

2020

LAW FOR CHANGE STUDENT COMPETITION

TEAM 8	PROJECT TITLE SUNGO Starter
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SCHOOL	The University of Hong Kong

LEGAL UNCERTAINTIES CONFRONTING START-UPS IN HONG KONG

The burgeoning economy of Hong Kong has brought about drastic changes in the landscape of business innovation. Hong Kong has scored a 5th place in the 2020 World Competitiveness Yearbook published by the Institute of Management Development headquartered in Switzerland, and it continues to retain the top spot in Economic Freedom published by the Fraser Institute in 2020. The combination of a vibrant and diversified economy as well as market freedoms have buttressed an environment favourable to the establishment of start-ups in Hong Kong. This is supported by a huge talent pool available in the region, a strong regulatory framework cementing investors' and consumers' confidence, and the outward-looking characteristic of Hong Kong's economy as a whole.

According to the start-up ecosystem survey published by InvestHK, a government department, in November 2020, a reported total of 3,360 start-ups are now domiciled in the city, registering an increase of 6% from 2019. Altogether they hire 10,688 employees spread across different working platforms and incubators. These start-ups cover a wide range of different sectors, such as financial technology (Fintech), E-commerce and design (InvestHK, 2020). This observable trend in Hong Kong coincides with the developmental trajectories of the global economy as increasing emphasis is placed on the interplay between knowledge economy and technology. This is nothing new to entrepreneurs and businessmen, but the materialisation of this trend in the form of growing start-ups certainly brings about optimism.

Establishing a start-up is no easy work. Founders need to construct a solid business plan, solicit adequate funding from different sources, ensure the market sustainability of their business model, conduct wide-encompassing publicity campaigns, and establish credibility and reputation within the social space of Hong Kong. However, all of these are predicated on an implicit assumption: that the business operates in accordance with the legal and regulatory framework of Hong Kong. Although Hong Kong is well known for its minimalist intervention in the market guided by the logics of capitalism, the Government has nonetheless fulfilled its duty to establish a regulatory framework touching upon issues of corporate governance,

employment matters, licensing and trademark etc. that are the bedrock for ensuring outsiders' confidence in the market. These are ground rules that every businessmen and entrepreneurs need to observe, regardless of their business model.

Here comes the difficulty. Despite the fact that no start-up founder can seriously claim that he or she is ignorant of and has no intention to comply with these laws and regulations, they do not always know how to comply with them. Knowing the law is one thing, complying with it is another. That is not to say they intend to evade the law. Quite the opposite - a lot of times they are not sure about the precise content of the law and compliance procedures. The overlooking of legal risks has been identified as one of the challenges confronting potential founders by Hong Kong Trade Development Council (HKTDC, 2017), and a HSBC report has concluded that around 33% of the interviewees see opportunity and risk perception as a factor that prevents founders from implementing their plan (Fintech News, 2017). Even if the founders are minded to lay a solid legal foundation for their start-ups, they are still confronted by three separate challenges substantiated below:

Expensive Legal Services from the Existing Market

The easiest way to solve all legal challenges is to hire qualified lawyers to do the job for them. Thereafter founders can sit and wait, or at least be more assured that the legal aspect of the business will be well-attended to. Nonetheless, the fact remains legal fees in Hong Kong is considerably high, and a lot of the start-up founders, many being early-career professionals or even graduates fresh out of universities, can hardly afford such skyrocketing fees lest most of the money originally dedicated to business operation would evaporate. That explains why potential founders consider the overlooking of legal risks as one of the main barriers in their start-up journey, echoing with the above mentioned data.

Inaccessible and Garbled Information

Many start-up founders, after realising the inaccessibility of legal services as a result of the price, would resort to deciphering all the legal niceties themselves. Of course, this comes with an inherent risk that founders who were not trained in law may not be able to fully digest the information and thus expose them to legal risks. This is exacerbated by the commonly-acknowledged fact that most of them simply do not know where to start with, and the information available, albeit being plentiful, are garbled and scattered so they cannot meaningfully piece them together. This aspect of inaccessibility unnecessarily exposes founders to legal risk.

