## FUNDING FOR START-UPS
A GUIDE TO FUNDRAISING

For Review Only

A research report in 2017 by the Startup Genome project, a US-based think-tank, stated that Singapore had overtaken Silicon Valley to become number one in the world for start-up talent. With the Singapore government successfully rolling out innovative new policies to establish Singapore as an attractive location for setting up new start-ups, *Funding for Start-ups* is a timely book on how to raise funds for new start-ups.

This book explores the concepts and processes behind fundraising in Singapore. With two decades' experience advising businesses on fundraising, the author provides a legal practitioner's perspective on concepts and processes ordinarily encountered in managing the fundraising process, including perfecting pitches and leveraging on legal documentation.

This is the first title in a new 3-book series to provide legal information and anecdotal guidance on the essentials of setting up new start-ups. The second and third titles are:

- Manpower Management for Start-ups
- Legal Risks & Managing Disputes for Start-ups

*"This book will be invaluable to anyone who is preparing for a new start-up and also to those who have already started the exciting journey."*

Lucas Chow, Chairman, Health Promotion Board

*"This book will be most valuable to aspiring entrepreneurs, especially the technical ones with little to no legal knowledge … [and] new investment managers embarking on their new journey."*

Chng Zhen Hao, CEO, Cap Vista Pte Ltd

visit our website at:
www.marshallcavendish.com/genref

Marshall Cavendish Business

BUSINESS
ISBN 978-981-4828-58-1
9 789814 828581

SETTING UP START-UPS

SAMUEL YUEN

FUNDING FOR START-UPS
A GUIDE TO FUNDRAISING

Marshall Cavendish Business

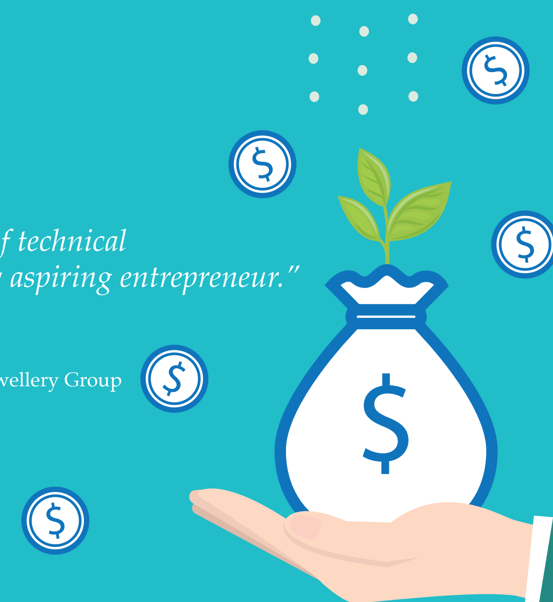
SAMUEL YUEN

SETTING UP START-UPS

# FUNDING FOR START-UPS
## A GUIDE TO FUNDRAISING

*"… a good source of technical information for any aspiring entrepreneur."*

Kelvin Tan Miang Ser
Founder & Chairman,
Genesis-Global Gems & Jewellery Group



For Review Only

© 2020 Marshall Cavendish International (Asia) Private Limited
Text © Samuel Yuen

Published by Marshall Cavendish Business
An imprint of Marshall Cavendish International

All rights reserved

No part of this publication may be reproduced, stored in a retrieval system or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owner. Requests for permission should be addressed to the Publisher, Marshall Cavendish International (Asia) Private Limited, 1 New Industrial Road, Singapore 536196. Tel: (65) 6213 9300. E-mail: genref@sg.marshallcavendish.com
Website: www.marshallcavendish.com/genref

The publisher makes no representation or warranties with respect to the contents of this book, and specifically disclaims any implied warranties or merchantability or fitness for any particular purpose, and shall in no event be liable for any loss of profit or any other commercial damage, including but not limited to special, incidental, consequential, or other damages.

