

momentum

IT'S
TAKING
OFF!

Australia's STARTUP ECONOMY

> 03

FINANCIAL SERVICES //
CROWD SOURCED EQUITY FUNDING
ALMOST READY TO GO

> 08

Q&A WITH WAYNE
GERARD // THE JOURNEY
OF AN AUSTRALIAN TECH STARTUP

> 12

TECHNOLOGY //
UP, UP, AND INTO THE CLOUD

ClarkeKann
LAWYERS



Welcome

to the July 2015 edition of **CK MOMENTUM**, our regular newsletter for business owners and corporate executives.

This edition focuses on a number of issues that are relevant to startup organisations, but with plenty of topics relevant to any business going through a period of growth or change. We feature an interview with Wayne Gerard, cofounder and CEO of Brisbane based tech startup RedEye Apps, who has some great tips for entrepreneurs with an idea to develop. We also look at a potential trap with cloud based technology solutions, what's on the horizon for the regulation of crowd funding in Australia, and some pointers on negotiating to lease business premises.

Our aim is for CK Momentum to help keep you up to date with pertinent developments that may affect you or your business. With offices in Brisbane and Sydney, our expertise covers commercial & corporate transactions, employment & IR, financial services, litigation, risk management and insolvency, property transactions and resources projects across a range of industries.

I hope you find this edition of **CK MOMENTUM** informative.

John Toigo //

MANAGING PARTNER



in this issue

- 03** FINANCIAL SERVICES // CROWD SOURCED EQUITY FUNDING ALMOST READY TO GO

- 04** SNAPSHOT //

- 06** BUSINESS // IT'S TAKING OFF: AUSTRALIA'S STARTUP ECONOMY

- 08** Q&A WITH WAYNE GERARD // THE JOURNEY OF AN AUSTRALIAN TECH STARTUP

- 10** PROPERTY // PRACTICAL CONSIDERATIONS IN LEASE NEGOTIATIONS

- 11** RISK MANAGEMENT // 9 TIPS FOR BOARD MINUTES

- 12** TECHNOLOGY // UP, UP, AND INTO THE CLOUD



CROWD SOURCED EQUITY FUNDING ALMOST READY TO GO



The Australian startup ecosystem is in need of new sources of capital to unleash the innovation within. The current equity raising regulatory framework is simply not suited to most startups with its heavy focus on compliance and investor protections.

Crowd Sourced Equity Funding (“CSEF”) is seen as a way to free up vast sums of investment capital. With legislation likely to be introduced to parliament in the coming months, encouragingly it appears that the Opposition is willing to work in a bipartisan way with the Abbott Government to help fast track the introduction of CSEF reforms.

The allocation of \$7.8 million in the budget for ASIC to implement and monitor a regulatory framework to facilitate the use of CSEF is another promising sign we are getting closer to implementation. We had hoped that the budget might give the government an opportunity to give more specific guidance around the CSEF legislation likely to be introduced to parliament but unfortunately we are still left to ponder which of the three broad alternatives will be adopted.

► TO RECAP, THE THREE BROAD CSEF REGULATORY MODELS BEING CONSIDERED BY TREASURY AT PRESENT ARE:

1. RETAIN THE EXISTING REGULATORY FRAMEWORK: which highly restricts the ability of startups to attract capital.

2. ESTABLISH A NEW CSEF FRAMEWORK:

- a. a new category of public company for CSEF issuers that are exempt from certain ordinary public company compliance requirements;
- b. equity raisings through CSEF will be limited to \$2 million in any 12 month period;
- c. individual investors can only invest \$2,500 in any particular startup, and a maximum of \$10,000 overall, in any 12 month period.

3. FOLLOW THE NEW ZEALAND CSEF MODEL:

- a. there are no exemptions from public company compliance requirements;
- b. equity raisings through CSEF are limited to \$2 million in any 12 month period;
- c. no investor caps, but CSEF issuers are obliged to provide different levels of disclosure depending on whether there are no, low or high voluntary investor caps.

- d. It is difficult to say whether the less regulated NZ model will be followed or whether investor protections will be given more emphasis. But we are sure there are a lot of startups in need of equity hoping for a lighter regulation touch as they stand by the mantra: “let the crowd decide”.

