

**I DON'T REALLY KNOW HOW STARTUPS
WORK**



**AND AT THIS POINT I'M TOO
AFRAID TO ASK**

Startup Law Crash Course

24 August 2022

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Director of JW Legal

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How

- Questions and answers
- Hypotheticals
- Interactive
- Groups
- Why are you here?

What

1. Intro to the legal system
2. Business structure
3. Cofounders and employees
4. Intellectual property
5. Funding and growth
6. Exit
7. Other topics

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Branches of government

- Makers
- Enforcers
- Interpreters

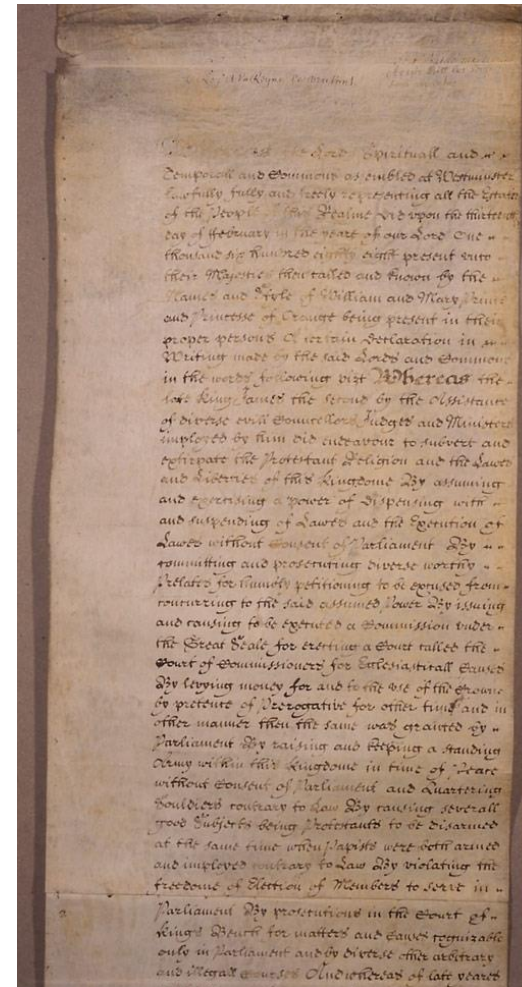


Branches of government

- Makers - Parliament, councils
- Enforcers - Executive, ministries, agencies, police, Cabinet
- Interpreters - Judges and the judiciary

Three principles

- Parliamentary sovereignty
- Rule of law
- Separation of powers
- (Te Tiriti o Waitangi)



The Bill of Rights 1689: An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown. It also includes no right of taxation without Parliament's agreement

Commercial / civil law

- Freedom of contract
- Complicated by legal overlay



What overlay?

What overlay?

- Employment Relations Act
- Credit Contracts and Consumer Finance Act
- Financial Markets Conduct Act
- Fair Trading Act
- Consumer Guarantees Act
- Commerce Act
- Companies Act
- ...

What is a contract

- Offer & Acceptance (Agreement)
- Consideration – Give and take
- Intention to legally bind
- Certain enough to be enforceable

“Shipped”



[Our Company](#)

[Our Operations](#)

[Our Commitment](#)

[Investors & News](#)



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New Zealand.**

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Key takeaways

- Three branches of government
- Parliament Sovereignty
- Freedom of contract, subject to statutes

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Exercise 1: Structuring

You are friends

You want to start a smartphone business

Q: How do you go about it? (2 mins)

What if you are going at it alone?

Is there a right answer?