Other Marshall Cavendish Offices
Marshall Cavendish Corporation, 99 White Plains Road, Tarrytown NY 10591-9001, USA • Marshall Cavendish International (Thailand) Co Ltd, 253 Asoke, 12th Floor, Sukhumvit 21 Road, Klongtoey Nua, Wattana, Bangkok 10110, Thailand • Marshall Cavendish (Malaysia) Sdn Bhd, Times Subang, Lot 46, Subang Hi-Tech Industrial Park, Batu Tiga, 40000 Shah Alam, Selangor Darul Ehsan, Malaysia.

Marshall Cavendish is a registered trademark of Times Publishing Limited

**National Library Board, Singapore Cataloguing-in-Publication Data**

Name: Yuen, Samuel, 1975-
Title: Funding for start-ups : a guide to fundraising / Samuel Yuen.
Description: Singapore : Marshall Cavendish Business, [2020]
Identifier(s): OCN 1129793753 | ISBN 978-981-48-2858-1 (paperback)
Subject(s): LCSH: New business enterprises--Finance--Law and legislation--Singapore. | New business enterprises--Law and legislation--Singapore. | Fund raising--Singapore.
Classification: DDC 346.5957065--dc23

Printed in Singapore

*For my earthly father, Charlie Yuen,*
*who taught me to think critically.*
*You are missed.*

For Review Only

**FOREWORD** 10
**ACKNOWLEDGEMENTS** 14
**INTRODUCTION** 16

**CHAPTER 1 – STARTING OUT: KEY LEGAL CONCEPTS** 24
#1: Separation of Legal Personality
#2: Piercing the Corporate Veil
#3: How Contracts are Made
#4: Not all Agreements are Equal, Some are More “Equal” than Others
#5: Legality of Oral Contracts
#6: Electronic Contracts
#7: Interpretation of Contracts Paradigm Shift: Contracts as a Form of Legal Risk Management

**CHAPTER 2 – LEGAL VEHICLES IN FUNDRAISING** 44
Types of Vehicles
Sole Proprietorship
Limited Partnership
Limited Liability Partnership
Company
Summary of Legal Entities
Finding the Right Fit for Your Business

**CHAPTER 3 – COMPANIES: WHAT IS IT?** 66
Types of Companies
Companies Limited by Shares
Variable Capital Companies
Companies Limited by Guarantee
Public and Private Companies
Different Classes of Shares
Regulatory and Compliance Requirements

**CHAPTER 4 – FUNDRAISING** 92
Introduction
Debt-based Financing
Equity-based Financing
Hybrid Approach
Alternative Sources of Funding
Fundraising in Phases
Summary

**CHAPTER 5 – NEGOTIATIONS: A LAWYER’S PERSPECTIVE** 122
Perfecting a Pitch
Pitching to Your Ideal Investor
Negotiation Tactics
Use Your Lawyers Well

**CHAPTER 6 – LEGAL DOCUMENTATION** 148
Preliminary Considerations
Types of Legal Documentation

**CHAPTER 7 – WISDOM DROP** 192

**GLOSSARY** 207
**ABOUT THE AUTHOR** 215

For Review Only

## FOREWORD

It gives me great pleasure to write this Foreword for Samuel Yuen's maiden law guidebook.

Alejandro Cremades, in *The Art of Startup Fundraising* (2016), wrote that "Most startups eventually pivot to adjust to what the market is telling them." I would venture to add that start-ups should, right from the start (not eventually), pivot to adjust to what the *law* is telling them. Samuel Yuen's book is one such potential pivot.

*Funding for Start-ups* is a timely and thematic guide on fundraising for start-ups. Singapore has, of late, taken *numero uno* position for start-up talent and overtaken the US in this regard. This is not a hyperbole or a slick marketing pitch. Instead, this finding comes from a 2017 research report by the Startup Genome project, a US-based think-tank.

Being in pole position, our nation needs to be positioned strongly to build capacity for our embryonic entrepreneurial start-ups. The guide in your hands could not have arrived at a better time.

The ambit of content coverage of this book includes:

(1) the legal aspects of different approaches to fundraising;
(2) an outline of fundraising in phases;
(3) how to perfect a pitch to an investor;
(4) understanding the investor's mindset; and
(5) managing negotiations in the fundraising process.

The author's straightforward but salutary aims include providing legal information and anecdotal guidance on the essentials of setting up new start-ups.

