Parry Field Lawyers

"From incorporation and crazy ambitious dreams, to this point of our exciting journey, Parry Field Lawyers have been superb in guiding us through an area that can be tricky for many founders to get right." Chris Bacon, CEO and Founder of Komodo

Capital Raising

Key issues for Founders

A practical guide on the capital raising process in Aotearoa New Zealand

Edited by Steven Moe

“From incorporation and crazy ambitious dreams, to this point of our exciting journey, Parry Field Lawyers have been superb in guiding us through an area that can be tricky for many founders to get right. The team have ensured we have done things right from the beginning and we are truly grateful for the dedication that both Aislinn & Steven, with the rest of the team, have provided.”

- Chris Bacon, CEO and Founder of Komodo

“Every company in Ōtautahi and beyond needs to understand what is required to raise funds to grow their business. This guide is a great way to be clear on the challenges ahead and make sure every raise is a success!“

- Matt Wiles, Investment Attraction Specialist at ChristchurchNZ

“We recently raised a significant amount of capital from an investment round and really valued the team approach from Parry Field Lawyers who came along and have journeyed with us from the very beginning”.

- Ron Park, CEO of Natural Extraction Technologies

“Founders who understand the process have a better chance of a successful investment raise. A guide like this to use is a fantastic resource and it makes the life of an Angel Investor much simpler.”

- Gabby Addington, Canterbury Angels

“One of the most important aspects of a successful capital raise is building the right relationships. This guide provides some great pointers to where those relationships need to be built.”

- Suse Reynolds, Angel Association New Zealand

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Overview

Entrepreneurs start off with a good idea. This guide will help those good ideas become great.

There are many things that start-ups should be aware of and prepared for. One of them is raising capital. This is how a great idea transforms into a success story.

One way of raising capital is receiving money from investors in return for issuing or transferring shares in the company. But that is not the sole way of raising capital and also not the only ingredient for success. A start-up will also need the help of others such as investors, friends and family, experienced entrepreneurs, accountants and lawyers. Connections and relationships are important aspects of capital raising.

This guide will walk through where to begin raising capital. It will discuss how to find investors including what is needed, the different type of investors and what they will be looking for; a timeline guide for raising capital; the core documents needed in the process; what the Financial Markets Authority says about fundraising and their rules around it; and lastly, it will give a case study of a successful capital raising story of a start-up.

While this guide was created to provide information for start-ups on raising capital, it is not a substitute for advice from a lawyer. Any questions or queries can be answered by one of our experts at Parry Field Lawyers, who have had lots of experience with start-ups and can provide advice tailored to the needs of each start-up.

Steven Moe, Kris Morrison, Aislinn Molloy, Michael Belay, Sophie Tremewan and Yang Kueh
The Capital raising team at **Parry Field Lawyers**

1. Capital Raising Questions

What does a start-up need?

Unsurprisingly, a start-up needs capital. However, there is only so much bootstrapping founders can do (investing one's own funds or revenue into the company), eventually investors will need to be found. But before looking for investors it is important to have a well thought out business plan. This will incorporate a good business model, capital raising projections and a plan as to how the start-up will grow. A start-up needs a story - why is it doing what it will do? What problem is it seeking to solve and how will it do this successfully? Understanding the industry the start-up is seeking to be in, its competitors and the market is important.

The start-up needs to understand core documents, such as a constitution and shareholders agreement, which will be discussed below under 'Core Documents Explained'. A constitution and shareholders agreement will set out the rules that will govern the company; along with how to resolve any issues or disputes that arise as between founders, directors and shareholders.

What type of investors are there?

Debt capital VS equity capital

It is good to understand what investment options are out there to determine what kind of investor will suit the start-up. Generally there are two categories of capital raising, namely, debt capital and equity capital. The former is borrowing money which will need to be paid back over a certain period often with interest; the latter is gaining capital in exchange for giving up a part of the founder's ownership (or equity) in the business.

