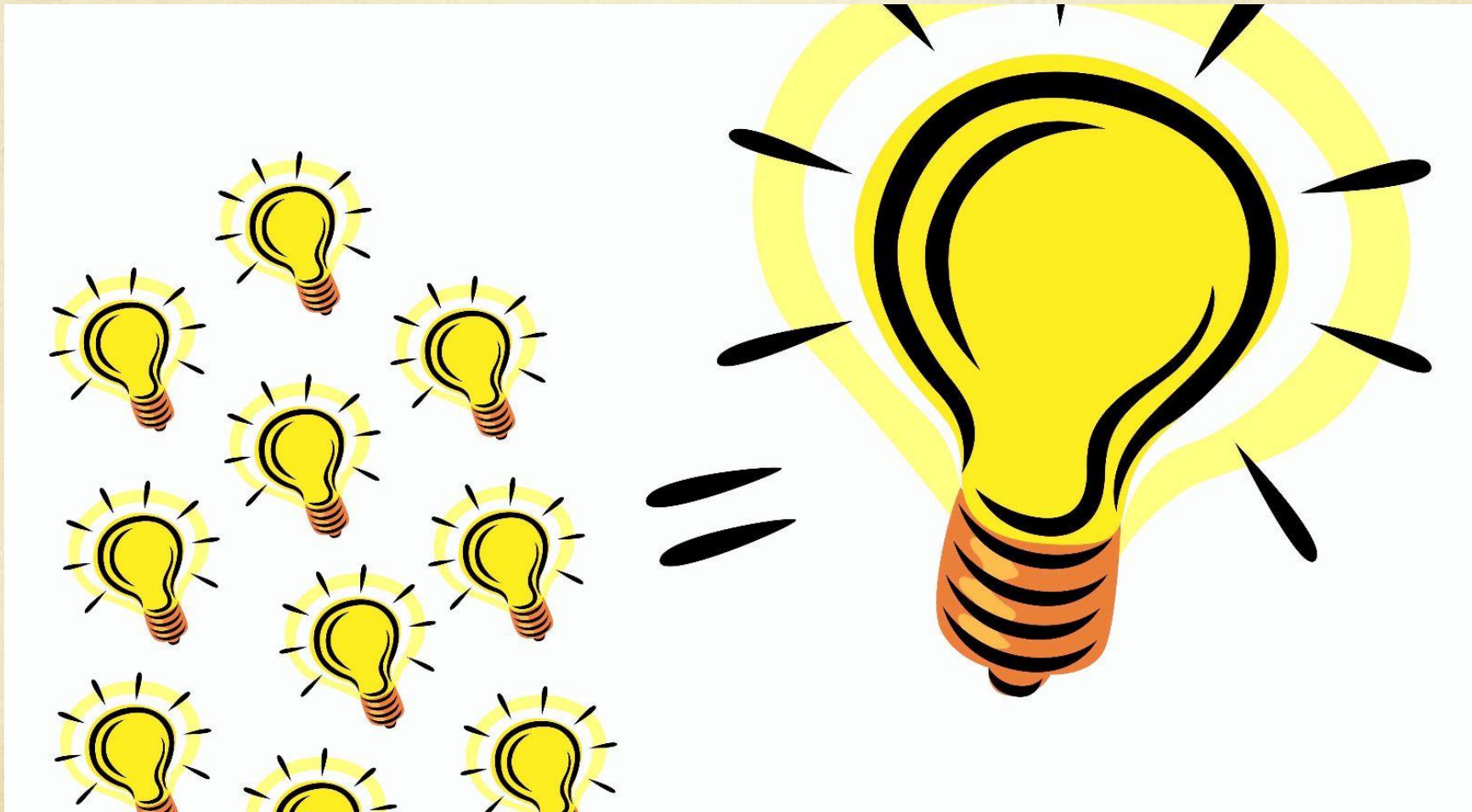


SOME BASICS LEGAL  
POINTERS FOR  
“START UPS”

July 2014









# Setting out ...

- Several ways of structuring a business
  - Sole proprietorship
  - Partnership
  - Company

# Each, its own “pros” and “cons”

- Sole proprietorships and Partnerships
  - Unlimited liability
  - Limited access to resources
  - Cumbersome

# Companies

- Several forms of companies recognized by law
  - Companies limited by guarantee
  - Private companies
  - Limited companies
  - Public limited companies



# Advantages of a company

- Limited Liability
- Facilitates wide spread ownership
- Liquidity
- Gives confidence to lenders etc.

# How companies operate

- Characteristics of companies
  - Separate legal personality
  - Powers to do virtually anything (subject to articles and “objects” clauses)

# Structuring your shareholding

- Promoters shares
- Shares for services
- ESOPS

# Shares and ownership

- Types of shares
- Rights in a share
- Pricing of shares
- Issuing of shares
- Transfers

# Shareholders

- Rights of shareholders
  - Right to vote
  - Right to distributions
  - Rights on liquidation

# Common misconceptions

Shareholders have ...

