



# Do's & Don'ts for your Venture

Baker McKenzie Zurich

Start-up Days | 25 September 2018



## Do's & Don'ts for your Venture

# Introduction | Baker McKenzie

Baker McKenzie covers the world over. With our expansive global footprint, our clients tell us they rely on our ability to provide a deep level of local expertise while ensuring a global perspective to their business and legal needs.

**1949**  
ESTABLISHED

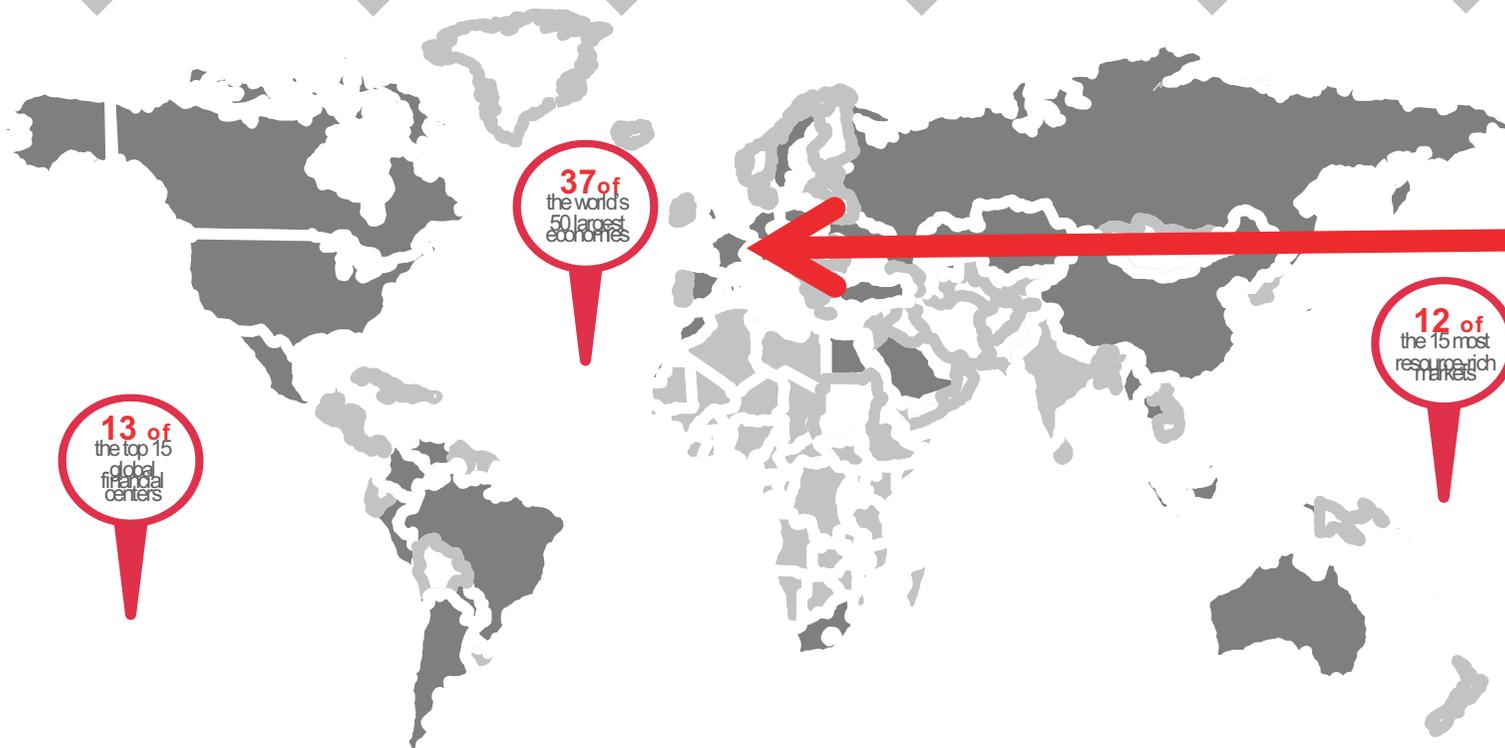
 more than  
**4,200** lawyers

**77**  
OFFICES

 **250+** jurisdictions

**47**  
COUNTRIES

 **75+** fluent languages



**13 of**  
the top 15  
global  
financial  
centers

**37 of**  
the world's  
50 largest  
economies

**12 of**  
the 15 most  
resource-rich  
markets

**Key facts Baker  
McKenzie  
Switzerland (Zurich  
and Geneva):  
since 1958 |  
33 Partners |  
5 Of Counsel |  
45 Associates |  
10 law clerks**

■ Baker & McKenzie locations

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## Do's & Don'ts for your Venture

# Common pitfalls for start-ups





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When it comes to corporate matters

## Do's & Don'ts for your Venture

# When it comes to corporate matters

✓ DO...

**Involve** corporate counsel at an early stage

**Choose** the type of legal entity which is adequate for your venture

**Arrange** for a capital structure which provides flexibility and is appropriate for your venture

**Carefully** consider if any assets are supposed to be acquired from founders / related persons

**Keep a watch on** any share transfers and compliance with applicable legal requirements

**Keep** clean and complete corporate records



✗ DON'T...

**Start** development and operations without a legal entity

**Go without** a Shareholders' Agreement, even if you are friends

**Make careless use** of template documents from online sources or provided by friends

**Underestimate** the relevance of corporate law rules and their potential consequences

**Be lavish** with your share capital

**Forget** to play the game of the formed entity



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When it comes to financing matters

## Do's & Don'ts for your Venture

# When it comes to financing matters

✓ DO...

