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Introduction¹

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The global start-up economy continues to grow, creating €2.6 trillion in value between 2016 and 2018, according to the 2019 Global Startup Ecosystem Report.² This represents a 20.6 per cent increase from the previous period and more than double what the data collected by the Startup Genome showed five years ago. This value creation is on par with a G7 economy and bigger than annual gross domestic product (GDP) of the United Kingdom.³ What is, however, even more important is that start-ups are not only a phenomenon in few places across the world. According to the above report, nearly 50 regions worldwide are creating at least €3.7 billion each in ecosystem value across all the continents (except Antarctica).⁴ In contrast, two decades ago, during the peak of the dotcom bubble, there were only four regions in which start-ups generated that much value. This is not the case anymore and start-ups and their regulatory framework should be of an interest for all lawyers, entrepreneurs, accountants, consultants, advisers, board members and regulators.

Areas such as greater Copenhagen, Helsinki, India or Tel-Aviv grow their start-up ecosystem rapidly. Working closely with the ecosystem in Europe, we hear more and more about Zurich, Madrid or Stockholm being great places to start one's innovative or entrepreneurial endeavour. Published studies show a clear relationship between the start-up activity and national economic development and competitiveness.⁵ Furthermore, a variety of

¹ The chapters in this book were updated in April 2020.

² Global Startup Ecosystem Report 2019, Startup Genome, 9 May 2019, <https://startupgenome.com/reports/global-startup-ecosystem-report-2019> accessed 20 February 2020.

³ *ibid* 11.

⁴ *ibid* 13.

⁵ Salustiano Martínez-Fierro, José María Biedma-Ferrer, José Ruiz-Navarro, 'Impact of High-growth Start-ups on Entrepreneurial Environment Based on the Level of National Economic Development' [2019] *Business Strategy and the Environment* 1–14.

studies present consistent evidence that the relationship between entrepreneurship and economic development largely depends on the national economic environment, which is shaped by economic, institutional and socio-cultural factors.⁶ We believe that we need to also include the regulatory and tax factors, which are crucial for start-ups' foundation and life cycle. According to empirical evidence, the high-potential companies have been shown to be key to economic growth in developed countries.⁷ It should be in the interest of all of the countries to attempt to create a pro start-up environment where innovation and business can be nurtured.

Over the past years, we have observed that the economic and institutional factors in various countries start to match and offer start-ups and entrepreneurs similar opportunities. Many jurisdictions offer competitive education, skilled labour, financial incentives and opportunities. Therefore, more start-ups consider regulatory and tax treatments. They wish to know how labour and time intensive it is to establish a company; to what extent can founders decide on each of their individual obligations and rights and how challenging it is to sell or liquidate the company; what are the VAT rules and whether they can introduce a vesting schedule for their employees and many other factors. We learn time and time again that the law and legal tools to grow the business and manage a start-up more effectively matter.

1.1 Goals and intended audience of this book

This book has a number of goals that we wish to achieve. However, the priority number one of all of the contributors was to create an open source publication for entrepreneurs, start-ups, their lawyers and advisers as well as curious students. As scholars and practitioners who have contributed to this book, it is our belief that innovation in the broadest sense can only be attempted if we have the known information easily at our disposal. We

⁶ See e.g. José Ernesto Amorós, Cristóbal Fernández and Juan Tapia, 'Quantifying the Relationship between Entrepreneurship and Competitiveness Development Stages in Latin America' [2012] 8(3) *International Entrepreneurship and Management Journal* 249–70; Sander Wennekers, André Van Stel, Martin Carree and Roy Thurik, 'The Relationship between Entrepreneurship and Economic Development: Is it U-shaped?' [2010] 6(3) *Foundations and Trends in Entrepreneurship* 167–237.