- Cost to start & maintain
- Personal risk
- Investments
- Tax
- Exiting

	Sole trader (solo)	Company	Partnerships
Cost to set up / maintain	<p>Low</p> <p>Annual personal tax filings</p>	<p>Medium-high (~\$150 to set up before professional costs). More if you are setting up SHAG</p> <p>Annual returns each year, tax rules different to company/owners as shareholders</p>	<p>Can be high, easy set up, no agreement needed but can be specified, no official register/fees. Partnership agreement, if put in place, can be costly.</p> <p>Partnership and partners file tax returns each year</p>
Risk to personal assets (house, vehicles etc)	<p>High</p> <p>Assets can be put into trust for additional protection</p>	<p>Usually low, capped at share value</p> <p>Personal guarantees for borrowing / leases</p> <p>Directors and shareholder details publicly filed with company (residential addresses)</p>	<p>High, goes both ways</p> <p>Liability shared with other partners</p>
Management	<p>Easy – you are the business</p>	<p>Company separate to owners (shareholders)</p> <p>Run by board of directors</p> <p>Can include management team appointed by board</p>	<p>Each partner represents the partnership and can bind the others</p> <p>Need delegated authorities</p>
Raising money / investors	<p>Debt okay, equity v difficult</p>	<p>Easiest.</p> <p>Equity by issuing new shares or convertible instruments</p> <p>Debt is okay, but personal guarantee likely</p>	<p>Debt okay, equity v difficult because of liability.</p> <p>Note preferred method for limited partners</p>
Tax rate	<p>Individual tax rate (up to 39%). Claim all expenses and set that off against personal income.</p>	<p>Company tax rate (flat 28%)</p> <p>Distribution to shareholders involve RWT and imputation credits (potentially another 11%)</p>	<p>Individual tax returns (up to 39%) but if you are a partner with v low tax rate (charity) – then no/lower tax.</p>
Exit	<p>Generally difficult, will require changing business structure</p>	<p>Typically easy if selling shares. Slightly more complicated for asset sale</p>	<p>Generally difficult, asset sale and dissolution of partnership</p>
Summary	<p>Good: Just start. You represent the business. Low risk services (e.g. social media marketing, agencies). Control the business and profits.</p> <p>Bad: Responsible for all debts, personal assets at risk. Investment/loans harder. Selling is harder.</p>	<p>Good: Limited liability. Lower tax rate than top personal rates. More credibility in the market. Raising money/selling is easier. It continues indefinitely.</p> <p>Bad: More involved including laws and compliance</p>	<p>Good: Share the load of running a business/costs.</p> <p>Bad: Joint unlimited liability</p>

Companies Act 1991

- Person
- Essential requirement
 - Name
 - One share
 - One shareholder
 - One director (NZ resident or director in Australia)
- Same rights / capacity as natural person
- Limited liability
- Does it ever die?

Who is Ron Wayne?



STEVE
JOBS

CO-FOUNDER



STEVE
WOZNIAK

CO-FOUNDER



TIM
COOK

CEO



RONALD
WAYNE

CO-FOUNDER

The 3rd co-founder

10% of Apple for \$800

Reasons – Personal liability

What should he have done?

APPLE COMPUTER COMPANY PARTNERSHIP AGREEMENT

TO WHOM IT MAY CONCERN:

WHEREAS, Mr. Stephen G. Wozniak (hereinafter referred to as WOZNIAK), Mr. Steven P. Jobs (hereinafter referred to as JOBS), and Mr. Ronald G. Wayne (hereinafter referred to as WAYNE), all residents of the County of Santa Clara, State of California, have mutually agreed to the formation of a company to be specifically organized for the manufacture and marketing of computer devices, components, and related material, said company to be organized under the fictitious name of APPLE COMPUTER COMPANY (hereinafter referred to as COMPANY), then

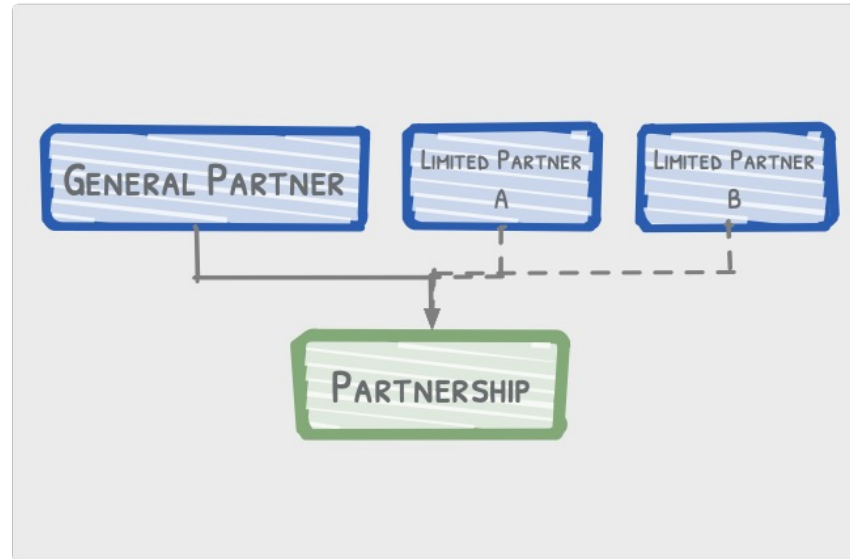
BE IT NOTED HEREWITH, that the COMPANY has been formally established in the County of Santa Clara, State of California, in conformance with all laws, statutes, and regulations of said County and State, as of the 15th day of April, 1976, and