Uncertainty as to Legal Requirements

The previously mentioned regulatory landscape of Hong Kong implies that one is almost certain to embark upon areas of businesses that are regulated. The most obvious example would be employment governed by relevant employment laws. However, most of the time the founders may not know that such requirements exist, and even if they have some idea about them their ability to research further is impeded by the difficulty espoused above.

Testimonials

“I am not sure about when do we need to enter into a non-disclosure agreement with our partner suppliers, and what are the terms and conditions that should be included. We worry that this might put us into a grossly disadvantageous position when dealing with others legally sophisticated parties, however the intention. It would also be ideal if we can have a checklist of legal requirements that we need to satisfy so we can track our progress and not miss anything.”

(Founder A, University Fresh Graduate)

“I am planning to start a business that offers beverages services. However, I am not sure whether the business model I am proposing is lawful or not as I am aware of some other regulatory frameworks governing the industry. I have obtained a quotation from a law firm but it stands at an astonishing \$3,000 which I am unable to afford.”

(Founder B, University Undergraduate)

EXISTING SERVICES IN HONG KONG AND SUNGO'S SIGNIFICANCE

As has been referred to above, there exists numerous platforms that are geared towards solving the problem elaborated above or at least a related part of it. For example, the Hong Kong Government has compiled information on the incorporation processes, relevant labour law and standards, as well as guidance on why and how to apply for certain licences. Various law firms have summarised and disseminated information of similar nature as well.

Particularly noteworthy is Zegal, a LegalTech company that provides services such as automated generation of legal documents and personalised legal services, among others. It was established in 2014 and since gained momentum in its business, demonstrating the palpable need for legal services by start-up founders.

The huge volume of information aside, two deficiencies can be observed, which are connected to the problem analysis laid out above.

First, start-up founders simply do not know what type of legal requirements they need to satisfy in the first place. As a result, even though there are detailed explanations on what and how to do concerning various legal issues, they simply do not know they need to consult them, or they are unsure which one to turn to because they do not realise such a legal issue arises for them to handle.

Second, too much and too scattered information. The sheer volume of information online complicates matter as start-up founders cannot often locate the information they require. The quality may also be questionable.

“Many start-up founders, especially for those social enterprises, are handling legal matters themselves for the purposes of cost-reduction. Given that they have no prior legal knowledge, they often find the information online confusing.”

(Manager of an Incubator in Hong Kong)

Succinctly put, the key issue can be distilled as follows: start-ups in Hong Kong face difficulties in navigating and identifying the legal requirements that they ought to comply with and other legal issues.

Here is how our solution can intervene and ameliorate the problem identified above. SUNGO addresses not only the problem of inadequate knowledge on how to satisfy the legal requirements that plague start-ups, we address the logically prior problem of identifying precisely what legal issues fall to be addressed. A start-up can face a multitude of legal problems and suffice to name a few:

What Business Vehicle should I Adopt

Whether a business vehicle ought to be incorporated depends on the prior question of whether one opts for limited liability companies as the suitable form of business vehicle to be adopted. Laws in Hong Kong allow several different types of business vehicle to operate other than limited companies - partnership and sole proprietorship being the most popular types. Although incorporation is certainly the trendy word and is often regarded as a milestone that all businesses should strive for, there may be justifiable reasons why unincorporated businesses may be a preferable form of business vehicle.

When and How to Incorporate

This is directed at those founders who have decided to incorporate their businesses. They need to figure out the procedures and requirements to lawfully incorporate, such as what forms to fill in and what entity to submit to. These are pretty straightforward. The difficult part is perhaps the company constitutional documents that are associated. Companies are governed by at least the Articles of Association. Founders might just well adopt the Model Articles contained in Cap. 622 Companies Ordinance, but there may be instances where they would like to modify them. Also, for start-ups that are operated by multiple founders, they might find it preferable to enter into a Shareholders' Agreement to govern their conduct. Regardless of what they prefer, they need to know the requirements and availability of these options.

