Venture Capital Comparative Guide

BÄR & KARRER

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1. Legal framework

1. 1. Which general legislative provisions have relevance to venture capital investment in your jurisdiction?

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Venture capital investments in Switzerland are primarily governed by the Code of Obligations (CO), particularly its provisions on corporate and contract law. In addition, the Commercial Register Ordinance sets out procedural rules for registrations with the Swiss commercial register, required for capital increases. Swiss tax law (eg, Federal Act on Stamp Duties, Federal Withholding Tax Act) and data protection law (Federal Act on Data Protection) may apply depending on the transaction specifics. Sector-specific regulations may apply depending on the business model – for example:

- the Financial Services Act and the Anti-Money Laundering Act for fintechs;
- the distributed ledger technology legal framework for blockchain-based models; and
- the Therapeutic Products Act for healthtech and medtech startups.

1. Legal framework

1. 2. What specific factors in your jurisdiction have particular relevance for, or appeal to, venture capital investors?

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Switzerland offers a stable, innovation-friendly environment that is attractive to venture capital investors. Key factors include:

- political stability;
- a strong and stable currency (Swiss franc);
- a transparent and reliable legal system; and

- a reputation as a global innovation leader.

The country is home to top-tier universities and research institutions, particularly in:

- life sciences;
- engineering; and
- AI.

Startups benefit from:

- relatively low administrative hurdles;
- clear corporate law; and
- access to highly qualified talent.

Additionally, Switzerland’s decentralised tax regime offers attractive cantonal tax rates in certain locations. Switzerland currently has no general foreign direct investment regime, which further facilitates international capital inflows, although one is under legislative review.

2. Parties

2. 1. What types of investors typically provide venture capital investment in your jurisdiction?

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Switzerland has a significant presence of business angels and family offices, particularly in seed and early-stage financings. These are complemented by traditional venture capital funds, corporate venture arms and institutional investors, which are more active in later rounds or larger-ticket deals.

2. Parties

2. 2. What types of companies do venture capital investors typically seek to invest in in your jurisdiction? Is the investment done directly or through foreign holding structures?

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Venture capital investors in Switzerland primarily target high-growth, technology-driven startups across sectors such as biotech, cleantech, medtech, deeptech and information and communications technology, with a particular surge in biotech and cleantech activity in 2024. According to the Swiss Venture Capital Report 2025, biotech alone attracted over 30% of all invested capital.

Most venture capital investments are made directly into Swiss companies – typically Swiss stock corporations. This legal form offers legal predictability, confidentiality and familiarity to international investors. While foreign holding structures may be used in certain cross-border or tax-driven contexts (eg, when aligning with group structures or in pre-exit planning), such arrangements remain the exception rather than the rule in Swiss venture capital investments.

2. Parties

2. 3. How are these companies typically structured?

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Swiss startups can select either a stock corporation or a limited liability company as their legal entity form. While a limited liability company may be attractive for founders due to lower minimum capital requirements at incorporation (CHF 20,000 for a limited liability company versus CHF 100,000 for a stock corporation, of which CHF 50,000 needs to be paid in), stock corporations are typically preferred as shareholders and share transfers do not require registration with the commercial register (as is the case with a limited liability company), which is burdensome (eg, in case of a broad shareholder base) and unattractive for investors from a confidentiality standpoint.

The board is elected by the shareholders and can delegate operational duties and day-to-day operations to management in accordance with the articles of association and organisational regulations.

3. Structuring considerations

3. 1. How are venture capital investments typically structured in your jurisdiction (eg, equity, quasi-equity (SAFE/KISS), debt, other), and how does structuring typically differ between seed-stage, early-stage and later-stage investments?

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In Switzerland, venture capital investments are most commonly structured through equity investments and convertible loan agreements. Quasi-equity instruments such as simple agreements for future equity and keep it simple security, though well established in the United States, are generally not used due to legal, tax and accounting constraints under Swiss law.

At the (pre-)seed stage, deal structures tend to be simpler. While some (pre-)seed investors may request preferred shares or some governance rights, typical business angels or friends and family investors often accept common shares or straightforward terms, depending on their:

- ticket size;
- risk appetite;
- capacity; and
- level of sophistication.

Convertible loans are used at both early and later stages. At the early stage, they are particularly helpful as they allow companies and investors to defer valuation discussions until a future financing round, typically incorporating a discount and/or valuation cap. At the later stage, convertible loans are often used as bridge financing:

- providing liquidity between financing rounds and flexibility during ongoing negotiations for a larger raise; and
- offering a mechanism for existing investors to participate on preferential terms (ie, discount).

Following the (pre-)seed or angel round, equity investments are typically structured as priced equity rounds involving preferred shares. These rounds:

- generally include standard investor protections such as:
  - liquidation/dividend preferences;
  - anti-dilution rights; and
  - board representation and veto rights/reserved matters; and
- are supported by more comprehensive investment and shareholder documentation.

As a general trend, the complexity of deal terms and documentation increases with each financing round, particularly as the cap table becomes more populated and investors negotiate more structured and protective rights.

3. Structuring considerations

3. 2. What are the potential advantages and disadvantages of the available investment structures?

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In Switzerland, the most common investment structures are equity investments and convertible loans. Each structure has distinct advantages and disadvantages, depending on:

- the stage of the company;
- investor preferences; and
- deal dynamics.

Structure	Advantages	Disadvantages
Equity investments	• Clear and final valuation and ownership from the outset.	• Requires agreement on valuation.

(priced rounds)	• Investors receive voting rights and protections (eg, liquidation/dividend preference, anti-dilution).	• Higher legal costs and greater documentation burden. • Slower execution due to more extensive negotiations.
Convertible loans	• Valuation discussion can be deferred until future round. • Typically faster and cheaper to implement. • Useful as bridge financing.	• May lead to cap table complexity upon conversion. • Risk of misunderstanding conversion mechanics. • Investors lack immediate shareholders' rights.