It is hoped that the Government will introduce legislation by August 2015 and we hope that the bipartisan approach promised by the Opposition will mean our next report discusses the details of the new CSEF legislation, rather than talking about the alternatives. **CK**



► EMAIL

Peter Karcher //

PARTNER, CORPORATE & COMMERCIAL



SEMINAR: BUILDING & CONSTRUCTION

➤ AN ESSENTIAL SEMINAR FOR ANYONE WORKING IN THE BUILDING & CONSTRUCTION INDUSTRY.

LEARN ABOUT

- Recovering money owing to you, including practical tips for navigating the BCIPA regime
- The important changes that have been made to BCIPA and how to make sure you comply with the requirements and timeframes
- How to minimize the risk of disputes arising in your construction contracts
- Dealing with complaints made to QBCC and how to avoid ending up in QCAT, and
- A roundup of some important legal issues affecting the building industry.

PRESENTED BY Sarah Davies, Partner, and Allana Agnew, Senior Associate, from the Litigation & Insolvency team.

WHEN Monday, 27 July 2015

TIME 3:00pm to 4:15pm

WHERE Novotel Twin Waters Resort, Ocean Drive Twin Waters, Sunshine Coast

COST FREE

[CLICK HERE](#) TO CONTACT ANNA-LYN McCAFFERTY TO REGISTER YOUR INTEREST.

EMPLOYEE SHARE SCHEME TAX REFORM FINALLY HERE

Legislation has finally passed both houses of Parliament to improve the taxation treatment of ESS and, in particular, provides some welcome concessions to startups looking to implement an ESS.

Key points include:

- **FOR STARTUPS:** discounts on shares or options are tax free for startup employees provided certain tests are satisfied
- **FOR ALL COMPANIES:** the taxing point on shares and options issued can now be deferred for up to a maximum of 15 years (up from 7 years).

[CLICK HERE](#) TO READ THE FULL ARTICLE.

FINTECH HUB STONE & CHALK EXPERIENCE OVERWHELMING HIGH DEMAND

Stone & Chalk describes itself as “an independent, not for profit Fintech hub whose overarching objective is to help foster and accelerate the development of world leading Fintech startups”.

Before it has even launched, Sydney’s new Stone & Chalk has had to find alternative larger office premises to cope with the demand of receiving 350 applications from entrepreneurs for 150 places initially on offer.

“Disruption” is the language that everyone is talking on both sides, but according to CEO, Alex Scandurra, this is not just about big, established players protecting their patch by keeping a closer eye on new developments.

“While we are partnering with large organisations,” Scandurra is reported as saying, “they do not in any way control what we do ... or get guaranteed access to the teams. It is about the startups first”.

Recent appointments



CHRIS KINTIS joins our Sydney Litigation & Insolvency team as a Partner. With extensive experience representing a wide array of clients from individuals and small businesses to liquidators, high profile directors and chairpersons, Chris brings with him a wealth of expertise in commercial dispute resolution, insolvency, and corporate governance.



JAMES GLEESON joins us as a Lawyer in our Brisbane Corporate & Commercial team. James has broad experience in the infrastructure, mining, energy and resources sectors, consulting to major clients including to Australian Pacific LNG Gas Pipeline Project, Queensland Urban Utilities, Shandong Energy, Bow Energy on the Blackwater Transmission Line Project and ACTEW Corporation on M2G Water Transfer Project. James is also a founding Director and member of the board of OilCorp Pty Ltd, an oil shale company based in Queensland.



BRAD VINNING of our Brisbane office has been promoted to Partner in our Corporate & Commercial team. With over 10 years' experience, Brad advises on a broad range of corporate and commercial transactions, with a particular emphasis on advising companies through their growth phase, while also advising a number of ASX and TSX listed companies on a range of regulated and M&A transactions.



ALLANA AGNEW has been promoted to Senior Associate in our Brisbane Litigation & Insolvency team. Allana has worked exclusively in commercial litigation across a broad range of industry sectors with a particular focus on building and construction litigation; property litigation, including put and call options disputes, leasing disputes and resumption claims; and insolvency and restructuring advice.



MATTHEW ARMSTRONG of our Brisbane Property & Projects team has been promoted to Associate. Matthew acts for a number of national property developers in relation to off the plan sales of flat land subdivisions and residential units in community titles schemes. Matthew's experience also includes acting on property and business acquisitions and disposals, advising on body corporate matters, and advising in relation to commercial and retail leases. **CK**



This year, 2015, represents a significant milestone for ClarkeKann as we celebrate 50 years in business. In today's environment it is not often to see an organisation in business under the same name for that period of time.