Common Documents

There are a lot of common documents that one frequently encounters. Employment contracts, non-disclosure agreements, memorandum of understanding and particularly funding agreements just to name a few. Many of them are technical and founders may not know, so to say, 'what type of document contains what'. This is a recipe for unnecessary legal risks.

There are many numerous other legal problems that one need to address and any attempt to exhaustively list them out is futile. But the point is fairly clear here: to know how to solve legal problems you need to know they exist first. This is the key value-added dimension of SUNGO which will become clear in later sections.

There exists one other dimension which shows how SUNGO contributes to broader community resilience.

In the wake of the 21st century whereby efficiency and innovation are the twin elements of success, SUNGO offers a technological solution that empowers those who want to empower others. The true meaning of social resilience is more than aiding the needy directly, but deep down to the root to empower the ones who wish to create a better society. This is the add-on value. By demolishing any residual legal uncertainties start-ups face, we want to set the perfect stage for them to thrive that will in turn contribute to community resilience.

TWO PILLARS OF SUNGO

Pillar I: Start-up Navigator

This pillar assists start-ups in navigating the abundance of legal information and the complexity of legal statutes. It consists of a web / mobile application whereby it would provide information as to key legal issues that start-ups will face in the form of a decision tree. The ultimate information that founders can derive through the decision tree includes the detailed incorporation process, requirements and process of convening directors' and general meetings under the Companies Ordinance, suggested legal precautionary measures in signing contracts and common legal loopholes, and basic legal knowledge and formalities that one have to observe.

Technology Used

Here, we make use of so-called decision tree logic. The idea is that the founders will key in keywords or answer questions provided by the application, the response of which will allow SUNGO to react dynamically to your answers in the form of a direct answer (if there is one), possible next steps, or/and present available resources that you may refer to. One illustration is by keying in the word 'Articles', and details on Articles of Association would be provided. We reconstruct the modus operandi below.

Proposed Modus Operandi

Layer 1: Preliminary Information

The first layer aims to find out the type of enterprise that one is running / establishing and the operational stage that one has arrived at to attain the background information.

QUESTION 1

What is the type of your enterprise?

Choices: for-profit social enterprise (educational, technological, catering, entertainment, logistics, employment, communication, commercial arms of NGOs, fairtrade, microfinance, performing arts, vocational, health and medical, policy research, R&D) / community-based organisation / non-profit organisation / private entrepreneur / others

QUESTION 2

Current stage of operation

Choices: incubation, incorporation, early stages, established / others

Layer 2: Problem Exploration

The second layer assists the start-up to identify the problem they are encountering or narrow down the problem that exists but the precise formulation of legal terms that is used is unclear, choosing of which will thereafter direct the user to the appropriate destination.

QUESTION

Two ways to assist the start-up in navigating the solution:

1. Problem-formulation:

- What type of corporate vehicle should I pursue?
- Is there a need to incorporate?
- Do I need to get a licence if ... ?
- How to file annual returns?
- ...

2. Keyword

- Incorporation
- Trademark
- Compliance Requirements
- Data Privacy
- Employment Contract
- Licence
- ...

This allows the user to arrive at the precise destination if they already have the keyword in mind.

OR

Directly typing in relevant terms

Layer 3: Specific Solutions Mix**Layer 3.1 Choosing your corporate vehicle**

This assists the user to identify the preferred type of corporate vehicles and lists out the pros and cons of each possible type of business vehicle that one may choose.

Sample questions:

1. Are you the only founder?
2. Do you want to separate personal liability and corporate liability?
3. Do you have plans to raise from the public?

