MASON HAYES & CURRAN

5 Legal Challenges for High Potential Fast-Growth Scaling Companies

The global technology sector is experiencing considerable growth at present. Companies like Uber, AirBnB and Spotify, that were start-ups only a few years ago, are now reaching the status of 'unicorns', having a valuation of €1 billion or more.

In Ireland, government and state agencies and the various incubators and accelerators are providing vital support to entrepreneurs to help grow the tech sector. It can be tempting for a high potential start-up ("HPSU") to prioritise its service offering over governance and compliance. This is one of the most common mistakes we see.

Here are five other common legal pitfalls for fast-growing scaling HPSUs along with practical ways to identify and overcome them.

1. Solve strategic issues at the beginning

A HPSU with plans to scale should prepare appropriately by addressing a number of strategic issues at the beginning of its journey. These include choosing the right corporate structure to enable continued growth and attract funding, preparing appropriate shareholder agreements that clearly define share ownership, and obtaining tax advice to employ an efficient tax structure. Other important tasks include drafting employee share plans that incentivise the retention of key staff and getting essential supply chain contracts in order. Having these items in place will show potential investors that the company has considered the various legal and operational issues that are often at the core of why so many HPSUs fail.

2. Protect confidential information

Before disclosing its valuable confidential information, intellectual property and trade secrets, a HPSU should require potential business partners, suppliers, funders and staff to sign a confidentiality agreement, also known as a non-disclosure agreement ("NDA"). Ideally, the HPSU will instruct its legal advisors to draft a robust NDA that it can repurpose for different engagements, rather than having to be redrafted from scratch each time.

3. Pre-empt the consequences of exiting employees

For many HPSUs, losing a key member of staff can cause significant disruption to its operations. However, it can avoid many of these issues if the template employee, consultant or shareholder agreement used by the HPSU readily address what happens in relation to key matters like intellectual property, shares and confidential information if a member of staff leaves the organisation.

4. Intellectual property chain of title

A large portion of the value in a HPSU relates to its technology and brand. The core intellectual property, which can often be software-based,

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needs to vest in the company. A HPSU, therefore, needs a clear chain of title for all of the intellectual property ("IP") that it owns. Putting in place licensing, contractor and employment agreements that contain suitable IP provisions can help achieve this. For example, if any contractors or consultants have assisted in the development of IP, there should be a written agreement transferring this IP to the company on completion of a project.

In addition, a HPSU should adequately protect all IP that it owns or licenses. Where necessary, it should file patents or trademarks protection for the company's IP. It should also ensure that all relevant website addresses and social media sites are secured for its brand.

5. Create a paper trail for due diligence

As is generally true for all emerging companies, funding is critical to the continued growth of a HPSU. Creating a due diligence paper trail is the perfect way to make the HPSU more attractive for future investors and help navigate potential legal pitfalls. To achieve this, the HPSU should document in writing, and keep in a safe place all of its:

- contractual arrangements, whether with business partners, suppliers or staff;
- IP registrations;
- IP licence and assignment agreements;
- audited financial statements and management accounts; and
- any correspondence about legal claims against the company, both threatened or actual. It is also prudent to ensure that its statutory books and records in the Irish Companies Registration Office are up to date.

Where we fit in

Good preparation, and retaining experienced legal advisers, can help circumvent these common legal pitfalls and pre-empt any potential investor concerns. We understand the particular requirements of fast-growing scaling HPSUs and their need for clear and prompt legal advice. We regularly assist technology clients in implementing solutions to allow them to rapidly scale globally. We provide a full range of legal services to HPSUs doing business in or through Ireland.

Our goal is to develop a lasting relationship with you and to play a part in your future success. We understand that young companies have smaller budgets, and when working with you we will take a long term view.

For a complimentary discussion on your business idea over a coffee and to learn more about navigating the most common legal pitfalls, please contact a member of our team below.

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