BE IT FURTHER NOTED HEREWITH, that by virtue of their respective contributions and commitments to the formation, maintenance, and progress of the COMPANY, the total of all rights, title, and interest in and to the COMPANY, and all assets therein contained, is herewith proportioned among all of the parties to this agreement, WOZNIAK, JOBS, and WAYNE, as follows: WOZNIAK is herewith assigned a total of forty-five percent (45%) of all rights, title, and interest in and to the COMPANY, and all assets therein contained; JOBS is herewith assigned a total of forty-five percent (45%) of all rights, title, and interest in and to the COMPANY, and all assets therein contained; and WAYNE is herewith assigned the remaining ten percent (10%) of all rights, title, and interest in and to the COMPANY, and all assets therein contained.

NOW THEREFORE, in consideration of the respective assignments of interest, as defined in the paragraph above, it is generally understood that the responsibilities of the various parties to this agreement, WOZNIAK, JOBS, and WAYNE, are to be nominally divided into the following categories: WOZNIAK shall assume both general and major responsibility for the conduct of Electrical Engineering; JOBS shall assume general responsibility for Electrical Engineering and Marketing, and WAYNE shall assume major responsibility for Mechanical Engineering and Documentation. All other functions and responsibilities, both primary and secondary, shall be apportioned among the parties to this agreement by mutual accord and by exercise of the various appropriate Articles of this agreement as defined in the following paragraphs.

Other entities

- Limited Partnerships – best of both worlds
- Charitable entities
- Social enterprises – How do you do good



Key takeaway

- Just starting out on your own, sole trader
- If there are 2 or more and for growth, company
- Investors or partners with tax exemption status, (limited) partnership

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Exercise 2: Brewing trouble

You incorporate company called “Orange Limited”, equal split

Made first sale, you see potential

One co-founder leaves

Q: How do you go about it? (2 mins)

Can they sell their shares to your competitor?

What if you get acquired in 5 years time for \$100m?

What if they start an identical business under a different name and poach your customers and suppliers?

Managing relationships

Contract to cover

Board & Management	Capital raising
Making important decisions	Exiting
Vesting	Intellectual property
Confidentiality	Restraint of trade
Shareholder loans	Dispute resolution

Managing relationships

Risk management

Enforcement costs

NO guarantee

<http://www.backofanapkin.co.nz/start>

Back *of a* Napkin

New projects are exciting. Answering *five questions* will help sort out some basics that are crucial to your future success.

LET'S GO

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Exercise 3: Growing and hiring

Orange hires its first employee

Everything was done verbally, including 90 days' trial period

You paid cash

2 months in, not working out so you fire the employee

Q: Are you okay? (2 mins)

What if the person was an independent contractor?

	Employee	Contractor
Legal entitlements	<ul style="list-style-type: none"> • Minimum wage • Annual leave • Sick leave • Bereavement leave • Domestic violence leave • Good faith • Written employment agreements • Personal grievance • Written records of employment (agreement, wage, time, holidays and leave records) 	None
Legislation	<ul style="list-style-type: none"> • Employment Relations Act 2000 • Holidays Act 2003 • Wages Protection Act 1983 • Minimum Wage Act 1983 • Parental Leave and Employment Protection Act 1987 • Equal Pay Act 1972 • Health and Safety at Work Act 2015 • Human Rights Act 1993 • Privacy Act 2020 • Protected Disclosures Act 2000 	<ul style="list-style-type: none"> • Health and Safety at Work Act 2015 • Human Rights Act 1993 • Privacy Act 2020