Both categories have positive and negative aspects. For instance, when raising debt capital there is no giving up of equity (which can equate to control) in the company. However, if the company cannot repay what is owed, negative repercussions may consist of: being sued for the money; damaging the credit record of the company which will adversely affect any future lending; or losing assets that were guaranteed against the debt. Conversely equity capital will mean ceding some ownership of the company, which gives the founders less control but does provide the funds needed to grow the start-up's business venture.

Accelerators and incubators

Other options are accelerators and incubators which help start-ups get to the funding stages. Sometimes these invest money, however they often act as a mentor and help start-ups commercialise their products. These can be invaluable to start-ups as they gain experienced entrepreneurs' advice and networks. Relationships can be just as important as money.

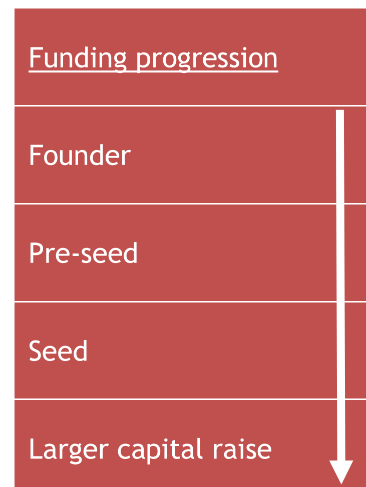
Government grants and crowdfunding

Other options include government grants or crowdfunding. To find government grants the company may be suitable for, the company's Regional Business Partner can be contacted to provide information and point the start-up in the right direction. While grants can help start-ups, it is to be noted that for some, the founders will have to match the funds that they give. A scheme available for technology start-ups by Callaghan Innovation and is known as a pre-incubation loan. This helps to progress the businesses ideas and market them.

Some forms of crowdfunding can be thought of as similar to receiving donations. This gives anyone an opportunity to invest in the company without the founders giving up any ownership of the business. The downside of this however, is that it puts the company's idea out there for everyone to see which could risk its intellectual property. Sometimes crowdfunding involves giving incentives in return for capital. Sometimes crowdfunding involves the issue of shares: in that case it is another form of capital raising.

Pre-seed and seed funding and angel investors

The phrase 'seed funding' is thrown around a lot in relation to start-ups. It can be thought of as planting a seed that will eventually grow into a tree. This tends to be the first lot of capital raised by the business. It follows the 'pre-seed' stage which is the very early stages of the founders, their family or their friends giving money toward the business venture. In the seed round of funding generally the capital raised will be under $1 million New Zealand dollars and will vary depending on the investors. For instance angel investors will invest less money than venture capital firms (see below).



Angel investors and venture capitalists

Angel investors are often involved in the seed round of funding and tend to have commercial experience. They seek to invest in new entrepreneurial ideas they believe in to receive equity in return (equity capital raising). Generally they choose industries they have an expertise or interest in so that they can help it to be successful. Some angels are hands on in that they will

help the start-up with networking, will provide advice and have a big role in the business. Others would prefer to be hands off, simply seeking to receive returns on their investment within a given amount of time. Founders need to be prepared to cede some control over the company but it is to be remembered that having an experienced entrepreneur on board will be of benefit to the company as they too profit from its success.

Venture capitalists (VCs) are also investors that could be involved in the seed funding stage or they can get involved later on. These firms will tend to get involved where a company is already gaining a steady revenue flow. Similarly to angel investors, VCs will provide funds in return for partial ownership in the company. They will often be hands on and will have extensive knowledge to help steer the start-up on its business voyage. Venture capitalist firms tend have a greater pool of money to draw from and would generally invest more money than an angel investor. However, investments from them can be more difficult to get as they want to see high-growth. It is wise for a company to have undergone extensive research and homework before approaching a VC.

Loans

Bank loans are a viable investment option that does not cost the founders any ownership in the company. This falls under the debt capital raising umbrella. However, banks will generally resist giving loans to a start-up that does not have a credit line. This is where angel investors are used as they do not mind the risk of investing in a start-up. There are other lending options out there to apply for and it is good to find a loan with a low interest rate.

How do start-ups find investors?

