

Pre-pitch legal considerations

Initial considerations for an investee company pitching on Crowdsphere.

1. Is there a shareholders' agreement in place?

- If so, the terms of the shareholders' Agreement should be carefully reviewed with a view to ascertaining:
 - Do the directors have the authority to issue and allot the shares which they are planning to offer to potential investors on Crowdsphere? Are there any restrictions?
 - Is the existing Shareholders' Agreement compatible with the Constitution which will be adopted once target has been met and prior to the issue and allotment of shares?
 - Is the Shareholders' Agreement going to be terminated before the allotment of shares to the Crowd?
 - Will the Crowd be required to sign the Shareholders' Agreement – if so have details been given in the pitch?

2. Existing Constitution

- Are there any restrictions in the existing Constitution on the authority of the directors to issue and allot shares?
- Do pre-emptive rights need to be waived by the existing shareholders? In most instances pre-emption rights on the issue of new shares will need to be waived by the existing shareholders.

3. How many types of shares does the company have?

- If the company has several different types of shares with different rights attached to them prior to pitching on Crowdsphere, then the legal work involved on completion may be more complicated and thus more expensive. In addition, this should be explained in the pitch.

4. Share numbers

- Complicated calculations to work out how many shares need to be issued and whether shares need to be sub-divided or consolidated can result in increased legal costs.
- Each investor will need to have at least 1 whole share for their investment and fractions and rounding should be avoided.
- When the Company has decided on the amount of money it is raising, it can work out the minimum number of shares to be issued to ensure that each investor gets at least one whole share.

For example,

If the Company offers 10% for \$10,000 in the pitch and the minimum level of investment is \$10, the Crowd would need to be issued at least 1,000 shares. Therefore, for the existing shareholders to have 90% of the company they need to hold 9,000 shares.

In the event that the Company has a small number of shares, such as one \$1 share, then you need to increase the number of shares the existing shareholders hold. This could be done by sub-dividing the nominal value of the shares or by the issuing of new shares (at not less than nominal value) or other ways. The existing shareholders should seek further advice. It may be necessary to take steps to pre-pitch to simplify matters.

5. Next steps

- Investee companies should seek advice on the matters detailed above, including in particular tax advice. Simpson Grierson can advise Investee companies pre-pitch on matters.

6. About Simpson Grierson

- Simpson Grierson is a full service law firm providing a broad range of legal services to both commercial and private clients. As a major NZ law firm, Simpson Grierson serve regional, national and international clients.
- Your legal work can be undertaken by Simon Vannini, a partner. He has been involved in a number of significant business acquisitions and management buy-outs, as well as (re)structuring new and existing businesses. Simon assists with investments into New Zealand directly, through fund structures and through venture capital arrangements.

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PLEASE NOTE

The information in this note is intended to be general information about New Zealand law and is not comprehensive. It is not to be relied upon as legal advice nor an alternative to taking professional advice.