Hiring someone

Freedom of contract, but under very strict statutory protections

Employee VERSUS Contractor

Intention, Control, Integration, Fundamental/Economic reality

Tricky for startups

Employee topics

- Employee share option schemes
- Internship / volunteers
- Employee IP

27. Intellectual Property

- 27.1 In addition to its existing intellectual property all legal interests (including copyright) in inventions, designs, new or modified procedures and all similar rights will remain the Employer's property. The Employee agrees to give up any claim to such interests and to irrevocably and unconditionally waive any and all moral rights in relation to any material produced pursuant to this Agreement.
- 27.2 Any material and all intellectual property rights whatsoever in all materials including patents, registered designs, petty patents, utility models, models, plant variety rights, trade marks (including logos and trade dress), domain names, copyrights, rights in computer software and data bases, rights in inventions, confidential information, know-how and trade secrets and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may exist anywhere in the world, made, discovered or used by the Employee pursuant to this agreement or relating to the Employee's duties under this agreement, must be disclosed to the Employer and will belong to, and be at the absolute disposal of the Employer.
- 27.3 The Employee agrees to do all things and execute all documents reasonably required by the Employer to perfect the ownership or waiver of any intellectual property, including anything reasonably required to register the intellectual property in any intellectual property register or anything to assist the Employer's successors to do so.
- 27.4 The Employee agrees that the relationships that the Employee builds with suppliers, prospective customers, customers and industry contacts are on behalf of the Employer and are to enhance its business and goodwill and are the proprietary interest of the Employer.
- 27.5 These intellectual property provisions, and your obligations regarding intellectual property, apply both during and after the employment relationship.



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“When does a thought become an idea, an idea become an invention? When does a doodle become a drawing? How do we know how long a thought has been rolling around in someone’s mind? Is an employee required to share all thoughts about better versions of products or services? If professionals are hired to provide ideas by deadlines, and they do that, can they keep their leftover thoughts for themselves? What if their thoughts become useful ideas off-hours and off-premises with no company resources involved? On the other hand, if people work flexibly and remotely, how can there be any boundaries?”

Barbie, Bratz, and the Employee Brain Battle by [Rosabeth Moss Kanter](https://hbr.org/2010/01/empty-your-brain-at-the-door)
<https://hbr.org/2010/01/empty-your-brain-at-the-door>

Key takeaways

- Relationships sour very quickly – Be proactive
- Contract risk management
- Be careful with employment

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Exercise 4: Protecting your name

2 years

You receive a cease and desist letter

From Orange Australasia who has registered trademark for Orange

You had registered your company

Q: What can you do? (2 mins)

What if they used the name before you?

What if we were in a “first to file” country?

What is IP?

- Intellectual property = intangible creations of the human intellect
- Exclusive rights
- Statutory monopoly to encourage innovation and creation

Why IP?

- Single largest category of value in business - WIPO 2017 found intangible capital accounted for 30.4% of the total value of manufactured goods sold between 2000-2014.
- Protection of business goodwill.

**Version
as at 12 April 2022**



**Version
as at 12 April 2022**



**Version
as at 28 October 2021**



Copyright Act 1994

Public Act	1994 No 143
Date of assent	15 December 1994
Commencement	see section 1(2)

Trade Marks Act 2002

Public Act	2002 No 49
Date of assent	4 December 2002
Commencement	see section 2

Patents Act 2013

Public Act	2013 No 68
Date of assent	13 September 2013
Commencement	see section 2

So you have a BILLION \$ idea.

Do you have legal protections?

Protecting your ideas as intellectual property



Disclaimer: This publication should not be construed as legal advice. It is necessarily brief and general in nature. Please seek professional advice before taking any action in relation to the matters discussed in this publication.



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- ¹¹
Spices = Mix With 2
Cups White Fl.
- 1) $\frac{2}{3}$ T.S salt
 - 2) $\frac{1}{2}$ T.S Thyme
 - 3) $\frac{1}{2}$ T.S Basil
 - 4) $\frac{1}{3}$ T.S Origano
 - 5) 1 T.S Celery Salt
 - 6) 1 T.S Black pepper
 - 7) 1 T.S Dried Mustard
 - 8) 4 T.S Paprika
 - 9) 2 T.S Garlic Salt
 - 10) 1 T.S Ground Ginger
 - 11) 3 T.S White pepper



Key takeaways

- Ideas themselves cannot be protected
- If expressed or recorded as IP, can be protected
- Some need registrations, some are automatic
- Consider what is your company's IP

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Exercise 5: Finding money

Reached your limit, need money to expand overseas

Q: What should you do? (2 mins)

Can you ask your family and friends to invest? (Is this a good idea)?