- No ownership to the assets of the company
- No right to interfere with management

# Shareholder liabilities

Only to the extent of sums outstanding on the share subscription:

- Partly paid shares
- Shareholder guarantees

# The Board of Directors

- Responsible for conducting the business of the Company
- Considerable liabilities under the Companies Act
  - Statutory duties
  - Statutory liabilities



# Directors duties

- Act in good faith in the interests of the company
- Owe duty to the company
- Comply with law and standards of care

# Directors liabilities

- Can be sued by shareholders for breach of duties
- Statutory breaches can result in prosecution
- Employee and tax liabilities

# Operational aspects

- Composition
- Appointment
- Removal

# Exercise of powers

- “Board Responsibility”
- Practical need for delegation
  - Committees
  - Employees
  - Responsibility for decisions

# Operations

## ○ Meetings

- Physical
- Circular
- Remote

## ○ Quorum

# Supreme in decision making

- All decisions relating to the Company except those relating to “major transactions”

# Responsibilities towards shareholders

- General Meetings
- Accounts
- Disclosures
- Corporate governance

# Shareholder Agreements

- Why, and what are “Shareholder Agreements”



# Content of Shareholder Agreements

- General overview of contents
- Shareholdings
- Roles of parties
  - As shareholders
  - Within boards
  - In management

# General content ...

- Principles governing issue of securities
- Roles of shareholders
- Rights to appoint directors
- Veto powers on “reserved” matters

# Other undertakings of fairness

- Company appointments
- Accounts and audit
- Access to information
- Rights to conduct independent audit
- Dividend policies

# General content ...

- Rights and procedures on transfer of shares
  - Prohibitions on transfers
  - Rights of first refusal
  - Tag along
  - Drag along
  - Shot gun clauses

# General contents ...

- Shareholder undertakings
- Non compete undertakings
- Non disclosure agreements
- “No poaching” clauses

# Exit clauses

- Not a marriage
  
- Rearing a child
  - Listing
  - Trade sales
  - Buy back

# Intellectual property

- Protect your IP
  - Copyright
  - Trademarks
  - Patents
  - Industrial designs

Questions?



## RESERVED MATTERS

No decision relating to any of the following matters shall be valid unless it is taken by a majority decision of the Board which majority shall include the affirmative vote of a director nominated by the Strategic Investor:

- Repurchase, redemption buy back or acquisition of any shares of the Company's issued share capital, except for the repurchase of shares issued pursuant to the Company's ESOP;
- Declaration or payment of any dividend or making of other distributions on any class of share capital of the Company;

- Reclassification of any component of the share capital of the Company;
- Incurring or issuance of indebtedness in excess of Rs. ..../-;
- Guaranteeing third party indebtedness;
- Acquisition of any equity interest in any entity, or acquisition of any material assets of any entity or person outside the primary Business of the Company;
- Creation of any subsidiary;

- Approving the Company's annual Business Plan, Operating Plan and Budget;
- Appointing or changing the auditor of the Company;
- Any amendment to the Company's Articles of Association;
- Issue of new securities;

- Creation of any new class of shares or securities.
- Creation, allocation, lock in, increase, decrease or change of an ESOP;
- Liquidation, dissolving or winding-up the operations of the Company, or selling material assets that are in excess Rs. ....../=

- Making any material change in the nature of the Company's Business or entering into any new line of business;
- Entering into any Related Party transactions unless they are on and the terms of which are comparable to transactions entered into on an arm's length basis;
- Availing of debt by the Company in excess of Rs. ....../- or beyond what is approved by the Board in the business plan. For the purposes of this provision, “debt” shall include but not be limited to short and long-term debt and guarantees;

- Transferring of any intellectual property used by the Company and except where such transfer is necessitated in terms of a contract with a customer in the usual course of Business;
- Any strategic/financial/other alliance with a third party which results in investments by the Company or offer certain exclusive rights to such third party;
- Any investment in non-fixed income bearing securities including deployment of redemption reserves, excluding short-term (only in the case of fixed income securities) and working capital investments;\
- Changing the name of the Company or any proposal to change the financial year of the Company;

- Recruitment of any employees whose remuneration exceeds Rs. .... per annum;
- Appointment of persons to senior management positions, i.e., Chief Executive officer, the Chief Operating Officer and the Chief Financial Officer.
- Any increase of more than twenty per cent (20%) per annum of any employees remuneration;

- Any calls on equity shares of the Company, including calls on the unpaid amounts of partly paid-up shares.
- the hypothecation, pledge, mortgage, charge or other encumbrance by the Company of the whole of its assets or any part thereof except [to a financial institution] in the ordinary course of the Company's Business.