The greatest value proposition of this handy guidebook is that it demystifies the applicable law and deconstructs complex legal concepts. Among other things, Samuel doles out bite-sized, digestible knowledge and information on key legal concepts in this commercial sphere. These include separate legal personality, lifting the corporate veil, how contracts are made, electronic contracts and contractual interpretation. It is to Samuel's credit that his clear and concise communicating style make this an intelligible and interesting read for the layperson rather than gobbledygook. Exemplars within this work include the tabulated summary of legal entities in Chapter 2, as well as the respective advantages and disadvantages of equity, debt and hybrid financing in Chapter 4. There are also especially lucid explanations of invoice discounting, factoring and reverse takeovers in Chapter 4, as well as the types of legal documentation involved in Chapter 6, to select a few illustrations. And yet the narrative and outline is neither dry nor dull. The reader will be engaged by the writing style reflecting the author's alacrity. Samuel's conversational (possibly, chatty)

For Review Only

style gently guides the reader through the technical aspects to help them see the forest for the trees.

Leafing through this work is akin to listening to a patient navigational guide giving a travel map to a newcomer going into uncharted areas and walking through the same in methodical and careful fashion. Although virgin territory, Samuel has not shied away from commenting on new legal developments, including variable capital companies (Chapter 3), all done in a client-friendly and business-friendly style.

As one will readily glean even from a cursory dipping into this guidebook, it is not one-dimensional. On the contrary, it touches on practical tips and soft skills in perfecting the pitch to an investor and incising into the investor's mindset as well as negotiation techniques.

A particularly pertinent takeaway, reiterated in *Funding for Start-ups*, is the need for start-up founders to make a paradigm shift: to see contracts as a way to manage legal risks. As a corollary to that, to negotiate them with utmost care. This pragmatic perspective *per se* once understood could be business-saving and game-changing for many visionary entrepreneurs.

There are even more illuminating insights to come right at the end. In his final chapter, the author draws from two decades of practitioner experience to offer his pearl drops of wisdom. It seems that he has saved his best for last. These pointers are shared without the author being an upstart but, instead, gives honour where honour is due on the several sources involved.



In summary, Samuel's guidebook is pitch-perfect and pitched perfectly for start-ups. It should be essential reading for every start-up that needs not only a pivot but also a travel map.

Gregory Vijayendran SC

*President, Law Society of Singapore*

For Review Only

## INTRODUCTION

A media release by Enterprise Singapore on 17 October 2019 reported the following:

(1) in spite of a slowing economy, investments into early-stage, deep tech start-ups grew by more than 36% to a total of S$13.4 billion in the first three quarters of 2019 alone – in comparison, the whole of 2018 saw a relatively modest S$10.5 billion worth of investments;
(2) early stage funding had, within the first three quarters of 2019, almost doubled; and
(3) investment into deep tech domains continue to gain traction.

In comparison, Singapore's IPO capital market has seen relatively modest performance, with nine IPOs successfully conducted in the first half of 2019, representing S$1.55 billion in proceeds raised and an improved market capitalisation of S$2.24 billion.

The start-up ecosystem continues to grow unabated, with regional and global funds closing larger rounds in 2019 and with several other venture capitalists having launched early-stage and growth-stage funds in Singapore, such as Helicap, Wavemaker Partners and Reefknot Investments, amongst many others. The development of the start-up ecosystem will

For Review Only

continue to be nurtured in the days to come, amidst a respectable showing of a 14th-placed ranking in the 2019 Global Startup Ecosystem Ranking released by the Startup Genome. Amongst other things, it was stated in the same report that Singapore is attractive due to the ease of doing business (2nd-placed worldwide) and its competitive tax breaks.

Tragically, not all start-ups survive their early stages. It was reported by the Statistics Department of Singapore that while 61,573 new business entities were formed in 2019 alone, there had also been a cessation of 47,885 business entities in the same year. This represents an attrition rate of more than 77%. Over the same time period, there had been no less than 14 Court of Appeal cases concerning shareholders' disputes, including disputes over the terms of shareholders' agreements between plaintiffs and defendants, and derivative and minority oppression matters.