Our longevity is attributable to not only the quality of our people, but also to the quality of our clients and the trust and confidence that they have placed in us. Change and managing and adapting to change, in today's business environment, is de riger for us all. While we will continue to meet this challenge, one thing that will not change is our commitment to personal service, to act in our client's best interests, and to help you manage your business risks through top notch legal advice backed by sound commercial judgment.



IT'S
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Australia's STARTUP



Cloud based tech companies, scalability and disruptive technology. Small, agile startups rushing to innovate and find a gap in the market. It is activity on a scale that has never been seen before.

The way the world conducts business is changing rapidly and Australia has an unprecedented opportunity to transition from a resource and primary industry based economy to one focused on high growth, knowledge intensive and data driven businesses that compete on a global stage. If you need confirmation of how much the business world has changed, look no further than these four companies:

- **UBER:** a multibillion dollar taxi service that owns no vehicles.
- **AIRBNB:** an accommodation provider that owns no property.
- **ALIBABA:** the world's richest retailer carries no stock.

- **FACEBOOK:** the world's most popular media company creates no content.

The recent Startup Economy study conducted by PwC and commissioned by Google Australia projected that high growth technology companies could contribute 4% of GDP (or \$109 billion) and add over half a million jobs to the Australian economy by 2033, but only if the current risk averse culture, lack of entrepreneurial skills and restrictive funding regulation are addressed. There is already proof that this can be reality – over the past 15 years just nine software companies have grown to a point where they collectively contribute 6% of GDP (or \$1.3 trillion) to the US economy. Imagine if just one or two of these “unicorns” called Australia home.



According to the StartUpAus Crossroads Report 2015 (“Crossroads Report”), many countries are responding to this opportunity with speed and conviction by implementing policies and programs designed to stimulate and support high growth technology based businesses and retool their workforce by developing entrepreneurial skills. The Crossroads Report emphasises Australia’s need to:

- identify and address the current market failures that are impeding market growth;
- foster economic diversification so we are not so reliant on the volatile and ultimately unsustainable resources sector; and
- create and nurture a culture amongst our existing and future

government programs focused on supporting startups and boosting entrepreneurship.

Australia’s startup ecosystem lags behind many other developed countries in terms of startup formation and venture capital investment. Our economy has for a long time been dominated by service based industries and exports heavily skewed towards the resources sector. If Australia is to continue to compete on the global stage and maintain the quality of life to which its citizens are accustomed, then it needs to shift its focus away from these diminishing activities and create high labour productivity jobs that are not susceptible to being undercut by countries with significantly lower

cost of labour, as we have seen recently with the car manufacturing industry.

ClarkeKann, this year celebrating its 50th anniversary, is focused on tackling these challenges together with all other stakeholders, including government, entrepreneurs, corporations and our universities. [CK](#)



[▶ EMAIL](#)

Sam Bassingthwaite //
LAWYER, CORPORATE & COMMERCIAL

THE JOURNEY OF AN AUSTRALIAN TECH STARTUP:

Just RedEye It.

Experiencing rapid success since the start of its development in January 2012, Brisbane based tech startup RedEye Apps has fast become a global leading provider of engineering drawing collaborations and management solutions.

As the first fully cloud based and purpose built platform for managing engineering drawings, RedEye Apps has attracted strong interest from global mining, energy and resources industries. Corporate & Commercial Partner, Brad Vinning, chats to Wayne Gerard, RedEye Apps Cofounder and CEO, elevate61 Advisor, and finalist in the Lord Mayor's Business Award, about the soaring success of RedEye, the current conditions and sharing advice for anyone desiring their own startup success.



TELL US A LITTLE ABOUT REDEYE.

RedEye exists to solve a very common and widespread problem relating to how asset owners work with, share and manage engineering drawings and data. RedEye is the first purpose built, pure cloud based engineering management platform. We started development in January 2012. Our mission is to make all of the world's engineering drawings and data more available, useable, and valuable. It's a huge opportunity given that everything that's built in the world has engineering drawings.

YOU HAVE OFFICES IN BRISBANE AND HOUSTON. HOW DO YOU MANAGE THAT? DO YOU SPLIT YOUR TIME EVENLY BETWEEN THE TWO CITIES?

