White Paper

Model Pan-European Clauses for Lean Investment Agreements

A project supported by

the European Regional Forum

&

the Closely Held Companies Committee

of the International Bar Association

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A. Preface

By Marco A. Rizzi

The idea to create a pan-European standard for early stage investment documents was the consequence of a survey among lawyers from different European jurisdictions on funding terms in Europe[1] that was prepared before and presented during the second IBA European Start-up Conference of November 2017 in London.

Based upon the propositions that: (i) standards in legal documents can substantially contribute to make venture investments in start-ups more efficient, if sufficiently accepted by the market, (ii) in some jurisdictions efforts have been and are being made to create model documents, and (iii) no pan-European standard exists, in 2018, a think-tank involving some 80 European lawyers discussed whether pan-European standards for lean documents are achievable[2].

The result of the think-tank was presented at the 2018 IBA European Start-Up Conference in Berlin. Thereby, 7 topics where identified that are particularly amenable to standardization. In the course of the think-tank, input from a number of national working groups on how the topics are commonly addressed in the corresponding jurisdictions was obtained.

Following a very popular roundtable exercise on 7 topics identified by the think-tank for the 2019 IBA European Start-up Conference in London, a working group of 35 experienced lawyers from different European jurisdictions identified, discussed and produced initial preliminary drafts of the following 7 clauses intended to be used as a Pan-European standard in early-stage equity investments:

1. Warranties (including their limitations and remedies)
2. Board Composition & Reserved Matters
3. Lock-Up Provisions & Pre-Emptive Rights
4. Exit
5. Tag-Along / Drag-Along
6. Liquidation Preference
7. Anti-Dilution Protection

The result of that work was presented at the IBA “from Start-up to IPO” Conference that was held in October 2021 in Paris.

Our “lean documents project” has the following aims:

(a) To create a widely accepted Pan-European standard for some of the most important clauses in early-stage equity investments in start-ups;

(b) To create a large community of lawyers from all European jurisdictions who actively contribute to the project (and, thus, give the clauses the required acceptance); and

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[1] The survey was coordinated by Alexander Goertz of Flick Gocke Schaumburg and Antonia Verna of Portolano Cavallo.

[2] This exercise was coordinated by Christine Blaise-Engel of Fidal and Jens Wenzel of Hengeler Mueller. The following 13 jurisdictions were represented and contributed to the work: Austria, Denmark, Finland, France, Germany, Israel, Italy, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

(c) To encourage those European jurisdictions where (national) model standards do not exist yet to put in place such standards.

For these reasons, the “lean documents working group” has decided to submit their initial work to public scrutiny, to involve as many experienced lawyers as possible from all European jurisdictions and to collect their feedback. To this end, we have prepared this White Paper, which explains the work done so far, presents the clauses as they have been drafted by the group, explains the rationale behind the drafting and encourages all interested lawyers to participate in the consultation.

On behalf of the “lean documents working group”, I would like to express our gratitude to all those who have so far showed their interest in this project, and to all those who will participate in the consultation process.

A special thank you goes to the International Bar Association, which is officially supporting this project, and particularly to the IBA European Regional Forum and the IBA Closely Held and Growing Business Enterprises Committee.

B. Introduction

By Antonia Verna and Jens Wenzel

Starting Point, Assumptions and Goal of the Pan-European Lean Investment Clauses Project

As mentioned in the Preface, a lot of work has been undertaken in our multi-jurisdictional working groups and at various IBA European Startup Conferences organized by the IBA European Regional Forum and supported by the IBA Closely Held and Growing Business Enterprises Committee. This work shall now serve as the starting point for a consultation process that collects feedback from a much wider group of participants and thereby takes the project to the next level.

The model clauses presented in this document are meant for a situation of

- an early stage equity investment in a financing round with a total volume of approx. EUR 0.5m and EUR 5.0m,
- by a reasonably experienced early-stage VC-investor acquiring between 10 to 25% of the shares in the company,
- which remains open to further developments (e.g., additional financing rounds or co-financings), *i.e.*, all involved parties accept that the initial documents may be revised or replaced when additional investors will be involved.

The model clauses are primarily meant for use by European lawyers with some experience in the field of early-stage equity investments. However, beyond that they should also be understandable, at least in their key aspects, by the other involved parties, i.e., specifically founders and investors, be they Europeans or from other parts of the globe.

The current work will now be refined by this wider consultation process in order to achieve the aforementioned goals and to create a widely accepted and "easy-to-use" set of core investment provisions. More specifically:

The intention is to create, at the end of the consultation process that we are launching through this White Paper, a widely accepted and “easy-to-use” set of core investment provisions (independently on whether they are incorporated in a single contractual framework, or in separate documents, such as a subscription/investment agreement and a shareholders’ agreement).

The model clauses shall be, to the extent reasonably possible:

(i) ***Lean***:

While the goal is to have clauses that are simple and clear, “lean” does not necessarily mean that they need to be particularly short. Rather, they should be as comprehensible as possible and drafted in plain English to ensure better readability. Each aspect governed by the model clauses should be addressed in a separate subsection to facilitate "picking-and-choosing" when adapting the model clauses to a specific situation.

Lean also does not mean that the model clauses should only spell out what is absolutely necessary and otherwise rely on an underlying legal framework. Rather, the model clauses should allow readers without in-depth legal knowledge of a specific (national) legal framework to understand them easily.

(ii) ***Pan-European***:

The model clauses should create a self-contained system which is in principle generally acceptable throughout all European jurisdictions and does not rely on a specific (national) underlying legal system.

Of course, due to the diversity of national legal systems in Europe, in particular in the area of corporate law, some degree of adaptation of the clauses will be required in a number of jurisdictions. These specific needs shall be highlighted by way of footnotes or "country riders" to the individual clauses.

(iii) ***Balanced***:

Rather than setting out a menu of more or less investor- or founder-friendly options, the model clauses shall settle on a "middle-of-the-road" approach that might be adopted without too much negotiation.

This will probably be one of the most challenging (and most interesting) parts of the work as it will require a basic consensus to find middle ground among jurisdictions that, while not having irreconcilable legal frameworks, may have different market practices that need to be balanced out.

The approach that we have chosen will furthermore necessarily be based upon the hypothetic (and idealistic) assumption of a balanced market situation and environment that is neither investor nor founder friendly.

Consultation and Scrutiny Process; Invitation to Participate

The excellent initial drafting work undertaken by the members of our working groups and presented further below in this White Paper needs to go through intensive review and scrutiny, in order to become a widely accepted and Pan-European model. This process requires the active involvement and support of as many experienced lawyers as possible, and of all European jurisdictions. Accordingly, it will be intensive and very challenging. No doubt that at the end of it, at least some of the clauses will look quite different.

In order to make review and scrutiny easier, for each of the model clauses that have been developed so far, the respective working group has written a dedicated and short introduction, which describes the background and rationale of the current drafting.

We would like to invite all interested lawyers and other readers to join the working groups.

The current members of our working group are included below at the beginning of the introduction to each of the clauses. Please declare your interest to join one or more working groups by e-mail to LeanDocumentsConsultation@int-bar.org. Working group sessions will then be organized over the period until early September 2023 to achieve a more elaborate and refined drafting for each of the model clauses.

Alternatively, you may provide written feedback and suggestions on the model clauses – also by e-mail to LeanDocumentsConsultation@int-bar.org by not later than 31 August 2023. Both general comments, including on market practice, and drafting proposals are welcome.

Note that the following sample clauses have been drafted by the groups of lawyers identified in the beginning of each clause, and the sample clauses might therefore not (yet) include input from a wider range of jurisdictions. You are obviously invited to comment, and provide input, on any and all of the clauses set forth below, independent of your own jurisdiction.

We are very much looking forward to hearing from you!

C. Sample Clauses

1. Warranties

By Francesco Abbozzo Franzi, Nunziante Magrone, Milan
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Fredrik Christiansson, Vinge, Stockholm
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Introduction

Aligning contract language based on different legislations and different legal drafting practices throughout Europe is not an easy task. This divergence is particularly marked on the issue of warranties.

Each jurisdiction has its own approach and market standard for the treatment of warranty liabilities. One of the most remarkable topics between countries is who stands behind the guarantees i.e., who shall indemnify in the event of a loss or damage. This is of special relevance when analyzing the differences between investment processes, where the money is received by the company, and acquisitions, where the money is received by the sellers, and thus it is reasonable for sellers to be personally liable. In some countries, as a matter of law, equity investors cannot claim indemnification from the target company itself, while in others it is allowed. In addition, but this is not a matter of legal regulation but part of the negotiation, existing shareholders/founders will normally not agree to be personally liable for breach of warranties (other than fundamental i.e. title and capacity), as this would expose them to greater financial liability than they have invested (in a limited liability investment).

What is generally agreed by practitioners from all jurisdictions is that the warranties clause is one of the sections that requires the most negotiation, similar to M&A transactions.

At the time of drafting this clause, the following subtopics were considered and discussed:

(i) Identification of debtor(s): shareholders, founders, company and joint and several vs several liability.

(ii) Type of remedy: restitution in kind, cash, compensatory capital Increase.

(iii) Caps, baskets/thresholds, de minimis amount.

(iv) Exclusion of claims knowledge, fair disclosure, recovery/recoverability from insurer/third party, inclusion in balance sheet.

(v) Sole remedy.

The final lean documents will contain a proposed annex of warranties. Existing shareholders / target company would be expected to be liable for breaches of fundamental warranties, and the target company and / or the founders would be liable for the business warranties.

1.2 Existing Shareholders' Representations and Warranties

1.2.1 **Schedule 1.2.1** sets out the representations and warranties made by each Existing Shareholder, severally but not jointly to each Investor (the "**Existing Shareholders' Representations and Warranties**").

Each Existing Shareholder represents and warrants to each Investor that, as of the date of this Agreement, each and every one of the Existing Shareholders' Representations and

Warranties is true, accurate and not misleading and does not omit any fact or circumstance that might alter, limit or condition its content and scope. The Existing Shareholders' Representations and Warranties are made on the date of this Agreement, unless if they expressly refer to another date [*and shall be repeated on the Completion Date*].

1.2.2 The liability of the Existing Shareholders under this Section 1.2 shall be subject to the following specific rules:

(a) The Existing Shareholders (in their capacity as shareholders of the Company) shall not be liable for any breach of any representation and warranty, other than the Existing Shareholders' Representations and Warranties. For the avoidance of doubt, this limitation shall not affect the liability of the Company and the Founders under the Founders' and the Company's Representations and Warranties, which shall be governed by the provisions of Section 1.3 and Section 1.4.

(b) In the event of falsehood, inaccuracy, misrepresentation or breach of any of the Existing Shareholders' Representations and Warranties, the indemnification obligation for the Losses arising out of such falsehood, inaccuracy or breach shall be paid only by the Existing Shareholder(s) in breach of the Existing Shareholders' Representations and Warranties. In no event shall any person (other than the Investors), have any right to seek indemnification or any other payment from the Existing Shareholders for any breach of the Existing Shareholders' Representations and Warranties. Any indemnification payable by an Existing Shareholder pursuant to this clause shall be paid solely in cash[3].

(c) The Existing Shareholders' Representations and Warranties shall survive for [■][4] years as of the date of this Agreement.

1.3 Founders' and the Company's Representations and Warranties

1.3.1 **Schedule 1.3.1** sets out the representations and warranties made by each Founder and the Company, severally and not jointly, to each Investor (the "**Founders' and the Company's Representations and Warranties**").

1.3.2 The Founders and the Company, respectively, represent and warrant to each Investor that as of the date of this Agreement, each and every Founders' and the Company's Representations and Warranties is true, correct, accurate and not misleading [*in all material respects*] and does not omit any fact or circumstance that might alter, limit or condition their content and scope. The Founders' and the Company's Representations and Warranties are made on the date of this Agreement, unless if they expressly refer to another date [*and on the Completion Date*].