Layer 3.2 Incorporation

For users who would like to view incorporation requirements

Layer 3.3 Company's Constitution

For users who would like advice on the nature and requirement of company constitution, including shareholders' agreement.

Layer 3.4 Data Privacy and Protection

For users who would like advice on whether the business requires the formulation of data privacy policy, and how it can be done

Sample questions:

1. Whether, in the course of your business, you will be collecting personal information and data?
2. Whether your use of personal data falls into ... categories of use?

Layer 3.5 Trademark Registration

For users who would like to enquire whether trademark registration is required, and the possible recourse including trademark registration, trademark search, patent registration etc.

Sample questions:

1. Would you like to register a new name or logo for your company?
2. Would you like to protect your newly invented products?

Layer 3.6 Employment and Employee’s Compensation

For users who would like to know about: (i) whether one constitutes as an employee (ii) rights and liabilities attached to an employer (iii) legal requirements for employment contracts of various types (iv) legal rights and liabilities of hiring part-time vs full-time staff / apprentices etc.

Layer 3.7 Licences

For users who would like to find out whether one requires a license to conduct certain activities, including food licences etc.

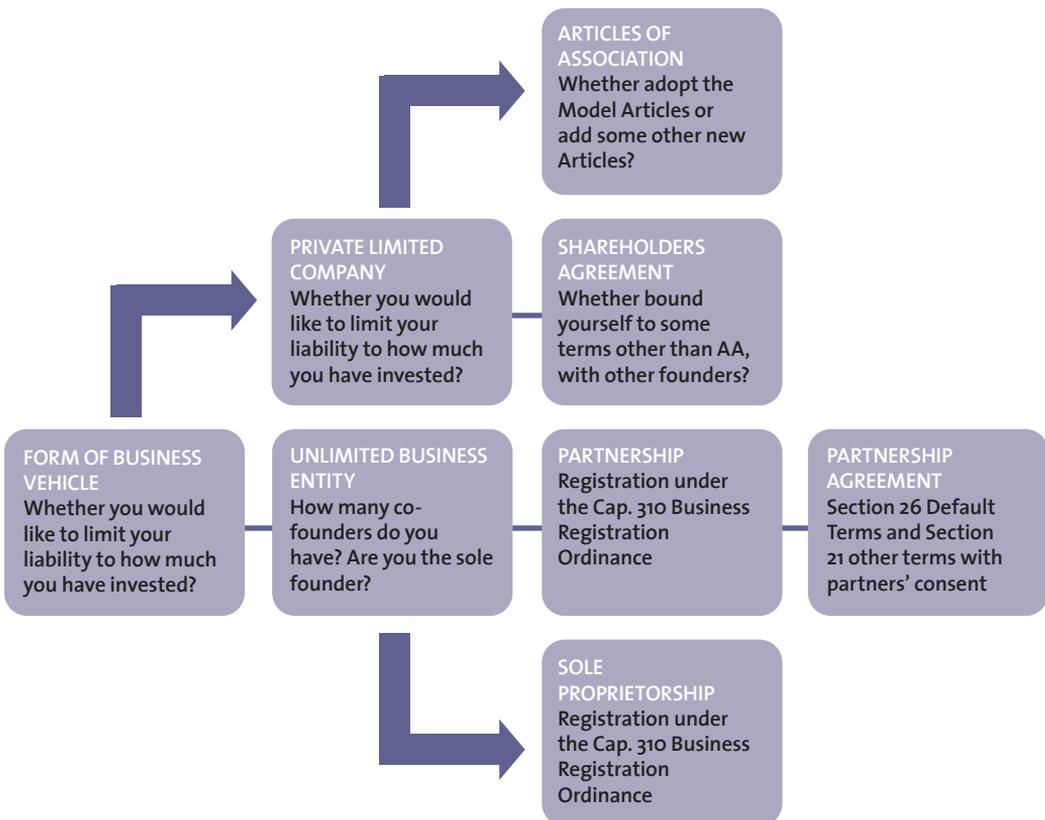
Layer 4: General Onboard Checklist

A general onboard checklist for start-ups, including issues such as setting up a bank account etc.