Putting aside the whys and wherefores, there are two quick observations to be made. Firstly, the increase in investment activities in early-stage and growth-stage start-ups will invariably lead to a higher incidence of disputes (or contention), all things remaining the same. Disputes can arise for a myriad of reasons, most common being the mismatch of expectations and parties not being clear with the concepts and issues inherent to any fundraising exercise. Secondly, fundraising is more likely than not necessary for the continued existence of a start-up, not just its growth. Just as blood is the essence of life, cash is the essence of one's business. Without blood circulating in your body, you would probably be dead very quickly. Without money



flowing or circulating in, out and around your business, you would probably find it impossible to stay in business, never mind nurturing a business into a thriving success.

Ensuring that your business has adequate funds is therefore one of the most important, if not the most important, processes you will take part in as a start-up founder. From my experience working with entrepreneurs and start-ups, a start-up is unlikely to become self-sufficient without at least an internal round of fundraising (seed capital) or even with an additional, external round of fundraising. Most business enterprises do in fact generally require external funding at some point in their growth and some may in fact require multiple rounds of fundraising. Just like keeping in top physical shape, it is a continuous process that will require commitment and dedication. Done improperly, fundraising will occupy your waking moments and give you sleepless nights. Done properly, the start-up is set on an upward trajectory to greatness.

In 20 years of legal practice through a broad spectrum of practice areas, I have had the privilege of being exposed to a wide variety of issues concerning start-ups in Singapore. Since 2012, I have set up and managed a law practice dedicated to the support, empowerment and protection of start-ups. Why, some have asked. Having grown up in a family of entrepreneurs, I have witnessed how businesses can fail because entrepreneurs were unable to afford proper legal support, empowerment and protection, and had settled for the inexperienced or inept. I am driven by the need to bring high quality services to start-ups, at affordable prices.

For Review Only

Further, legal practice in Singapore has also given me a ringside seat to the sometimes dramatic parting of ways between investors and a company, and between shareholders. The commercial success of a start-up is often muted and even destroyed by the conflicting interests between the start-up's founders and its investors. Conflicting interests are inherent and will continue to arise unless the issues are pre-empted and properly dealt with by the stakeholders of the company. Likewise, it seems that the most successful start-ups are those who do not sweep legal issues under the proverbial carpet but those who choose to deal with such obstacles honestly and competently. These are the ones which, in all likelihood, will survive. It is my hope that, through this book and the ones to come, I am professionally able to help start-ups and small businesses make sense of this beautiful mess and give them the best chances of success.

I firmly believe that a fundraising exercise will not make sense unless one understands the legal structures and rules surrounding the transaction. Which is why I have chosen to spend some time setting the foundational concepts before dealing with issues relating directly to fundraising. This book is not so much intended to be read from cover to cover (you may), as it is intended to be a set of topical guidelines that a start-up founder can refer to in a pinch (you should). It is hopefully a road map to the intricacies and nuances of fundraising and the key issues start-up founders are likely to face with stakeholders, such as investors, venture capitalists, accountants, lawyers, business consultants and other service providers. To this end, an understanding of the underlying reasons and key concepts is necessary in order to



achieve the aims of demystifying the fundraising process and to ensure a safe and successful fundraising exercise.

Relevant key concepts in law will be covered in Chapter 1. These will range from the formation of contracts to the nature of business entities. These will guide you not just in the realm of fundraising, but in choosing the right legal vehicles, understanding the contracts you will need to sign as part of your business, and how to protect your business as you grow. You will need to be aware of the following in choosing the right legal vehicles:

(1) whether the legal vehicle is a separate legal entity from you;
(2) what you might potentially be liable for; and
(3) how that legal entity would help you in realising your vision for your business.

I hope to arm readers with the right perspective in understanding why contracts are important and the right language to navigate legalese.

In Chapters 2 and 3, I will go into greater detail about the different types of legal vehicles available to you, and the characteristics of each. Specifically, I will focus on companies limited by shares, such a legal vehicle being the most common and popular amongst start-up founders due to the higher levels of convenience and protection, as well as better risk management. In Chapter 3, I will also highlight some of the more important updates to the company structure and touch on various regulatory and compliance requirements concerning the administration of a company.