[*The Parties agree that the terms "knowledge" or "best knowledge" or "to the knowledge and understanding of" shall refer not only to actual knowledge of the relevant Party, in this case, the Company, but also the knowledge that such Party should have had if it had acted with standard diligence and after due enquiry of Company employees*].

1.3.3 The liability of the Founders and the Company under this Section 1.3 shall be subject to the following specific rules:

(a) The Founders' and the Company's Representations and Warranties refer to the Company and its respective equity, assets, liabilities and business activities, as all of these are

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[3] ***Note to Draft**: This clause can be largely negotiated and indemnification can be payable in shares sometimes, but the most common option for existing shareholders is payment in cash.*

[4] ***Note to Draft**: The survival term of the Existing Shareholders' Representations and Warranties can be largely negotiated. Generally, said term is set for a period of approx. 5 years.*

essential to the Investment. The Founders' and the Company's Representations and Warranties are essential to the execution of this Agreement by Investors, because without them the consensus necessary to accomplish the Investment would not have been reached. Investors' decision to make the Investment pursuant to the terms of this Agreement was based mainly on the existence, truth, accuracy and correctness of the Founders' and the Company's Representations and Warranties.

(b) In the event any of the Founders' and the Company's Representations is not true, correct or accurate or is misleading, the indemnification obligation for the Losses arising out of such breach shall be paid by the Founders and the Company in breach of the Founders' and the Company's Representations and Warranties. In no event shall any person (other than the Investors) have any right to seek indemnification or any other payment from the Founders and the Company for any breach of the Founders' and the Company's Representations and Warranties.

1.4 Indemnity Undertaking

1.4.1 Subject to the limitations and exclusions of liability detailed in this Section 1.4, (i) the Company and each of the Founders (the "**Indemnifying Parties**"), agree to, severally and not jointly fully indemnify, defend and hold the Investors harmless (the "**Indemnified Parties**") against and in respect of any Losses caused to the Investors or the Company due to breach, inaccuracy or untruthfulness [*in any material respect*] of any of the Founders' and the Company's Representations and Warranties.

1.4.2 If the Loss is suffered by the Company, the Indemnified Parties shall be entitled to receive indemnification equal to (x) the full amount of the Losses multiplied by (y) the percentage that the Shares subscribed by the Investors in the context of the Investment represent over the total share capital of the Company at the time the Loss is suffered. If the Loss is suffered directly by the Indemnified Parties, the Indemnifying Parties shall indemnify the Indemnified Parties for the full amount of the Loss, subject to the limitations and exclusions of liability under this Section 1.4.

1.4.3 "**Loss**" or "**Losses**" means any [*direct*] loss, damage, harm, charge, liability, depreciation, penalty, surcharge, interest or expense of any kind (including the fees or costs related to attorneys, agents in court, notaries, auditors, accountants, experts or other professionals). [*"Loss" does not include any (i) punitive damages, (ii) consequential damages or losses such as remote, speculative, indirect or special damages and the like (including loss of profit or loss of reputation).*]

1.4.4 For the avoidance of doubt, the following shall not be considered a Loss, regardless of its nature or amount[5]:

(a) liabilities shown in the Financial Statements, provided it is adequately supported for accounting purposes and identified as a specific and individual item, and only up to the amount that has been accounted or recorded as an accounting provision, as the case may be;

(b) [*liabilities of the Company subject to administrative or judicial appeal, in which case the liability shall not exist until the matter is finally resolved (but this shall not invalidate any*

[5] ***Note to Draft**: Sometimes a provision stating that the due diligence carried out by the Investors does not limit Losses due to events or circumstances known by the Investors. However, this is quite investor friendly and when this provision is included, it comes with a list of disclosures that qualifies the warranties to reduce the scope of this provision.*

claim notified by the relevant Investor prior to the expiration of the time limits set out in this Agreement);]

(c) liabilities reduced by any insurance proceeds actually received by the relevant Investor or the Company (less the costs of such recovery and less any increased cost of insurance that may appear as a result of the claim against the insurance company);

(d) [*liabilities arising from the passing of, or a change in, a law, applicable rule or regulation or new authorization or license requirements occurring after the date of this Agreement;*]

(e) [*liabilities arising from an increase in the taxation rates or an imposition of taxation in each case not actually in force as of the date of this Agreement;*]

(f) [*liabilities arising from the change by statute, by any regulatory or other body of any accounting policy or a change in the application of any accounting policy or estimation technique in the preparation of Financial Statements, save if such change is necessary because the policy, methods or criteria applied by the Company up to date are not in accordance with accounting rules or generally accepted accounting principles; or*]

(g) [*liabilities coming from events or circumstances known by the Investors [or fairly disclosed] during financial, accounting, legal and tax audits and reviews of the Company carried out by the Investors (or their advisors) prior to Completion Date*]

[*Any amounts to be paid by the Founders or the Company as an indemnity for Loss will be grossed-up with the amount corresponding to any direct or indirect taxes that might be payable by the Investor or the Company as a result of receiving payment of such Loss.*]

1.4.5 The Investors shall not be entitled to claim the Founders or the Company for Losses where the amount of the Loss, considered individually, is less than EUR [■][6] (the "**De Minimis Exclusion**"). All individual Losses arising from the same breach of Representation and Warranties shall be deemed on an accumulated basis as one individual Loss.

The Founders or the Company, as the case may be, shall not be obliged to indemnify for Losses until the total aggregate amount of all accumulated Losses exceeds EUR [■][7] (the "**Basket Amount**"). [*Once the Basket Amount is exceeded, the Founders or the Company, as the case may be, will indemnify the Investors for the full amount of all the accumulated Losses and not merely for the excess over the Basket Amount.*]

The aggregate liability for Losses shall not exceed the total amount of the Investment. However, no limit shall exist for Losses suffered by the Investors related to fraud or willful misconduct[8].

1.4.6 The liability of the Indemnifying Party in relation to the Founders' and the Company's Representations and Warranties and the Existing Shareholders' Representations and Warranties (both, jointly, the "**Representations and Warranties**") shall terminate:

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[6] ***Note to Draft**: De Minimis threshold can be largely negotiated. Generally, said threshold is set for a value around 0.1% of the amount invested;*

[7] ***Note to Draft**: Basket threshold can be largely negotiated. Generally, said threshold is set for a value around 0.5% - 1% of the amount invested;*

[8] ***Note to Draft**: Total investment amount to be included. However, maximum liability threshold is heavily negotiated. Additionally, it is common that de minimis and thresholds do not apply in case of "fundamental warranties" or specific indemnities (if any) and, in case of founders, it is common to see a cap referred to multiple of annual salary (between x1 and x2).*

(a) 60 days after the end of the applicable statutory limitation period in relation to any claim for falsehood, inaccuracy or breach of the Representation and Warranty under Sections [●][9]; and

(b) in respect of any other claim for falsehood, inaccuracy or breach of any other Representation and Warranty, on the [*second*] anniversary[10] of the Completion Date.

1.4.7 The time limits mentioned above shall not operate in respect of any claim of which notice in writing in the terms of this Agreement is given by any of the Investors before the relevant expiration date.

[*Regardless of the provisions of Section 1.4.6 above, any delay by the Company or any Existing Shareholder in giving notice of any Loss to Investors shall automatically extend the liability term by six months from the date the notice of Loss is served.*]

1.4.8 [*For the purposes of ensuring Investors' indemnity for Losses as provided for in this Section 1.4, the Founders agree that, in the event that any of them fails to pay indemnity for Losses to any Investor when they are required to do so, such Founder shall, at Investors' request, deliver, in payment of such indemnity, a number of Shares it owns, whose reasonable value at the time the Investment is executed is sufficient to cover the amount of the indemnity. In the event that the indemnification to be paid by the Indemnifying Party is subject to tax on receipt by each Investor or otherwise has a tax cost for the Investor (whether imposed by way of withholding, deduction or otherwise), the amount of the indemnification to be paid shall be increased as necessary to leave the Investor with the amount it would have received in the absence of such tax, whether the payment is in cash or in Company's Shares.*]

1.4.9 [*If a claim for indemnification is made by an Indemnified Party that results from Losses sustained by such Indemnified Party due to a third party claim, the Indemnifying Party(ies) shall have the right to assume, conduct and control the defense, compromise or settlement of any such third party claim, by written notice to the Indemnified Party, at the expense of such Indemnifying Party(ies), and thereupon to prosecute in the name and on behalf of the Investor any available cross-claims, counterclaims or third-party claims arising with respect to such claim, provided that no settlement or compromise will be agreed to by the Indemnifying Party(ies) without the Indemnified Party's prior consent to the extent the same will result in any liability of any the Indemnified Party, and provided, further, that in the event of conflict of interest between the Indemnifying Party(ies) and the Indemnified Party, the Indemnified Party shall be entitled to assume, conduct and control its defense, compromise or settlement of any such third party claim, and thereupon to prosecute in any available cross-claims, counterclaims or third-party claims arising with respect to such claim.*]

1.4.10 [*No Indemnified Party shall be indemnified more than once for the same Losses suffered, regardless of whether such Losses may be attributed to more than one indemnity, breach of several paragraphs of the Representations and Warranties.*]

1.5 [***Non-Exclusive Remedy; Autonomous and Independent Contractual Guarantee***

The rights and remedies of [Investor] provided in Section 1.4 shall be in addition to any other rights and remedies of [Investor] provided by the applicable law.]

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[9] ***Note to Draft*** *The statute of limitation usually applies to tax and labor; then, for the so-called "fundamental warranties" such as capacity, capital, no bankruptcy, compliance with law etc., usually a 5-years period is required; depending on the business, some other matters like data protection or environmental can fall under the 5-years period (or statute of limitation, as the case may be).*

[10] ***Note to Draft*** *The survival term of the Representations and Warranties can be largely negotiated. Generally, said term is set for a period between 12 and 24 months.*

2. Board Composition & Reserved Matters; Description of Board and Shareholder Rights

By Stefan Bais, AKD, Amsterdam
Pierre-Alexandre Degehet, BSP, Luxembourg
Christian Gregersen and Sören Toft, Horten, Copenhagen
Alex Nikitine, WalderWyss, Zurich
Pablo Vinageras, Garrigues, Barcelona

Introduction

We have taken into account the fact that the provisions should be lean, pan-European and balanced. We aim to provide appropriate corporate governance while still allowing the necessary structure for the company to develop its businesses and pursue success. We believe that taking the right approach to developing proportional corporate governance structures in startups commonly experiencing rapid growth is a balancing act between enabling lean and agile decision-making, on the one hand, and providing sufficient levels of oversight of the company's strategy and internal controls on the other.

For startups and scale-ups, we have considered that corporate governance should fundamentally determine the balance of power between founders and investors in a way that allows both to work closely for the company's benefit. During this process, it should manage the tensions between the two, for instance, maximizing return on investment versus portfolio management.

Given that the board is the most crucial governance body of a company, providing the link between founders and investors with board composition is critical to ensuring it operates efficiently as a driver of strategy and overseer of its implementation.

We worked under the assumption that corporate governance is a progressive journey that will continuously support a company's strategic decision-making process and oversight, thereby helping to enhance its long-term value.

Besides, we have tried to remain as pragmatic as possible while identifying which specific jurisdictions any exception will apply. It is intended that this section provides a helpful overview of items to consider when implementing adequate corporate governance as well as share concepts that mainly apply at a pan-European level.

2.1 The Board[11] and the Investor Directors

2.1.1 The members of the Board[12] immediately following Completion shall be [*the Founders*] and the Investor Directors (if appointed). The Board shall comprise a maximum of [■] Directors. At least [■] Board meetings shall be held in each calendar year.