A starting point to finding investors is to begin researching to see what is out there. Understand what different investors interests and mandates are. Networking is an important part of finding investors. A way to do this is meeting others in the same field by going to events related to the start-ups industry. Other people's experience and expertise is of value to a start-up whether they have been in the industry for decades or are another start-up. These people may not be investors, but such relationships will be beneficial later down the track. Using other personal connections founders might have can be another way to find investors.

Another option is contacting the company's Regional Business Partner who has knowledge and are there to advise and support businesses. There are fourteen around New Zealand, it is free to register and they can help start-ups network with others in their industry or investors. They can advise in relation to any government funds the start-up may be eligible for and point them

in the direction of incubators and accelerators such as Callaghan Innovation. A start-up's local chamber of commerce can also help it to grow as a business.

Start-ups can also approach angel networks. There are fifteen angel groups across the country, each with different experiences and interests. We just attended their annual conference in Wellington and they do great work building up the ecosystem. The Angel groups are made up of individuals that are seeking to invest in companies they believe in and want to take part in either actively or passively. Approaching venture capitalists is another option once the start-up has a flow of revenue. It is advisable to have completed a good amount of research before doing this to ensure a good fit.

What will investors be looking for?

Investors will be looking for a business plan, sound intellectual property ownership, track record and a growth strategy. They will not take a second look at founders who do not have a strategy. Investors are in it for what they can get out of it, so they are looking for the right opportunity and are interested in how their money will be used to accelerate growth. Many investors also are genuinely curious and want to support those start-ups coming up, particularly those with impact. They will be looking for whether the founders understand the market and competition, the risks that may arise and what the company will do to mitigate such risks. Further, investors would look for whether: the start-up has any prospective or current customers, as this shows investors that the founders know and understand their customers; that there is a fit for their start-up in the market.

Investors will be looking for how the start-up will scale more than just in New Zealand, but globally. They want to see compatibility between themselves, the founders and the team, as all will be working closely together and the ability to work well together is key. They will be looking for a compelling and unique product. Lastly, investors like experienced founders who understand commerce. They will not invest in someone that does not know what they are talking about or does not have an idea of what they are getting into; not being aware of core documents and their essentiality to the day to day running of the company will not look good to investors either (see 'Core Documents Explained' for more information).

It is important to note that while an investor might find everything they are looking for in the founders, it should be ensured that they are the right investor for the founders and the start-up. It is important to be able to work alongside them. Start-ups should keep in mind that investors are more than just dollar bills as they have a boatload of experience the business can benefit from.

2. Timeline of a Capital Raise

(a) What is our purpose?

It is important to tell the story of the business. Tied up in this is the purpose or mission as a company. What is the company going to actually do? What is driving the business to undertake this mission? It is good to have something to revert to as the '*why*' when the company makes decisions. This should be able to be summarised in 30 seconds, so it can be expressed easily to possible investors when it comes to raising capital or when someone asks about the company. Understanding what the purpose is will be the driving force behind the start-up.

(b) Funding

Once the purpose of the mission is understood, it is important to understand the *how* aspect of this purpose - how will this vehicle the founders created be driven? The how will coincide with money, as funding is needed for the company to move forward. This involves working out where this capital is going to come from. Whether it will be from sale of goods or services, private investment, loans, donations or government grants. The information under 'Capital Raising Questions' above answers questions on the sorts of things a company might need to obtain capital from some of these options. After determining where capital will come from the next issue is where is the money going – will it be to private individuals or reinvested into the company to help the mission?

(c) Name, structure and key documents

This step is placed here to ensure that these things are done before seeking to raise capital. The legal structure of a start-up must be determined and the company needs an original name. Discuss with a lawyer regarding how to structure the start-up - at Parry Field Lawyers we help companies with this all the time. The name cannot be used by others and this can be checked on 'one check' a government website. It will look bad to investors if these things are not done. A company needs a director(s), a shareholder(s) and founding documents (though the documents are not a legal requirement they are extremely helpful). These documents, a constitution and a shareholder agreement, are important as they will determine how the founders will relate to each other, which is helpful if things go south, and how the business will be run on a day-to-day basis (for further information see 'Core Documents Explained' below).

