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MARKET

1. Please describe briefly the venture capital market in your jurisdiction, in particular:

- **How it is distinguished from private equity.**
- **The sources from which early stage companies obtain funding.**
- **The types of companies that attract venture capital investment.**
- **Market trends (for example, levels of investment, the type of companies invested in and where those companies are located).**

Venture capital and private equity

Swiss law and the venture capital (VC) industry do not clearly distinguish between VC and private equity. However, according to the Swiss Private Equity and Corporate Finance Association (SECA), in contrast to the US market, VC includes:

- Early-stage deals (that is, seed, start-up and first-round deals).
- Middle-stage deals (expansion and development deals).
- Later and exit-stage deals.

Private equity is generally interpreted as:

- Buyouts (management buyouts (MBOs), management buy-ins (MBIs), leveraged buyouts (LBOs) and privatisations).
- Turnaround and restructuring financing.

Private equity is also frequently used as the general term for both VC and private equity.

Sources of funding

The European Venture Capital Association (EVCA), which prepares statistics for SECA, does not differentiate funding sources between VC and private equity. Although there are no hard figures, the most active investors for (early) VC investments include family, friends, private individuals (business angels), certain banks and some venture funds. In some industries, such as in biotechnology, medical technology and cleantech, VC funds (including corporate venturing) and business angels are the predominant investors.

Types of companies

In 2009, the most attractive venture portfolio companies were those active in:

- Life sciences (84%).
- Computer and consumer electronics (11%).
- Communications (4%).

In 2009, 69 investee companies were funded in 145 investments. This amounted to about EUR215 million (as at 1 November 2010, US$1 was about EUR0.7) (*EVCA*).

Market trends

Switzerland acts as a European entry point for foreign investors, and plays an important role in the VC market for innovation (notably in high-tech industries). In particular, the two Swiss Federal Institutes of Technology in Zurich and Lausanne, and the Universities of Zurich and Basel, develop many high-tech spin-offs. VC investments rose from EUR157 million in 2008 to EUR215 million in 2009 (*EVCA*). This trend has continued as the financial crisis did not affect the Swiss VC sector to the degree that had been feared. Investments were shifted significantly from communications towards life science and cleantech investee companies.

TAX INCENTIVES

2. What tax incentive schemes exist to encourage investment in venture capital companies? At whom are the schemes directed? What conditions must be met?

Since the (rarely used) Venture Capital Companies Act was abolished on 1 May 2010, Switzerland no longer has a tax scheme specifically intended to encourage investment in VC companies. Nevertheless, venture capital may still benefit from the following general exemptions.

Tax-exempt capital gains

The general tax exemption for capital gains is not specific to the VC industry, but is an important factor for investors in Switzerland. In principle, no capital gains tax is levied on the sale of a private individual's participation in a company where he holds it as a personal (as opposed to business) asset, as long as the transaction does not qualify as an indirect partial liquidation (*indirekte Teilliquidation*). A sale of an individual's participation in a company qualifies as an indirect partial liquidation and is subject to tax if:

- The vendor sells a participation of at least 20% in the target company.

Country Q&A

- The shares were held as private assets but are transferred into the business property of the buyer (typically a company).
- On the date of the transaction, the target company has non-operating assets that could be distributed as dividends.
- Within five years after the transaction, the target company makes a distribution of non-operating assets that were already distributable at the time of the transaction.
- The vendor has co-operated with the buyer in this distribution.

The taxable basis (in proportion of the percentage of the shares sold) corresponds to the smallest amount of the following:

- Sales proceeds (including amounts paid under conditions).
- Distribution.
- Retained earnings available for distribution under company law as of the last balance sheet date preceding the sale.
- Non-operating assets as of the date of sale.

A seller should therefore insist on including a respective tax covenant in the purchase agreement to safeguard the non-taxation of his capital gain.

Limited partnerships (LPs)

Generally, a Swiss LP is considered as transparent for tax purposes, and is therefore not subject to Swiss income or capital taxes. Any income generated by the Swiss LP is directly subject to taxation at the level of the investor. The general partner (GP) is subject to ordinary taxation in Switzerland. However, due to structuring opportunities, it may qualify for a privileged tax status at cantonal level (*see Question 6*).

