

Start-ups: What to consider

The number of new companies starting up is holding steady. Switzerland is a world leader in innovation thanks to its renowned universities. However, the road from the initial idea to the launch of a marketable product or service is often a hard one, and the hurdles to be overcome along the way are many and various. Moreover, mistakes made in the inception phase may lead to problems further down the line.

Grant Thornton's experienced lawyers know what is important when it comes to implementing new business ideas and by involving other in-house specialists (e.g. taxation or transaction services), they can provide start-ups with a comprehensive advice.



From the idea to your own business

According to the Swiss Federal Statistics Office (BFS), a total of 39,125 companies were founded in Switzerland in 2016, creating 53,031 new jobs. Encouraging innovation and providing support for the commercial realisation of ideas is important for a country like Switzerland. However, it has been observed that new start-ups often lack the experience,

knowledge and the network for the successful and sustainable realisation of their business idea. All too often, all resources are channelled into the creative and supply-side aspects of implementation. That the success of a start-up largely depends on the foundation that underpins it all gets forgotten. Careful and comprehensive advice at all stages, starting with the

foundation of the company, pays off since in this way potentially costly conflicts with government or municipal bodies, customers or competitors can be avoided. Professional advisors have an eye to later phases of the business, e.g. a restructuring or sale (exit). With this in mind, mistakes which may lead to problems later can be avoided right from the start.



Challenges

In our experience, a start-up has, from a legal perspective, a particular need for support in the following areas:

- **Structuring the foundation of the company, taking account of the group of shareholders**

When founding a company, it is already advisable to draft the necessary corporate documents carefully, and where necessary to supplement “off-the-shelf” documents with customised provisions (e.g. pre-emptive options).

- Adaptation of the draft articles of association to the particular needs of the shareholders.
- Preparation of a shareholders’ agreement, in particular also with regard to arrangements with any new and departing shareholders.

- **Internal organisation**

Besides the visible external structure of the company, it is worthwhile organising the internal structure appropriately. This includes well-balanced organisational rules which allocate responsibilities, rights and duties to the individual company organs and any additional committees in a suitable manner.

- Clear organisational rules.
- Where needed, preparation of additional instructions for particular business areas.
- If necessary, creation of a rudimentary ICS as a risk register to ensure an overview of potential risks right from the start.

- **Corporate housekeeping**

In our experience, too little heed is paid too often to the proper documentation of corporate transactions. So it comes as no surprise that actions are sometimes

taken without formal resolutions, oftentimes because of lack of time or knowledge of the formalities. The absence of corporate legitimation can however, e.g. in the case of a conflict, have negative consequences. At the latest when external investors are brought on board will the company have to undergo a first critical examination. Missing paperwork does not exactly inspire confidence.

- Impeccable maintenance and updating of share registers.
- Proper drafting of the necessary resolutions of shareholders’ meetings and management bodies.
- Filing and archiving of relevant documentation.
- Drafting of all documentation in such a way that even an outsider can follow what went on and can understand the actions that have been taken.

- **Intellectual property rights**

A business idea as such cannot be protected from imitators. However, it is possible to achieve adequate protection for core elements of a business idea.

- Careful formulation of company name and company object.
- Registration of trademarks.
- Filing of patent applications.
- Design protection.
- Securing of domain names.

- **Business contracts and general terms and conditions, cooperation agreements**

As soon as the company starts operating, the need arises for a set of carefully drafted contracts for the company’s basic business transactions. This includes general terms and conditions. Nowadays,

effective partnerships with suppliers are becoming increasingly important, which in turn raises the question of whether to “make it or buy it”. Corresponding partnerships must be on a sound contractual footing in order to be armed against possible conflicts.

- Preparation of contracts necessary for running the business.
- Preparation of general terms and conditions.
- Preparation of possible cooperation agreements, arrangement of joint venture structures.

- **Employment contracts**

Every company is reliant on good employees. Especially in the case of start-ups, it needs to be considered whether and in what manner employees should share in the success of the company. Attention should be paid to this matter in the associated contracts.

- Drafting of employment contracts.
- Development of employee participation programmes.

- **Restructuring and financing**

Start-ups often face the question early on of growth and the associated restructuring problems it brings with it. Grant Thornton is happy to support companies on questions relating to the best financing arrangements, and in helping to draft the corresponding contracts and the work associated with implementation.

- Implementation of capital increases.
- Structuring of debt and equity capital.
- Preparation of share and share purchase agreements.

A strong partner

Grant Thornton Legal Services is a reliable and solution-oriented partner for start-up companies. We can support you in all legal matters, from the initial idea to the launch of a marketable product or service. Thanks to our integrated advisory approach, further specialists can be called in as needed. We look forward to helping you put your company on track for growth.



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