Core Documents (explained below):

- Constitution
- Shareholders' Agreement
- Term Sheets
- Subscription Agreements
- Employee Stock Option Plans (ESOPs)
- Vesting Agreements
- Resolutions

It is advisable to talk to a lawyer at this stage as these foundational documents will govern the way the company operates and if done incorrectly could have adverse consequences later down the track. At this stage it is also worth considering whether a vesting agreement is needed. This may be good to have as protection in case a founder tries to walk off with their shares in the company without putting in any work. It acts as an incentive for founders to stay and continue working for a specified amount of time because when a few years pass they might want to give up on the venture they started out on. Information on this agreement can be found in 'Core Documents Explained' below.

(d) **Plan**

Investors want to see a business plan, which needs to be worked out before seeking investments. This includes determining the valuation of the business and thinking further than just the first round of funding to the long term strategy. Work out how the business will use investors' money to grow the business and get more money coming in. Having a timeline is helpful but ensure the timeframes are stuck to. A start-up generally needs multiple rounds of funding so incorporate in the plan the amount of equity the founders will have after a few rounds of funding. It is vital to have people in the company that are motivated to work hard to make the company successful; investment will look more attractive this way.

A clear business plan could be set out in a drop sheet - a document a few pages long including: the product/service the company will provide; the problem the company will solve; the market; competitors; the team and the financials of the business. It could also be in a business plan which tends to be longer - between twenty to forty pages. This would detail the company's growth strategy and could include capital raising projections, business model, and the story of the company and its customers.

(e) **Understand FMA exemptions**

Before finding investors it is important to understand what the Financial Markets Authority are and what the Financial Markets Conduct Act 2013 ("FMCA") has to say about investors. The FMCA sets out rules relating to who can invest in the debt or equity securities a company is offering. This is to protect prudent people that have no commercial or financial experience. It is so a founder cannot walk down the street and ask an elderly lady to invest $20,000 in their new and innovative idea. Instead there are certain disclosure obligations that would need to be met. A product disclosure statement is needed to provide sufficient information regarding the risks of investing so prudent but inexperienced persons can way up their options. However, there are exemptions, for instance, where the person is an experienced businessperson or very wealthy as they are expected to 'know better'. For more information on who would fall under an exemption see 'Financial Markets Authority Exemptions' below.

(f) Finding investors

The next step is to find investors. Hopefully at this stage the founders have been networking by going to events related to the companies industry, as stated above in ‘Capital Raising Questions’. Investors at the beginning will invest more in the founder than in the founder’s company, which is why building relationships is key. The first round of funding will generally come from the founder’s family or friends and will generally be smaller amounts of money as compared to angel investors or venture capitals. To find the latter, companies can ask mentors or contact their Regional Business Partner who help founders network with others and connect them onto possible investors. As stated previously, they can also make known any government funds, incubators or accelerators which could be of great value. A company’s local chamber of commerce can help the process of networking, connecting and finding investors. There is also the option of approaching angel investors or venture capitalists in which case the steps up to this point must be well thought out and/or already completed and the pitch (next stage) should be fleshed out also.

(g) The pitch

The pitch is putting the business idea to investors and taking them through the story of the company. It will explain the problem that the company is seeking to solve, how it will execute the solution and it will provide proof that what the company has is the correct solution to the problem. This is selling the founders, the company and its project to them. Incorporating customer feedback or testimonials would also help to show there is a fit of the company’s product (or service) in the market. Explaining any experience that the founders have in the businesses industry and why this should evoke confidence is good.

The pitch should also address intellectual property and how this will be protected whether by trademark, patent or trade secrets. Once explaining those things then discuss the businesses financial model - how it will make money, the amount it will make and when that will eventuate. Specific information regarding the company’s financials should be in the due diligence kit that will be given to investors. It is important to remember that being rejected is expected, it is difficult to get to the next stage. There are also things to learn from being rejected, so it is just a part of the journey. Before pitching to investors, it is advisable to run it through with someone who is experienced in business. This is where those connections come in handy!