⁷ Magnus Henrekson and Dan Johansson, 'Gazelles as Job Creators: A Survey and Interpretation of the Evidence' [2010] 35 *Small Business Economics* 227–44.

hope that the book can help entrepreneurs and lawyers decide on where to initiate business endeavours, reflecting on their individual needs.

We believe that this book can become a real instrument for lawyers and current and future entrepreneurs even if their country is not represented in the second Part of this book. Given that this book offers a comparative understanding into the life of a start-up, it helps navigate the decision-making process and understand the business and legal elements that founders need to undertake in different periods of the life of the company. Furthermore, we often understand our jurisdictions and processes much better once we have had the opportunity to look at the others and return to our own with a new lens. This book offers five jurisdictions from three continents, while following the same original structure: the life cycle of a start-up. However, during the process of writing, we have encountered few variations in our respective jurisdictions. Therefore, all of the chapters analyse the same legal questions, but sometimes end up describing diverse phenomena and practices present in their own countries. This shows that even though we observe many harmonization attempts, the national distinctiveness is still present. Therefore, we would highly recommend reading several of the chapters as they all bring an original perspective to the law of start-ups.

This book is unique as it does not only focus on a specific type of a legal entity but attempts to understand the most important elements of the start-up life cycle and become a cross-disciplinary guide, bringing together corporate, finance, IP, employment as well as tax law. Lawyers have become extremely specialized and they tend to focus on one specific area of law. We believe that in order to help navigate the journey of start-ups, lawyers and advisers need to see across different fields and identify the conjunctions. All the contributors to this book have had work experience with establishing and advising start-ups and carrying out research within the law of start-ups, including crowdfunding, venture capital (VC) funding or national innovation policies.

1.2 Origins of this book

This book represents a continuation of the project called ‘Law of start-up companies: How to start a start-up?’ that several of the contributors

and their colleagues have initiated at the Faculty of Law, University of Copenhagen in 2017. Alexandra Andhov together with Marta Andhov with support from Jakob Wested and Rasmus Kristian Feldthusen have applied for funding from the Danish Entrepreneurship Foundation (*Fonden for Entreprenørskab*) with the project that aimed to bring more entrepreneurship and innovation into legal education.

The premise of that project was simple. Law and legal education need a powerful injection of innovation and entrepreneurship. The education that the majority of our students obtain is extremely narrow. Students, similarly to the lawyers, tend to focus on a specific area of law, be it corporate law, bankruptcy law, capital market law or tax law, but during their experience at law schools or in law firms, these fields remain isolated. It is very rarely that offered courses provide linking elements between different fields of law or the opportunity to understand the inter-relation between them and see the bigger picture. It is assumed that students will gain the bigger picture once they start to practice, but is this assumption truly correct?

When discussing this educational phenomenon together with several of the contributors, we came to the conclusion that we observe the same approach to the legal education across our countries and institutions. The law schools are considered to teach predominantly the knowledge and the law firms, government or prosecutor's office will teach the skills. Yet, these two become more and more interconnected and students are often expected to master various practical skills even before starting their first jobs. Thus, the project 'Law of start-up companies: How to start a start-up?' aimed to teach students various soft and hard skills, while attending classes, guest lectures and advising start-ups. In the wake of new legal technology, we have tools and software that allows us easily to access resources and big data. Yet, it takes additional skill to work with these resources, review them, understand and apply them correctly. It requires our students to be good communicators, to be able to ask the right questions, read in between the lines, connect the dots between facts and the law, but also to consider the law in its entirety, where corporate decisions will affect tax obligations as well as their ability to apply for patent and protect their trade secrets. We saw a clear link between teaching our students new practical skills and connecting their previous knowledge of individual fields of law within a safe space of start-up environment.

With the project ‘Law of start-up companies: How to start a start-up?’, we aimed to create an innovative and interactive learning experience through fostering entrepreneurship by introducing an intensive innovation and entrepreneurship driven master level course and an open-access book that would help practitioners, students and start-ups. The relevance of the project was embedded in the need of supporting a new generation of legal professionals who will be able to better understand the business and innovation needs of their clients, while mastering the start-up law.