3. Structuring considerations

3. 3. What specific issues should be borne in mind in relation to cross-border venture capital investments?

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Cross-border venture capital investments into Swiss startups are generally straightforward, as Switzerland currently does not impose foreign direct investment restrictions on inbound venture capital investments. However, several legal and practical considerations should be kept in mind:

- Tax structuring: This is typically less critical, as early-stage startups in Switzerland rarely have disposable profits or reserves that would allow for dividend distributions. As a result, treaty clearance procedures or withholding tax considerations generally arise only at the point of exit (eg, upon a sale or initial public offering) (see also question 9 for some tax-related comments).
- Know-your-customer and anti-money-laundering and sanctions compliance: This can become more burdensome for startups in cross-border deals. Swiss companies may receive enhanced due diligence requests from foreign investors,

especially those based in jurisdictions with stricter regulatory regimes (eg, the United States or the European Union), including requirements around:
    - sanctions screening; and
    - environmental, social and governance disclosures.
- Regulatory frictions: Companies should also be mindful of regulatory frictions when accepting foreign institutional investors, such as compliance with US Securities and Exchange Commission regulations (eg, for US limited partner-backed funds) or EU fund marketing rules, which may trigger additional disclosure or contractual obligations.
- Cross-border enforceability and governing law: These require careful attention, particularly when shareholders' agreements or dispute resolution clauses are governed by non-Swiss law (eg, UK or New York law). These situations typically necessitate the involvement of local counsel in multiple jurisdictions, leading to increased legal complexity and higher fees.

3. Structuring considerations

3. 4. What specific issues should be borne in mind when multiple investors are involved (eg, pooling)?

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When multiple investors are involved in a financing round, several structuring and coordination issues should be considered:

- Lead investor: A lead investor typically:
    - writes the largest ticket;
    - issues the term sheet;
    - conducts legal and financial due diligence;
    - negotiates the transaction documents; and
    - takes a board seat.

  The other investors generally tag along on the agreed terms without engaging separate counsel or negotiating their own deal terms.
- Minority investors and employee participation: It is ultimately up to the founders to decide how many small-ticket investors they are willing to accept. A

larger number of investors typically increases the administrative burden – for example, in relation to:

- shareholders' meetings;
- reporting; and
- governance.

To reduce complexity, minority investors or employee shareholders (eg, under an employee stock option plan) are sometimes pooled contractually, requiring them to act collectively through a designated representative who exercises their rights on their behalf.

4. Investment process

4. 1. How does the investment process typically unfold? What are the key milestones?

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In Switzerland, venture capital investments typically follow a structured process:

- Preparation: The company prepares:
  - a business plan;
  - a financial model;
  - a cap table;
  - an investor deck; and
  - a data room.

  Founders often seek early feedback from advisers or existing investors.
- Initial outreach/non-disclosure agreement (NDA): Founders approach potential investors through warm introductions, events or accelerators. An NDA is often signed before sharing confidential materials.
- Bridge financing: To ensure liquidity before the equity round, companies may raise convertible loans from existing or early-stage investors.
- Term sheet: A lead investor issues a term sheet outlining key terms, including:
  - valuation;
  - investment size;
  - governance rights; and

    - protections.

  This is typically negotiated with the company.
- Investor commitments: With the term sheet in place, founders (often with the lead investor's support) approach additional investors, which usually invest under the same terms without separate negotiations.
- Due diligence: The lead investor conducts legal, financial and commercial due diligence on the company.
- Definitive agreements: Parties negotiate the investment and shareholders' agreements based on the term sheet, along with ancillary documents such as updated articles or side letters.
- Signing and closing: After finalising documents, parties sign and transfer funds. The round closes upon share issuance and completion of closing steps.

4. Investment process

4. 2. What types of due diligence (eg, legal, financial, technical) do venture capital investors typically conduct into prospective portfolio companies? What are key red flags for venture capital investors?

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The scope of due diligence varies by:

- company stage;
- investment size; and
- industry.

It is usually led by the lead investor and carried out internally, with support from external advisers as needed.

Financial, business and HR due diligence are often handled in-house, particularly for early-stage startups or smaller investments. Investors typically assess:

- the business plan;
- the financial model;

- key metrics; and
- the team.

Increasingly, institutional and cross-border investors also conduct internal know-your-customer (KYC), anti-money laundering (AML) and sanctions checks.

Legal due diligence is more limited and is typically performed by external counsel. It focuses on:

- corporate structure;
- past financing rounds;
- employment matters (including employee share option plans);
- key commercial contracts;
- leases;
- intellectual property; and
- data protection.

The depth of review depends on the company's:

- maturity;
- complexity; and
- sector.

In IP-heavy sectors such as deep tech or life sciences, investors may commission separate IP reviews to examine:

- patent ownership;
- freedom to operate; and
- pending applications.

Key red flags include:

- unclear or incomplete corporate documentation;
- cap table inconsistencies; and
- missing IP assignments – particularly where intellectual property is core to the business.

In employment matters, risks arise if:

- there are no written contracts;
- contracts fail to reflect actual work arrangements; or
- contracts are not compliant with Swiss law.

Heavy use of (independent) contractors (instead of employees) may trigger reclassification risks under Swiss employment or social security rules. Financially, the business plan must hold up under scrutiny. Liquidity constraints and technical over-indebtedness are common in startups, so investors must assess whether new funding will provide sufficient runway, especially given existing liabilities or debt and cash burn rate.

4. Investment process

4. 3. What documentation is typically prepared during the investment process and who is responsible for preparing this?

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The core documentation prepared during a Swiss venture capital financing round includes the following:

- The non-binding term sheet is usually provided by the lead investor and negotiated with the company/founders and sets out the commercial and legal cornerstones of the investment.
- The investment agreement governs the subscription for shares and any conditions precedent to closing.
- The shareholders’ agreement sets out:
    - governance rights;
    - information rights;
    - transfer restrictions; and
    - investor protections.
- Corporate documents include:
    - updated articles of association;
    - organisational regulations; and
    - shareholder and board resolutions required for the capital increase.