2.1.2 For so long as the [*relevant Investor*] hold not less than [■]% of the Company's Shares in issue he/she/they shall have the right:

(a) to appoint and maintain in office such natural person as [*relevant Investor*] may from time to time nominate as a Director (and as a member of each and any committee of the

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[11] ***General comment and Note to Draft****: Not all jurisdictions may accommodate a one-tier board. In case of a two-tear board where one board supervises a management team that runs the day-to-day business of the Company, we suggest to include information rights for the individual Board members and access to the day-to-day information regarding the Company, unless provided for under applicable law.*

[12] ***Note to Draft****: Consider whether any specific right to empower directors is required to be included here (e.g., as to directors are able to bind the company on a single or a joint basis).*

Board) and to remove any Director so appointed and, upon his/her removal whether by the Investor or otherwise, to appoint another Director in his/her place; and

(b) to [■].

[*Insert name(s)*] shall be deemed to be the first Director(s) appointed pursuant to this Section 2.1.2.

2.1.3 Appointment and removal[13] of an Investor Director[14] in accordance with Section 2.1.2 shall be by written notice from the appointing Investor to the Company which shall take effect on delivery at the Company's registered office or at any meeting of the Board or committee thereof. When required by the [*relevant Investor*], the other Investors shall vote in favor of any appointment or substitution of the relevant Director appointed by the [*relevant Investor*] pursuant to Section 2.1.2. To the extent required, the Shareholders and the Company, respectively, shall take any necessary additional (corporate) actions to effect the election or removal, as applicable, of the respective Director to be appointed or removed in accordance with Section 2.1.2 and/or Section 2.1.3.

2.1.4 The initial chairman of the Board shall be [*name*]. Thereafter, the chairman shall be appointed by [*Investors / Shareholders / Founders*] for any subsequent terms. The chairman shall be elected by the Board[15]. In case of a tie, the chairman shall [*have / not have*] the casting vote.

2.1.5 The [*Chairman*] shall send to the Directors (in electronic form if so required):

(a) reasonable advance notice of each meeting of the Board (being not fewer than [■] Business Days) and each committee of the Board, such notice to be accompanied by a written agenda specifying the items to be discussed at such meeting together with all relevant papers; and

(b) as soon as practicable after each meeting of the Board (or committee of the Board) a copy of the minutes.

Sections 2.1.5(a) and 2.1.5(b) shall apply *mutatis mutandis* in case of circular resolutions of the Board.

2.1.6 Save with Investor Director Consent no resolution shall be voted on at any meeting of the Board (or committee of the Board) save for that relating to topics specified in the agenda referred to in Section 2.1.5(a).

2.1.7 The Company will reimburse the Investor Directors the reasonable costs and out of pocket expenses incurred by them in respect of attending meetings of the Company or carrying out authorized business on behalf of the Company. Any costs/expenses exceeding [*currency*] [■] per item shall require the prior approval by the Board.

2.1.8 An Investor who has appointed an Investor Director pursuant to Section 2.1.2 shall procure that such Investor Director shall comply with Section [■] (Confidentiality) save that such Investor Director shall be at liberty from time to time to make full disclosure to its appointing

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[13] ***Note to Draft**: Attention, depending on concerned country specific conditions may be required or not for removal of directors. In some other countries, the right of removal is a public order rule belonging to the general meeting of shareholders which cannot be limited by any contractual clause.*

[14] ***Note to Draft**: The manner in which an Investor Director is required to be appointed should be included here (e.g., as to whether a shareholders' resolution is required and whether any notarized signatures are required).*

[15] ***Note to Draft**: Depending on applicable law, the chairman must be elected by the shareholders' meeting.*

Investor of any information relating to the Company, subject to any contractual or statutory confidentiality obligation limiting or excluding any such disclosure.

2.1.9 Subject to Section 2.2, items arising at any meeting of the Board and to be decided at such meeting shall be decided by a majority of votes.

2.2 Matters requiring consent of the Investors or the Investor Directors[16]

2.2.1 Each of the Shareholders and Directors shall exercise all voting rights and powers of control available to such Shareholder or Director, as applicable, to procure that:

(a) resolutions on any of the matters referred to in Part 1 of **Schedule 2.2.1(a)** shall be adopted only with Investor Majority Consent, and

(b) resolutions on any of the matters referred to in Part 2 of **Schedule 2.2.1(a)** shall be adopted only with Investor Director Consent.

2.3 Organization of the Board / Delegation to Management

To the fullest extent permitted by law and subject to Section 2.2, the Constitutional Documents shall provide that the Board delegate the day-to-day management of the Company to the [*Management*] of the Company.

[16] ***Note to Draft**: It may be necessary to specify to what extent the matters set out in schedule 2.3.1.1 are within the power of the Directors or the Shareholders as a matter of national law, and make the appropriate adjustments to this document (e.g., that the directors are parties to the agreement so that they have an obligation to refer the matter to the Shareholders). These provisions may also be required to be included in the articles of association of the Company.*

3. Lock-Up Provisions & Pre-Emptive Rights

By Thomas Kulnigg, Schönherr, Austria
Uri Nesher, Pearl Cohen, Tel Aviv
Frank Oschütz, Munich
Milena Prisco, Pavia e Ansaldo, Milan
Marco Rizzi, Bratschi, Zurich

Introduction

In formulating the model clause for the "Lock-Up Provisions & Pre-Emptive Rights" section, the working group's goal was to keep this clause (which by definition is a very restrictive clause) lean, pan-European and balanced, as per the guidelines of this project.

The members of this multi-jurisdictional working group acknowledged that in each of their respective jurisdictions there were specific standard terms, customary caveats, local peculiarities and definitions that differ from the other jurisdictions (not necessarily due to applicable law, but rather as a matter of customary commercial terms).

Some examples of such difference would be with respect to the corporate bodies that approve certain actions (such as approval of general share transfers), or any mitigation of restrictions on transfer (such as allowing a founder subject to a lock-up to transfer a portion of shares without approval), or with respect to the application of "over-allotment" (rights of over-subscription) regarding subscription rights on share offerings by the company, or with respect to the definition a "Permitted Transfer" which may be broadened and more detailed.

Additionally, a number of provisions on transfer restrictions, lock-ups and subscription/pre-emptive rights may vary significantly depending on the circumstances of a particular investment. This holds particularly true for the following:

- Lock-up / transfer prohibitions;
- Specific call and put options, such as, e.g., for good or bad leavers.

Due to all these differences, and to create clauses that are balanced and can be generally used as a base, the wording proposed did not include all exclusions and alternatives and peculiarities, and the group intentionally decided not to address all possible situations. Rather, the drafted clauses try to cater for the most common denominator identified, with the rationale that respective counsels using this document will adapt to the nuances of their applicable jurisdiction and to the specific situation of a particular investment.

3.1 Transfer Restrictions, Lock-Up

3.1.1 General Transfer Restrictions

Subject to Section 3.1.2 below, any transfer of Shares requires the prior written consent of [*Shareholders representing more than [50]% of the total share capital of the Company, including the Investor Majority* [*the Investors*]] / [*the Board*] [*which shall not be unreasonably withheld, delayed or conditioned*], unless the transfer of Shares is required pursuant to the terms of this Agreement.

For purposes of this Agreement, any references to a "transfer of Shares", or to equivalent expressions shall include (i) any direct or indirect transfer, sale, lease, exchange, assignment, or other disposal of legal and/or beneficial ownership in Shares [*excluding any transfer without*

consideration]; (ii) creating or permitting to subsist any direct or indirect pledge, charge, mortgage, lien, hypothecation or other security interest over Shares; (iii) any agreement, arrangement or understanding in respect of votes or the right to receive dividends with respect to Shares; and (iv) any agreement to do any of the above.

3.1.2 [*Founder/Key Person*] Lock-Up

For a period of [■] [*years/month/days*] as of the date of this Agreement, each [*Founder/Key Person*] agrees not to transfer any of its Shares without the prior written consent of [*the Investor Majority/the Investors/[■]*], unless required pursuant to the terms of this Agreement and except for any Permitted Transfers.

3.1.3 Permitted Transfers

Subject to the following provisions, the [*Shareholders*[17]] agree and undertake to (A) approve and pass all resolutions necessary to approve any Permitted Transfer and (B) not make use of, and waive to exercise, the right of first refusal and other restrictions on transfers of Shares pursuant to the Articles and this Agreement in case of a Permitted Transfer.

"**Permitted Transfer(s)**" means (A) any transfer of Shares made in compliance with this Agreement (including pursuant to Sections 3.1.2, 3.2, 6.1 and 6.2), (B) in case of any [*Founder/Key Person/Shareholder that is an individual*] any transfer of Shares by such Shareholder to a wholly owned entity or (C) in case of any Shareholder that is not a [*Founder/Key Person/individual*], any transfer of Shares by such Shareholder to any of such Shareholder's Affiliate (each transferee under (B) and (C), a "**Permitted Transferee**").

Any Permitted Transfer pursuant to subclauses (B) and (C) of the definition thereof shall be made under the condition subsequent that the Permitted Transferee ceases to be an Affiliate of the Permitted Transferee, with the consequence that the parties to such Permitted Transfer are obliged to unwind such transaction upon the condition subsequent being triggered.

Further, any Permitted Transferee shall agree in writing to be bound by and to be subject to any agreement governing the transferred Shares and to which the Permitted Transferee is subject, including this Agreement, and in each case as shall be amended from time to time, as if it was an original party thereunder, and accepts and assumes any and all liabilities and obligations of the Permitted Transferee following such transfer, under said agreements.

3.2 Pre-Emption Right/Right of First Refusal

3.2.1 Obligation to Make an Offer

Except for any Permitted Transfer, if a Shareholder (the "**Transferring Shareholder**") has received a binding and (with the exception of, if necessary, mandatory regulatory approvals) unconditional acquisition offer from a *bona fide* third party ([*including/excluding*] any other Shareholders) (the "**Interested Party**") for the transfer of Shares of the Transferring Shareholder, the Transferring Shareholder shall notify the Company without undue delay. The Company shall in turn notify the other Shareholders (each, an "**Entitled Shareholder**") without undue delay of the offer of the Interested Party and offer to the Entitled Shareholders (the "**Pre-Emptive Offer**") the Shares that are subject to the offer of the Interested Party (the

[17] ***Note to Draft:*** *Rephrase, if consent is given (also) at board level (e.g. by "the Shareholders agree and undertake to [procure by instructing] OR [by exercising – as far as legally permissible – their influence over the members of] the [Board] accordingly to (A)*

"**Relevant Shares**") on the same terms and conditions of such offer (such offer notice, the "**Pre-Emptive Notice**").

The Pre-Emptive Notice shall include [*a certified copy of the Interested Party's offer/a summary of the key terms of the offer*[18]] and shall be submitted in writing (or in such stricter form as required under applicable laws).

3.2.2 Acceptance and Declaration period

Within [*15*] Business Days from the date on which the Pre-Emptive Offer is delivered by the Company by registered letter (date of posting) or by e-mail to the Entitled Shareholders ("**Acceptance and Declaration Period**"), each Entitled Shareholder shall declare in writing (or in such stricter form as required under applicable laws) by registered letter or by e-mail in advance whether it accepts the Pre-Emptive Offer and if so, in which amounts.

3.2.3 Acceptance[19]

If one Entitled Shareholder accepts the Pre-Emptive Offer within the Acceptance and Declaration Period (for the entire Relevant Shares), the Transferring Shareholder and the exercising Entitled Shareholder shall without undue delay, and in any case within [*ten*] Business Days and subject to Section 3.2.5, negotiate in good faith and execute the necessary transfer documentation regarding the sale and transfer of all Relevant Shares from the Transferring Shareholder to the exercising Entitled Shareholder at the terms and conditions of the Pre-Emptive Offer.