For Review Only

Over the course of Chapters 4, 5 and 6, we leave behind the starters and antipasti of the book and get into the meat. In Chapter 4, I will cover the different ways in which fundraising may be done, including alternatives to the traditional forms of fundraising and series funding. In Chapter 5, I will share some tactics and strategies for perfecting pitches and getting the best out of negotiations. In Chapter 6, I will provide some insights concerning legal documentation relating to fundraising, including key practical issues that could make or break a fundraising exercise.

I am a firm believer in encouraging entrepreneurship from a young age. There are simply some things in life which cannot be taught in a classroom and learning them as early as one can is only beneficial. It is my small hope that my humble contribution to the subject of fundraising will be useful to young entrepreneurs and give them a wellspring of wisdom and knowledge which they can draw from in their personal journeys as entrepreneurs.

At this point, it would perhaps be appropriate to draw your attention to the illustrations created by Kyra Teo, aged 15. Kyra has a God-given talent as an artist and in a book about fundraising, it is perhaps apt for me to support a budding entrepreneur by commissioning and incorporating original artistic works from one such talented individual in this book, both as a means of supporting young entrepreneurship, as well as to help illustrate a few key ideas in this book.

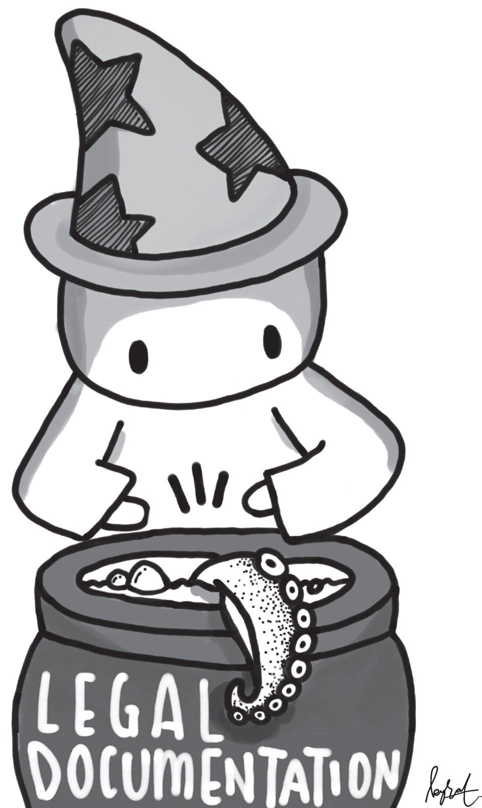
Lastly, I will share some of the practical wisdom that I have gleaned from the masters (fellow practitioners of the law and



clients alike) in my legal practice in commercial transactions and fundraising projects.

I hope you will derive as much value from this book as I have enjoyed writing it.

For Review Only




CHAPTER 6

# LEGAL DOCUMENTATION

In Chapter 1, the need for start-up founders to make a paradigm shift on the nature of contracts was highlighted. Specifically, they must see contracts as a way to manage and mitigate legal risks; as a document that should therefore be negotiated with the utmost care. Do head back to the last section of Chapter 1 and the whole of Chapter 5 if a quick refresher is needed.

Contracts are entered into because of the 5Cs: convenience, certainty, confidence, control and compulsion. Having all the agreed terms set out in a contract is convenient. The point of reference is reduced to a singularity. If the terms and conditions are set out in a contract, you will have certainty over where to find the details governing the agreement. Mastery over the terms and conditions means that you have control over the same and you know to a large degree how things will turn out. Control in turn breeds confidence, as you will now have a solid handle over pretty much all aspects of the deal. Confidence also extends to the ability to compel an errant party to comply with the contract.

For Review Only

## PRELIMINARY CONSIDERATIONS

Before you can definitively work out the legal documentation for the fundraise, you should consider the following factors:

(1) Who are the players in the transaction?
(2) How complicated is the transaction?
(3) Has it been done before?
(4) Is the proposed deal structure acceptable to me?
(5) Should I ask my lawyer for a template agreement?
(6) Should I bother with boilerplates?
(7) Do I need term sheets or letters of intent?
(8) What is a cap (capitalisation) table?