This book represents a continuation of this project as we are attempting to reach a larger audience, including the legal profession as well as the entrepreneurs themselves.

1.3 Selection of the jurisdictions

When selecting the jurisdictions for this book, we had several aims. Firstly, the jurisdictions were chosen based on their ‘start-up friendliness’, which means that these jurisdictions have established themselves as places where not only the nationals, but also internationals, felt safe to initiate their business endeavours. Secondly, the diversity as to the legal systems and legal traditions was important in order to offer our audience diverse approaches and perspectives. Lastly, we also utilized our network. When creating the group of contributors, we aimed to involve people who are either recognized scholars, entrepreneurs or have been advising start-ups or all of the above. As a consequence, all of the chapters offer great depth of wisdom and experience.

In addition to providing an open access, we also believe in the comparative value of this book. Firstly, this book systematizes the life cycle of early stage start-ups. When drafting the content and discussing the elements that need to be analysed, all the contributors were involved in order to best reflect their experience and knowledge and include in the book considerations that might seem irrelevant, but might become truly determinative, e.g. will or equity-debt ratio. Although we have developed a common list of topics to be covered in each chapter, you will find that the chapters do bring their national flavour and perspective into the discussion. For the purposes of better understanding the start-up life and

navigating the legal journey, we would emphasize the comparative value that the chapters offer.

1.4 Structure

This book is divided into two parts. In the first part, Introduction and a chapter on the importance of start-ups in our legal systems are included. In this chapter, Alexandra Andhov reflects on start-ups as a new phenomenon and an important element in our legal systems that deserves special attention. She analyses start-ups and offers a definition, by reviewing various features. She compares small and medium sized companies (SMEs) with the start-ups and considers the distinguishing elements between them. She suggests the ways in which corporate lawyers, scholars and young entrepreneurs need to think differently about start-ups than other companies.

The second part of this book focuses on five jurisdictions: Canada, Denmark, Israel, Switzerland and the United States. These chapters, by looking into their individual regulatory framework, practice and jurisprudence anticipate start-up's legal concerns from its inception to its liquidation or bankruptcy. Each chapter is self-contained and may be read on its own. Each of the chapters brings a unique set of practices and understanding of start-up law. Yet, we observe several areas where a level of convergence between the individual jurisdictions takes place. This could be the effect of internationalization and harmonization of law, where many areas, including corporate law, intellectual property law or data protection law have been brought closer together over the decades. Moreover, we have also witnessed the spread of same practices across diverse countries through the same intermediaries – including law firms or VC funds – which are using the same legal documents (e.g. term sheets) and tools with start-ups, irrespective of the place of their activity.

1.5 What is next?

We believe that this publication will reach a large audience and will help start-ups and entrepreneurs with their decision as to where to initiate their business activities. At the same time, we hope that this book will be

the starting point for further comparative research either between the contributors themselves or further researchers. An additional hope is that the findings and observations of this publication will initiate discussions on the national and supranational level in regard to regulatory innovation and further development of one's laws. It is undeniable that the regulatory framework substantially affects innovation and the appetite for technological and business endeavours.

Within the next couple of years, we also hope to publish a second edition of this book and include other jurisdictions, by continuing to spread the word and practice of start-up law across the globe. Already today, we see new trends within financing as well as corporate structures that might be changing the start-up environment and practices down the line. We would like to include several other jurisdictions that we consider interesting and relevant that offer supportive legal frameworks for start-ups. Many of these jurisdictions are themselves exceptionally innovative, among these Singapore, India and Portugal. We will continue to follow the development and bring new jurisdictions on board.

Lastly, we would like to thank Danish Entrepreneurship Foundation (*Fonden for Entreprenørskab*) for supporting this book project and providing us with funding to make this book available to everyone through open-access publication.