- Other ancillary documents may be required depending on the findings of legal due diligence or at the request of the investor (eg, IP assignments, employment amendments, waivers or side letters).

Of these documents, only the articles of association and shareholder and board resolutions required for the capital increase are filed with the commercial register and become publicly available.

The company's legal counsel often prepares the first draft of the core transaction documents. These are then negotiated with the legal counsel of the lead investor, if one is appointed. Other investors, which typically tag along under the same terms:

- are generally not involved in detailed negotiations; and
- do not engage separate legal representation.

4. Investment process

4. 4. Are standard investment documents available for venture capital investments in your jurisdiction? If so, who (eg, industry association, organisation) provides them and how frequently are they used in practice?

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Standard model documents for venture capital investments are available in Switzerland and have been published by the Swiss Private Equity & Corporate Finance Association (SECA). SECA provides templates for both equity investments and convertible loans.

The model documents, while widely known, are generally considered investor-friendly. That said, they are frequently used as reference points during negotiations.

SECA's model documents are updated on a regular basis (by the SECA working group, consisting of lawyers from leading Swiss law firms), which helps to ensure that they remain aligned with evolving market practices and legal developments.

4. Investment process

4. 5. What disclosure requirements and restrictions may apply throughout the investment process, for both the venture capital investor and the prospective portfolio company?

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For the prospective portfolio company, disclosure plays a key role in the investment process – both to facilitate due diligence and to limit liability. Swiss practice often applies the concept of 'fair disclosure', meaning that information disclosed (eg, in a virtual data room, management presentation or side letter) may serve to qualify representations and warranties in the investment documentation. As such, it is generally in the company's interests to disclose as much relevant information as possible.

At the same time, disclosure is typically made subject to an NDA or confidentiality undertaking, to protect sensitive information. Specific disclosure restrictions may arise in relation to:

- business secrets;
- intellectual property (especially if not yet registered or protected);
- personal data (subject to Swiss and potentially foreign data protection laws); and
- less commonly, antitrust considerations (though these are not usually triggered in typical venture capital/startup scenarios).

On the investor side, formal disclosure requirements are limited. However, investors must comply with beneficial ownership notification obligations under Swiss law if they acquire/subscribe (alone or while acting in concert) for 25% or more of the company. In practice, some companies – and occasionally existing investors – also require basic KYC or AML checks to be performed on new or prospective investors.

4. Investment process

4. 6. What advisers and other stakeholders are involved in the investment process?

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The advisers and stakeholders involved in a Swiss venture capital transaction vary depending on the stage and size of the investment, but the process is often lean compared to larger M&A transactions.

On the company side, stakeholders typically include:

- existing investors and shareholders, especially those with governance rights or *pro rata* investment rights;
- founders, who are typically also part of the management team and are directly involved in:
  - preparing materials;
  - managing due diligence; and
  - negotiating terms; and
- external legal counsel, engaged to prepare and negotiate transaction documents. Particularly in early-stage deals, it is common for founders to handle much of the fundraising process themselves without engaging separate financial advisers.

On the investor side, the involvement of advisers depends largely on the ticket size and institutional setup. In early-stage or smaller rounds:

- venture capital investors typically conduct financial, commercial and KYC/AML due diligence internally; and
- external legal counsel are often engaged by the lead investor to review and negotiate investment documentation, while follow-on or smaller investors usually rely on the lead and do not engage separate advisers.

In later-stage or larger transactions, investors may engage additional specialists to help with the financial, tax commercial and IP/IT due diligence.

4. 7. What is the process and what (corporate) approvals are required for a portfolio company to issue shares or debt instruments to investors in your jurisdiction?

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In Switzerland, a company can issue shares by way of:

- an ordinary capital increase; or
- out of conditional capital or a capital band (which replaced authorised capital in 2023).

In venture capital equity financings, share issuances are typically structured as an ordinary capital increase.

This requires a shareholder resolution followed by board implementation within six months. Investors sign a subscription form and pay the subscription price into a blocked bank account. The board then:

- issues a capital increase report (which must be audited in case of non-cash capital increases or if the statutory subscription right of the shareholders is limited or excluded);
- passes the implementing resolution before a notary public; and
- files the commercial register application.

The increase becomes effective upon registration in the commercial register. In practice:

- shareholder approval is often granted at a universal meeting with powers of attorney; and
- all steps are typically completed on the same day following pre-payment of the subscription price to the blocked bank account.

Debt instruments frequently take the form of convertible loan agreements, which generally require shareholder consent – or rather, a shareholder undertaking, as future conversion typically cannot be guaranteed without a shareholders' resolution (if no conditional capital is available for conversion). This consent (and undertaking) may be:

- included in the shareholders' agreement;
- collected individually; or
- documented in the convertible loan agreement or a side agreement.

Without such approval, the enforceability of the conversion may be at risk. In addition, absent waivers, existing shareholders may have a pre-emptive right to participate in convertible financings.

5. Equity investment terms

5. 1. What key investment documents and terms (eg, valuation, share class, governance rights, liability concept, transfer restrictions, exit rights) typically feature in venture capital equity investments in your jurisdiction?

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The key terms of a venture capital equity investment in Switzerland are generally pre-agreed in a term sheet between the company/founders and the lead investor. The definitive documentation is typically split between an investment agreement and a shareholders' agreement, supplemented by amendments to the company's corporate documents (the articles of association and organisational regulations).

The investment agreement typically covers:

- the investment amount (by the lead and other investors);
- the type of security issued;
- the issue price;
- the agreed valuation;

- representations and warranties; and
- conditions precedent to closing.