(h) Setting out the deal

Once an investor is interested in injecting capital into a start-up a term sheet will be used. As the name implies, this contains the terms of the agreement such as the value of the shares. Discussions with the investor are needed on what things either party want to include in the

agreement, such as founder commitments, reporting obligations, or milestones. This can be used as a baseline afterward to pitch to other investors too. While a term sheet is not a binding document, trying to adapt these terms later may prove difficult as the parties have already come to an agreement. This is why it is important to engage with a lawyer early on so they can help with this process. Refer to the 'Core Documents Explained' below for more information regarding term sheets.

(i) **Investor due diligence**

Once the start-up and the investor agree upon the term sheet, the next stage is due diligence. This is where the investor does their homework and scrutinises the company. This can be a long process so having key documents ready before this stage approaches is good. The type of things investors will be on the lookout for is potential risks or liabilities. Generally they will be looking into the people involved, the company's financials, the product or service, the market, the structure of equity and risk management. Investors will scrutinise the people and their backgrounds; how the people work together and whether the investors would be able to work with them. The previous performance of the business helps to show how it will perform in the future and investors will look into any debt obtained throughout the life of the company. They will look to the financial statements, tax statements, balance sheets and annual budget which should be prepared for them in advance.

Furthermore, in the due diligence stage investors will look at the product (or service), how it works and how it will fit into the market. They will likely research around to see what is already out there. Investors will look into the equity and share structure of the business. Having a well thought out plan to manage and mitigate risks as they arise will be of value to investors, as they are likely taking a big risk themselves in investing in a new start-up. At this point the investor can pull out of the deal depending on how they feel afterward or sometimes during the due diligence stage. If that is the case then it is a time of learning, as it will indicate a start-ups strengths, weaknesses and things that could be worked on for the next investor that comes along.

(j) **Making the deal**

Following the due diligence process, if all goes well then a subscription agreement would be needed. This is the binding contractual agreement where the investor confirms the agreement to invest capital in exchange for the issue of shares. There may be more negotiating involved at this stage. The subscription agreement would set out the types of shares, their issue price, the parties involved, a capitalisation table and other clauses. Again, it is vital that a lawyer is involved in this agreement as it is a binding document. See below under 'Core Documents Explained' for more information regarding subscription agreements. Within ten working days of

issuing shares to an investor a notice must be filed to the New Zealand Companies Office. This notice must set out the number of shares being issued, the date of issue, the number of shares that are held by each shareholder, along with the full legal name and residential address or registered office of each shareholder. As will be discussed under ‘Core Documents Explained’, the constitution and shareholder agreement would likely need updating after making the deal. As a lawyer would be involved at this stage, it would be prudent to discuss with them whether such documents would need changing to reflect the new investors and terms agreed upon.

3. Core Documents Explained

There are several documents that a start-up needs to be aware of and consider putting in place. These are: a constitution, shareholders' agreement, term sheets, subscription agreements, employee stock option plans, vesting agreements and resolutions approving them. When a company is seeking to raise capital, it is important that they understand the purpose of these documents and have at least the constitution and shareholder agreement fleshed out. Start-ups will come across these documents early on in their capital raising journey, so knowing how they function and what they are used for is important.

Constitution

A constitution sets out the way the company will be governed internally on a day-to-day basis. It contains rules to dictate the relationships between the directors and shareholders. A constitution is good to have as it sets out the rights, powers, duties and obligations of both the company and its directors, along with the board and the shareholders. While it is good, it is not a legal requirement. Where a company does not have a constitution the Companies Act 1993 ("Companies Act") applies. In this case the company, the board, each director and each shareholder hold the rights, duties, powers and obligations that are set out in the Companies Act.

Dispute resolution mechanisms can be set out in a constitution which may be vital later down the track if co-founders have disputes or disagree. Generally a constitution lays out: the company's shares and how they will be acquired, issued and transferred; methods and regulations for directors and shareholders meetings; provisions regarding liquidation and restrictions; and how directors will be appointed or removed. These can be tailored to the companies needs and there can be other provisions inserted where necessary. Rights, powers, duties, and obligations from the Companies Act apply to the extent they are excluded or modified by the constitution. A company's constitution is publicly available through the Companies Office and is not a private document. It can only be adopted following a company becoming incorporated. In order to take out insurance for directors it needs to be authorised in the constitution.