### Who are the players in the transaction?

Generally for fundraising activities, you will encounter the following persons in a deal:

(1) Start-up founder: the person who is widely acknowledged to be the person who founded the start-up, or the "first amongst equals" in a group of founders.
(2) Existing shareholders of the start-up: these person(s) would be the other founders, and/or possibly, shareholders of the start-up who were on-boarded as investors previously and hold shares before the start of the contemplated fundraising round. However, I would exclude persons who are merely vendors or creditors, unless they have rights over equity in any form or format.
(3) Professional vendors: professionals such as lawyers, accountants and other trade specialists who are regulated by the law in the provision of their professional services to you.



(4) Business consultant/broker: people who provide management related support and those who help the start-up make introductions to other parties. These services are usually not regulated, although some of these consultants/brokers are licensed in other industries or have relevant experience in the areas that they are consulting in. A friend once told me jokingly that in his industry, business consultants are defined as people whom the company has fired but are re-engaged as freelancers to tell you the time by looking at the watch on your wrist. Of course, actual reality can be rather different from that. Consultants and brokers do play an important role, including matchmaking your start-up to a suitable investor.
(5) VC: usually a firm of individuals licenced by the MAS to provide financial advisory and securities-related services. They may at times overlap in function with business consultants and brokers, but tend to have a more focused and directed purpose in fundraising activities, as well as greater access to the serious players. They tend to dress very well too.
(6) Prospective investor(s): the people with the liquidity and reserves to invest in the start-up.

These are, broadly speaking, the people in your neighbourhood, players in the ecosystem.

In the course of your fundraising exercise, you may come across some or all of the aforementioned, depending on the structure you have opted for. For a more detailed explanation, please refer to Chapter 4.

For Review Only

### How complicated is the transaction?

A former boss of mine whom I deeply respect used to help calm the nerves of his associates by reminding them that what lawyers do can be complex especially to the uninitiated, but at the same time, what we do is certainly not rocket science. He meant that as lawyers, our work is not so complex that one would need genius level IQ to even begin to comprehend it. It is really about learning to see the features of any deal and breaking the deal down into bite-sized pieces.

Over the years, I have developed a shorthand method for understanding each transaction before I apply the law. For instance, it helps to understand how and where the valuables such as money and effort is flowing, and where the obligations fall. You just need to stay calm and trust your team. Do not forget to take their advice and guidance to heart.

### Has it been done before?

That which we call a rose, by any other name, would smell just as sweet. Customary names can be and are useful handles, but they do not define a transaction. I have noticed that, in Singapore, this problem can be exacerbated when individuals with a little knowledge flaunt that knowledge to detrimental effect. I have variously heard of the "Buy-Sell Agreement" (a form of shareholders' agreement that seems to be popular with insurance professionals), the "Investment Agreement" (meaning a subscription for shares agreement) and the "Exclusivity Agreement" (aren't they, usually?) in reference to a referral agreement, just to name a few. At this juncture, remembering Chapter 1 would be useful.



The name of a thing is not as important as the substance of the thing. In our context, there is actually no benefit in signing an agreement with a fancy name, if you sign away your rights to the start-up's successes. As unethical as it may seem, it is no crime to leave out vital clauses that would help the counterparty. As a professional, I am under no obligations to help my client's counterparty understand the deal and preserve his rights. In fact, it is the counterparty's lawyer's job to ensure that his client is not fleeced in the making of the deal. Always read or have someone in your team of experts read and understand the practical impact of the particular species of agreement in question. Resist the urge to be overwhelmed by the flash and bang of the fundraising circus. Rather, put in the time (or at least pay someone to do so) to understand the intricacies of the contract before you decide if it is acceptable.

### Is the proposed deal structure acceptable?

The parties must obviously come to an agreement before a deal can be struck. No one can force you to take a deal except yourself, so be sure that you don't just like the deal structure, but you love it. Look not just at the quantitative aspects of the transaction (the quantum of money to be invested and the portion of equity to be exchanged) but also at the qualitative aspects of the deal (what kind of rights are surrendered, impact of the transaction on future transactions).

