

THE NATIONAL LAW REVIEW

Legal Issues for High-Growth Technology Companies: The Series

Wednesday, May 2, 2018

High-growth technology companies face a unique set of challenges and roadblocks that their leaders must address in order to continue to expand and compete. This article series is intended to provide high-growth companies with a roadmap on how to navigate many of the interdisciplinary legal issues they might face during a particular stage of their life cycle. Below is a preview of what this series will cover. The articles that are currently available are hyperlinked and include:

- [Choice of Entity: Tax Implications](#)
- [Risk Considerations in Commercial Contracts with Customers](#)
- [Are You an Exporter? You Might Be. The Often Overlooked Controls on Software with Encryption Capacity](#)
- [Blinded by the Price: From Enterprise Value to Net Payment at Closing](#)
- [What Type of Security Should You Use to Fund Your Venture?](#)
- [The Patent Eligibility Battle for Life Sciences Companies in a Changing Landscape](#)
- [Emerging Tech Companies: It's Not Your Uncle's Dot.Com Regulatory Environment Anymore for Privacy and Data Security*](#)
- [Wage and Hour Fundamentals: "A Guide for Early Stage Companies"](#)
- [You've Been Sued: How to Avoid Early Missteps](#)
- [Estate Planning for Founders](#)

Please check back in with us over the next couple of months for updates as we plan to publish the remainder of the articles on a regular basis.

[Choice of Entity: Tax Implications](#)

This post by [Peter Gruen](#) and [Amy Drais](#) will provide a high level overview of the tax implications of each type of entity from a variety of perspectives: taxation of the entity, taxation of its owners and employees and concerns of potential investors. The entities to be discussed are limited liability companies, partnerships, C corporations and S corporations.

[What Start-Ups Need to Know About Intellectual Property](#)

Today, more than ever, having a solid understanding of intellectual property and developing an IP strategy that aligns with the business is a crucial part of building a new venture on a solid foundation. [Michael Kasdan](#)'s article will provide an overview of the different types of intellectual property and provide advice tailored to start-up companies on how to both secure your own intellectual property while protecting against intellectual property risks from others.

[What Security to Sell to Investors and Why it Matters](#)



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Your business is ready for a financing—what security will you issue? There’s no one right answer and not surprisingly, your investors get to have a say as well. This article by Evan Kipperman and Adam Silverman will discuss the pros and cons of various types of securities an early stage company may sell during a financing, including preferred equity, convertible debt, debt, and lesser known vehicles such as the SAFE and KISS documents.

[Risk Considerations in Commercial Contracts with Customers](#)

As an emerging company goes to market with new offerings, it will need to determine the terms and risk profile on which it will sell its services and products. Many companies develop terms of use (generally for products or services provided or sold through the web) or contract templates. An emerging company will want to have terms that are consistent with market norms for the relevant industry and are “sellable” to customers, but are protective of the company’s interests and go-to-market strategy. Having balanced terms can reduce negotiation time and energy, allowing the company to get customers and close sales more quickly. This article by [Sarvesh Mahajan](#) focuses on three key area of risk that typically need to be considered in offering services and products: warranties, indemnification, and liability.

Cybersecurity: Starting Your Company with Sound Data Privacy and Security Strategies

In the wake of recent privacy and security issues at major U.S. platforms, the climate for privacy regulation may be changing. Recent revelations concerning Facebook’s dealings with Cambridge Analytica have regulators on both sides of the Atlantic considering tighter rules for data sharing and secondary data use by social media platforms and their ecosystems of app developers, analytics firms and other business partners. In addition, the enforcement of the European Commission’s strict General Data Protection Regulation (“GDPR”) also portends a new era of heightened monitoring and enforcement of consumer privacy rights in the global digital economy.

Emerging technology companies with data-driven business models can expect increasing scrutiny of their data practices by users, investors, the plaintiffs’ bar and regulators. How can emerging companies and startups, with limited resources, focus their efforts to prepare effectively for a heightened regulatory and due diligence environment for data privacy? The [article](#) by [John Kennedy](#) will focus in particular on key privacy and security practices that regulators have emphasized and on the usefulness of following principles of privacy and security ‘by design.’