Layer 5: Operational Checklist

A general overview of things that have to be done for businesses that are relatively more mature, including filing of annual returns, tax returns, etc.

Illustration 1: This graphic shows a possible operation of the decision tree on the issue of choice of business vehicles (simplified)



Pillar II: Start-ups Legal Information Exchange Hub

We aspire to create a Start-ups Legal Information Exchange Hub. Firstly, we propose to disseminate key legal information through our application and social media platforms including Instagram and Facebook comprising two parts: (1) forums and (2) legal posts. Second, we propose to hold legal seminars in partnership with incubators and relevant stakeholders.

Forums

A forum will be included on our application whereby start-ups developers can ask questions on either a public or private basis. Public questions may be answered using AI-generated responses or other users of the platform while private questions will be addressed by AI-generated responses directly. Each question is indexable using hashtags, such as #incorporation, #NDA, #employment. Also, we might channel our users to the legal services, be it in-built on our platform or external resources, that are desired by them at that particular stage.

Legal Posts

Student helpers will write a number of legal posts on legal issues that might potentially relate to start-ups. If there are important policies changes pertaining to the rights or obligations of start-ups, summaries on legal reforms will also be available. All posts written by law students will be reviewed by legal professionals to ensure accuracy.

Illustration 2: Proposed Instagram Post (auto generated)



Legal Workshops

The most direct way to interact with start-up founders and convey legal knowledge to them is through legal workshops. Therefore, we propose to organise legal workshops with incubators.

With an aim to first introduce them to the basic legal requirements, our first forum will be called “A checklist of all documents you have to know” whereby Incorporation Form, Business Registration Form, Incorporation Form, Company Constitution, Memorandum of Understanding for proposed partnership, Non-Disclosure Agreements will be briefly presented and introduced. Another forum will focus on Intellectual Property law, data privacy, and relevant laws on technology which have been identified as a pressing issue of start-ups. Also, it is our sincere wish to identify the authentic legal needs of our users. Attendants of our workshops will be provided with Short Questionnaires so that we are able to improve our services.

PROPOSED PROJECT PARTNERS

iDendron

A proposed project partner is iDendron at The University of Hong Kong (“HKU”). iDendron, HKU Innovation & Entrepreneurship Hub, was launched in 2017 with the aim of nurturing start-ups on campus through serving as an incubator. We aim to pilot our platform in iDendron by providing our tool to the members of iDendron.

The partnership timeline is as follow: -

February, 2021	a pitching session to introduce our platform to the member of iDendron
March to May, 2021	members of iDendron to be the piloting target users who will try out our platform
May to September, 2021	members of iDendron to be the first batch of customers who use our platform and provide feedback

September, 2021 onwards

possible long-term partnership with iDendron

If the partnership with iDendron is successful, we aim to extend our network and partner with other universities incubators and institutions serving startups.

Law firms

While accuracy and reliability are two of our main features, endorsement and assistance from law firms means a lot to the success of our project. That’s why we plan to partner with law firms as our legal advisors in developing our project. Professional lawyers in law firms will monitor the accuracy and compliance of the legal advice offered on our platform. This will ensure that our legal advice is accountable and minimise the risk of misinformation.

