

# THE STARTUP ENTERPRISE

**What do I do? Where do I go? How will I know when I get there?**

## ***LEGALS TOOLS TO ENHANCE AND PRESERVE VALUE AT EACH STAGE OF NEW BUSINESS GROWTH AND DEVELOPMENT***©

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Clients often ask what they should do to prepare to own a business, especially to start a new business. Here are some things they can do at each stage of growth and development.<sup>2</sup>

<b>I. Ideation</b>	<b>Legal Considerations</b>	<b>Comments</b>
<p>A. This is the birth stage of a business. There is a potential scalable product or service idea in play that has a large enough target market. Business model ideas are rising and a potential team is in place, although there is no confirmed commitment and no right skills balance or team structure set up.</p> <p>B. This stage may last anywhere from 5-7 months. The following should occur at this stage:</p> <ol style="list-style-type: none"> <li>1. Confirm the business idea, get all necessary documents and tools in place to transact business. (license, LLC formed, EIN, etc.)</li> <li>2. Find and build a team,</li> <li>3. Products are created,</li> <li>4. Teams are formed, financing, investors found and advisors are coming together.               <ol style="list-style-type: none"> <li>a. This can include angel investors and venture capitalists</li> </ol> </li> </ol>	<p><b>A. The Promoter(s) and Investors</b></p> <ol style="list-style-type: none"> <li>1. Non-Disclosure Agreement (NDA)</li> <li>2. Investor Questionnaire</li> <li>3. Private Placement Memorandum</li> <li>4. Reg. D or other filings.</li> <li>5. Securities Purchase Agreement</li> </ol> <p><b>B. Company Formation</b></p> <ol style="list-style-type: none"> <li>1. Shareholders or Operating Agreement</li> <li>2. Founders Buy-Sell Agreement</li> <li>3. Trade Marks: Name and Logo (the “brand”)</li> <li>4. Organizational Engineering</li> <li>5. Contracts:               <ol style="list-style-type: none"> <li>a. Sales, Supply, Distribution, Dealer Contracts with limitations of warranties, remedies, controlling law and forum</li> <li>b. Website Terms and Conditions</li> <li>c. Vendor Supply and Support Agreements</li> </ol> </li> </ol>	<p>Protect IP</p> <p>Qualify investors, not for SEC but for protection</p> <p>What does each founder bring to the business? Is it a temporary benefit? (Generally do not give position or power for short term benefit. \$ is better. )</p> <p>“Founders split:”</p>

<sup>1</sup> The Stages of Growth did not come from me. They are available several places on the Web including [www.startupcommons.org/startup-development-phases.html](http://www.startupcommons.org/startup-development-phases.html) and [piyushaggarwal.me](http://piyushaggarwal.me). My focus is on the legal considerations and tools of each Stage, i.e. the second and third columns.

<sup>2</sup> This table is provided for general informational purposes only. All companies may not need to do all the things listed or may need to do some things that are not. Please follow up on this table with a consultation with a qualified business law attorney.

		<p>Someone stays; others go. Plan for the exit upfront.</p> <p>The standard organization chart is not always right at first</p> <p>Limit lawsuit potential right up front with disclaimers, limitations of remedy, law arbitration, etc.</p>
<p><b>II. Concepting</b>  A clear and meaningful target with a clear direction needs to be established at this stage. This requires set goals at 3, 6, 12, 24, and 36 months.</p> <p>A. Core founding people with a balanced ownership should also be established together with an extended team who can have a lighter commitment (e.g. through stock options or cash compensation).</p>	<p><b>C. Team Building</b></p> <ol style="list-style-type: none"> <li>1. NDA</li> <li>2. Founders Employment Agreements</li> <li>3. Key Employment Agreements</li> <li>4. Other Confidentiality and Employment Agreements</li> <li>5. Indemnification Agreements</li> <li>6. Incentive Plans, including stock ownership plans and warrants</li> <li>7. Vesting Schedule</li> <li>8. Business Plan</li> </ol>	<p><b>Comment</b></p> <p>Bad or non-existent contracts cause bad outcomes</p> <p>Best practice: formalize relationships with contracts.</p> <p>Gain:</p> <ol style="list-style-type: none"> <li>1. The deal</li> <li>2. Knowledge about unrealized hidden value &amp; problems, and</li> <li>3. Agenda. Revealed in</li> </ol>