If more than one of the Entitled Shareholders accept the Pre-Emptive Offer within the Acceptance and Declaration Period, the Transferring Shareholder and the exercising Entitled Shareholders shall without undue delay, and in any case within [*ten*] Business Days and subject to Section 3.2.5, negotiate in good faith and execute the necessary transfer documentation regarding the sale and transfer of all Relevant Shares from the Transferring Shareholder to the exercising Entitled Shareholders on a *pro rata*-basis (*pro rata* to the shareholdings of the exercising Entitled Shareholders in the Company towards each other, unless agreed differently between the exercising Entitled Shareholders) at the terms and conditions of the Pre-Emptive Offer. For the avoidance of doubt, any such sale constitutes a Permitted Transfer.

3.2.4 Non-Acceptance

If no Entitled Shareholder accepts the Pre-Emptive Offer within the Acceptance and Declaration Period (with respect to all of the Relevant Shares), the Transferring Shareholder shall be entitled to transfer all, but not less than all, of the Relevant Shares within [*90*] days after expiry of the Acceptance and Declaration Period to the Interested Party on the terms set forth in the Pre-Emptive Offer, otherwise this Section 3.2 shall apply again. For the avoidance of doubt, any such sale constitutes a Permitted Transfer if the Transferring Shareholder fully complied with this Section 3.2.

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[18] ***Note to Draft**: Submitting only a summary of the key terms may be easier to satisfy, but leaves room for interpretation and would be more prone to potential disputes than submitting a copy of the entire offer.*

[19] ***Note to Draft**: This draft intentionally requires any exercising Party to acquire all shares that are subject to the Pre-Emptive Offer as this is a simpler process. As alternative, the mechanics could be revised to entitle each Shareholder in a first round to acquire only the pro rata number of shares and in a second round the pro rata number of Shares of other Shareholders who have not exercised their pre-emptive right in the first round, provided that all shares that are subject to the Pre-Emptive Offer are eventually acquired.*

3.2.5 Consideration In-Kind

(a) The provisions of this Section 3.2 shall apply *mutatis mutandis* where the consideration of the Interested Party is payable (partly or a as a whole) in-kind, in particular in the event of exchange/barter, as well as if the transfer shall be made without consideration.

(b) In such case and to the extent the consideration of the Interested Party is payable (partly or a as a whole) in-kind or the transfer is made without consideration, the consideration payable by the Entitled Shareholders for the Relevant Shares shall correspond to the *pro rata* fair market value of the Company as of the date of the Pre-Emptive Offer.

(c) If the Transferring Shareholder and the Entitled Shareholder(s), who have accepted the Pre-Emptive Offer, are unable to agree on the *pro rata* fair market value of the Company within [*14*] Business Days after expiry of the Acceptance and Declaration Period, the *pro rata* fair market value of the Company shall be determined by an independent expert appointed by the Parties. If the Parties are unable to agree on an independent expert within further [*ten*] Business Days, the independent expert shall be appointed by [■][20].

(d) The valuation of the *pro rata* fair market value of the Company shall be based on the most suitable expert opinion for company valuations. The valuation must be carried out on the basis of what the independent expert considers to be the most adequate procedure for the valuation of the *pro rata* fair market value of the Company in accordance with such expert opinion. The costs of the independent expert shall be borne by the Entitled Shareholder(s) on the one side and the Transferring Shareholder on the other side (in equal parts).

The Shareholders shall use their rights as shareholders of the Company to ensure that the Company supports the valuation process and provides the expert with all documents and information deemed necessary by the expert for purposes of the valuation.

3.3 Subscription Rights

3.3.1 Subscription Rights

In the event of any issuance of Shares or other equity instruments, including instruments convertible into Shares or other equity instruments (other than Excluded Securities (as defined below)) ("**Equity Securities**"), each Shareholder[21] is entitled (in addition to any statutory subscription right) to a *pro rata* subscription right (in proportion to the Shares held by such Shareholder to the issued and outstanding Shares held by all Shareholders, on an as converted basis) in accordance with the following terms (the "**Pro Rata Subscription Right**"). Each Shareholder shall exercise its Pro Rata Subscription Right by written notice to the Company (the "**Subscription Declaration**") within [*14*] Business Days (the "**Subscription Period**") of the written notification by the Company of the issuance of Equity Securities (the "**Issuance Notification**"), unless a longer period is offered. The Issuance Notification shall (i) state the Company's *bona fide* intention to issue such Equity Securities, (ii) describe the number and type of the Equity Securities to be issued, and (iii) describe their price and the general terms upon which the Company proposes to issue the same. If a Shareholder does not exercise its Pro Rata Subscription Right or does not exercise it in full within the Subscription Period, its Pro Rata Subscription Right - insofar as it has not been

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[20] ***Note to Draft**: Insert appropriate mechanics to ensure that an independent expert is appointed in case of disputes, e.g. by referring the decision to a corporate body of the Company or to an independent person (e.g. a pre-defined expert).*

[21] ***Note to draft**: Consider allowing only shareholders holding a certain type/amount of shares to be entitled to such subscription rights.*

exercised - shall accrue to the other Shareholders who have exercised their Pro Rata Subscription Right in full (the "**Privileged Beneficiaries**") in proportion to the Shares held by them (the "**Additional Subscription Right**").

3.3.2 Acceptance

In their Subscription Declaration, Privileged Beneficiaries must bindingly declare the amount up to which they would be prepared, in the event of non-exercise of the Pro Rata Subscription Right in full by other Shareholders, to assume a portion of the instruments offered in excess of their Pro Rata Subscription Right. Failure to make this declaration shall be deemed a failure by the respective Shareholder to exercise the Additional Subscription Right.

In case the Shareholders do not subscribe to any or all Equity Securities, the Company may, during a period of [*90*] days following the Subscription Period, offer the remaining Equity Securities to any person or persons at a price not less than, and upon terms no more favorable than those specified and offered in the Issuance Notification.

3.3.3 No Assignment

The assignment of subscription rights to other Shareholders or third parties shall be excluded to the greatest extent permissible.

3.3.4 Exclusion of Subscription Rights

To the greatest extent legally permissible, the Pro Rata Subscription Right shall not apply to ("**Excluded Securities**"):

(a) [*options to subscribe for shares under a Share Option Plan;*]

(b) Shares issued as consideration for the acquisition of any company or business which has been approved in writing by an [*Investor Majority*];

(c) Shares which the [*Investor Majority*] has agreed in writing should be issued without complying with the procedure set out in this Section 3.3[*; and*

(d) *other exemptions*[22]].

[22] ***Note to Draft**: Depending on the local regime and number of shareholders, at times this could trigger securities law issues (prospectus requirements) and thus additional language is added to ensure no such issue is triggered.*

4. Exit Clause – Alternative 1[23]

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Joram Moyal, MMS, Luxembourg
Oliver Triebold, Schellenberg Wittmer, Zurich
Martin Viciano Gofferje, Gleiss Lutz, Berlin

Introduction

The working group's mission was to prepare a process that is sufficiently detailed to allow the exit to be implemented (and, if needed, enforced) as smoothly as possible when the relevant conditions are met. The main challenge, however, was for the mechanism to be sufficiently flexible in view of local jurisdictional differences and, most of all, the inherent uncertainty about the most advantageous exit scenario feasible a few years down the road.

The solution adopted by the working group was to set out only the basic elements of the process and to provide for more general obligations to cooperate for successful completion of the exit process.

During the working sessions, the group discussed whether a specific preferred exit strategy should be identified. Some members of the group proposed that an IPO should be the preferred strategy; others were in favor of an IPO and, if unsuccessful, a share sale. In the end, the view prevailed that, at least in the European context, exits by IPO are not very common, and, therefore, a mixed solution was to be preferred: after a certain period of time or upon the occurrence of certain conditions, the parties will periodically evaluate whether an exit is a viable option, either by IPO or by share sale. The model clause then sets out the formal steps to be taken if one or the other path is chosen. It also specifies the principles to be followed for a successful exit, as well as some basic protection mechanisms (e.g., a purchase price floor for a share sale).

Considering the above-mentioned difficulty of identifying the preferred exit scenario *ex ante*, the group finally prepared a second exit clause version (see paragraph 5 "Exit Clause – Alternative 2"). This second version is much more concise and general: rather than providing a more or less structured process, it merely sets out the broad principles to be followed in identifying the possible exit strategy and implementing it.

4.1 Exit

4.1.1 The Parties acknowledge that their agreed preferred Exit is through a Share Sale or an IPO as soon as practicable and in any event within the [■] anniversary of the Completion Date. To this end, the Parties undertake as follows:

4.1.2 The Parties shall assess, preferably at a physical meeting or alternatively on the occasion of a video conference or conference call organized by the Board, the feasibility of a Share Sale or IPO every six months, as from the second anniversary of the Completion Date or as of the achievement of the following milestones: [■], whichever comes first.

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[23] ***Note to Draft***: *There are two alternative sample clauses of which "alternative 1" is a more sophisticated, "alternative 2" a simple alternative.*

4.1.3 If Shareholders holding at least [75%] of all issued and outstanding Shares (the "**Qualified Majority**")[24] [*and an Investor Majority*] so require, the feasibility of a Share Sale or an IPO shall be assessed with the support of a Professional Advisor to be hired by the Company.

4.1.4 In the event the [*Board*] [*and an Investor Majority*] agree[*s*] on the feasibility of an IPO, the following shall apply:

(a) The Company shall grant the IPO Bank a mandate to start the IPO procedure under the terms and conditions that the Board and the IPO Bank shall deem fit; [*in any case, such terms and conditions shall not be prejudicial to the liquidation preference provided for under Section 7;*]

(b) The Shareholders shall follow the recommendation of the IPO Bank, including in determining their sale of Shares upon the IPO, and agree to limitations of their rights to sell their respective Shares following an IPO (the "**IPO Lock-Up**"), if such IPO Lock-Up is, in the reasonable discretion of the IPO Bank, advisable for the successful completion of the IPO;

(c) The [*Company/Shareholders*] shall do anything that is necessary or expedient to ensure the success of the IPO, including changes to the corporate structure facilitating the IPO, the preparation of a prospectus or registration statements and the application for required court or administrative orders; [*The* [*Company/Shareholders*] *shall submit all declarations and take all reasonably necessary measures in order to enable the IPO;*]

(d) The Shareholders shall not be obliged to provide any representations, warranties or undertakings in relation to an IPO, except as to the ownership of their Shares sold in an IPO.

4.1.5 In the event (i) the [*Board*] [*and an Investor Majority*] agree on the feasibility of a Share Sale, or (ii) in case no mandate to the IPO Bank is granted [*by the [■] anniversary of the Completion Date*], the Parties agree as follows:

(a) The Shareholders shall grant the Board a mandate to start the Share Sale procedure.

(b) Within [■] months as from the relevant request of [*an Investor Majority*], the [*Company/Shareholders*] shall grant to a Sale Advisor a mandate to a Share Sale and instruct the Sale Advisor (i) to maximize the potential sale price, including by means of a competitive sale procedure, (ii) to communicate to the Shareholders the offers it has received without delay, and (iii) to indicate the offer that it deems preferable; [*the mandate shall have a duration of [■] months and it may be extended by the [Company/Shareholders] for an additional [■] months in case of pending negotiations*].

(c) The Shareholders shall contextually waive their pre-emption rights according to Section 3.2.

(d) The Shareholders shall complete the Share Sale within [■] days as from such communication of the Sale Advisor, it being understood that:

(i) the Shareholders shall not be obliged to agree to the Share Sale if the offered purchase price is below [■] or not payable in Cash;

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[24] ***Note to Draft***: *"Qualified Majority" definition to be determined based on cap table, e.g., in order to grant or prevent individual veto rights and/or to require approval by specific shareholder groups.*

(ii) the Shareholders, with the support of the Sale Advisor, shall negotiate in good faith the terms and conditions of the Share Sale agreement, which shall be in line with the terms and conditions of transactions of the same type and size in the Company's jurisdiction;

(iii) in any event, no [*Investor/Shareholder*] shall be obliged to give representations and warranties other than with respect to title and authority regarding the Shares sold by such [*Investor/Shareholder*] nor to undertake any indemnification obligation.