Shareholders' agreement

A shareholders' agreement, unlike a constitution, is a private and confidential document. It is an agreement between the shareholders that provides for their own rights and obligations along with the company's rights and obligations. Similar to the constitution it sets out the day-to-day operations and management of the company. It is not a legal requirement but they are often

used. There will be similar provisions in a company's shareholders' agreement and its constitution, however the shareholders' agreements generally provide more detail as it is not public. Things that can be found in a shareholders' agreement are provisions providing for the company's powers and its restrictions, who is responsible for key decisions and provisions relating to the transfer and issue of shares or the winding up of the company or capital raising.

The key is that the shareholders can look to this if there are disputes or if there are any misunderstandings. For this reason, and due to the difficulty of changing a shareholders' agreement, it is important to draft this document properly. All the shareholders have to agree to alter the shareholders' agreement. This compares to changing a constitution which can be done by a special resolution (where 75% of the shareholders need to agree) unless some other mechanism is set out there.

Term sheet

A term sheet is used when a company seeks to make an agreement with an investor before entering into a binding commercial agreement. The terms of the agreement are set out which generally provide details of the investors, the investment amounts, the type and amount of shares (these could be ordinary or preference shares – which have additional rights or 'preference'), warranties, and the terms and conditions for the benefit of the company and its investors. A capitalisation table will be included which sets out the number of shares and holdings after the investment. It also sets out information about the business, its board and director(s) and will specify which terms are legally binding as the investment terms in a term sheet often are not.

Capitalisation table example

		Existing Shares		Existing Options		New Investment			Converting Loans			New Shareholding				
Ordinary Shares Shareholders	Seed Preference Shareholders	Existing Shares	Ownership %	Existing Options	Fully Diluted Ownership %	New Investment	Price Per Share	New Shares	Amount of Loan Converting	Conversion Price	Conversion Shares	Total Shares	Ownership %	New ESOP Shares*	Fully Diluted Shares	Fully diluted Ownership %
New ESOP																
Totals:			%		%	$	$		$	$			%			%

The company and the investor will negotiate the terms to be inserted or excluded, for instance the investor may want a founder commitment term that the founder holds a minimum shareholding or the investor may also want certain rights to appoint a director or approval rights. The term sheet agreement will be with the lead investor and the start-up; with the investor's permission it can be used as a basis for what is offered to other investors too. A term sheet is helpful as it expressly sets out the expectation and intention of both parties.

Subscription agreement

A subscription agreement is used in capital raising when a company wants to issue shares to an investor. It records the terms and amount of the investment and sets out in detail the different parties involved and the shares that will be issued. A subscription agreement describes the business of the company, the type of shares and their issue price, along with setting out conditions and warranties (all of this is first agreed in the Term Sheet). This will be signed by the company, investor and founders and will be a binding agreement. It will contain a capitalisation table that sets out the existing shareholders and shares as well as the shares issued; it shows the proportion of holdings after the investment.

A lawyer can help draft the subscription agreement. After completing this stage a company may need to update their constitution and shareholder agreement if it is a condition of the subscription agreement, so that it reflects the new investors and the arrangements agreed upon.

ESOPs

An employee stock option plan, or an ESOP for short, is a plan that gives employees the option to purchase future shares in the company. The options are given for no cost and without tax liability and are a right, not an obligation. The option will vest at a specified date (generally up to four years) determined by the company, as long as the employee stays in the company and are issued at a price the company decides. This provides an incentive for employees to continue working for the company. When the options vest the employee can exercise the option after paying an ‘exercise/strike price’ which is generally their market value when the option was initially given (if that is what the company decides) and in return the employee receives shares in the company. The company can also determine when the option will expire if the employee does not exercise their right.

