EXPERT SESSIONS

KEY KNOWLEDGE FOR SUSTAINABILITY

One of the main objectives of the Pesatech Accelerator Program is to expose startups to expertise that help them better prepare for investment and their businesses' sustainability. The program prepared expert sessions that facilitated the sharing of industry expertise by seasoned professionals, to accomplish this goal. This activity report details some of the sessions we have had so far, lessons learned, and offers recommendations.

2022

PESATECH ACCELERATOR

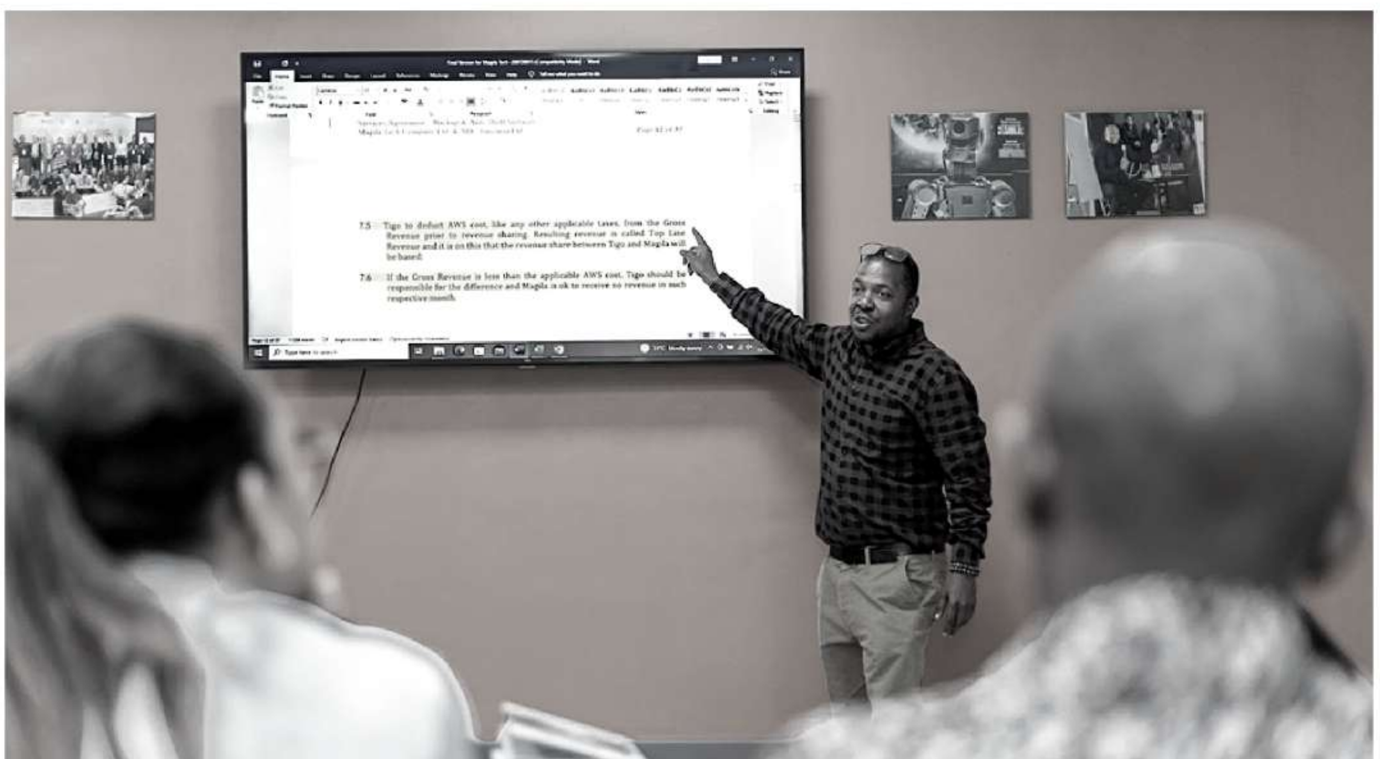
PesaTech Accelerator

EXPERT SESSION | COLLIN GUMBU

CORPORATE ARM-TWISTING TRICKS

Collin is a leader in corporate-startups partnerships. He is an expert on how startups-corporates engagements in Tanzania. He has worked with many startups, helping them engage with banks and Mobile Network Operators (MNOs).