4.1.6 If and to the extent the Company may not bear the cost of the IPO Bank and/or the Sale Advisor, as applicable, under applicable law or if this would lead to adverse tax consequences, such expenses shall be borne by the Shareholders in proportion to the Shares sold or to be sold by them (based in sales proceeds) in such IPO or Share Sale.

For the purposes of this Section 4.1.6, the Company and the Shareholders shall support the IPO assessment, the IPO and the Share Sale processes by giving the IPO Bank and the Sale Advisor, as the case may be, access to the Company's books, records, properties and other proprietary materials and by making available the Company's managers, officers and employees for presentations and interviews, in each case on a need-to-know basis and subject to the entering into a customary confidentiality undertakings by the above-mentioned advisors vis-à-vis the Company.

5. Exit Clause – Alternative 2

5.1 The Parties acknowledge that their common goal is to accomplish an Exit from their investments into the Company as soon as [*the Company has reached the following milestones: [■]/the Company's pre-money valuation has reached [■]*] but no later than [■] years from the Completion Date.

5.2 If, at any time, Shareholders holding a Qualified Majority [*and an Investor Majority*] so require, or if, after [■] years following the Completion Date, one Investor so requires, the Board shall assess the feasibility of an Exit through a Share Sale or an IPO. The Board is free to take the necessary measures in that respect, including the engagement of appropriate advisors.

5.3 If the Board approves an Exit (the "**Approved Exit**"), each of the Parties undertakes, individually in its capacity as direct or indirect holder of Shares, and/or member of the Board and/or member of the Management, as the case may be, to implement the Approved Exit (including approving a sale of its Shares, waiving its subscription rights or rights of first refusal, *etc*.), to use the voting rights attached to the Shares and, as the case may be, the voting rights as member of the Board and/or member of the Management, to instruct Directors appointed by it accordingly and to take all such further actions as may be reasonably necessary or appropriate in order to implement the Approved Exit, provided only that all Shareholders are treated relatively equal with respect to the terms and conditions of the Approved Exit.

6. Tag-Along/Drag-Along Clause

By Pedro Fernández, Perez-Llorca, Madrid
Bent Kemplar, Kromann Reumert, Copenhagen
Robert Mollen, Fried Frank, London
Luís Roquette Geraldes and Tomás Jonet, Morais Leitão, Lisbon
Nathalie Younan, FTPA, Paris

Introduction

Tag-Along Right

The tag-along right is not strictly an obligation for the shareholder who exercises the tag-along right and co-sales, although the relevant transferring shareholder is obliged to bear such exercise. Therefore, tag-along right allows the minority shareholders to voluntarily join a potential sale, and co-sale its stake together with the relevant transferring shareholder.

This section has been drafted providing the possibility that the tag-along right may be exercised (i) only by the investors that typically request a tag-along right in their investments; or (ii) by all the shareholders of the company.

The above taking into account that certain requirements must be met, which include that (i) the sale does not qualify as a "Permitted Transfer"; (ii) the sale could be related or not to the transfer of a minimum percentage of share capital; (iii) the right of first refusal has not been exercised in full; and (iv) the sale is carried out under the terms and conditions announced in the corresponding tag-along notice.

The tag-along right shall be calculated on a pro-rata basis (although depending if the beneficiary of the tag-along right are all the shareholders or only the investors, the pro-rata could be calculated on the percentage of the share capital owned by that shareholder or taking into account the preferred shares), and whether the potential purchaser is not willing to acquire all the shares, it shall apply to the proportional part of the shares to be sold.

Moreover, a brief framework for the exercise procedure and the notifications (the latter including the basic content of the tag-along notice) has been hereby stated, as well as a duty to provide information to all the shareholders. In this regard and as indicated in the footnotes, it may be advisable that the company or the board of directors run the process to ensure that all the requirements of the clause are met.

Finally, although the wording has not been included in this section (but rather in the footnote), it is not unusual that, at least the investors, request a full tag-along right, so that in the event that there is an acquisition of the control of the company, they could sell all their shares in the company and not only the pro-rata.

Drag-Along Right

The drag-along right is intended to protect the majority shareholders, as it can maximize the company's value, allowing these majorities to drag along the minority shareholders in order to sell 100% of the share capital. In this regard, it is not customary to include a percentage under 100%, and its execution may be challenging in some jurisdictions. Following the lean nature of this sections, we have not included in the drafting other options as the majority or the majority of the assets, although it is indicated in the footnotes.

Moreover, the drag-along right has been hereby treated as a right and not an obligation of the relevant shareholder. Nonetheless, the dragged shareholders are obliged to allow the exercise thereof.

In this case, all the shareholders may be obliged to sell their shares, provided that the relevant conditions are met, which include (i) the necessary approval, by the agreed majority, both of the transfer and of the terms and conditions under which it is carried out; (ii) the consideration's nature; (iii) certain deadlines and other possible restrictions, as a minimum return of the investment; and (iv) certain liability concerns, which are related, among others, to the representations and warranties to be granted.

It has been also included a brief framework for the exercise procedure and notifications (the latter including the basic content of the drag-along notice), and the exclusion of any other rights in relation to the transfer of the company's shares.

Finally, to support the execution of this obligation (in particular, in some jurisdictions) it may be advisable to include an irrevocable power of attorney. Alternatively, in case of breach, a penalty clause may be included, as described in the footnotes.

6.1 Tag-Along Rights

6.1.1 The Investors/Shareholders (the latter subject to the provisions of Section 3.1.2 (*Lock-up*)) (any of them, the "**Tagging Shareholder**"), are entitled to demand from a Transferring Shareholder the pro rata co-sale of their Shares (based on their ownership of Preferred Shares/Shares of the Company)[25], provided the following conditions are met:

(a) this sale does not qualify as a Permitted Transfer[26];

(b) [*this sale relates to a percentage in the share capital above [■] %*]

(c) the applicable pre-emption rights according to Section 3.2 have not been exercised in full[27]; and

(d) such sale occurs under the same terms and conditions[28] as the ones set forth in the Tag-Along Notice (as defined below).

6.1.2 The [*Transferring Shareholder/board of directors*][29] shall inform all Tagging Shareholders about the extent and content of all requests that have been made within [■] Business Days

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[25] ***Note to Draft**: depending on the drafting of the Clause and which categories are considered as "Tagging Shareholders", it would be advisable to include the reference to the "Preferred Shares" or to the "Shares" of the Company.*

[26] ***Note to Draft**: Permitted Transfers may allow for a small Liquidity Event by the founders – up to* [■]*% of the stock each founder owns at closing of the last round.*

[27] ***Note to Draft**: it shall be aligned with Clause 3.2 (Right of First Refusal).*

[28] ***Note to Draft**: We have made an (investor-friendly) choice to only allow investors co-sale rights (if the Permitted Transfers allow for some liquidity by the founders, this should be a fair approach).*

The alternative would be to allow for different prices for different classes which would add an extra layer of complexity and the clause much more complex (which we believe not to be the intended outcome).

We have not included wording to adjust the price based on a conversion ratio as it seems the investor should weight this in in its decision to exercise its rights (for instance because of triggering of anti-dilution protections or share splits).

***Note to Draft**: with regards to this approach, it should be checked if the liquidation preference Section applies (see Section 7).*

[29] ***Note to Draft**: The process may be conducted by the board if this is favored or convenient under applicable laws or the relevant country practice.*

counted from the lapse of the term to exercise all the co-sale rights (the "**Tag-Along Notice**")[30].

6.1.3 The Tag-Along Notice shall set forth the number of Shares the respective Tagging Shareholder wishes to co-sale calculated based on a pro rata mechanism[31].

6.1.4 Such co-sale right is exercisable by way of written notice by the relevant Tagging Shareholder to the Transferring Shareholder [*and* [*the chairman of*] *the Board*][32] sent within [■] Business Days after the Tag-Along Notice has been received (the "**Notice of Exercise**").

6.1.5 Any Tagging Shareholder who does not timely send a written declaration exercising the co-sale right shall be deemed to have irrevocably specified that such Tagging Shareholder wishes to sell no Shares.

6.1.6 In case the Potential Purchaser is not willing to purchase all the Shares from the Transferring Shareholder and from any of the Tagging Shareholders who have exercised their co-sale right, the Transferring Shareholder shall propose to the Potential Purchaser, upon request of the respective Tagging Shareholders who have exercised their co-sale right, to transfer to the Potential Purchaser the number of Shares held by such Tagging Shareholders indicated in the Notice of Exercise sent pursuant to Section 6.1.4 and proportionally decrease the number of its Shares to be transferred to the Potential Purchaser. If the Potential Purchaser does not accept, then the Transferring Shareholder may not sell its Shares and the Tag-Along Right may not be exercised by the Tagging Shareholders.

6.1.7 In any case, before transferring and after having received the notification that co-sale rights have been exercised, the Transferring Shareholder is obliged to inform the Tagging Shareholders who have exercised their co-sale right of the total nominal value of Shares that the Potential Purchaser wishes to acquire.

6.2 **Drag-Along Rights**

6.2.1 The Parties agree that the Shareholder/s who is/are selling its/their Shares according to this Section (the "**Dragging Shareholder**"), shall be entitled to (but not obliged to) exercise its/their Drag-Along Right.

6.2.2 All the Parties shall be obliged to dispose of all their Shares, provided that the following conditions are met:

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[30] ***Note to Draft:*** *The basic content of the Tag-Along Notice may be hereby stated. By way of example: "The Tag-Along Notice shall include: (i) the number of shares to be transferred; (ii) the price offered by the Interested Party; (iii) the identity of the Interested Party, and (iv) the other relevant terms and conditions of the transfer such as: method of payment, terms for the applicable guarantees and transfer date*".

[31] ***Note to Draft****: By way of example, if the Transferring Shareholder receives proposed transfer from a third party for the purchase of 500 shares of the 3,000 shares of the company, and the potential buyer is not willing to acquire more than those initially proposed, and the Shareholders held at the time:*

- *Shareholder 1: 1,530 Shares*
- *Shareholder 2: 1,470 Shares*

The Shareholders will have the right to sell the following number of Shares:

- *Shareholder 1: 500 * (1,540 / 3,000) = 255 Shares*
- *Shareholder 2: 500 * (1,540 / 3,000) = 245 Shares*

[32] ***Note to Draft****: it is advisable that the company or the board of directors are in charge of the process, as it can thus ensure that the rules envisaged in this clause are complied with.*

(a) a [*Qualified/Investor*] Majority[33] consents the transfer and accepts the offer including the related terms and conditions;

(b) the acquirer's consideration shall be in cash [*and/or in a divisible consideration in kind (e.g., shares)*][34] and shall be distributed among the Shareholders in accordance with the liquidation preference (if applicable) as set out in Section 7;

(c) [*at least* [*two/three*] *years have passed since Completion Date*][35];

(d) the liability of each Investor for representations, warranties, indemnities and other claims granted to the acquirer in connection with the transaction shall be several, and not joint, and limited to the proceeds paid to each such Investor to the extent permitted by applicable law;

(e) the Investors' representations, warranties, indemnities and other claims shall only be granted with respect to the title in, and third party rights regarding, the Shares sold by the respective Investor and their respective capacity to enter into the contract[36]; and

(f) unless consent is obtained by the prejudiced Investors, no Investor may be treated differently from other Investors under such contract.

6.2.3 in the event that the Dragging Shareholder wishes to transfer its shares to the Potential Purchaser, it shall give notice in writing within [■] Business Days of receipt of the offer ("**Drag-Along Notice**")[37] to the other Shareholders (the "**Dragged Shareholders**") informing them that it is exercising its Drag-Along Right.