Can you ask your neighbours or ex-colleagues to invest?

What if you have good consistent cashflow?

Process

Decide:

- Amount you need
- Structure
- Valuation (if necessary)

Prepare:

- Financials and forecasts
- Investor presentation/memorandum

Process cont'

- Pitch – Sales and marketing
 - Elevator pitch
 - Competitive advantage / analysis
 - Financials
 - Offer
- Negotiate term sheet
- Due diligence
- Execution and payment



Investment rounds

- Pre-seed (<\$500k)
- Seed (\$500k-\$5m)
- Series A (>\$5m)
- Series B (>\$10m)
- Series C....
- And so on – dilution continues, founders are demotivated, generally replaced with new C-levels to take the company to the next level (international).

Scenario one

- Investor wants to give \$200,000
- They want 50% of the company
- You accept
- Two years later, you sell at \$10 million valuation
- How much did you make?

Scenario two

- Investor wants to give \$200,000
- They want 50% of the company
- You disagree
- They put money in as convertible note with \$1 million “valuation cap”
- Two years later, you sell at \$10m valuation
- How much did you make?

- Scenario 1, you make \$5m on exit (and investor makes \$5m)
- Scenario 2, you make \$8m on exit (and investor makes \$2m)

Same company, same investment \$, same exit price.

Scenario three

- Investor wants to give \$200,000
- They want 50% of the company
- You disagree
- They put money in as a loan with 20% p.a. interest rate
- Two years later, you sell at \$10m valuation
- How much did you make?

- Scenario 1, you make \$5m on exit (and investor makes \$5m)
- Scenario 2, you make \$8m on exit (and investor makes \$2m)
- Scenario 3, you make ~\$9.7m on exit (and investor makes ~\$300k)

Same company, same investment \$, same exit price.

Financial Markets Conduct Act 2013

- Contract, overlaid with statute
- **Why?**
- ALL OFFERS of financial products “regulated”
- PDS and other disclosures
- **Not** feasible for startups

Exemptions

- Wholesale investors (\$750k, investment businesses, banks etc)
- Relatives
- Close business associates – director, senior managers, 5% or more shareholders
- Small offer – \$2m in 12 months
- Licensed intermediaries – \$2m in 12 months

Pledge Me

Helping Kiwis fund the things they care about.



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Key takeaways

- Raising capital is strategy
- Complicated by narrow pool of eligible investors – take advice
- If possible, avoid
- If not, debt > equity (provided you have cashflow)

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What is the most common way for an exit?

Good outcome

- Trade / private sale
- Initial product offering
- Partial off-market sales

Process for private sale

- Letter of intent
 - Price
 - Exclusivity
 - Due diligence
- Due diligence – Financial, legal and commercial
- Formal documentation, conditions:
 - Regulatory approvals (OIO and ComCom)
 - Key suppliers and customers
 - Employees

Process for IPO

- Much more complicated
- Internal company committee – directors, senior managers and advisors
- 4-6 months
- Preparation of PDS, register entry, audited financial information
- Marketing the offer
- Listing on a stock exchange
- NO guarantee – but underwriting available at a fee

Life post-listing

	Publicly listed company	Private unlisted company
Corporate Governance	Need formal independent board comprising at least 2 independent directors Annual AGMs required	N/a or if applicable, shareholders can opt out
Financial information	Need audited financial statements Made publicly available	N/a or if applicable, shareholders can opt out
Disclosure rules	Subject to continuous disclosure regime of all material information Directors and Officers, and substantial shareholders must declare all share dealings and interests	N/a
Share sales and purchases	Comparatively more liquid market, but strict Takeovers code and regulation applies if purchasing above 20%	N/a (assuming not a Code company)

Another one gets away from the NZX

Partners Life's massive \$1b sale should be celebrated, but has left some wondering what could have been.



