

Startup Investments



For J.B Nagar CPE Study Circle of WIRC

Essential documentation

- Shareholders Agreement/Share Subscription Agreement/Co-Founder Arrangement
- Debenture Subscription Agreement
- Employment Agreement
- Consultant Agreement
- Services Agreement
- Non-Disclosure Agreement

Fund raising documentation

➤ **Termsheet**

- An understanding between the investor and the company regarding the terms of the investment
- Terms such as:
 - Valuation of the shares
 - Management rights and governance
 - Liquidation preference
 - Anti-dilution
 - Basic understanding of the terms of investment

Fund raising documentation

➤ **Shareholders Agreement/Share Subscription Agreement**

- A binding agreement on the Investor and the Investee detailing the understanding in the Termsheet
- Would contain detailed terms such as:
 - Governance and Board rights like affirmative vote items
 - Founder/Employee related terms such as vesting and ESOP
 - Representations and Warranties, Indemnities
 - Exit expectations: ROFR, Tag-along, Drag along
 - Liquidation Preference

Methods of valuation of shares

- Net Asset method (asset based)
- Yield method (profit based)
- DCF (discounted cash flow)

Fund raising documentation and process flow

- Once the Termsheet is signed by the parties, a valuation of the shares is carried out by a registered valuer.
- Valuation of shares is carried out using a method as prescribed under the Companies Shares and Debentures Rules 2014
- If the Articles of Association of the Company allow for a Private Placement
- Call board meeting for allotment of shares
- Allotment of shares within 60 days of receipt of money
- File return of allotment as under Form PAS-3 within 30 days of allotment of shares
- File MGT-14 along with board resolution passed for allotment of shares
- Issue of share certificates, the share certificates have to be issued within a period of 60 days
- In case the investor is a foreign investor Form FC-GPR has to be filed with the RBI within a period of 60 days.

Documentation required for a Private Placement Process

- Draft Board Resolutions
- Board Resolution filings (Form MGT-14)
- Private Placement Offer Letter (Form PAS-4)
- Return of Allotment of shares (Form PAS-3)
- Share Certificates

At the time of Mergers and Acquisitions

➤ **Share Purchase Agreement**

- Executed when a company is being acquired or merged with another company
 - Involves buying out of the company or merging with purchase of its shares
 - In case of foreign investor FORM FC-TRS is to be filed with the RBI

➤ **Asset Purchase Agreement**

- Executed as an itemised sale or a slump sale

➤ **IP Assignment Agreement**

- Intellectual property of the Company such as brands, trademarks, software and expertise are increasingly being assigned.

Operational Documentation

➤ **Robust and detailed employment agreements**

- Lack of a detailed and comprehensive employment leads to uncertainty in case of dispute between employees and employer. Especially in times of exit and termination.

➤ **Consultant Agreement**

- A consultant agreement is essential in clearly defining the relationship between the company and its consultants, and the obligations inter-se

➤ **Non-Disclosure Agreement**

- Extremely important in cases where the company exposes its sensitive commercial and scientific data to external consultants, interns, employees and other service providers and recipients.

Operational Documentation

- **Employment Agreements**

- Companies, especially start ups based in the technology sector need to have robust employment agreements which are watertight in protecting their interests

- **Most important clauses are:**

- Confidentiality

- Non-Compete and Non-Solicit

- Data security and integrity

- Terms of compensation

- Termination, clearly defining cause and without cause

- Covenants post termination

Operational Documents

- **Employee Stock Option Schemes and Grant Letter**
- **Service Agreements and Master Service Agreements** are essential for a company in the services sector whether tangible or intangible. These agreements should also contain detailed service level agreements.
- **Robust and clear internal processes and policies for:**
 - Data Protection and Intellectual Property
 - Exit of employees
 - Internal rules and processes

Compliance Challenges faced by Startups

- Getting a share valuation report at a competent startup friendly pricing
- Tax opinions on new age service and goods delivery models such as E-commerce and Services based market platforms
- Transfer Pricing issues and related opinions
- RBI filings such as FC-GPR and FC-TRS, and filings for Foreign Assets and Liabilities for companies with foreign investment
- Clarity in taxation of inter state sale of intangible assets
- Clarity in taxation of classification on sale of assets as slump sale or asset sale
- Clarity on taxation of issue of ESOPs and SWEAT Equity.

How we can help

- Innove Law would like to bring together Chartered Accountants and Company Secretaries for a workshop on Startup documentation and compliance
- Please share your contact details with us, if you're interested in the workshop and for any further updates

Thank you!