The shareholders' agreement and corporate documents regulate a wide range of economic, governance and exit-related terms, including:

- preference rights (eg, dividend rights, liquidation preference, ranking, participation features, conversion mechanics);
- anti-dilution protections;
- governance rights (eg, voting rights, board representation, information rights, qualified majorities, founder non-compete clauses);
- transfer restrictions (eg, rights of first refusal, tag-along, drag-along, and purchase options); and
- exit rights and mechanisms.

5. Equity investment terms

5. 2. What type of security is typically issued to new investors as part of venture capital equity investments in your jurisdiction and what (economic) preference rights are typically attached to these securities (by operation of law, under constitutional documents and/or contractually)? What rules and requirements apply in this regard?

Switzerland
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In Swiss venture capital transactions, new investors typically receive preferred shares, which may be structured either:

- contractually (ie, ordinary shares with preference rights granted through a shareholders' agreement); or
- more formally by issuing a separate class of preferred shares with specific rights defined in the articles of association.

Preference rights commonly include:

- liquidation preferences;
- anti-dilution protections;
- dividend entitlements; and
- conversion rights.

These rights may:

- be participating or non-participating; and
- include a multiple return (eg, 1x, 1.5x, 2x).

If preference rights are implemented via a separate share class, the company's articles of association must be amended, which requires a shareholder resolution before a notary. As the articles are publicly available, the economic and structural terms of the preferred shares are accessible via the commercial register.

Relevant legal bases include Articles 654 and 655 of the Code of Obligations, which govern the creation and characteristics of preference share classes. Article 654 also provides that a special class vote is required if a new issuance could adversely affect the rights of existing preferred shareholders, unless this requirement has been validly waived in the articles. In addition, Article 709 of the Code of Obligations states that if a company has multiple classes of shares differing in voting or economic rights, each class is entitled to elect at least one representative to the board of directors.

5. Equity investment terms

5. 3. What anti-dilution measures or rights (eg, pre-emptive rights, down-round protection) typically feature in venture capital equity investments in your jurisdiction?

Switzerland
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Anti-dilution protections are a standard feature in Swiss venture capital investments to protect investors in the event of a down round (ie, a financing at a lower valuation/issue price than the previous round). The most commonly used mechanism is the broad-based weighted average ratchet, which operates by granting affected investors additional (preferred) shares. This approach is also reflected in the Swiss Private Equity & Corporate Finance Association (SECA) model documentation.

Importantly, under Swiss law, the issuance of additional shares – even as part of an anti-dilution adjustment – requires payment of at least the nominal value of such shares (unless the company has sufficient freely distributable equity which allows for the creation of free shares). To ensure implementation, shareholders' agreements typically include undertakings by all shareholders to:

- approve the necessary capital increases; and
- waive statutory subscription rights.

Special attention is required when convertible loans convert at a discount. Even if the share price of the round is higher than in the last round (and does not itself trigger anti-dilution), the discounted conversion may nonetheless activate anti-dilution rights for earlier investors. As companies raise multiple successive rounds with varying anti-dilution terms, such adjustments can become increasingly complex and sunset clauses should be considered.

In later-stage financings, it is not uncommon for new investors to require earlier investors to waive existing anti-dilution rights in order to streamline the capital structure and simplify documentation. Alternatively, anti-dilution rights may be subject to sunset clauses, meaning that they only apply until completion of the next subsequent financing round.

5. Equity investment terms

5. 4. What are the key features of the liability regime (eg, representations and warranties, disclosure concept, liability caps, remedies) that applies to venture capital investments in your jurisdiction?

Switzerland
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In Swiss venture capital transactions, representations and warranties (R&W) are typically set out in the investment agreement and are negotiated on a case-by-case basis. Standard R&W cover:

- corporate organisation;
- cap table accuracy;
- intellectual property;
- employment matters; and
- litigation risks.

Depending on the deal structure and bargaining position, R&W may be provided by:

- the company;
- the founders; and
- in some cases, existing investors.

Due to the prohibition on capital repayments under Swiss corporate law – which restricts distributions from the company to shareholders – Swiss investment agreements typically rely on non-monetary remedies, including:

- a compensatory capital increase, whereby the investor subscribes for additional shares (often preferred shares) at nominal value to restore its intended shareholding, based on a reduced valuation adjusted for the damages caused by the R&W breach; and
- a compensatory transfer, whereby the founders transfer (common) shares to the investor at nominal value to cover any remaining damages resulting from the breach.

To ensure that these remedies can be implemented, existing shareholders typically:

- pre-commit to voting in favour of the necessary resolutions; and
- waive subscription, pre-emption, anti-dilution and other rights that could otherwise hinder consummation.

The liability regime is often subject to a fair disclosure concept, meaning that information disclosed in a data room or formal disclosure schedule may qualify and limit the scope of the R&W (and thus any liability for misrepresentation or breach of R&W).

5. Equity investment terms

5. 5. What key transfer rights and restrictions (eg, lock-up period, right of first offer/right of first refusal, drag/tag-along rights, purchase options) typically feature in venture capital investments in your jurisdiction? Are (reverse) vesting/good and bad leaver provisions commonly applied to founders in your jurisdiction? If so, how are these typically structured?

Switzerland
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Swiss venture capital transactions typically include transfer restrictions to maintain cap table stability and facilitate exits. Common mechanisms include:

- lock-up periods for founders (often three to five years);
- a right of first refusal in favour of existing shareholders or the company;
- tag-along rights for minority shareholders;
- drag-along rights enabling majority-led exits; and
- put options allowing investors to sell their shares back to founders (often at nominal value, such as CHF 1) in reputational or discretionary scenarios.

Purchase options (call options) are frequently used in connection with founder or employee departures (leaver events).

(Reverse) vesting is widely used, particularly in early-stage deals. Vesting periods usually range from three to five years, with monthly or quarterly vesting after a one-year cliff. Exit events often trigger accelerated vesting. The percentage of founder shares subject to vesting is frequently negotiated – while early investors expect broad coverage, founders often resist revesting in later rounds.