NBR co-editor Hamish McNicol speaks with Calida Stuart-Menteath.

 Hamish McNicol
Mon, 22 Aug 2022



At just after 6pm the Friday before last, the [extraordinary \\$1 billion sale](#) of New Zealand's Partners Life was announced.

BUSINESS

2

Timeline of troubles for NZ Automotive Investments

NZAI board exodus signals possibility of long-running tension behind closed doors.



New Zealand Automotive Investments owns the 2 Cheap Cars network.



Jonathan Mitchell
Tue, 19 Jul 2022



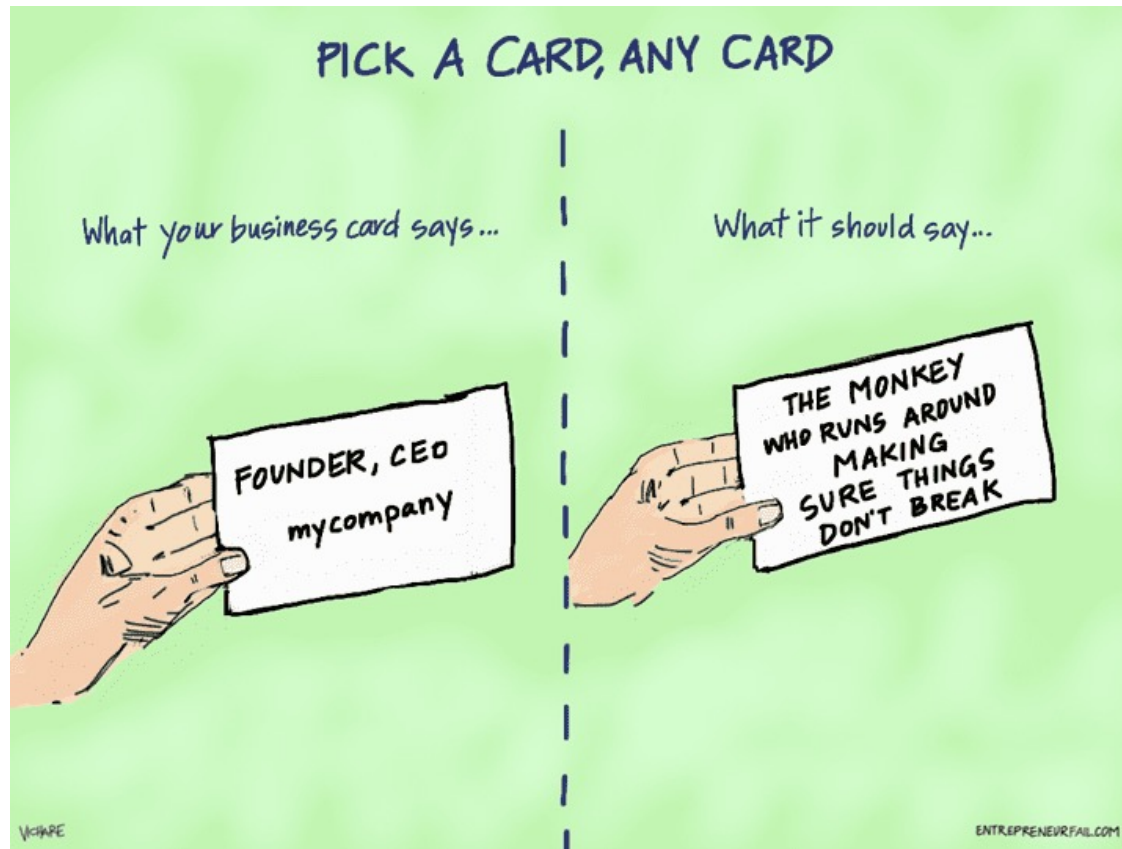
NZX-listed NZ Automotive Investments' board has self-destructed, with a string of exits highlighting struggles behind the scenes.

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- Privacy Act
- Consumer protection legislation – Consumer Guarantees Act, Credit Contracts and Consumer Finance Act
- Commerce Act
- Financial Services Providers (Registration and Dispute Resolution) Act
- And more

Thank you



24 August 2022
Joshua Woo
Director of JW Legal

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