		the negotiations over contract terms
<p><b>III. Commitment</b></p> <p>A. A committed team is established.</p> <p>B. The product should be able to be developed ( a minimum viable product) without dependency of uncommitted external resources</p> <p>C. Shareholder agreement between founders should be established and milestones should be in play (see Concepting stage)</p> <p>D. Committed time and money use for at least two years with vesting should be set up</p>	<p><b>D. Personal Capital, Product Development &amp; Sales</b></p> <p>1. IP Development Agreements</p> <p>2. Joint Development Contracts</p> <p>3. Team Agreements-3<sup>rd</sup> parties</p> <p>4. Licensing Agreements</p> <p>5. Milestones from Employment Agreements confirmed</p>	<p><b>Comment</b></p> <p>What’s so hot about you?</p> <p>Identifying your strategic advantage.</p>
<p><b>IV. Scaling</b></p> <p>A. Essentially means that the business is stepping on the gas pedal to drive growth aggressively. It turns the business from being opportunistic to strategic.</p> <p>B. The business will grow by narrowing the market, this helps to avoid being spread too thin. Avoid performing any and all service for any and all customers. While this helps to grow, it is not scalable, or sustainable.</p> <p>C. This stage requires focus: Momentum to the extent of where your sales are growing, what is the market response? Margin is the area where there is profitability, and materiality, which is the size of the market space, this helps determine how much growth there will be.</p> <p>This stage lasts anywhere from 7-9 months. The following typically occurs at this stage: customer acquisition, first executive hires, establishment of departments, back-end scalability improvements.</p> <p><b>1. Sub-stage: Efficiency</b></p> <p>a. Startups refine their business model and improve their customer acquisition process. Acquiring customers should be able to efficiently scale “without a leaky bucket” (i.e., be efficient.)</p>	<p><b>E. National &amp; International Agreements</b></p> <p>1. Refine Sales &amp; Supply Contracts</p> <p>2. Distribution Agreements</p> <p>3. Dealership Agreements</p> <p>4. Territorial Representative Agreements</p> <p>5. Revaluation, renegotiation &amp; termination of certain agreements as target markets</p> <p>6. Joint Development Contracts</p> <p>7. Team Agreements-3<sup>rd</sup> parties</p>	<p>Does breached contract say anything about the business model?</p>

<p>b. This could also include forming partnerships to reach more customers. While this is a risk, there is some leverage such as protected intellectual property which can stop a partner from becoming a competitor and copying.</p> <p>c. This stage generally takes 5-6 months</p> <p>d. The following usually occurs at this stage:</p> <ul style="list-style-type: none"> <li>a. viral growth,</li> <li>b. repeatable sales process,</li> <li>c. customer acquisition channels found,</li> <li>d. value proposition refined.</li> </ul> <p>Knowledge of strengths and weaknesses of the company and team</p>		
<p><b>V. Conclusion</b></p>	<p>Contracts are an essential part of business organizational structure. At each stage of development material terms of important relationships should be confirmed by a properly drawn legal document. But, in my business law practice I find that businesses both large and small often share a common problem of having out dated or insufficient contracts. Bad or non-existent contracts can cause bad outcomes. Thus, as the business grows what has been accomplished can be captured and retained by proper legal work.</p>	<p>Based on knowledge and experience (yours or somebody else's) anticipate what could go wrong and create and organize entities, inter-organizational relationship and contracts and other legal docs accordingly</p>

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