During this session, Colling offered his knowledge on understanding the legal aspects of doing business with corporates and telecoms, with a special focus on the legal and arm-twisting tricks to watch out for while dealing with corporations.



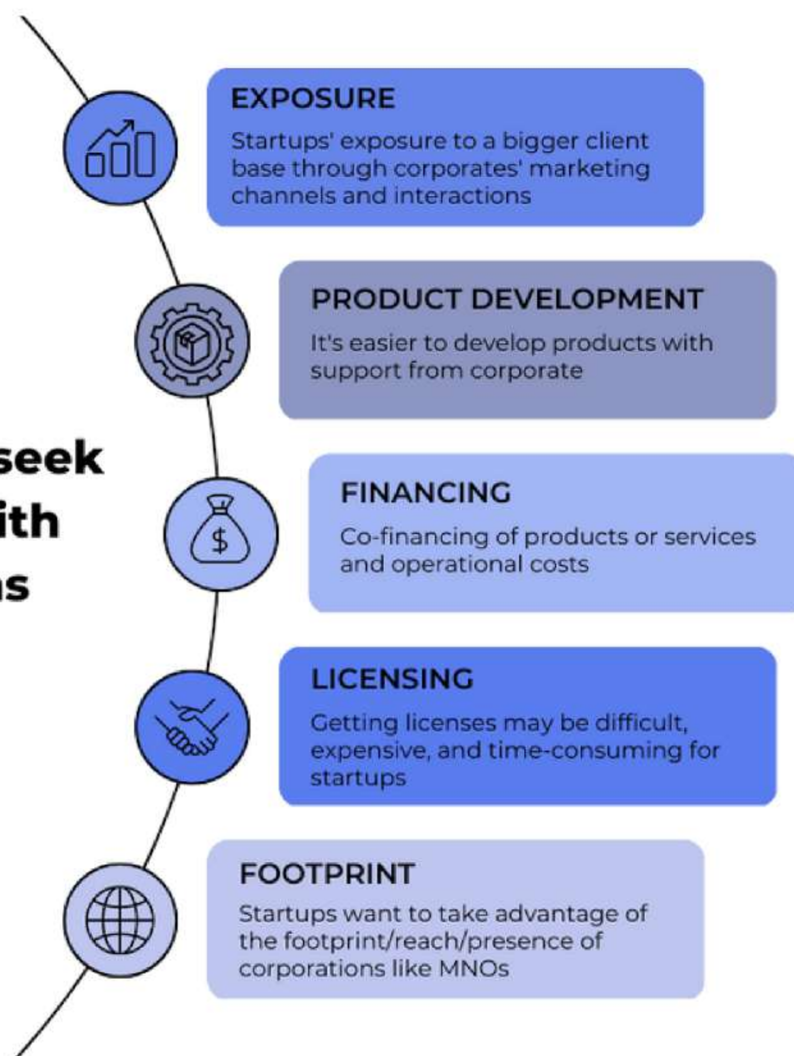
The session started by startups sharing why they seek partnerships with big corporations like banks, MNOs, and insurance companies. The list included challenges they face getting funds from banks and included other factors like reach and licensing as seen below.

Challenges that Hinder Asset Financing of Start-Ups by Banks

- Ignorance about Information and Communications Technologies (ICT)-related products and technology advancements - Regulators are not aware of the tech advancements and their potential
- Lack of proper documentation
- Lack of proven business
- Strict collateral requirements - Bank of Tanzania (BoT) has given a directive to commercial banks that any loan provided must be secured by 125%

These challenges are a key reason why start-ups seek partnerships with big corporations, more reasons are listed below.