6.2.4 The [*Qualified/Investor*] Majority shall be entitled to demand from [*any and*] all Shareholders that they enter into the contract with the acquirer(s) (or other relevant third party) within [■] Business Days of its receipt in the event that (i) the [*Qualified/Investor*] Majority has resolved as set forth in Section 6.2.1 above and (ii) a draft contract negotiated with a prospective acquirer(s) (or other relevant third party) meets all the requirements set forth in Section 6.2.1 above.

6.2.5 The Parties shall procure all reasonable actions and enter into all agreements necessary in order to fully carry out the transaction provided for under Section 6.2.1.[38]

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[33] ***Note to Draft**: Thresholds to be agreed and to be seen whether a majority of the ordinary shares should also be included (Qualified Majority) as opposed to having a floor on exit proceeds. If there is no saying by the ordinary shareholders, then a floor should be set – the value is often heavily debated. The type of majority and the applicable thresholds will depend if we are before a founders or an investors friendly clause and if it is an early or later stage round. The Qualified/Investor Majority concept is not defined since its definition will largely depend on the applicable majority.*

Within these majorities, when drafting the clause, we could distinguish between two types of disposition acts: of shares or of tangible and intangible assets.

[34] ***Note to draft**: The consideration in kind may apply when the contribution consists of shares in listed companies. Otherwise, it may have a different treatment, such as a merger, which require different majorities.*

[35] ***Note to draft**: Please note that different requirements apart from the term may be established. By way of example, a minimum return on investment (2x or 3x) or minimum IRR, to drag.*

[36] ***Note to draft**: Please note that having preferred terms and conditions for some shareholders (e.g. the Investors), could raise execution problems in some jurisdictions.*

[37] ***Note to Draft**: The basic content of the Drag-Along Notice may be hereby stated. By way of example: "The Drag-Along Notice shall include: (i) the number of shares to be transferred (e.g. 100% of the share capital); (ii) the price offered by the Interested Party; (iii) the identity of the Interested Party, and (iv) the other relevant terms and conditions of the transfer such as: method of payment, terms for the applicable guarantees and transfer date".*

[38] ***Note to draft:** to ensure the successful completion of the Drag-Along Right, this clause may include (i) an irrevocable power of attorney to carry out the sale; and/or (ii) a penalty clause in the event of default.*

6.2.6 The Drag-Along Right shall prevail over any other rights in relation to the transfer of the Company's Shares which, if appropriate, may be applicable[39].

[39] ***Note to Draft:*** *it shall be aligned with Clause 3.2 (Right of First Refusal).*

7. Liquidation Preference

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Introduction

Within the group responsible for drafting the liquidation preference clause, we have had representatives from Germany, Switzerland, Italy, Portugal and Sweden. Our initial discussions within the group were in relation to different forms of liquidation preference shares. It is our common understanding that there are mainly two different kinds of liquidation preference shares used on the European market, these being non-participating preference shares verses participating preference shares. Both share types can also be structured to include different multiples and/or interest rates. We concluded that the market practice varies between our different jurisdictions and may also vary over time. As a matter of fact, our understanding is that 1x non-participating preference share has been the dominating share class on many European markets over the last years. However, in some jurisdictions, notably in countries where the start-up/VC markets may be less mature, the participating preference shares seem to be more widely used. Also, the effect the new current market trends will have on the type of securities used in early-stage investments are still to be seen.

In light of the foregoing considerations, we have proposed to include a 1x non-preference share as the standard wording in the documentation, with a participating preference share as an alternative wording.

With the aim to keep the documentation as lean as possible, and to avoid having to also include conversion rights in the draft clause, we have structured the non-participating preference shares as a “higher of” wording, even if recognizing that this may not be the standard wording in all jurisdictions. According to the wording proposed the investor will be entitled to receive the higher of i) the “Preferred Amount” and ii) the amount the investor would receive on an as converted basis.

We did discuss if we should also include conversion rights in the draft clause but came to the conclusion that the mechanism to achieve conversion varied a great deal between different jurisdictions, plus in certain jurisdictions there is no need for conversion and, on that basis, decided to leave, at least for now, the right for preference shares holders to convert their share to common shares outside the draft.

The definitions of “Liquidity Event” and “Preferred Amount” have also been points of discussions within the group. As for the “Liquidity Event”, although this definition seems to be quite standardized within different jurisdictions, we discussed whether to include IPOs and came to the common understanding that such concept should be excluded from the definition. As for the definition of the “Preferred Amount” we decided to offer two alternative wordings: either the exact preference amount can be inserted or, as an alternative, the definition will include all payments made in relation to the preference shares. We have also proposed a definition of “Net Proceeds”.

For now, we have decided not to address any potential preference rights in relation to dividends in the clause, but this may obviously be built-in at a later stage.

7.1 Distribution of Proceeds

7.1.1 In case of any Liquidity Event, the Shareholders agree and, as the case may be, shall procure that any Net Proceeds will be allocated as follows to the Shareholders (the "**Liquidation Proceeds**")[40]:

Holders of Preferred Shares will be entitled to receive as consideration, individually and before any other Shareholder, the higher of the following: (i) an amount per Preferred Share equal to the Preferred Amount or (ii) an amount per Preferred Share equal to the amount such Preferred Shares would have received in a case of any Liquidity Event, should such Preferred Shares have been converted into common Shares immediately prior to the Liquidity Event. It is clarified that, the amounts due under points (i) or (ii) before shall be net of any dividends already paid. To the extent that any holder of Preferred Shares holds different series of Preferred Shares, such holder of Preferred Shares may make its election under this Section 7.1.1 separately for each class of Preferred Shares held by such holder. If the Liquidation Proceeds are insufficient to pay in full the Preferred Amount set out above to each holder of Preferred Shares, then the entire Liquidation Proceeds shall be distributed in their entirety to the holders of Preferred Shares in a pro rata basis to their holdings in the Preferred Shares. If, in the event of a Liquidity Event, the holders of Preferred Shares do not transfer all their Preferred Shares, the Liquidation Preference shall only apply as to the respective Preferred Shares transferred by its respective holder.

[*Firstly, holders of Preferred Shares will be entitled to receive as consideration, individually and before any other Shareholder, an amount per Preferred Share equal to the Preferred Amount. If the Liquidation Proceeds are insufficient to pay in full the Preferred Amount set out above to each holder of Preferred Shares, then the entire Liquidation Proceeds shall be distributed in their entirety to the holders of Preferred Shares in a pro rata basis to their holdings of the Preferred Shares.*

Secondly, any remaining Liquidation Proceeds will be distributed among all Shareholders of the Company on a pro rata basis[41]].

7.1.2 The Shareholders agree that if the Liquidation Proceeds are received by the Company instead of the Shareholders (*e.g.*, upon the sale of all or substantially all of the Company assets), the Shareholders will perform all actions in compliance with applicable laws necessary to distribute to the Shareholders such proceeds to satisfy the liquidation preferences pursuant to Section 7.1.1.

7.1.3 Likewise, the Shareholders agree that if the Liquidation Proceeds received by the Shareholders are in kind (*e.g.*, by virtue of a merger), the Shareholders will perform all actions necessary to comply with the terms of Section 7.1.1.

7.1.4 If any amount that otherwise would have been paid to the Shareholders as a result of a Liquidity Event is retained as a result of an escrow, retention or provision for similar contingencies (collectively, the "**Escrow**"), each Party will ensure that the transaction documents on the Liquidity Event provide that further distributions to Shareholders of funds under the Escrow comply with the provisions of Section 7.1.1.

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[40] ***Note to Draft**: The following sample wording is for non-participating Preferred Shares and is structured as a "higher of" wording and does not require the Preferred Shares to be converted into common share upon a Liquidity Event. The need to include conversion provisions in the documentation should be evaluated in each case.*

[41] ***Note to Draft**: This alternative wording may be used in case of a "participating Preferred Shares".*

8. Anti-Dilution – Broad Based Weighted Average

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Introduction

Anti-Dilution clauses protect investors (only for the purpose of this introduction section the "**Protected Investors**") in situations where the company in which they have invested decides to issue new shares at a price per share that is lower than the price per share those Protected Investors paid for their shares.

Protected Investors could be all holders of preferred shares, or alternatively, this protection could be limited (i) to certain holders of preferred shares and/or (ii) to a certain period of time or until the next qualifying financing round occurs.

This model clause follows the standard formula for broad based weighted average, which nowadays is the most common anti-dilution provision in Venture Capital deals in Europe, since it is more balanced than the *full ratchet* formula or the *narrow based weighted average*.

Broad based weighted average method calculates (i) a new average price for the Protected Investors in the framework of the downround, considering all shares in the company (whether issued or issuable) and (ii) the number of shares said Protected Investor will be entitled to receive under such anti-dilution clause due to the downround.

If the Protected Investors have subscribed shares in the company at different prices, this formula will have to be calculated for each of the different prices (normally allocated to a certain class of shares or a specific serie within the same class of shares).

Occasionally, this anti-dilution right will not apply in certain scenarios, e.g., in case of not committing with "pay to play", in the event of issuance of shares reserved for employees, advisors or consultants or equity options in IP licenses for UNI spin offs.

8.1 Downround Protection

8.1.1 If the Company, subsequently to the issuance and subscription of the Preferred Shares by holders of Preferred Shares (the "**Protected Shareholders**")[42] issues any new shares, whether due to the exercise of subscription rights or convertible loans or otherwise, at an issue price per share lower than the Preferred Share Price [*or, in case of Preferred Shares issued to a Convertible Lender, the applicable Conversion Share Price*] (a "**Downround**"), the

[42] ***Note to Draft****: This downround protection could be limited to a certain period of time or until the next qualifying financing round.*

Protected Shareholders shall be entitled to a broad based weighted average anti-dilution adjustment in such Downround.

8.1.2 Upon a Downround, a broad based weighted average anti-dilution adjustment will apply based on the following formula:

$$\boldsymbol{P2 = P1 \times \left(\frac{(A + B)}{(A + C)} \right) -}$$ minimum statutory issue price / nominal value per new Share

where:

"**P2**" is the broad based weighted average share price.

"**P1**" is the Preferred Share Price [*or, in case of Preferred Shares issued to a Convertible Lender, the applicable Conversion Share Price, in each case*] as adjusted from time to time in accordance with Section 8.1.4 below;

"**A**" is the total number of outstanding shares [*and phantom shares included in the PSOP*] issued by the Company prior to the Downround;

"**B**" is the number of shares equal to the quotient of (x) the total [*currency*] amount contributed into the Company's capital (face value and share premium) in the Downround, divided by (y) P1;

"**C**" is the total number of new shares to be issued in the Downround; in case of fractions, C will be rounded down to the next entire number.

8.1.3 The Shareholders agree that, immediately before the Downround is implemented, they will take all actions necessary to issue new shares in favor of the Protected Shareholders, at the minimum statutory issue price, of the same class and with the same rights and entitlements, calculated in accordance with the following formula, so that the average cost per share of the Preferred Shares held by the respective Protected Shareholders plus the new shares acquired pursuant to this Section is equal to P2:

$$N1 = \left(D \times \left(\frac{(P1)}{(P2)} \right) \right) - D$$

where:

"**N1**" is the number of additional (of the same class) shares to be issued to the respective Protected Shareholder pursuant to this Section;

"**D**" is the number of Preferred Shares held by the relevant Protected Shareholder;

"**P1**" is the Preferred Share Price [*or, in case of Preferred Shares issued to a Convertible Lender, the applicable Conversion Share Price, in each case*] as adjusted from time to time in accordance with Section 8.1.4 below; and

"**P2**" is the broad based weighted average share price.

8.1.4 If there is an antidilution adjustment in a Downround, then after giving effect to such adjustment pursuant to this Section 8, the issue price per share of each Preferred Share shall, for the purposes of the next succeeding Downround, be adjusted to equal the P2 calculated

with respect to the Downround in relation to which there was such immediately preceding adjustment.