An option itself does not confer any shareholder rights, however, once it is exercised and shares are received by the employee, at that point they are a shareholder and have shareholder rights. In order to give an option in this way the company generally establishes a trust to hold the shares that may be issued to the employees in the future. Income tax will need to be paid on the difference. ESOPs are beneficial as employees are much more invested in the success of the company and begin to think like business owners; it attempts to align the company’s interests with the employees.

Vesting Agreements

A vesting agreement is an agreement commonly seen between founders and the company. They generally provide that where a founder leaves a company in a specified amount of time (usually a few years) they relinquish a part of their shares back to the business. They may have shares in the company but if a vesting agreement is in place those shares will vest at a specified time, usually on a monthly basis (meaning they fully own the shares). If the founder commits to the company for the specified time the shares will vest and the founder can receive them. However, if they leave then they forfeit the as yet unvested shares. This can be incremental, so that a small amount of shares may be vested each year the founder stays at the company.

In this way a vesting agreement serves as protection if a founder decides to leave; it gives them an incentive to stay committed to the company for a certain amount of years. A vesting agreement is worth considering when starting out, as the commitment that founders have for the mission at the start may not carry into the future. It gives an insurance that they will stay, or if they do not stay, some of their shares can still revert back to the company.

As an example, a founder may have 360,000 shares with monthly vesting over three years. So each month 10,000 shares would vest.

4. Understanding Financial Markets Authority Exemptions

When capital raising, it is important to understand the rules around how to raise money from other people and that the Financial Markets Authority ("FMA") must be complied with. The Financial Markets Conduct Act 2013 ("FMCA") sets out certain rules relating to who can invest in a debt security or an equity security that a company is offering. It is there to protect investors meaning that it errs on the side of more disclosure, unless an exemption applies. Under the FMCA, when a company is seeking to issue a debt or equity security to someone it must provide certain information (product disclosure statement). This is to protect people that are not experts so they can be completely informed and able to weigh up the risks of the securities they are acquiring. That is the starting point, however there are exemptions to this where the product disclosure agreement is not needed.

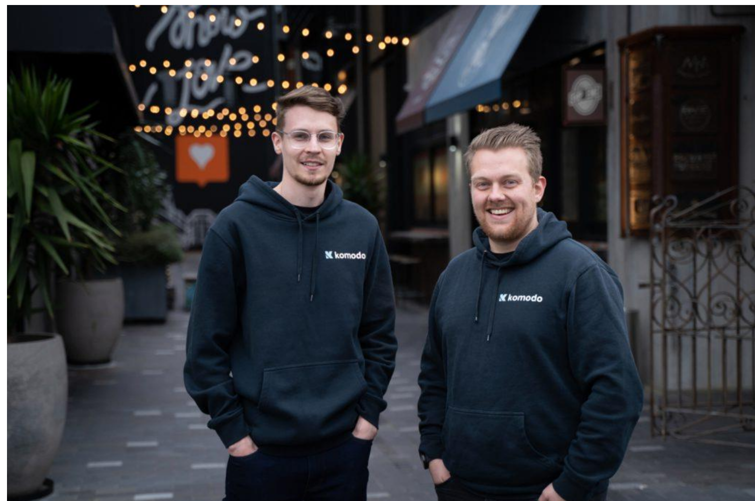
The exemptions are set out in schedule 1 of the FMCA, which covers where a person is experienced enough to be protected and so does not need a product disclosure statement. The exemptions cover wholesale investors which includes investment businesses; wealthy people whose net assets or turnover exceeds $5 million; people that meet the investment criteria of owning or carrying out transactions of financial products of at least $1 million or have been employed in investment business and materially participated in investment decisions; eligible investors that have been certified or a person that in relation to acceptance of an offer pay at least $750,000. It also covers close business associates (for specifics click here) or immediate relatives (for specifics click here). Employees under an employee share purchase scheme fall under the exemptions in schedule 1 of the FMCA also.

Other exemptions are where the nature of the offer provides the exclusion. For instance, where it is a small offer of equity or debt securities and the offers remain under the investor limit of 20 people and does not exceed the $2 million in a 12-month period. When this occurs, the FMA must be informed and a warning statement is required.