Wage and Hour Law Fundamentals: A Guide for Early Stage Companies

Even early stage companies need to be proactive when it comes to employee relations issues. In this article Mary Gambardella and Lawrence Peikes discuss [fundamentals in the wage and hour area](#), including proper job classifications (exempt/non-exempt; independent contractors); pay practices; timekeeping; and equal pay laws.

[The Battle for Patent Eligibility in a Changing Landscape](#)

Over the last five years, the United States Supreme Court has changed the [landscape of patent eligibility](#) with its decisions in *Mayo Collaborative Servs v Prometheus Labs, Inc* (132 S Ct 1289 (2012)) and *Alice Corp Pty Ltd v CLS Bank Int’l* (134 S Ct 2347 (2014)). While patent eligibility was not a primary focus in the life sciences area, the Supreme Court decisions and their progeny have sent shock waves through the life sciences field. Numerous biotech and diagnostic patents have been found to be ineligible under the threshold patent statute. This article by [Sapna Palla](#) addresses the changing landscape and key court decisions, suggests new avenues for companies to navigate the changed landscape and provides practical guidelines for companies in protecting and enforcing patents in the life sciences area.

You’ve Been Sued: What to Do (and Not Do)

Your company is doing well and building momentum, but then you get hit with a lawsuit. What do you do, and what shouldn’t you do? Litigation doesn’t have to be the death knell of a growing company, but it (and its cost) can quickly spiral out of control if not handled properly. [This article by Joe Merschman will provide an overview of litigation and explore issues to consider when your company is faced with a lawsuit.](#)

[Are You an Exporter? You Might Be. The Often Overlooked Controls on Software with Encryption Capacity](#)

Given the common use of encryption in software today, and an increasingly global market for software products, it is important for companies, particularly emerging ones, to recognize that software with cryptographic functionality is controlled by U.S. export law. The consequences of not recognizing the export compliance obligations associated with encryption products could be costly, and not only because regulators might catch a

company breaking the law (and have the power to impose penalties even for unintentional violations). Start-ups being acquired by larger companies may have to disclose non-compliance with export law in the due diligence process leading up to purchase, forcing money into holdback escrows to serve as security for the buyer, which will inherit liability for any violations and understandably look to shunt any successor liability and compliance expenses to the seller in the deal. Luckily, avoiding this outcome is relatively easy, if a company making or selling software expends minimal effort to: (1) know if their product is of the type that concerns the U.S. government; and (2) satisfy their export compliance obligations, which may amount to little more than submitting an annual “self-classification” report to the government by email. [Daniel Goren](#) and [Tahlia Townsend](#) explore these issues.

Estate Planning for Founders

Founders have unique needs that necessitate proactive estate planning as early in a company’s existence as possible in order to maximize tax and liquidity options. This article by [Michael Clear](#) and [Erin Nicolls](#) will discuss the [intersection of the personal planning and startup lifecycle](#), as well as various milestones for estate planning that impact tax efficiency, business continuity, and asset management and protection. We will focus on transfer tax strategies to minimize the effect of estate and gift taxes and to set the Founder on a financial path for future success.

Blinded by the Price: From Enterprise Value to Net Payment at Closing

In the sale of a business, the difference between the headline purchase price and the net payment to the equity holders can be significant. Seller may have negotiated an attractive multiple to determine enterprise value. But the presence of rollover equity stakes, deferred purchase price, escrows and purchase price adjustments, as well as payments to third parties in connection with payoff of indebtedness and other debt-like items, transaction bonuses, advisor expenses and other deal-specific amounts, may mean that some amounts will come off the top before equity holders get paid. Understanding whether certain items should (or should not) be paid at closing, and why (or why not) is fundamental to structuring the transaction appropriately. [James Greifzu](#) and [Aaron Baral](#) discuss these issues.

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