The following are some factors to consider when deciding if the deal structure is acceptable to you.

For Review Only

What am I losing?

In every transaction, you give up something you have (or will have) to gain something that you don't or otherwise will never attain. As discussed previously in Chapter 4, the deal can either be equity, or debt, or a hybrid in nature. In terms of an equity play, you lose shares in your business and possibly control, but there is no worry with having to pay back the investor. Taking up debt instead will mean that you have to pay the piper at some point in time, but you will not lose control over the company. A hybridised approach should ideally present you with the best of both approaches but equally possibly, the worst of both. I have seen cases where the convertible loan agreement did not work out the way it was supposed to, with the investor demanding full redemption of the loan instead of conversion to equity. In that scenario, the company became burdened financially to a point where it had to keep borrowing to finance the redemption. Always consider the worst case scenario and if you can live with that potential worst case scenario, you will be alright.

What am I gaining?

On the other hand, do consider which deal structure presents you with the best competitive advantage, given the nature of what you would be losing. Would the loss of equity (and therefore control) give you a strategic advantage over your competitors or an otherwise inaccessible realm of possibilities? What if taking on debt prevents the loss of equity in the short term and allows you to on-board a more strategic partner with a lesser loss of control? Is the deal worth it? That leads me to the next question.



Am I paying too much?

Was the valuation fair, quantitatively and qualitatively? What have you negotiated as a counterweight to the perceived undervaluation or overvaluation? A "win-win" scenario does require a fair amount of compromise. Make sure you do not give away your shares too cheaply. Make sure also that if you do take on a debt, the cost of borrowing does not cripple your business.

Will this come back to haunt me?

Do not, under any circumstances, bank on the best case scenario happening. Always assume that the worst case will happen and plan accordingly. In this regard, having a good lawyer who prepares you for the worst case scenario helps tremendously.

### Should I ask my lawyer for a template agreement?

The answer is both yes and no. To understand the ambiguous answer, you need to understand that there is a difference in drafting a template agreement and using a template agreement as a draft.

The former (drafting a template agreement) is prudent and practical as it would help you save on costs in the long run. These would include employment contracts for your staff or in our context, deeds of novation, assignment and accession.

The latter (using a template agreement as a draft), if in the wrong hands, is a time bomb waiting to go off. Each deal is different and templates for drafts often contain a generic solution to a specific problem, such as the structure of your fundraise. Using a template is not illegal and can sometimes appear to drastically

For Review Only

shorten turnaround times. However, the more complex your deal, the less likely a template would be adequate in meaningfully shortening the time for the turnaround. It is, however, not such a big problem if the professional services provider is aware of the dangers of using templates and is cautious in relying on the template for specific clauses or using said template after gaining a deep awareness and appreciation for the intention and purposes behind the template. Templates are a great way to understand the generic structure of a deal, but you should always work hand in hand with your lawyer to custom build an agreement specific to your needs and context.

The rule of thumb is: The more complex the deal, the less likely a template would suffice.

It is also pertinent at this point to note that businesses change over time. As your business model evolves, you may need to adjust the terms and conditions of your contracts as well. This will ensure that the agreement remains relevant and accurate. A periodic check-in with your lawyer is useful, especially when you foresee major changes in your business (for example, launch of new products or services, change in ownership and control, restructuring of your business or group).

### Should I bother with boilerplates?

Boilerplate clauses are contractual terms which are fairly commonplace, generic and uncontroversial at law, and are widely used in a standardised form to a high degree. They can and will appear across a range of legal documentation (please see below).



Back in the day, a boilerplate was a plate of steel used as a template in the construction of steam boilers. These boilerplates were made in large quantities and because they were designed to be fitted and welded together, they were made to a great degree of uniformity. The legal profession began using the term widely in the 1950s. Far from denoting a certain quality and a testament to human ingenuity, boilerplates became associated with a lack of originality and sophistication because they also happen to lack the fine print designed to skirt the law.

