



Startup Legal Matters

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Startup, VC, PE and M&A

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TRINITI Law Firm

- **Pan-Baltic** full-service **law firm** with offices in **Estonia, Latvia** and **Lithuania**.
- Ca 120 people.
- **Main areas.** M&A, PE, VC, startup, IP, IT, media, data protection, infrastructure, energy, aviation, litigation, real-estate & planning.
- Some of the startup / VC deals advised by experts of TRINITI:
 - Advising Vincent Group p.l.c (**Coolbet**) in being acquired by GAN Limited (listed, US) for **EUR 149.1M**.
 - Advising Bolt (formerly Taxify, an Estonian unicorn) in acquiring an investment from **Didi Chuxing**.
 - Advising **Atomico** in **Pipedrive** (an Estonian unicorn) series B financing round.
 - Advising **Fractory Solutions** in raising **USD 9M** in equity and acquiring a venture debt of **EUR 4M**.
 - Advising (in cooperation foreign counsel) **BayWa r.e** in leading a **EUR 6,4M** series A investment round into **Roofit.solar**.
 - Advising GetID in its acquisition by **Checkin.com Group** (listed, Sweden) for **EUR 8,1M**.
 - Advising **Cachet** in raising **EUR 5,5M**.



Agenda

- Legal aspects to know when fundraising.
- Securing your intellectual property.
- Legal aspects of setting up option plans.
- Q&A



Legal aspects to know when fundraising

- ☐ **Statistics on Baltic rounds:** <https://www.changeventures.com/baltic-startup-funding-report>.
- ☐ **Term sheet:** binding or not binding?
- ☐ **Due diligence:** what info should be shared with the investors?
- ☐ **Convertibles/SAFEs:** what's the difference and are all the formulas the same?
- ☐ **Equity investment/CAP table:** founder vs investor stake.
- ☐ **Representations and warranties:** what are these?
- ☐ **Reverse vesting:** the first necessary evil.
- ☐ **Non-competition:** the second necessary evil.
- ☐ **Majorities/veto rights:** how much rights should the founders keep/investors get?
- ☐ **Management board member/supervisory board member/observer:** what's the difference?
- ☐ **Management Board Member Service Agreement vs Employment Contract:** which is better?
- ☐ **Liquidation preference/anti-dilution protection:** what are these?
- ☐ **Model documents:** Startup Estonia model documents (<https://startupestonia.ee/resources>).



Securing Your Intellectual Property

○ Flavors of IP

- Copyright
- Trademarks (and domain names)
- Inventions
- Designs
- Trade secrets

○ Golden rules

- Bring it home!
- Ownership is good, possession is better!
- Do it now!



Securing Your Intellectual Property - Copyright

☐ Copyright

- what: original works in the domain of art, literature, science; computer programs are protected as literary works
- arises automatically upon creation of the work; registration unnecessary and usually impossible
- economic rights (transferable and licensable) and moral rights (non-transferable, sometimes licensable)

☐ Trademarks (and domain names)

☐ Inventions

☐ Designs

☐ Trade secrets



Securing Your Intellectual Property - Trademarks

☐ Copyright

☐ Trademarks (and domain names)

- what: words, logos, etc., distinguishing one producer's/provider's goods/services from those of the others
- registration-based (with exceptions); first come, first served
- trademarks are specific both to territories and to goods and services, domain names not

☐ Inventions

☐ Designs

☐ Trade secrets



Securing Your Intellectual Property - Inventions

☐ Copyright

☐ Trademarks (and domain names)

☐ **Inventions**

- what: processes, mechanisms, materials (incl biological materials), software in some jurisdictions
- can be protected via patents or as trade secrets
- patent protection is specific to territories but must be globally new (you can spoil your own invention's novelty)

☐ Designs

☐ Trade secrets



Securing Your Intellectual Property - Designs

- Copyright
- Trademarks (and domain names)
- Inventions
- **Designs**
 - what: external appearance of industrially produceable goods
 - registration-based, subject to novelty, specific to territories
- Trade secrets



Securing Your Intellectual Property - Trade secrets

- ☐ Copyright
- ☐ Trademarks (and domain names)
- ☐ Inventions
- ☐ Designs
- ☐ **Trade secrets**
 - information that is secret, has commercial value because of being secret, and has been subject to reasonable measures to keep it secret
 - can not be registered because registration implies disclosure



Securing Your Intellectual Property – Golden Rules

☐ **Bring it home!**

- include IP transfer provisions in founders' agreements, employment contracts, board member service agreements, agreements with all external service providers

☐ **Ownership is good, possession is better!**

- especially important for outsourced software development -- make sure the company always has a complete copy of everything
- make sure the company always has all credentials to all relevant online service provider accounts

☐ **Do it now!**

- you don't want to start negotiating with the legal (or factual) rightsholders when you're no longer friends

☐ **Bonus tips**

- IP law is complex. Hire a lawyer!
- Lawyers are like doctors: prevention is cheaper than cure



Understanding Employee Stock Options in Startups

- Why do startups offer stock options?
- What are employee stock options?
- Key concepts: vesting, exercise price, exercise conditions, expiration
- Legal structure: option agreements, shareholder approval
- Becoming a shareholder upon exercise



Taxation and Best Practices of Option Plans

- 3-year tax rule: gain tax-free if exercised after 3 years
- Early exercise = taxed like salary
- Document grant/cliff/vesting/exercise dates
- Cross-border considerations
- Best practices: clarity, communication, approvals, regular review
- Ensure legal and tax compliance and document it correctly in your financial reports!



Questions?





Thank You!

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