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# How to efficiently advise our clients – Pan-European lean investment documents

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# Objective and past work

- Standard model documents can substantially contribute to make venture investments in start-ups more efficient if sufficiently accepted in the market.
- In some jurisdictions, efforts have been/are made to create “lean” or “light” model documents, but no pan-European standard exists.
- Working groups with lawyers from 13 jurisdictions have identified key clauses for which to develop a standard that is acceptable across these jurisdictions.
- Findings of the working groups were presented at the IBA European Startup Conference in Berlin (2018) and London (2019).



# Objective and past work

- Working groups have reconvened earlier this year to refine and simplify model clauses for:
  - Warranties (Remedies)
  - Board Composition
  - Lock-up & Pre-Emptive Rights
  - Exit
  - Tag/Drag
  - Liquidation Preference
  - Anti-Dilution (Downround Protection)
- Contributing jurisdictions:
  - Austria
  - Denmark
  - Finland
  - France
  - Germany
  - Israel
  - Italy
  - Norway
  - Portugal
  - Spain
  - Sweden
  - Switzerland
  - UK



# Tag-Along

- I. Tag or co-sale rights
- II. Conditions
  - Not a Permitted Transfer
  - ROFR not exercised in full
  - Same terms and conditions (naturally)
- III. Discussion Points
  - Tag beneficiaries: investors only vs. all shareholders
  - Trigger: any transfer vs. c-o-c transfers only
  - Pro rata tag vs. full tag

# Drag-Along

- I. Drag-along (or the nicer way of putting it – the bring-along right)
- II. Discussion points
  - Only for 100% exit vs. also for partial exits
  - Floor price
  - Investors' majority right vs. qualified (incl. founders) majority right
  - Time limitation
  - Limitation on reps by investors

# Liquidation Preference

- I. Liquidation Preference (last in / first out)
- II. Trigger:
  - Liquidity event (asset sale, change of control merger, share sale and other dissolution or winding-up but **not an IPO**)
  - Also any dividend distribution?
- III. Non-participating preference shares vs. participating preference shares
  - 1 x non-participating preference shares as standard (+ interest?)
  - Conversion rights?

# Anti-Dilution

- I. "Down-round" protection (mitigate dilutive effect of future stock issuances at lower price)
- II. Discussion points:
  - Full ratchet vs. weighted-average protection
  - Broad-based vs. narrow-based weighted average protection
  - Limitation to immediately following round(s)
  - Pay-to-play
  - Alternatives to anti-dilution clauses





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