If there is no exemption and a product disclosure statement is not used when offering a debt security or an equity security this can be classed as an offence, in which case the person may be liable for imprisonment of up to 5 years and/or a fine not exceeding $500,000 if they are an individual. This is why understanding FMA exemptions is important, as a company could be in trouble if it is not aware of these rules.

5. Capital Raising Success Story

At Parry Field Lawyers we often help start-ups as they begin their journey. We assist them with raising capital, preparing the core documents they need, answering questions and helping with their company structure. We have been working with many tech start-ups recently. As one example, we have supported Komodo from the beginning of their journey to where they are today. Having recently raised $1.8 million in capital they are an example of how an innovative idea and ambitious minds can accomplish what they set out to do and more. It can happen and it does happen.



Komodo are a platform that helps students to communicate with staff in schools, with an aim for student well-being. This tech start-up is trying to combat issues such as depression or bullying that so commonly occurs in schools. Chris Bacon, Matt Goodson and Jack Wood founded Komodo in 2018 and their clients include High Schools across New Zealand and Australia. Their impact driven focus highlights a gradual shift in companies seeking to create an impact in the work that they do.

Chris, the CEO and Founder of Komodo says this: “From incorporation and crazy ambitious dreams, to this point of our exciting journey, Parry Field Lawyers have been superb in guiding us through an area that can be tricky for many founders to get right. The team have ensured we have done things right from the beginning and we are truly grateful for the dedication that both Aislinn & Steven, with the rest of the team, have provided.”

The company started off seeking to monitor young athletes and their well-being until the idea was adapted and changed to incorporate a much wider focus. This is an example of how start-ups need to be flexible and willing to change and adapt, it may just lead to a success story.

6. Contacts and Other Resources

Contacts for Capital Raising

Steven Moe
Partner

Email: stevenmoe@parryfield.com

Phone: 021 761 292

Steven is a Partner with a focus on capital raising for clients and a particular specialty on empowering impact. He hosts the podcast *seeds* and is chair of Community Finance (impact investing in social housing).

Kris Morrison
Partner

Email: krismorrison@parryfield.com

Phone: 03 348 8480

Kris is a Partner who regularly advises companies on a range of issues. He is an experienced board member on a number of charitable trusts and non-profit organisations.

Aislinn Molloy
Senior Solicitor

Email: aislinnmolloy@parryfield.com

Phone: 03 348 8480

Aislinn is a senior solicitor at our firm who works in our property team and assists companies with their capital raising and in their initial stages.

Michael Belay
Solicitor

Email: michaelbelay@parryfield.com

Phone: 03 348 8480

Michael is a solicitor who works in our commercial team and assists impact driven clients such as start-ups, businesses and charities as well as on capital raisings.

Sophie Tremewan
Law Clerk

Email: sophietremewan@parryfield.com

Phone: 03 348 8480

Sophie is a law clerk working in our property and commercial teams assisting purpose driven clients.

About Parry Field Lawyers

Our team works across three offices with around 75 staff working with clients across the country. We have a real specialty in capital raising for start-ups, as shown by the content in this handbook. We started 75 years ago so have a proven track record and provide services in the areas of Property, Commercial Advice and Disputes.

Gaining a better understanding of the business of our clients and solidifying relationships with them is a priority for us. Sometimes things call for a different approach. We are also a tech focussed law firm who enjoy working with start-ups, tech companies and other new businesses seeking angel or other investors. We help our clients to get their legal structures right from the beginning. We enjoy being lawyers who challenge the way law firms traditionally work with their clients and would welcome the chance to see if we can support you.

Other Resources

- Guide to "Doing Business in New Zealand" Second Edition
- Social Enterprises in New Zealand: A Legal Handbook
- Laying Foundations for Reimagining Business: Essays
- Start-ups Legal Toolkit
- Family Trusts (to protect your assets)
- Creating impact driven organisations
- On effective marketing
- Trade Mark Protection
- Electronic signatures
- Director duties and liability
- We have a lot more at www.parryfield.com - or contact us for any specific questions…