Our goal is to become the leading cloud based solution for engineering globally and we expanded into the US early to demonstrate our relevance across market sectors and geographies. Today we have three full time people in our US team. We are growing the US team quickly based on the clients we are securing, I would expect us to have ten people in Houston pretty soon. At the same time, I am also expanding RedEye into South East Asia and the Pacific and we aim to open an office in that region in July 2015. My focus is to drive the culture, focus, direction and productivity of the team so I travel regularly to make sure everyone is on the same page.

HOW HAS THE STARTUP SCENE IN AUSTRALIA EVOLVED IN THE LAST FOUR YEARS?

It's been great to watch the startup scene in Australia develop over the last couple of years. We have some amazing entrepreneurs who are building awesome businesses and it won't be too long before we start to see some large exits and capital being

recycled back into the ecosystem. Australian entrepreneurs are really proud of their heritage and very supportive and willing to give back to the new entrepreneurs coming into the ecosystem. The quality of startups that presented at Tech23 in Sydney in 2014 was a great indicator of how much our ecosystem is maturing.

DO YOU HAVE ANY PLANS TO MOVE OVERSEAS?

As the CEO and a Cofounder, it's my responsibility to grow RedEye as quickly, profitably and sustainably as possible. I will base myself and spend time wherever I need to be to do that. Early on, a number of US VCs wanted me to be based in Silicon Valley before they would consider investing. I am seeing a shift in this thinking, as RedEye's revenue grows and our traction becomes more evident, the VCs are less focused on where I live and more focused on helping us to accelerate our growth.

DO YOU HAVE ANY MENTORS/ADVISORS?

Yes, I am incredibly grateful for all of the people who have helped us establish RedEye. There are a handful of people in Australia and the US who have been instrumental in coaching, guiding and helping me to take RedEye from a good idea to a funded and growing startup. I established a Board of Directors in November/December 2013 which was a great step and I encourage other startups to take advantage of the skills, experience, relationships, and perspective that a great board brings to an early stage, high growth company. We aimed really high when we went searching for the right board members and I'm glad we did. The more experienced and successful the people on your board are, the more opportunities

and potential your startup will have.

WHAT ADVICE WOULD YOU GIVE TO SOMEONE WANTING TO START THEIR OWN COMPANY?

Have some criteria to evaluate the problem you want to solve and if the solution could become the basis for a "globally relevant high growth company" (my definition of a tech startup). I set the following criteria and this really helped me to ensure that was I focusing my time, energy and resources into something that had the potential to have a huge impact globally:

1. the problem to be solved has to be big and costing our potential clients lots of money;
2. the solution to be developed shouldn't compete directly with a core offering from the large enterprise software companies (competitors); and
3. the solution needs to be capable of application across multiple market sectors and geographies.

WHAT'S NEXT FOR YOU AND REDEYE?

I am a huge believer in paying it forward and also giving back. I love working in the startup space and will either do another startup or start a VC and help the next wave of entrepreneurs. **CK**



EMAIL

Brad Vinning // PARTNER, CORPORATE & COMMERCIAL



PRACTICAL CONSIDERATIONS IN LEASE NEGOTIATIONS



Congratulations! You are ready to start scaling your business and take on your first commercial lease! Now comes the negotiations with the landlord on the commercial terms of lease. Here we list some tips and traps that could be the difference of thousands of dollars over the life of the lease.

1. RENT REVIEW

So you have negotiated the first year's rent with the landlord, but have you considered what the rent will be over the life of the entire lease?

Rent is usually reviewed annually in line with a fixed percentage or CPI. However, for longer term leases over 5 years or leases which have a renewal term, the rent may also be reviewed to market every few years or on the commencement of the further term.

This means those years where the rent is reviewed to market (which usually results in rent increasing) then the rent will be increased by the annual percentage and by the "market review". A double whammy of rent increases.

A way to avoid this "rent shock" is to agree with the landlord, the specific dates and methods of each rent review.

2. SECURITY DEPOSIT/ BANK GUARANTEE

The amount of security or bank guarantee required by the landlord is usually calculated by reference to the number of months of rent over the life of the lease plus outgoings and GST. While this may sound harmless, it means you will be

required to "top up" the security deposit or bank guarantee whenever the rent is reviewed or the outgoings budget changes.

The cost of arranging for new/replacement bank guarantee can sometimes be more than the top up amount required. For this reason, a fixed security amount should be negotiated, or at the very least you should only be required to top up the security deposit or bank guarantee if you take up a further term.