**Use multiple forms** of financing if the company already has revenue streams

**Consider** convertible loans as bridge until first financing round

**Structure** your financing round in an **efficient** manner from the beginning

**Select** your investment partners **carefully** and consider which benefit they can bring you

**Make sure** you comply with securities and financial markets laws when initiating your ICO

**Have a strategy** on how to bind your investors and keep control over shareholder structure



✗ DON'T...

**Take** much more money than you need

**Sell** more than 20% of the shares in the first financing round

**Neglect** your corporate records which will be reviewed in a due diligence

**Offer or sell** securities unless you know what you are doing

**Think** that all shareholders will always like each other & don't need written arrangements

**Underestimate** valuation issues in connection with call and similar rights in SHAs

A blurred background image of a person with long hair, wearing a white shirt, holding a pink smartphone in their right hand and a document or tablet in their left hand. The image is out of focus, emphasizing the text overlay.

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When it comes to tax matters

## Do's & Don'ts for your Venture

# When it comes to tax matters

✓ DO...

**Start** as entity

**Plan** your exit and protect tax exempt capital gain in your exit

**Enter into** all your **related parties' transactions** at arm's length

**Incentivize** your employees wisely (ESPP / ESOP / Phantom Stock / etc.)

**Insist** on proper VAT invoices

**Pay** (and monitor the payment!) of social security contributions



✗ DON'T...

**Go** off-shore or create **complex** structures

**Forget** your wealth tax

**Mix up** your roles as a founder / shareholder and a board member / employee

**Forget** that there are other taxes than CIT (stamp taxes, source taxes, WHT, import duties, etc.)

**Forget** that there are instances where you can become **personally liable** for taxes



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When it comes to intellectual property matters

## Do's & Don'ts for your Venture

# When it comes to intellectual property matters

✓ DO...

Develop an IP strategy

Involve IP counsel early

Conduct trademark availability and domain name clearance searches

Consider all forms of IP

Implement a cookies / data protection policy



✗ DON'T...

Overlook the details

Ignore competitors' patents

Hire the wrong IP counsel

Focus your patent applications solely on your specific technology

File perfunctory provisional patent applications

Skimp on your IP budget



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When it comes to employment matters

## Do's & Don'ts for your Venture

# When it comes to employment matters

### ✓ DO...

**Enter into** written employment agreements with each employee and make sure such agreements contain all applicable terms

**Make sure** that all employment agreements provide for adequate confidentiality and non-compete / non-solicitation undertakings

**Arrange** for employment agreements which provide for a right of the employer to acquire inventions produced by the employee in the course of his/her work but not in performance of his/her contractual obligations

**Act strategically** when it comes to granting of incentive shares or stock options to employees



### ✗ DON'T...

**Forget** that your employees are your walking capital and treat them accordingly

**Forget to analyze** existing non-compete and similar clauses contained in former employment agreement

**Make compromises** when it comes to compliance with all employee-related obligations, such as (i) immigration / work permits, as well as (ii) recording and treatment of working hours and all kinds of overtime

**Dismiss** employees without notice period, unless there exists an important reason

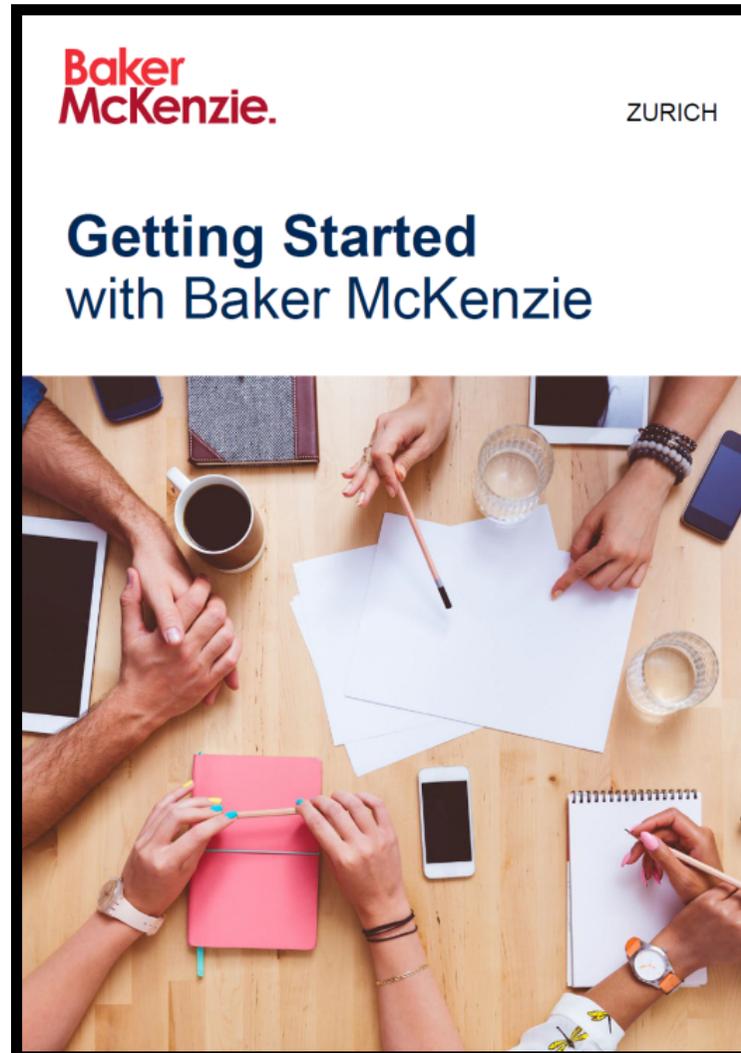


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## Getting Started with Baker McKenzie

Do's & Don'ts for your Venture

# Getting Started with Baker McKenzie





**THANK YOU.**

## Do's & Don'ts for your Venture

# Here with you today



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