Why start-ups seek partnerships with big corporations



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Key Takeaways on Dealing with Corporates

- The contracts are very one-sided; they are designed to best serve the corporates, not the startups.
- The best way to partner with corporates is through their Corporate Social Responsibility (CSR) because that puts you in a safe space from being mongered by big companies since they won't be looking for profits from you.
- If there is no definite support/benefit from the partnership, do not enter into an agreement. If they are offering you something you can get on your own in a few years, then don't get into an agreement. Only partner if there is a significant benefit because corporates always want a return on their investment.
- Business cases and financial models are the foundation of negotiations with corporates because the companies want to profit- you either share revenue topline revenue - before tax) or profits, so know your numbers. It is crucial to have and know your financial model. Have a good understanding of your finances and have a professional create a financial model for you.
- Always push for profit sharing over revenue or top-line revenue sharing.
- The income statement is the most important thing in your financial model
- If your numbers are not good yet, do not negotiate with corporations because that means you have less bargaining power.
- Make sure you have a non-disclosure agreement (NDA), an integration, and a commercial agreement.
- Never give the source code to partners
- Scrutinize the contract to ensure it is mutually beneficial.
- Before any agreement, make sure you have an Intellectual Property (IP) agreement. document

Key Takeaways on Contracts

- Make sure that the applicable laws that are being referred to and used by the contract are of the United Republic of Tanzania so that in case of any dispute, you can follow up and get justice. You may also state the applicable law as the Common Wealth because that means you may get a hearing in any common wealth country, which includes Tanzania.
- Be careful about the revenue clause in revenue sharing agreements so you may know what exactly is referred to - ensure you know if it means before tax, after administrative costs, or after both.
- The scope of services should be very detailed/specific.
- Make sure the contract stipulates the obligations of both parties. Ensure that the corporate company commits to the specific things they have agreed to do for your startup in writing.
- The contract has to clearly state what costs will be incurred by the corporate company.
- Ensure that the intellectual property clause refers to both parties. Your product's intellectual property must be protected.
- In most cases, the termination clause usually gives the corporate power to terminate, not the startup. Ensure that the contract details the conditions against which you, as a start-up, may terminate the contract. Both parties must be able to terminate the agreement.
- The termination notice should be longer than the usual 60-90 days, especially with startups, because investors want longer. If the termination is 60-90 days, what investors see is that your contract is only valid for that period.
- The most important clause in the contract warranting termination should be the failure of the corporate to provide the resources it committed to provide to you, the startup.
- The contract must detail how the money, whether revenue or profit, will be shared between the parties.
- Exclusivity should not be perpetual, it should have a time limit.
- Exclusivity should consider the opportunity cost - what does it mean for you to commit to that one corporate?
- The termination clause should include what happens to the remaining revenue generated in perpetuity, post-termination.
- Always get a contract over an MoU (Momerandum of Understanding) when dealing with MNOs. An MoU is not legally binding, it is not an agreement; it's merely an understanding which does not hold water in court or restrict the other party to engage someone else.
- Consider your level of need when negotiating - it is easier to get a bad deal when you are too desperate. However, consider what the partnership will do for you in the moment given your circumstances.

"The most important clause in the contract warranting termination should be the failure of the corporate to provide the resources it committed to provide to you, the startup."

You can see more pictures of this session here.