3. OUTGOINGS

We all know that there are 2 major types of rent:

- Gross rent is where the tenant is only required to pay the rent when due.
- Net rent where in addition to paying the rent when due, the tenant must also pay for its proportion of the all other outgoings (ie rates, common area maintenance, land tax, etc).

Naturally, the tenants' preference is for a gross rent. However, there is a middle ground. It is dubbed as a "semi gross lease", whereby the tenant is only responsible for its proportion of any increases to the amount of outgoings set in the first year. For example if the outgoings in year one are set at \$50m²,

but in year 2 the expenses go up to \$65m², the tenant's contribution to outgoings in year 2 is only \$15m².

Therefore, instead of paying thousands of dollars (or even tens of thousands of dollars) in outgoings, over and above the rent you are already paying to the landlord, a semi gross lease will mean that the amount of your outgoings contribution in the later years of the leased term will only be a fraction of the actual outgoing for the premises.

We hope the above pointers can help you save any unnecessary heartaches or expenses over the life of your new lease. Stay tuned for more lease tips on other cost saving tips.



EMAIL

Ang Li //

ASSOCIATE, PROPERTY & PROJECTS



9 TIPS FOR BOARD MINUTES



Minutes of directors' meetings are critical in protecting the directors and managers of a company from claims that they have not properly discharged their duties. There can be serious reputational damage and fines if the minutes are wrong.

Litigation & Insolvency Partner, Sarah Davies, has 9 tips for ensuring board minutes serve their purpose.



[▶ EMAIL](#)

Sarah Davies //

PARTNER, LITIGATION & INSOLVENCY

1

PREPARE MINUTES PROMPTLY

They should be contemporaneous.

2

INCLUDE ENOUGH DETAIL, BUT NOT TOO MUCH

Don't make a transcript of the meeting, but do include enough detail to show proper consideration was given to the issues.

3

MAKE SURE THEY ARE EASY TO FOLLOW

Use techniques that aid readability.

4

IDENTIFY DOCUMENTS RELIED UPON

Particularly if they are not in the board pack.

5

IDENTIFY CONFLICTS

Make sure they are properly dealt with.

6

RECORD DISSENTS AND ABSTENTIONS

Remember the lessons from James Hardie.

7

MAKE A LIST OF ACTION ITEMS

It's an important checklist for work that needs to be done for the next meeting.

8

REVIEW THE MINUTES

Each directors present at the meeting should read them.

9

SIGN THE MINUTES

Within a reasonable time after the meeting and record the resolutions in the company's minute book within 1 month. [CK](#)

[CLICK HERE](#)

TO READ THE FULL ARTICLE.

UP, UP, AND INTO THE CLOUD

As a small business or an early stage startup, you may not necessarily be bound by the requirements of the Privacy Act. However, your clients may themselves be subject to its provisions and will want to be assured that you are compliant in order to satisfy their own privacy obligations. So, big or small, at some point or another it is likely you will have to demonstrate that your business complies with Australian privacy laws and has in place appropriate data security measures.

One particular area of concern is cloud computing. For an increasing number of Australian businesses, moving towards cloud based solutions makes sense. Cloud based offerings are particularly attractive to startup businesses as they almost eliminate upfront capital expenditure on IT infrastructure and offer scalability and flexibility. However, before you sign up for cloud based services, you should shop around to find a reputable cloud provider that is right for your business.

One important consideration is the location of the cloud provider's infrastructure. Storing your data outside of Australia is not necessarily an issue under the Privacy Act, unless a third

party has the right to access and use the data. However, there still might be important commercial considerations. For example, last year Luxottica Retail Australia (which owns the OPSM brand) lost a lucrative contract with the Australian Defence Force ("ADF") after the ADF discovered information about its personnel had been stored offshore, in breach of Luxottica's contract.

By putting data into the cloud, you are putting the security of that data in the hands of your cloud provider. Before you do so, make sure you have undertaken due diligence on your cloud provider and the terms of your service agreement places obligations on the provider to store

your data securely and comply with any applicable privacy and data security laws and standards. The risks associated with cloud computing can be mitigated by having appropriate contractual protections in place with your cloud provider. [CK](#)



[▶ EMAIL](#)

Suzette Caldaroni //
LAWYER, CORPORATE & COMMERCIAL

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