

# Startup Legal Matters

13 May 2025





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.
- $\bigcirc$  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

C 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: <u>https://www.changeventures.com/baltic-startup-funding-report</u>.
- **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 (<u>https://startupestonia.ee/resources</u>).

## **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)
- O 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

O Designs

○ Trade secrets

## Securing Your Intellectual Property - Inventions

Copyright

○ Trademarks (and domain names)

#### $\bigcirc$ 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)
- O 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)
- O 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

#### O Bonus tips

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

### Undrestanding 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**

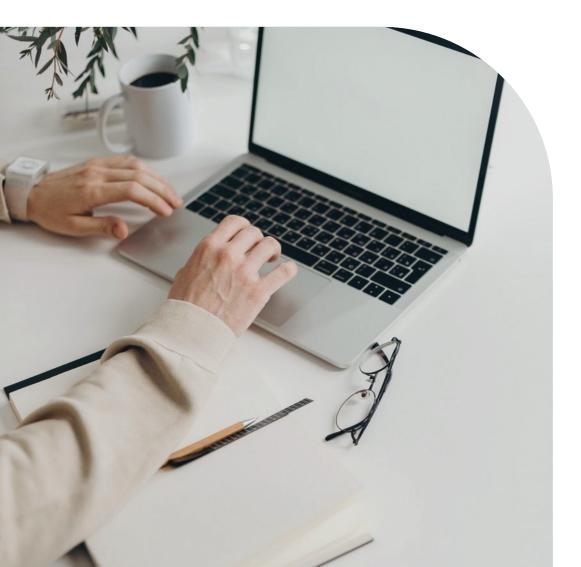
- 3-year tax rule: gain tax-free if exercised after 3 years
- Early exercise = taxed like salary
- Ocument grant/cliff/vesting/exercise dates
- Cross-border considerations
- Best practices: clarity, communication, approvals, regular review
- C Ensure legal and tax compliance and document it correctly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



# Questions?







# Thank You!

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