Good/bad leaver provisions are closely linked to vesting mechanics. These typically refer to legal standards of ‘good cause’ or ‘justified reason’. These standards are relatively strict: dismissal for underperformance alone usually does not qualify as a bad leaver event. In a good leaver scenario, vested shares are retained or repurchased at fair market value, while unvested shares are typically bought back at nominal value. Bad leaver provisions often allow for all shares to be repurchased at nominal value or a significant discount.

5. Equity investment terms

5. 6. What management incentives (eg, equity, options, phantom shares) typically feature in venture capital investments in your jurisdiction?

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In Swiss venture capital-backed companies, the most common management incentive instruments are:

- share equity plans (for actual equity); and
- phantom share plans (synthetic equity with cash settlement).

Both structures are used to align employees with company performance, although they differ significantly in implementation and tax treatment.

From a legal and administrative perspective, phantom shares are easier to implement. They do not require share issuances or changes to the shareholder register; nor do participants need to adhere to the shareholders’ agreement. However:

- they are treated as salary income upon payout, subject to ordinary income tax and social security; and
- they offer no capital gains tax exemption.

Share equity plans, by contrast, can be more attractive to employees from a tax standpoint. If structured correctly, employee shares may qualify for capital gains treatment upon exit. However, if shares are granted at a discount to fair market value, the benefit is taxed upfront as dry income and subject to social security (see also question 9).

From a commercial perspective, the dilutive impact of employee participation is often heavily negotiated. Investors typically require that any option pool increases be included in the pre-money valuation, thereby shifting the dilution entirely to founders and existing shareholders. Founders usually push to (partially) allocate this dilution post-money to preserve their ownership.

6. Debt investment terms

6. 1. What terms typically feature in non-equity venture capital investments in your jurisdiction?

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In Switzerland, the most commonly used non-equity financing instrument is the convertible loan agreement (CLA). CLAs are widely used for seed-stage or bridge financing and typically contain provisions for:

- interest rates;
- a valuation cap and/or discount for conversion;
- conversion triggers (eg, qualified equity round, change of control, maturity); and
- a subordination clause, placing the loan behind all other creditors (except other unsecured subordinated debt) to avoid triggering over-indebtedness and mandatory bankruptcy filings.

Subordinated CLAs are rarely repaid at maturity and are generally converted into equity due to the prohibition on repaying subordinated loans. The Swiss Private Equity & Corporate Finance Association provides model convertible loan agreements reflecting these terms.

Venture debt remains less prevalent but is gaining traction. It is typically structured with:

- conditions precedent;
- covenants (eg, financial covenants, negative covenants such as negative pledge undertaking and information covenants);
- representations and warranties (R&W) of the borrower;
- an (extensive) list of default events (eg, breach of R&W, breach of covenants, default, cross-default, deterioration of collateral/creditworthiness);
- collateral provisions (guarantees, sureties, assignment of receivables and pledges of assets such as bank accounts, shares, IP rights and real estate); and
- an equity kicker in the form of subscription rights or warrants for the venture debt provider.

There are currently no standard form documents available in Switzerland.

From a Swiss tax perspective, arm's-length interest payments by Swiss borrowing entities are not subject to Swiss withholding tax, provided that the Swiss borrowing entity:

- is compliant with Swiss thin capitalisation rules; and
- receives financing from:
    - a maximum of 10 non-bank lenders (on the same terms); or
    - a maximum of 20 non-bank lenders (on different terms).

6. Debt investment terms

6. 2. How are such non-equity investments typically treated in the event of (a) an equity investment, (b) a change of control and/or (c) maturity?

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In Switzerland, non-equity investments – most notably in the form of CLAs – are generally structured to automatically or mandatorily convert into equity upon certain triggering events:

- Equity investment (qualified financing round): CLAs typically provide for mandatory conversion of the loan into equity upon the occurrence of a qualified equity financing round. This is defined as a *bona fide* capital increase during which new shares of the company are issued against a minimum investment. Investors benefit from either a valuation cap or a discount to the share price paid by the new investors.
- Change of control: In the event of a change of control (eg, acquisition or merger), CLAs often allow the investor to choose between:
  - repayment of the loan (often with a premium or multiple); or
  - conversion of the loan into equity immediately prior to the transaction to allow participation in the exit.
- Maturity: At maturity, if no earlier conversion event has occurred, the investor typically has a right to convert voluntarily or the company may be contractually obliged to convert the loan into equity. While repayment may be provided for contractually, in practice this is rarely effected – particularly as repayment of subordinated loans is prohibited under Swiss law if the company is over-indebted. As a result, conversion into equity is the prevailing outcome. In some cases, where neither repayment nor immediate conversion is feasible or desired, the parties may also agree to extend the loan term.

7. Governance and oversight

7. 1. What are the typical governance arrangements of venture capital portfolio companies?

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In Switzerland, governance arrangements in venture capital-backed companies are typically designed to balance investor protection with founder control.

Voting rights are governed by Article 692 of the Code of Obligations, which provides that shareholders exercise voting rights in proportion to the nominal value of their shares. While Article 693 of the Code of Obligations allows for the introduction of voting right shares (ie, one vote per share regardless of nominal value up to a maximum of 1:10), this structure is rare in Swiss venture capital transactions. Typically, all share classes have the same nominal value and the 'one share, one vote' principle applies equally to common and preferred shares. Nonetheless, it remains important to review share classes and the articles of association carefully to detect any deviations from this principle.

To safeguard their interests, investors typically negotiate qualified majority requirements and veto rights at both the shareholder and board levels. At the shareholder level, key matters such as capital increases, changes to the articles, mergers or liquidation:

- often require a supermajority (eg, 66.66%); and
- sometimes require separate consent by holders of preferred shares.

