Frequently Asked Questions - Legal

** Click here to see FAQ’s for SBC FastTracks and Application process

Q. Does the shareholders’ agreement nullify previous existing agreements?

Yes, it will nullify all previous agreements between the shareholders, and between the company and its shareholders. Separate agreements dealing with specific issues will still apply, as long as there is no conflict between that agreement and the shareholders’ agreement. If there is a conflict, this shareholders agreement will take precedence.

Q. How much equity does SBC take?

8.0%

Q. What does the “share transfers” clause of the shareholders’ agreement mean for my business?

This clause provides that no shareholder will be allowed to sell his or her shares, without SBC’s consent. This clause is included because SBC is making an investment not just into your business, but into the people behind the business. SBC wants to know who their partners are.

Q. What does the anti-dilution clause mean for my business, other shareholders and interested investors?

SBC are investing into your business without demanding any ongoing board representation. SBC wants to protect their investment. The anti-dilution provisions in the agreement provide that, unless an investor invests into your business on the basis of a pre-money valuation of Euros 4 million or more, SBC’s 8% shareholding will not dilute as a result. The remaining shareholders will need to dilute in order to accommodate the new investor. SBC, as well as every single shareholder, must be informed of any potential investments into your business, and SBC must consent to any new investments. SBC may wish to exit all or part of its investment
before the company itself accepts further investment. However, primarily, SBC wishes to be fully aware of all discussions and negotiations concerning potential investments in a company prior to any negotiations being entered into and before any deal is concluded.

**Q. Will the shareholders’ agreement conflict when raising new funds?**

When raising new funds, a copy of this shareholders agreement must be furnished to your potential investors. If the new investors wish to make amendments to this agreement, this can be communicated and all the shareholders will need to consent to making any such amendments.

**Q. Should my IP be held by my company? What are the risks and benefits?**

SBC will not invest into your company unless your company holds its IP. This is where the value lies. However, from a structuring perspective, it may be worth considering forming a new entity to house your trading and operational activities, which entity license the IP from your ultimate holding company. This ring-fences your IP neatly. However, depending on your country of incorporation, this is a consideration which will require proper exchange control and tax advice.

**Q. Is the MOU binding if I do not make it into the program?**

No.

**Q. I have signed the shareholders’ agreement, does this have any effect if I do not make it into the program?**

No. The shareholders' agreement will only come into effect once SBC has been granted shares in your company (although the agreement will retrospectively come into effect from the date of commencement of the Program).

**Q. What does the newly signed Shareholders agreement mean for current existing shareholders?**

All existing shareholders will need to sign this agreement and be bound by the terms.

**Q. What are the general terms of the shareholders' agreement?**

SBC will need to consent to any share transfers or new investments into the business. As explained above, SBC has the right not to dilute their shareholding below 8% unless a new investor is investing on the basis of at least a Euro 4 million pre-money valuation. In addition, SBC may choose to exit their investment before an investor is granted further equity in the business.
SBC’s consent is required for any major transactions or the incurrence of indebtedness outside the ordinary course of business.

There is a customary drag-along clause which means that if a majority of the shareholders want to sell their shares to an investor (at fair market value), the other shareholders have to sell out too. Similarly, if an investor wants to acquire a majority of the company shares, the investor must offer to buy out the remaining shareholders too.

SBC requests simple monthly reports to be provided to it by the board of the company. SBC does not require board representation but reserves the right to nominate an advisor to the board. If SBC deems it necessary, it can require the company to undergo an annual audit.

All existing shareholders are bound by non-compete and non-solicitation provisions for so long as they are shareholders and for a 12-month period thereafter.

**Q. Is there due diligence done on existing shareholders prior to signing the Shareholders Agreement?**

No, although SBC expects the business and existing shareholders to make certain promises and disclosures as part of the selection process. It is expected that all ownership interests in the business will be disclosed, and it is expected that all IP used by the business is owned by the company itself. SBC asks the company and its shareholders to warrant that the shareholders' agreement is legally binding and that it does not conflict with any other agreements in place. In addition, if any other person has a future right to invest in the company, this must be disclosed. If the company is a party to any litigation, this must be disclosed. The company is also expected to promise that all of its tax affairs are in order and that all material information has been fully disclosed to SBC.