Today, boilerplates are often used defensively by a party with superior bargaining power to avoid legal liabilities and obligations in relation to a party with a weaker bargaining position. These boilerplates are usually not open for negotiation and are, unfortunately, often entered into without due consideration and understanding. Courts may, however, set aside provisions of such contracts if they find them clearly coercive, unreasonable or unfair (see Chapter 1).

There is some confusion concerning the treatment of boilerplates and templated agreement: Why the apparent disparity in treatment? Aren't boilerplates good for you? And if they are, shouldn't one be able to use templated agreements safely without risks? Well, as with most things in life, the answer isn't straightforward. Boilerplates represent contractual terms which are fairly commonplace, generic and uncontroversial at law. There is seldom very little (if any) customisation in the boilerplate clauses, as the clarity and inflexibility of the legal position regarding individual boilerplate clauses has rendered such customisation non-critical, generally speaking.

For Review Only

This cannot be further from the truth for the rest of the contractual terms, which are not boilerplate clauses, which must set out commercial considerations and processes within the legal framework of the law. Commercial considerations and processes are unique to each transaction and will require considerable attention on your part to ensure that the legal documentation addresses every aspect of the commercial transaction.

### Do I need term sheets or letters of intent?

Term sheets and letters of intent are essentially holding agreements, designed to bridge the window in time between the striking of the broad strokes of the deal, past the negotiations and until the signing and execution of the legal documentation surrounding the deal. The term sheets and letters of intent should be prepared as legally binding and enforceable contracts (not memorandums of understanding), so that you get adequate protection should the other party renege, or at least until the deal is done.

Term sheets and letters of intent, being enforceable placeholders, cannot be expected to take the place of the actual legal documentation. They are preliminary and do not set out full details of the deal. If you envisage a prolonged period between the initial agreement and eventual conclusion of the deal, please "Beyoncé" it – "if you like it then you should've put a ring on it". Otherwise, it is relatively safe to skip this step.

### What is a cap (capitalisation) table?

The capitalisation table has been likened by industry watchers to be to a business what ancestry.com is to a human. One cannot overemphasise the importance of the capitalisation table. Simply



put, it is a table (usually done on Microsoft Excel or, to the less initiated, Microsoft Word) that sets out details concerning the ownership of a company, including:

(1) name of the shareholder(s);
(2) the amount the shareholder bought in at;
(3) the number of shareholders bought by that shareholder; and
(4) how that ownership percentage translates into actual equity after dilution.

The capitalisation table can be created by any of your vendors, mostly the consultant (including the VC), accountant or lawyer. However, do consider getting your lawyers involved as early as possible. While most lawyers will joke about being poor with numbers, the good ones I know of tend to be strong in mathematical concepts and the truly talented ones are adept at converting words into usable formulas. Your lawyer will be useful in spotting errors in the capitalisation table and in verification of the truthfulness/accuracy of the capitalisation table.

A well organised capitalisation table will be very useful in fundraising, as well as in understanding your personal position with regards to a share award/option, when hiring for senior roles with equity stake and in setting out your exit plan. Most of all, you can use it to determine how the round of fundraising will turn out and how future rounds will be impacted.

Fundraising can be messy. Using a capitalisation table certainly helps to "Marie Kondo" the mess and give you a clear and clean picture.

For Review Only

## ABOUT THE AUTHOR

Samuel Yuen is the founder and Managing Director of Yuen Law LLC, a Singapore Law Practice. Following his graduation from the National University of Singapore's Law Faculty in 2000, Samuel has advised financially challenged businesses of all ilk and sizes on fundraising issues over the past two decades. Samuel comes from a family with a long tradition in entrepreneurship. Samuel is an award-winning business owner who was recognised as the top business referrer in BNI Singapore for 2014 and 2015, amongst other accolades and awards.

Samuel is passionate about helping businesses thrive ethically and derives much joy in helping start-ups make sense of their business environment, which he is well-positioned to do with his diverse experience in legal practice and his own personal entrepreneurship journey.

Yuen Law LLC
Website: https://yuenlaw.com.sg/
Email: inquiry@yuenlaw.com.sg