At the board level, investors often require consent rights for specific 'important board matters', such as:

- budget approvals;
- significant transactions;
- recruitment and dismissal of executives; or
- new debt.

Investors also seek board representation, commonly tied to a minimum equity threshold (eg, 10%–20%). Founders and common shareholders usually retain seats as well and occasionally independent directors are appointed by mutual agreement.

Finally, information rights are an essential part of the governance framework. These typically include access to:

- monthly management reports;
- quarterly figures;
- annual audited financial statements; and
- budgets.

Investors rely on these rights:

- for monitoring purposes; and
- to fulfil their own reporting obligations to their investors or limited partners.

7. Governance and oversight

7. 2. What legal considerations should venture capital investors take into account when putting forward nominees to the board of portfolio companies?

Switzerland
Bär & Karrer

When nominating directors to the board of a Swiss portfolio company, venture capital investors must consider that under Swiss law, board members owe fiduciary duties to the company, not to the nominating investor. This includes the duty to:

- act in the company's best interests;
- avoid conflicts of interest; and
- maintain confidentiality.

Investor-nominated directors therefore:

- must exercise independent judgement; and
- may be required to recuse themselves from decisions where personal or investor interests conflict with those of the company.

Board representation is often sought to ensure access to information and oversight. While board membership does provide access to regular updates and strategic discussions, this access is:

- limited to the director's role; and
- subject to (statutory) confidentiality obligations.

Because directors can be held personally liable for breaches of duty, particularly in insolvency scenarios or in case of negligent conduct, it is recommended that the company maintain directors' and officers' insurance for the protection of all board members, including investor nominees.

Finally, since investor-nominated directors are typically non-operational (ie, not involved in the day-to-day management), it is advisable to ensure that the company has organisational regulations in place. These should clearly delegate operational responsibilities to executive management, thereby:

- limiting the board's exposure to operational risks; and
- reducing the risk that non-operational directors inadvertently assume liability for management-level decisions.

7. Governance and oversight

7. 3. Can a venture capital investor and/or its nominated directors typically veto significant corporate decisions of a portfolio company? If so, what are the common types of corporate decisions over which a venture capital investor might request veto rights?

Switzerland
Bär & Karrer

Yes, venture capital investors in Switzerland commonly negotiate veto rights over significant corporate decisions. These are typically structured as 'important shareholder matters' and 'important board matters', requiring either:

- qualified majority approval; or
- consent from the investor-nominated director(s).

Important shareholder matters often include:

- amendments to the articles of association;
- the creation of preferred or voting-right shares;
- capital increases (especially via authorised or conditional capital);
- limitations or exclusions of subscription rights;

- mergers, demergers, asset sales or liquidation; and
- distributions and dividend payments.

Important board matters typically cover:

- the approval or amendment of the annual budget and business plan;
- major capital expenditures or debt incurrence beyond agreed thresholds;
- related-party or non-arm's-length transactions;
- the issuance of shares or options (outside agreed employee share option plans (ESOPs) or an anti-dilution context);
- the appointment or dismissal of key executives (eg, chief executive officer); and
- amendments to the organisational regulations or ESOP.

A common mechanism to implement such protections is the double quorum requirement, where certain board decisions require not only a majority vote but also the affirmative vote of one or more investor-nominated directors – effectively granting a veto right. However, the validity of such double quorum requirements under Swiss corporate law is controversial. A 2023 decision by the Commercial Court of Zurich held that board-level vetoes of this kind may be invalid under corporate (though not contract) law. While many practitioners disagree, the legal uncertainty has led to increased caution in structuring these rights.

7. Governance and oversight

7. 4. What information and reporting rights do venture capital investors typically enjoy in your jurisdiction (by law and contractually)?

Switzerland
Bär & Karrer

Swiss law provides a layered system of shareholder information rights, shaped by the principle of capital-based membership. Shareholders are not subject to fiduciary or confidentiality obligations *vis-à-vis* the company or one another, unless contractually agreed (eg, in a shareholders' agreement). Statutory rights include the following:

- Annual disclosures: All shareholders are entitled to receive the annual report and audit report (if any) ahead of the general meeting (Article 699a of the Code of Obligations).
- Information and inspection:
  - Oral questions at general meetings (Article 697(1) of the Code of Obligations)
  - Written requests by shareholders holding at least 10% (Article 697(2) of the Code of Obligations) and inspection of books/files by shareholders holding at least 5% (Article 697a of the Code of Obligations).
  - These rights are limited to what is necessary for the proper exercise of shareholders' rights and may be refused to protect trade secrets or overriding company interests (Article 697(4)/697a(3) of the Code of Obligations).
- Special investigation: Shareholders that have exercised these rights may request a special investigation (Articles 697c–g of the Code of Obligations), subject to general meeting or court approval.

Contractual rights in shareholders' agreements typically go further and include:

- delivery of:
  - annual audited financials;
  - quarterly and monthly reports; and
  - budgets; and
- *ad hoc* information needed for:
  - investor reporting;
  - regulatory filings; or
  - strategic oversight.

The shareholders' agreements may specify deadlines for providing such information to ensure timely access.

Investors also commonly negotiate consultation rights with management and access to company records upon reasonable notice.

7. Governance and oversight

7. 5. What other legal tools and strategies are available to venture capital investors or other minority investors to monitor and influence the performance of portfolio companies?

Switzerland
Bär & Karrer

Beyond the contractual and governance rights discussed in questions 7.1–7.4 (eg, board representation, veto rights and layered information rights), Swiss law and practice offer a range of additional tools – particularly for minority investors – to monitor and influence portfolio company performance. These include the following:

- Participation rights:
    - Voting rights (Articles 692–695 of the Code of Obligations) (see also question 7.1).
    - Rights relating to the convening and conduct of shareholders' meetings, including the right to convene a meeting (at least 10%) or request the inclusion of agenda items (at least 5%) (Articles 689–691 and 699 of the Code of Obligations).
- Protective rights:
    - Statutory pre-emption and subscription rights to protect against dilution (Articles 652b and 653c of the Code of Obligations).
    - Information and inspection rights, and the right to request a special investigation (Articles 699a and 697–697h of the Code of Obligations) (see also question 7.4).
    - Right to challenge shareholders' resolutions (Article 706 of the Code of Obligations).
    - Right to bring directors' liability claims (Articles 752 and following of the Code of Obligations).
    - Right to request judicial dissolution of the company for valid cause (Article 736(4) of the Code of Obligations).