BUDGET

Development Cost	Person	Weeks	Cost/Person/Week (HK\$)	Sub-total (HK\$)
IT development	2	5	3,500	35,000
Testing	2	1	3,500	6,000
Maintenance Cost		Years	Cost/Year (HK\$)	Sub-total (HK\$)
Maintenance		2	10,000	20,000
Marketing Cost	Person	Years	Cost/Person/Year (HK\$)	Sub-total (HK\$)
Graphic design	1	2	2,500	5,000
Online promotion	1		2,000	4,000
TOTAL:				70,000 (=35,000 a year)

PROJECT TIMELINE AND ACTIVITY DURATION

Activity	Duration
Phase 1	
Pitching & Fundraising We aim to gather our kick-start funds from PILnet or other case competitions.	Feb 2021- Mar 2021
Phase 2	
Partnership Our first target customers would be selected university incubators and social enterprises. At the initial stage, we aim to provide our services only to the specific groups as our pilot test. Meanwhile, we would confirm the details regarding the content of legal workshops with our partner organisation. Also, we would negotiate and confirm partnership with law firms in a hope to engage them in our product development.	Apr 2021- Aug 2021
Product Development The first step to execute our idea is to engage developers and build the web/mobile app and the platform with the above functions.	
Phase 3	
Partnership After the initial stage, we aim to expand our services to the public sector. Our services will be made available to all social enterprises and start-ups. Upon our successful pilot test with our partners, our services will be openly available. This can be done by connecting with university incubators plus other intermediaries.	Sep 2021- Aug 2022
Value Realisation Apart from our AI-driven Q&A platform, we aim to recruit legal student volunteers who have completed courses in the relevant fields (e.g. Company Law, IP Law, Commercial Law etc.) to help. On the one hand, it allows students to gain meaningful working experience. On the other hand, it provides users with high-quality legal posts and information.	

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SUSTAINABILITY

The sustainability of the project can be manifested in the following ways:

Low Cost

This project demands relatively low establishment and operational costs. Most of the cost items come from the initial development stage whereby technological services solicited may require certain cost. However, thereafter the two pillars are being established, the cost would primarily be shifted to maintenance cost which is estimated to be low. The second pillar of information exchange hub also requires minimal costs.

Continual Relevance of the Materials

There might be a worry that SUNGO requires constant updates as to our materials in both pillars because the law will continue to develop. Although we do acknowledge this issue, understandably the law concerning a lot of commercial and business issues seldom undergo major overhaul. Regular review of the materials and consultation of latest legal positions would suffice to ensure our materials are up-to-date.

Multiple Usage of our Materials

Although our project is divided into two pillars, the materials that are used to either one pillar can readily be deployed to be used for another pillar. This is because the law stands as it is and it would be unlikely the information contained in one pillar differs from another.

Project Development

As illustrated above, we will reach out to and partner with a multitude of parties at different stages. Not only do we convey practical legal knowledge to start-ups, we also aim at developing an extensive supporting network to them so that they could connect to reliable legal resources they need easily. As we go along the stages, the development of such a community including law students, start-ups, universities and law firms will surely give rise to more partnership and cooperation, bringing a positive change in the long run.

PROJECT EVALUATION

SUNGO will be evaluated on a regular basis, focused on several Key Performance Indicators posited below:

Number of Visitors of our Platform

This KPI acts as a proxy to show the reach of our services. In gist, as most websites and applications allow the administrator to check the number of visitors, we can deploy this as a proxy to estimate how many people have actually consulted our services. Of course, this measurement method suffers from one in-built bias that not all people who visit indeed use our services and many of them will revisit it for several times that further exaggerate the actual reach. Nonetheless, this is the best estimate available.

Social Media Reception

Another KPI concerns how well we have fared on the social media. We will make use of data including how many people have read our posts and how many people have private-messaged us as a result. The logic of this KPI closely resembles that of the above one concerning the number of visitors of our Platform and the two suffer comparable deficiencies, but this is nonetheless a good proxy to show the popularity of our services that is key to our long-term development.

User Ratings

Users who have consulted our various platforms under both pillars will be invited to give their rating to our services on a five-point scale. This indicates their satisfaction with our services, which may include how well do they find it useful etc. This is a direct measurement that can show whether we have fared well.

Attendance at Start-ups Legal Workshops

Another KPI will be the attendance rate of our workshops. A longitudinal analysis of the change in attendance rate will reveal whether our workshops are useful such that start-up founders would return and possibly recommend them to others.

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