8.1.5 This antidilution protection shall not be applicable in the case of (i) the issue of shares reserved for employees, advisors or consultants pursuant to an incentive scheme[43] as approved by the general Shareholders' meeting in accordance with this Agreement, (ii) shares issued pursuant to a share split or similar reorganization affecting the Company's Shares from the date hereof [*or (iii) the relevant Protected Shareholders not exercising the full pro rata right in the Downround*].

8.1.6 Any issuance of shares under this Section 8 shall be considered as an adjustment to the issue price paid by the Protected Shareholders for the Preferred Shares.

8.1.7 Each of the Shareholders hereby undertakes to execute the necessary waivers required by law, the bylaws or contractual arrangements, to exercise its powers and voting rights in the general meetings of Shareholders in order to facilitate this antidilution adjustments in respect of any Downround in accordance with this Section 8.

* * *

[43] ***Note to Draft**: In some jurisdictions there might be holders of certain rights that could be exempted from the application of the antidilution formula (e.g., IP licenses for UNI spin offs with equity options, etc.).*

Definitions Schedule

Acceptance	means [■].
Acceptance and Declaration Period	has the meaning given in Section 3.2.2.
Accounts	means [*the audited balance sheet and profit and loss account of the Company*] [*a consolidation of the audited balance sheets and profit and loss accounts of the Company and any of its Subsidiaries*] for the period ended on the Accounts Date in the agreed form.
Accounts Date	means [■].
Accountants' Report	means [■].
Additional Subscription Right	has the meaning given in Section 3.3.1.
Affiliate	means, with respect to any person, any other person (A) directly or indirectly Controlling, (B) Controlled by, or (C) under common Control with such person, provided that "**Control**" mean any circumstance in which such legal entity is controlled by another person, including by virtue of the possession, directly or indirectly, of the power to (a) direct or cause the direction of the affairs, management and policies of such person, whether through the ownership of voting securities, by contract or otherwise, or (b) elect, or cause the election of, the majority of the members of the board of directors (supervisory board or management board), the administrators or any analogous corporate body of the legal entity, whether through the ownership of voting securities, by contract or otherwise.
Agreement	means this investment and shareholders' agreement, as amended from time to time.
Approved Exit	has the meaning given in Section 5.3.
Articles	means the articles of association of the Company as adopted from time to time.
Asset Sale	means the disposal by the Company of all or substantially all of its undertaking and assets.
Basket Amount	has the meaning given in Section 1.4.5.
Board	means the board of directors of the Company as constituted from time to time.

Business	means [■], as more fully described in the Business Plan.
Business Day	means any day on which banks are ordinarily open for the transaction of normal banking business in [■] (other than a Saturday or Sunday).
Business Plan	means the business plan for the Company as amended from time to time.
Cash	means (i) cash in [*USD, EUR, GBP, CHF*], or a currency freely convertible thereto, and (ii) securities traded on an internationally recognized stock exchange.[44]
Company	has the meaning given in [■][45].
Completion	means completion by the parties of their respective obligations in accordance with [■][46].
Completion Date	means the date upon which Completion occurs.
Connected Person	means [■][47].
Consideration In-Kind	means [■].
Constitutional Documents	means the [■][48] of the Company in the agreed form to be adopted on or prior to Completion as amended or superseded from time to time[49].
[*Conversion Share Price*	*means [■].*].
[*Convertible Lender*	*means [■]*].
[*De Minimis Exclusion*	*has the meaning given in Section 1.4.5.*[50]].
Director	means a member of the Board.
Downround	has the meaning given in Section 8.1.
Drag-Along Notice	has the meaning given in Section 6.2.3.
Drag-Along Right(s)	has the meaning given in Section 6.

[44] ***Note to Draft**: Limb (ii) to be further discussed.*

[45] ***Note to Draft**: Reference to be included.*

[46] ***Note to Draft**: Respective Investment Agreement for reference to be included.*

[47] ***Note to Draft**: Include relevant statutory references.*

[48] ***Note to Draft**: Articles of association to be included.*

[49] ***Note to Draft**: To be updated according to jurisdiction.*

[50] ***Note to Draft**: See Section 1.4.5.*

Dragged Shareholders	has the meaning given in Section 6.2.3.
Dragging Shareholder	has the meaning given in Section 6.2.1.
Encumbrance	means any mortgage, charge, security interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law).
Entitled Shareholder	has the meaning given in Section 3.2.1.
Equity Securities	has the meaning given in Section 3.3.1.
Escrow	has the meaning given in Section 7.1.4.
Excluded Securities	has the meaning given in Section 3.3.4.
Existing Shareholder	means any person/entity whose name and address are set out in Part [■] of Schedule [■].
Existing Shareholders' Representations and Warranties	has the meaning given in Section 1.2.1.
Exit	means a Share Sale, an Asset Sale or an IPO.
Financial Statements	[*has the meaning given in Section [■] / means [■]*].
Financial Year	means a financial year of the Company ending on [*date*].
Founder(s)	means any person whose name and address is set out in Part [■] of Schedule [■].
Founders' and the Company's Representations and Warranties	has the meaning given in Section 1.3.1.
Indemnified Parties	has the meaning given in Section 1.4.1.
Indemnifying Parties	has the meaning given in Section 1.4.1.
Interested Party	has the meaning given in Section 3.2.1.
Investment	means the investment by the Investor(s) in the Company to be completed at Completion**.**

Investor Director Consent	means the [*prior written*] consent of [*all*] the Investor Directors.
Investor Directors	means the directors appointed in accordance with Section 2.1.2.
Investor Majority	means the holders of at least 50% of [■][51] from time to time[52].
Investor Majority Consent	means the [*prior written*] consent of the Investor Majority.
Investor(s)	means any person/entity whose name and address are set out in Part [■] of Schedule [■] and any other person/entity who becomes a party to and in accordance with this Agreement as an "Investor" by signing a deed of adherence and is named therein as an "Investor".
IPO	means the admission of all or any of the Shares or securities representing those shares to or the grant of permission for the same to be traded or quoted on [*a qualified stock exchange, regulated market place, multilateral trading facility or other exchange of trading of shares of recognized national or international standing anywhere in the world*].
IPO Bank	means [■].
IPO Lock-Up	has the meaning given in 4.1.4(b).
Issuance Notification	has the meaning given in Section 3.3.1
[***Key Person***[53]	[*means any person whose name are set out in Schedule [■]* .]
Liquidation Proceeds	has the meaning given in Section 7.1.1.
Liquidity Event	means (i) any Asset Sale, lease, transfer, exclusive license or other disposal, in a single or series of related transactions, by the Company or any Subsidiary of the Company, of all or substantially all of the assets of the Company and its Subsidiaries taken as a whole, (ii) any merger of the Company [*except any such merger does not cause a change of Control of the Company*], (iii) Share Sale or (iv) dissolution or winding-up of the Company, with or without liquidation, (v) distribution of dividends.

[51] ***Note to Draft****: The respective Investor Shares, e.g., Series A Shares, to be included.*

[52] ***Note to Draft****: Although the Investor Majority is set at 50%, it is acknowledged that under applicable law in the relevant jurisdiction, a higher majority may actually be required (e.g., a share capital increase may require a 75% vote). Such statutory majorities would clearly need to be achieved too.*

[53] ***Note to Draft****: See Section 3.1.2.*

Loss or **Losses**	has the meaning given in Section 1.4.3.
Management	means [■].
Net Proceeds	means the aggregate cash proceeds received in respect of a Liquidity Event (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Liquidity Event), net of the direct costs relating to such Liquidity Event, including, without limitation, legal, accounting and investment banking fees, sales commissions, and, to the extent such proceeds are received by the Company or any of its Subsidiaries, (i) any taxes paid or payable as a result of the Liquidity Event, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements, (ii) any amounts required to be applied to the repayment of indebtedness secured by a lien on the asset or assets that were the subject of such Liquidity Event and (iii) any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with the generally accepted accounting principles in [*country of the head-office of the Company*] as in effect from time to time.
Non-Acceptance	means [■].
Notice of Exercise	has the meaning given in Section 6.1.4.
Notification	means the written communication sent by any Transferring Shareholder informing the intent to transfer its Shares[54].
Parties	means, jointly, the parties of this Agreement.
Party	means any party to this Agreement.
Permitted Transfer(s)	has the meaning given in Section 3.1.3.
Permitted Transferee	has the meaning given in Section 3.1.3
Potential Purchaser	means any Party or a *bona fide* third party willing to acquire/buy any Shares.
Pre-Emptive Notice	has the meaning given in Section 3.2.1.
Pre-Emptive Offer	has the meaning given in Section 3.2.1.

[54] ***Note to Draft****: The definition of Notification (or Notification to Sell or Notification of Transferring Shareholder) to include the standard market terms adjusted to comply with applicable laws and jurisprudence: name and registered office of the Potential Purchaser, the nominal value of the Share(s) intended to be transferred, the purchase price and the due date for payment. We would also advise including mention of representations, warranties and indemnities the Transferring Shareholder may give as well as the remedies available in case of a breach thereof.*

Preferred Amount	means in respect to each Preferred Share [*an amount equal to EUR [■] as adjusted for shares splits, bonus issues, redemptions and combinations*] [*an amount equal to the original subscription price paid for such Preferred Shares*[, *including payments on such Preferred Shares (e.g., contributions) after subscription*[55]] [*plus [■]% per annum on the sum of the foregoing from the date of payment capitalized on an annual basis*[56]].
Preferred Share Price	means EUR [■]
Preferred Shares	means all preferred Shares issued by the Company (irrespective of the existence of different classes of Shares and seniority).
Privileged Beneficiaries	has the meaning given in Section 3.3.1.
Pro Rata Subscription Right	has the meaning given in Section 3.3.1.
Professional Advisor	means [■].
Protected Shareholders	has the meaning given in Section 8.1.
[*PSOP*	*has the meaning given in Section [■]*[57]].
Relevant Shares	has the meaning given in Section 3.2.1.
Representations and Warranties	has the meaning given in Section 1.4.6.
Sale	means a Share Sale or an Asset Sale.
Sale Advisor	means [■].
Section(s)	means any section of the Agreement.
Service Agreements	means [■].
[*Share Option Plan*	*means the share (option) plan to be established by the Company pursuant to Section [■].*]
Share Sale	means the sale of (or the grant of a right to acquire or to dispose of) any of the Shares (in one transaction or as a series

[55] ***Note to Draft**: The preferred wording to be included depending on whether the liquidation preference should refer to a set amount or the original subscription price of the Preferred Shares. The intention with the wording "including payments on such Preferred Shares (e.g., contributions) after subscription" is to capture also future payments made by the holder of Preference shares in favor of the target company, if relevant.*

[56] ***Note to Draft**: Wording to be included in case the Preferred Shares will bear interest.*

[57] ***Note to Draft**: Respective Phantom Share Option Program to be included.*

	of transactions) which will result in the purchaser of those Shares (or grantee of that right) and its affiliates or persons acting in concert with it together acquiring an interest in Shares giving to the holder(s) control of the Company, except where following completion of the sale the Shareholders and the proportion of Shares held by each of them are the same as the Shareholders and their shareholdings in the Company immediately prior to the sale.
Shareholder(s)	means any shareholder of the Company from time to time who is a Party to this Agreement [*(but excludes the Company holding Shares as Treasury Shares from time to time)*].
Shares	means issued shares in the capital of the Company including any categories of shares.
Subscription Declaration	Has the meaning given in Section 3.3.1
Subscription Period	has the meaning given in Section 3.3.1.
Subscription Rights	means [■].
Subsidiary(ies)	means [■][58].
Tag-Along Notice	has the meaning given in Section 6.1.2.
Tag-Along Right(s)	has the meaning given in section 6.
Tagging Shareholder	has the meaning given in Section 6.1.1.
Transferring Shareholder	has the meaning given in Section 3.2.1.
Treasury Shares	means Shares in the capital of the Company held, directly or indirectly, by the Company as treasury shares, to the extent permitted by applicable law.