Minority investors may also enjoy additional contractual protections. For instance, amendments to the shareholders' agreement or related governance documents may require their consent or signature, giving them influence beyond their shareholding.

8. Exit

8. 1. What exit strategies are typically pursued by venture capital investors in your jurisdiction?

Switzerland
Bär & Karrer

In Switzerland, venture capital investors typically pursue one of three exit routes:

- trade sales;
- secondary sales; and
- less frequently, initial public offerings (IPOs).

Trade sales remain the most common strategy, often involving acquisitions by international strategic buyers attracted by Swiss companies' technology, talent and intellectual property. As noted in the *Swiss Venture Capital Report 2025*, such exits continue to dominate the Swiss landscape.

Secondary sales – where shares are sold to other investors, often during later financing rounds – are a common strategy for early-stage investors to achieve partial or full liquidity, especially when large (institutional) investors enter the cap table.

IPOs are rare but occasionally pursued by high-growth companies. The complexity and cost of going public, combined with relatively modest capital market depth in Switzerland, mean that IPOs are the exception rather than the rule.

According to the 2025 report, 68% of investors expect increased exit activity over the next 12 months, signalling renewed confidence – especially in trade sale outcomes.

8. Exit

8. 2. What specific legal and regulatory considerations (if any) should be borne in mind when pursuing each of these different strategies in your jurisdiction?

Switzerland

Trade sales, the most common strategy, require careful attention to statutory and contractual rights, such as:

- drag-along rights;
- tag-along rights;
- transfer restrictions; and
- consent rights.

Transactions often benefit from early alignment among existing shareholders, with a single representative granted power of attorney to negotiate and execute on their behalf. Merger control filings may be triggered in Switzerland or abroad, depending on the size and geographic scope of the target and the buyer's group.

Secondary sales (ie, private share transfers) require:

- close coordination of statutory and contractual transfer restrictions, such as:
  - rights of first refusal or offer;
  - tag-along rights; and
  - board approvals; and
- updating of the share register accordingly.

IPOs, while rare, involve significant legal and regulatory preparation. This includes:

- converting into a public limited company;
- aligning governance with stock exchange and corporate governance standards; and
- preparing a prospectus in accordance with Swiss or EU regulations.

Shareholder alignment and pre-IPO restructuring (eg, changes to capital structure) may also be required.

Across all exit routes, early attention to tax structuring, cap table hygiene and due diligence readiness is critical. Well-drafted shareholders' agreements with clear exit mechanics can significantly ease execution and reduce transaction risks.

9. Tax considerations

9. 1. What are the key tax considerations in relation to venture capital equity investment in your jurisdiction?

Switzerland
Bär & Karrer

Switzerland is not known as a location for the establishment of private equity/venture capital funds, mainly due to the Swiss withholding tax (WHT) and securities transfer tax regimes. Therefore, venture capital funds are typically established:

- in offshore jurisdictions; or
- in jurisdictions such as:
  - Germany;
  - Liechtenstein; or
  - the Netherlands.

Investments in Swiss companies can be made either:

- directly; or
- via a newly established acquisition vehicle in:
  - Switzerland; or
  - a double taxation treaty jurisdiction providing for 0% Swiss WHT for qualifying dividend distributions from a Swiss company (generally a minimum of 10% shareholding).

To benefit from a WHT reduction, the shareholder of the Swiss target must have sufficient substance and beneficial ownership. To avoid non-refundable WHT leakage (also in a later exit), Swiss WHT avoidance rules – such as old reserves and extended international transposition – must be considered, especially when using a Swiss acquisition vehicle financed with intercompany debt/capital contributions. Such anti-abuse practices could result in non-refundable Swiss WHT on dividends if the acquisition company is held by a fund or non-treaty shareholder. While there are structuring options to allow for a WHT-efficient structure, a diligent setup and advance tax ruling confirmation are recommended –particularly as a future buyer will generally inherit the current WHT situation and address any (withholding) tax risks in the purchase price determination or the share purchase agreement.

For direct investments, such as via a share capital increase, equity contributions by direct shareholders are subject to a Swiss stamp duty of 1% (with a one-off exemption limit of CHF 1 million in case of a share capital increase), but any paid-in surplus may qualify as capital contribution reserves which could be repaid:

- free of Swiss WHT; and
- for Swiss residents, free of Swiss income tax.

9. Tax considerations

9. 2. What are the key tax considerations in relation to venture capital debt investments in your jurisdiction?

Switzerland
Bär & Karrer

From a Swiss tax perspective, arm's-length interest payments by Swiss borrowing entities will not be subject to Swiss WHT, provided that the Swiss borrowing entity:

- is compliant with the Swiss thin capitalisation rules; and
- receives financing from:
  - a maximum of 10 non-bank lenders (on the same terms); or
  - a maximum of 20 non-bank lenders (on different terms).

Certain limitations on leverage result from the Swiss thin capitalisation rules applied by Swiss tax authorities with respect to related-party debt (ie, from an existing shareholder). Interest paid on amounts of debt exceeding certain thresholds may be requalified as a hidden dividend if paid to a shareholder or a related party of a shareholder. Consequently, such interest will not be tax deductible and subject to 35% dividend WHT. The same applies if debt is provided by a third party but secured by a shareholder or a related party.