FUND STRUCTURE

3. From what sources do venture capital funds typically receive funding? Please the ways (if any) in which activity in the current climate differs from what is considered typical.

In 2009, Swiss VC funds were funded by (*EVCA*):

- Pension funds (29.7%).
- Endowments and foundations (14.3%).
- Funds of funds (14.3%).
- Corporate investors (12.2%).

The remainder was split among private individuals, banks, government agencies, family offices and insurance companies.

4. Can the structure of the venture capital fund impact on how investments are made?

The structure of the VC fund does not usually affect how investments are made.

5. Do venture capital funds typically invest with other funds?

In 2009, about 57% of all investments were syndicated. However, only 52% of all portfolio companies received their funds from more than one VC fund (*EVCA*).

FUND FORMATION AND REGULATION

6. What legal structure(s) are most commonly used as vehicles for venture capital funds in your jurisdiction?

Offshore LPs

Most VC funds active in the Swiss market are offshore LPs, regulated under the laws of Guernsey, Jersey, Cayman Islands, Scotland or other Anglo-Saxon jurisdictions. Some VC funds also set up exempt limited liability companies, particularly under Cayman Islands law.

Swiss LPs

The Swiss Federal Act on Collective Investment Schemes 2006 (CISA) introduced the LP into Swiss law, and is similar to those in Anglo-Saxon jurisdictions. The GP must be a Swiss company limited by shares, while the limited partners must be qualified investors, such as:

- Institutional investors.
- High net-worth individuals, that is, people who demonstrate and confirm in writing that they hold net liquid assets exceeding CHF2 million (as at 1 November 2010, US$1 was about CHF0.98) (*EVCA*).
- Individuals who have entered into an asset management agreement with a supervised financial intermediary (*see Question 8*).

The Swiss LP is similar to the offshore LP (in that it is closed-ended with no time limit). However, market participants are reluctant to use Swiss LPs for three reasons:

- **Taxation of carried interest.** In contrast to other jurisdictions, a Swiss LP does not receive tax benefits. However, this disadvantage can be mitigated if it is properly structured and a ruling from the competent tax authority is obtained.
- **Regulation.** Swiss LPs are regulated by the Swiss Financial Market Supervisory Authority (FINMA) (formerly the Swiss Federal Banking Commission (SFBC)) (*see Question 8, Swiss LPs*). FINMA supervision can also be an advantage as domestic pension plans, for example, are required to invest in regulated investment schemes.
- **Uncertainty.** As the Swiss LP was introduced only three years ago, fund managers and qualified investors are reluctant to move away from the proven concept of offshore LPs.

As these issues are addressed, and administration costs decline and transparency increases, it is expected that the Swiss LP will become a more attractive alternative to offshore LPs. For example, a Swiss LP was set up by the Swiss National Bank to take over toxic assets from UBS for more than CHF60 billion in autumn 2008. As of mid-2010, nine Swiss LPs were set up in Switzerland.

Company limited by shares

Some VC funds are structured as companies limited by shares under the Swiss Code of Obligations (SCO), and listed on the SIX Swiss Exchange or the BX Berne eXchange.

7. Do a venture capital fund's promoter, manager and principals require licences?

See *Question 8*.

8. Are venture capital funds regulated as investment companies or otherwise and, if so, what are the consequences? Are there any exemptions?

Offshore LPs

Offshore LPs' main documentation (such as the prospectus, the articles of association or the limited partnership agreement (LPA)) are subject to approval by the FINMA if publicly advertised in or out of Switzerland (*CISA*). This approval is subject to the following:

- The offshore LP must be supervised by a public authority according to the principles of investor protection in the country of the fund management company's principal place of business.
- The organisation, investors' rights and investment policies are similar to those under the CISA.
- The name of the offshore LP is distinctive and not deceptive.
- A licensed representative (*Vertreter*) for the distribution of the LP's documentation and a paying agent for any bank transfers must be nominated for offshore LPs being advertised publicly in or out of Switzerland.

If the partnership interests are only privately advertised, approval is not necessary, provided that (*FINMA Circular 08/8*):

- Private advertising is restricted to qualified investors.
- Normal industry advertising practices are used (for example, one-on-ones, management presentations, business plans or private placement memoranda).