**Q. Are the terms negotiable?**

No, they are not. The shareholders' agreement adheres to the same form and standard used across the globe in all of SBC’s programs worldwide. If additional items are specifically requested by a shareholder (which additions do not change the existing terms), these will be considered.

**Q. What are the exit terms for SBC once the Shareholders agreement has been signed?**

SBC may exit at any time if it finds a suitable purchaser for its equity. However, such a purchaser would be required to sign a deed of adherence to this shareholders agreement, and such purchaser would not inherit any of SBC’s “special” rights. They would become just like any other shareholder.

**Q. What is my company getting in exchange for 8% equity?**
The value of the investment of credits and discounted services, commercial contract opportunities, co-working space, and mentorship is valued in excess of €400,000 (four hundred thousand euros). SBC will also provide each participant with a cash payment of €15,000 (fifteen thousand euros). In addition, for the duration of the Program, the participants will receive free office space and intensive mentorship. Potentially valuable introductions and connections will be made, and influential relationships built. There will also be favourable publicity for the selected startups, and the program will culminate with a demo day where participants may pitch to potential investors. There will be ongoing support after the program by nature of SBC’s continued shareholding and therefore committed interest in the participants’ success. The full list of benefits can be found at bit.ly/sbcafrica

One of the prominent reasons (amongst many others) that startups in South Africa (and Africa as a whole) have for a long time lagged behind their counterparts in more mature ecosystems like Silicon Valley, New York, Europe, Israel, etc. is they have a big fixation on equity %s, as do the seed and Angel investors that fund their early growth.

It is not easy to truly scale and grow one’s business fast and efficiently in emerging markets, and all of the members of our executive team have played a critical role in helping startups in Africa overcome several of those hurdles. Global Accelerators like Y-Combinator, Startupbootcamp, 500 Startups, TechStars, etc. which take anywhere from 5% to 10% equity stakes in their portfolio ventures do so under terms that do NOT constitute a valuation event, and accredited investors the world over are aware of this.

The only question that you as the founder/co-founder should be asking yourself should be – “how likely is it that our company’s business proposition, growth and scale will improve through our participation in a program like this”. The simple math is this – if a startup’s valuation (irrespective of what it is at the moment – be it R1m or R100m) is able to increase by at least x% within 6-9 months post graduating from an accelerator program and the accelerator program has an x% stake in the startup, the value created would be breakeven. Anything above an x% increase for the startup makes it an NPV positive exercise for the founders and investors in the company. In our case, the ‘x’ is 8%. See the attached simple table as a reference.

The amount of investment in cash, value of services, corporate commercial engagements, mentorship, networks, partnerships, content, resources, professional services, etc. have to be weighed by you and your founding team and a decision needs to be made on whether you foresee the value of your venture growing by more than 8% by being part of the accelerator. Although they are welcome to provide you with their input, your investors do not necessarily need to be part of this decision-making process. You (and your co-founders) run the company, not them.
A few points to note:

● Our executive team collectively has >30 years of experience in the corporate finance, private equity, venture capital and startup industry spanning 4 continents (the Americas, Europe, Asia and Africa).

● The average valuation across Startupbootcamp alumni companies worldwide 6 months post our programs is EUR 3.2 million (a significant increase from their valuations pre-program), with 75% of companies raising Series A rounds during this period and ±80% still in existence/acquired. You can see all stats here: www.startupbootcamp.org/stats

● In our 2017 SBC Africa cohort, we signed a record 32 commercial engagements (PoCs, pilots, letters of intent and commercial agreements) with the 10 startups in our inaugural cohort – details of which you can see here: . You are welcome to chat to any of our alumni founders w.r.t. the benefit of being part of SBC vs the 8% equity they gave up.

**Q. When does the agreement become binding?**

The shareholders’ agreement will only come into effect once SBC has been granted shares in your company, and once the first 7 500 Euros has been paid to your company (although the agreement will retrospectively come into effect from the date of commencement of the Program).
This is critical given that we are expecting them to sign the SHA as a precondition to being invited to the Final Selection Days, so it needs to be clear that the agreement is only binding if they are chosen as one of the final 10 and also only when the funds are transferred upon arrival on Day 1.