The Swiss tax authorities publish maximum safe haven interest rates for intercompany loans on an annual basis. By applying such safe haven rates, the arm's-length nature is in principle assumed; but higher interest rates may be justified provided that they are in line with the arm's-length nature, which must be proven in case of challenge by the tax authorities.

9. Tax considerations

9. 3. What are the key tax considerations in relation to equity-related incentive schemes in the context of venture capital investments in your jurisdiction?

Switzerland
Bär & Karrer

A Swiss resident manager's capital gain from the sale of employee shares acquired at fair market value (FMV) qualifies for tax exemption. For non-listed shares, a formula value approximates the FMV; this formula value must be consistently applied throughout the incentive plan. In this context, startups enjoy certain benefits (eg, with regard to financing rounds); however, the startup qualification should be confirmed with the tax authorities (via a tax ruling).

The potential taxable income at acquisition is calculated as the difference between the FMV of the shares and the price at which they are sold to the employee. No specific tax reliefs exist for shares acquired below FMV (formula value), except for blocking period discounts of up to 44.161% (6% per blocking year, maximum 10 years). A capital gain on the sale of shares that have been acquired at formula value by a Swiss resident manager more than five years ago will generally qualify for a tax exemption (otherwise, any excess profit above the formula value will be taxable). A sale before the expiration of the blocking period may result in taxable salary in the amount of the remaining blocking period discount applied to the FMV (formula value) at that time.

Any benefits from more synthetic incentive schemes such as phantom shares plans are treated like ordinary salary income, being subject to income tax and social security contributions (plus pension scheme contributions, if applicable). Taxation occurs only at the time of actual (cash) payment.

In view of various options for incentive schemes, diligent structuring and an advance tax ruling confirmation are recommended.

10. Disputes

10. 1. What kinds of disputes typically arise in relation to venture capital investments in your jurisdiction and how are they typically resolved?

Switzerland
Bär & Karrer

In Switzerland, formal litigation in venture capital contexts is relatively rare – especially at the early stage – since startups often lack the financial means to pursue or defend costly proceedings. Most disputes are handled commercially through negotiation.

That said, certain categories of disputes do arise more frequently:

- Employment-related disputes: These are among the most common formal disputes and typically involve:
  - executive terminations;
  - bonus entitlements; or
  - disagreements over incentive schemes.
- IP-related disputes: Particularly in tech or life sciences-focused companies, conflicts over IP ownership, licensing or infringement (eg, patents, trademarks or software) may trigger formal legal proceedings.

Other typical but less litigated conflicts include:

- founder-related issues, such as departures, vesting or dilution – usually addressed via leaver provisions in the shareholders' agreement;
- exit-related disagreements – for example, over drag-along enforcement or deal terms; and
- investor disagreements, including around down rounds or minority protections.

Clear contractual frameworks and governance arrangements help to prevent escalation in such cases.

11. Trends and predictions

11. 1. How would you describe the current venture capital landscape and prevailing trends in your jurisdiction? What are regarded as the key opportunities and main challenges for the coming 12 months?

Switzerland
Bär & Karrer

Following a period of cautious activity, the Swiss venture capital market is showing signs of renewed momentum. While deal volumes remain below the record levels of 2021–2022, investor confidence has improved, especially in technology-driven sectors such as:

- deeptech;
- biotech; and
- sustainability.

Sixty-eight per cent of investors expect increased exit activity over the next 12 months, signalling a cautiously optimistic outlook. Key challenges remain, particularly in:

- bridging valuation gaps;
- navigating a subdued fundraising environment; and
- managing macroeconomic uncertainty.

Trade sales continue to dominate the exit landscape.

11. Trends and predictions

11. 2. Are any developments anticipated in the next 12 months, including any proposed legislative reforms in the legal or tax framework?

Switzerland
Bär & Karrer

Two key legal developments are currently underway in Switzerland:

- The proposed Federal Law on the Control of Foreign Direct Investment (FDI) continues to progress through the legislative process. While Switzerland does not currently maintain a comprehensive FDI regime, the draft law – last debated by the Council of States in March 2025 – may introduce new approval requirements for certain foreign investors, including non-state-controlled entities.
- A draft law extending the tax loss carry-forward period from seven to 10 years was published by the Federal Council in November 2024 and is now under parliamentary review. If enacted, this reform will be particularly relevant for startups and early-stage ventures that typically incur losses in their initial years of operation.

12. Tips and traps

12. 1. What are your tips to maximise the opportunities that venture capital presents in your jurisdiction, for both investors and portfolio companies, and what potential issues or limitations would you highlight?

Switzerland
Bär & Karrer

Switzerland offers a stable legal environment, strong investor protections and a growing innovation ecosystem – especially in fintech, deep tech and life sciences – making it an increasingly attractive market for venture capital.

Tips to maximise opportunities:

- Engage early with experienced advisers (legal, tax, intellectual property) to:
  - ensure proper set-up, structuring, advice and legal documentation from the outset; and
  - avoid costly clean-up measures later on.
- Cap table clarity is critical:
  - Maintain up-to-date records; and
  - Ensure proper documentation of all past share transfers, financing rounds and share issuances.

- Carefully structure employee participation plans and obtain proper tax advice. Tax treatment varies by canton and missteps can lead to negative consequences for both the company and employees.

Common traps and limitations:

- Anti-dilution provisions may create complexity over time, especially when triggered by convertible loans or successive rounds with inconsistent terms.
- Each share transfer must be properly documented and statutory as well as contractual implications must be considered and addressed.
- Capital increases require formalities (eg, notarial deeds, commercial register filings), which can delay closings if not properly planned.
- Convertible loans require shareholder approval (or undertakings) for conversion into equity; lack thereof may render conversion rights difficult to enforce.
- Swiss law may require wet-ink or qualified electronic signatures for certain documents – standard e-signatures (eg, DocuSign) are not sufficient in certain cases (eg, for share transfers via assignment or filings with the commercial register).

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