[58] ***Note to Draft**: Include relevant statutory references.*

Schedule 1.2.1
Existing Shareholders' Representations and Warranties

8.1.1 Each Existing Shareholder is the sole legal and beneficial owner of the shares in the Company as set out in **Exhibit 8.1.1**.

The shares in the Company held by the respective Existing Shareholder are free and clear of any encumbrances, liens or other third party rights (including trusteeships, sub-participations, silent partnerships and arrangements with similar economic effect), in particular no third parties are entitled to exercise pre-emptive rights, rights of first refusal, options or other rights to purchase or acquire any shares of the respective Existing Shareholder except in accordance with the Existing [ISHA[59]] or the [SHA / Company's articles of association].

8.1.2 The shares held by each Existing Shareholder are validly issued and fully paid in and the respective share capital contribution has not been repaid. The relevant Existing Shareholder is under no obligation to make further contributions to the registered share capital.

[59] ***Note to Draft**: ISHA stands for Investment and Shareholders' agreement.*

Schedule 1.3.1
Founders' and the Company's Representations and Warranties

8.1.1 The Company is a [■] duly incorporated and validly existing under the Laws of [■] and registered with the [■] register of [■] under [■].

Except as provided by Law or the Company's articles of association, and the Existing [ISHA / SHA], there are no written agreements between the Company and its Existing Shareholders relating to the acquisition, disposition, transfer or voting of the shares in the Company.

8.1.2 No silent partnerships, participating loans, debentures, special dividend rights or any other similar agreements exist, which would entitle a third party to participate in the profits, revenues or liquidation proceeds of the Company.

Except as provided by Law, the Company's articles of association, and the Existing [ISHA / SHA], no conversion, subscription, option or similar rights exist, which would impose an obligation to issue new shares or grant voting rights in the Company to any person.

8.1.3 The information and details reported at the date hereof in the competent commercial register ("**Commercial Register**") correctly reflect all details that require registration with the Commercial Register. No registrations are currently pending at the Commercial Register.

The current articles of association of the Company are available at the competent Commercial Register at the date hereof .

8.1.4 Except as listed in **Exhibit 8.1.4**, the Company (i) does not hold or control any participations or indirect interests in other companies, (ii) is not under an obligation to acquire such participations or indirect interests, and (iii) has not entered into any enterprise agreements such as domination or profit-and-loss transfer agreements[60].

The Company is not insolvent or overindebted within the meaning of [■]. The Company has not filed any application for the opening of insolvency proceedings concerning its own assets.

8.1.5 Except as listed in **Exhibit 8.1.5**, the Company is not a party to any pending court or administrative proceedings, including arbitral proceedings, and no such lawsuit or proceeding has been threatened against the Company in writing since its incorporation.

8.1.6 The financial statements for the Company's business year 2022 are attached hereto as **Exhibit 8.1.6**. These financial statements (i) were prepared from the books and records of the Company in accordance with applicable laws and accounting principles generally recognized in [■] and (ii) give in all material respects a true and fair view of the assets, financial and earning position of the Company as of [■] on the basis of all facts and circumstances which were known to the Company's managing directors at the time of preparation of the accounts.

8.1.7 To the best of its knowledge[61], the Company has all permits, authorisations, licenses or other rights which are necessary for the operation of the Company's business as currently conducted. The Company has complied in all material respects with all licenses and permits

[60] ***Note to Draft**: depending on relevant national applicable law, said enterprise agreements might not exist or might be differently qualified.*

[61] ***Note to Draft**: usually, knowledge qualifiers are largely negotiated and specifically defined as they limit the scope of the representation or warranty (in this case: limiting the Founders' and Company's scope of responsibility).*

held by it and no proceedings have been threatened in writing *vis-à-vis* the Company to revoke or limit any such license or permit.

To the best of its knowledge, the Company has fully and timely met its obligations resulting from Tax Laws with respect to the filing of returns and the payment of Taxes of whatever kind and nature.

8.1.8 The Company is party to the agreements listed in **Exhibit 8.1.8** ("**Material Agreements**")[62]. No party to a Material Agreement has given written notice of termination. To the best of its knowledge, the Company confirms that all Material Agreements are in full force and effect.

The Company has not entered into any loan agreements (as lender or borrower) other than the [■] and the [■] or any other instruments evidencing financial indebtedness of the Company and has not issued guarantees, suretyships or letters of comfort to any other third party.

8.1.9 The Company owns the Registered Company IP and the non-registered IP Rights listed in **Exhibit 8.1.9** ("**Company IP**").

The Company, to the best of its knowledge, owns or licenses or otherwise has the right to use all IP Rights (other than commercially available off-the-shelf software) which are necessary for the operation of the Company's business as currently conducted.

8.1.10 To the best of its knowledge, the Company has not interfered with, infringed upon, misappropriated, reverse engineered or otherwise come into conflict with any IP Rights of third parties and has never received any written charge, complaint, claim, demand or notice alleging any such interference, infringement, misappropriation, reverse engineering or violation.

Other than in connection with the ordinary course of business, the Company has granted no license (exclusive or non-exclusive) with respect to any Company IP to any third party.

8.1.11 To the best of its knowledge, the Company is not aware that any third party is infringing or making unauthorised use of any Company IP.

The Company has no works council, and no collective bargaining agreements are applicable to the Company. All the employment agreements to which the Company is a party have been validly executed and are currently in force; the Company has never been in breach of any employment agreements.

8.1.12 The Company does not own any real estate.

[62] ***Note to Draft**: the need to include a special Exhibit usually depends on both the size of the Company as well as the relevance and number of agreements in force. For example, in case of a small and more recently established company, the Exhibit could be replaced by a more general statement on the existence and validity of all commercial agreements in force.*

Schedule 2.2.1(a)

Part 1: Matters requiring Investor Majority Consent

1. Permit or cause to be proposed any alteration to its share capital [(including any increase or removal of the limit on the number of shares that may be allotted by the Company)] or the rights attaching to its shares or waive any right to receive payment on any of its shares issued partly paid.
2. Create, allot, issue, buy-in or redeem any share or loan capital or grant or agree to grant any options [*other than pursuant to the Share Option Plan*] or warrants for the issue of any share or loan capital or issue any securities convertible into shares, or establish any employee incentive scheme, except in accordance with the Constitutional Documents or this Agreement.
3. Permit the Company to hold any Treasury Shares or permit the sale or transfer or cancellation of any shares held by the Company as Treasury Shares, if allowed by the applicable law.
4. Permit or cause to be proposed any amendment to the Constitutional Documents.
5. Propose or pay any dividend or propose or make any other distribution.
6. Subscribe or otherwise acquire, or dispose of any shares in the capital of any other company.
7. Acquire or dispose of the whole or part of the undertaking of any other person or dispose of the whole or part of the undertaking of the Company or merge the Company or any part of its business with any other person or propose to do so.
8. Negotiate or permit the disposal of shares in the Company amounting to a Sale or IPO.
9. Permit the Company to cease, or propose to cease, to carry on its business or permit the Company or its Directors (or any one of them) to take any step to wind up the Company, save where it is insolvent.
10. Permit the Company or its Directors (or any one of them) to take any step to place the Company into administration (whether by the filing of an administration application, a notice of intention to appoint an administrator or a notice of appointment), permit the Company or its Directors to propose or enter into any arrangement, scheme, moratorium, compromise or composition with its creditors or permit the Company or its Directors to invite the appointment of a receiver or administrative receiver over all or any part of the Company's assets or undertaking.
11. Enter into or give or permit or suffer to subsist any guarantee of or indemnity for or otherwise commit itself in respect of the due payment of money or the performance of any contract, engagement or obligation of any other person or body other than a wholly-owned Subsidiary of the Company.
12. Offer or grant any superior registration rights to any future shareholder in the Company without offering substantially similar rights to the Investors.

13. Enter into any right of first refusal, negotiation or notification that applies in relation to a Sale or IPO which gives a third party a preferential right to negotiate, make an offer or receive information in relation to such Sale or IPO.
14. Adopt the Business Plan in respect of each Financial Year of the Company.
15. Deal in any way (including the acquisition or disposal, whether outright or by way of license or otherwise howsoever) with intellectual property other than in the ordinary course of business.
16. [*Other than is specifically set out in the Business Plan for the relevant Financial Year,*] make any material change to the nature of the Business or the jurisdiction where it is managed and controlled or change the name of the Company.

Part 2: Matters requiring Investor Director Consent

1. Incur any capital expenditure (including obligations under hire-purchase and leasing arrangements) which exceeds the amount for capital expenditure in the relevant capital expenditure of the Business Plan [*by more than [■]%*] or (where no items were specified but a general provision made) in relation to any item exceeding EUR [■].
2. Dispose (otherwise than in accordance with any relevant capital disposals forecast in the Business Plan) of any asset of a capital nature having a book or market value greater than EUR [■].
3. [*Other than as is specifically set out in the Business Plan for the relevant Financial Year,*] establish any new branch, agency, trading establishment or business or close any such branch, agency, trading establishment or business.
4. Do any act or thing outside the ordinary course of the business carried on by the Company.
5. Make any change to:

(a) its bankers or the terms of the mandate given to such bankers in relation to its account(s);

(b) its accounting reference date;

(c) its accounting policies, bases or methods from those set out in the Accounts and the Accountants' Report (other than as recommended by the auditors of the Company); or

(d) the Business Plan.

6. Factor any of its debts, borrow monies (other than by way of its facilities in place at the date of this Agreement), incur indebtedness in excess of EUR [■] or accept credit (other than normal trade credit).
7. [*Other than as is specifically set out in the Business Plan for the relevant Financial Year,*] engage any employee or consultant on terms that either his contract cannot be terminated by three months' notice or less or his emoluments and/or commissions or bonuses are or are likely to be at the rate of EUR [■] per annum or more or increase the emoluments and/or commissions or bonuses of any employee or consultant to more than EUR [■] per annum or vary the terms of employment of any employee earning (or so that after such variation he will, or is likely to earn) more than EUR [■] per annum.
8. [*Other than as is specifically set out in the Business Plan for the relevant Financial Year,*] vary or make any binding decisions on the terms of employment and service of any

Director or company secretary of the Company, increase or vary the salary or other benefits of any such officer, or appoint or dismiss any such officer.

9. [*Other than as is specifically set out in the Business Plan for the relevant Financial Year,*] mortgage or charge or permit the creation of or suffer to subsist any mortgage or fixed or floating charge, lien (other than a lien arising by operation of law) or other Encumbrance over the whole or any part of its undertaking, property or assets [*(other than those mortgages and charges detailed in schedule [■])*].
10. Make any loan or advance or give any credit (other than in the ordinary course of business) to any person or acquire any loan capital of any corporate body (wherever incorporated).
11. Conduct any litigation which is material to the Company and is outside of the ordinary course of its Business (such as debt collection in the ordinary course), save for any application for an interim injunction or other application or action (including interim defense) which is urgently required in the best interests of the Company in circumstances in which it is not reasonably practicable to obtain prior consent as aforesaid.
12. Propose or implement any variation to the Company's pension scheme or any of the benefits payable to members of the scheme.
13. Take or agree to take any leasehold interest in or license over any real property.
14. Other than where expressly contemplated by this Agreement or the Service Agreements, enter into or vary any transaction or arrangement with, or for the benefit of any of its Directors or Shareholders or any other person who is a "**Connected Person**" with any of its Directors or Shareholders.
15. Enter into any transaction or make any payment other than on an arm's length basis for the benefit of the Company.
16. Enter into any partnership, joint venture or consortium agreement.
17. Surrender or agree to any material change in the terms of any substantial supply or distribution agreement to which it is from time to time a party.