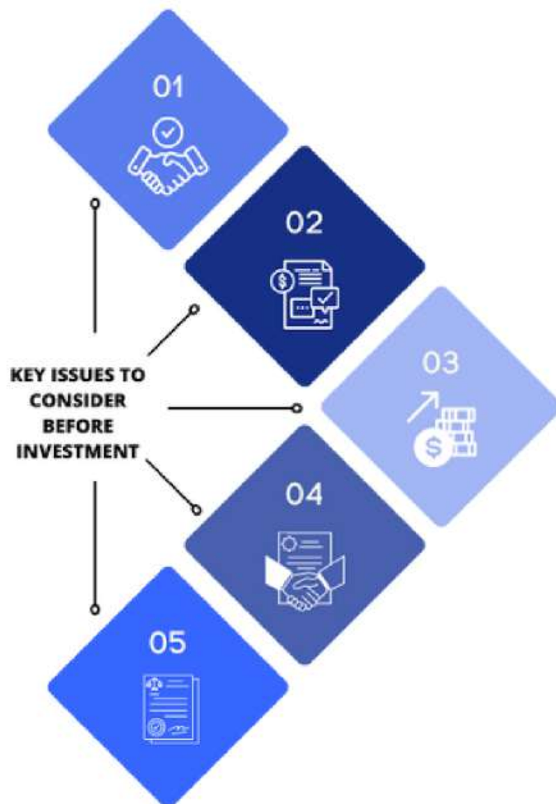
EXPERT SESSION | SALIM BHARWANI

LEGAL ISSUES TO CONSIDER WHILE SEEKING INVESTMENT

Salim Bharwani is a legal expert with years of experience working with corporate companies and startups. Also the founder of the firm Twelfth law, he has vast experience in regulatory requirements for fundraising and for integration between corporate and startups.

In this session, Salim shared his expertise with startups; focusing on what they should pay attention to while seeking investment, especially from venture capitalists.

Key Takeaways



01 **Shareholder Agreement**
Have a detailed, well-documented shareholder agreement.

02 **Equity Sales**
Don't give so much of your company away, retain enough to have decisionmaking power.

03 **Sweat Equity**
In the case of sweat equity, argue to have more shares/equity against milestones achieved.

04 **Share Option Agreements**
Have well-detailed documentation of share options and how they work in the company.

05 **IP Ownership**
Make sure that the IP is owned by the company/startup, not the founder.

- In your shareholder agreement, stipulate whether the decisions are made by a majority or unanimous.
- Have a dividend policy that works out who decides the dividends and how they are distributed.
- The selling procedure of shares should be clear in the shareholder agreement.
- The shareholder agreement must consider the death of one of the shareholders. Decide and document what happens when one of the key shareholders dies.
- The focus of private equity or any investment is the return on investment (ROI). You need to clearly stipulate what investors are going to get from your startup, whether equity or revenue/profit sharing. Most venture capitalists go for equity since it has long-lasting returns and more decision-making power than revenue sharing.
- Having a teaser/trailer of your business showing financial records and ROI often stimulates better decisions among investors.
- Incorporating in Delaware increases your chances of investment by decreasing risk for investors.
- Make sure you have some decision-making power left, don't give too much of your company away.
- You may argue to have more share/equity against milestones achieved in the case of a sweat equity agreement.

"Documentation is very important. Document everything in detail to avoid conflict, misunderstandings, and legal arm-twisting tricks."

You can see more pictures of this session here.

Lessons and Recommendations

LESSONS

- The legal framework offers low exit potential by presenting a high risk of investors' funds getting stuck in startups for longer than their fund lifespan. The unstable regulatory environment scares investors with the possibility of being unable to liquidate their investment on-time.
- There is limited knowledge of legal matters concerning corporate partnerships among startups.
- There is a notable knowledge gap regarding the legal requirements by investors among corporates.
- Retaining and obtaining good legal expertise is often too expensive for startups; most end up paying inexperienced lawyers to handle their matters, often resulting in negative consequences.
- The termination clause in corporate-startup partnership contracts is often brief (60-90 days) and doesn't give startups options to terminate. The termination power often lies with the corporate.
- The legal and regulatory environment in Tanzania isn't friendly to venture capitalists' funding; it is more supportive of grants. Therefore investors prefer companies registered outside Tanzania.
- Local investors and financial institutions have limiting requirements for financing, most require tangible assets as collateral.
- Lack of local investment discourages external private equity or venture capitalists' funding.

RECOMMENDATIONS

- Offer knowledge on legal matters required by investors as part of the investor-readiness aspect of the program.
- Partner with a legal firm to provide legal advice and consultancy to startups on contracts, compliance, licences and registrations as a form of technical support offered in the program.
- Publish a report on regulatory reforms to consider to make Tanzania a more friendly environment for venture capitalists and private equity investments.
- Create awareness of the benefits of startup funding among financial institutions and local investors.
- Provide knowledge of legal and regulatory compliance requirements to startups as a form of capacity building.
- Share insights into legal and arm-twisting tricks to look out for in corporate-startup partnerships.

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