Qualified investors are:

- Supervised financial intermediaries, such as banks, securities dealers or fund management companies.
- Supervised insurance companies.
- Public entities and professionally managed pension funds or companies.
- High net-worth individuals.
- Investors who have entered into a written asset management agreement with a supervised financial intermediary (*see Question 6*).
- Independent asset managers and their investors (under certain conditions).

Swiss LPs

In contrast to privately advertised offshore LPs, Swiss LPs do not enjoy private placement exemptions. This means that partnership agreements (and any amendment to them) always require the consent of FINMA. In addition, a Swiss LP must obtain a FINMA licence and therefore must meet the following criteria:

- Fulfilling the fit and proper test, in that the persons managing the fund must:
  - have a good reputation;
  - be responsible for the proper discharge of their duties;
  - have sufficient knowledge and experience.
- Key qualified investors (that is, persons subscribing, alone or in concert, to more than 10% of the capital or the votes) having a good reputation and not exerting a detrimental influence on the fund.
- Having internal regulations and an appropriate organisation to ensure the fund can carry out its duties under the CISA.
- Offering sufficient financial guarantees.
- Complying with the SECA Code of Conduct for Private Equity Professionals (in some circumstances).

Investment companies limited by shares

Investment companies structured as collective investment schemes are principally governed by the CISA. However, investment companies limited by shares are exempt if either:

- The company is listed on a Swiss stock exchange (that is, the SIX Swiss Exchange or BX Berne eXchange).
- The company does all of the following:
  - only allows qualified investors;
  - has registered shares (not bearer shares);
  - obtains confirmation by the audit company of compliance with these two criteria.

9. How is the relationship between investor and fund governed? What protections do investors typically seek?

Swiss LPs

The relationship between an investor and the fund is mainly regulated by the LPA and the CISA. Important provisions in the LPA include the:

- Total capital commitment.
- Fund's duration.
- Conditions for the admission of new and withdrawal of existing investors.

- Fund's management's participation.
- Reporting.
- Repayment of capital and distribution of the proceeds (hurdle rates, high-water mark and/or clawback provisions).
- Management fees.
- Voting quorums.
- Co-investments.
- Establishment of committees.

Investment companies limited by shares

As the investor becomes a shareholder of the investment company, their relationship is regulated by the SCO. If the investment company is listed on a Swiss stock exchange, the protection investors can seek is limited. In privately held investment companies with only qualified investors as shareholders, the investors typically seek the same or similar protection as in the Swiss LP (*see above, Swiss LPs*).

10. What are the most common investment objectives of venture capital funds?

VC funds have an average lifespan of about eight to ten years (plus options to extend once or twice for a further one or two years). They look for an average internal rate of return (IRR) of between 15% and 40% per year. It generally takes the fund about four to seven years to exit its investment.

11. Are there any recent or proposed regulatory changes affecting the venture capital industry?

There are Swiss government bills under discussion or expected to be discussed soon in Parliament, such as amendments to:

- Company law (including reinforcing corporate governance, more flexibility for capital changes and ease of holding shareholders' meetings).
- Tax law (for example, abolition of issuance stamp tax, nationwide regulation of employee share (option) plans and facilitation of the value added tax (VAT) system).
- Restructuring law.

From 1 January 2011, the capital contribution principle applies in Swiss tax law. The new rule foresees the exemption from Swiss income and withholding tax on (dividend) distributions from capital contribution reserves.

INVESTOR PROTECTION

12. What form of investment do venture capital funds take?

The majority of VC investments are made by subscribing (or buying) equity in a portfolio company. Some VCs also mix equity and loan investments to give the management sweat equity (that is, shares in compensation for managers' efforts in starting up the company). However, apart from some market participants who focus solely on debt financing, loans are rarely used, although mezzanine structures are gradually becoming more popular.

13. How do venture capital funds value an investee company?

VC funds value investee companies in many different ways, including by:

- Discounted cash flows (DCF) or earnings of investee companies.
- DCF from the investments.
- Option pricing.
- Publicly available valuations of comparable companies.
- Business angels' various rules developed with experience over time.

Generally, the earlier that VC funds value investee companies, the more they tend to use expertise and instinct, rather than specific financial valuation methods.

14. What investigations will venture capital funds carry out on potential investee companies?

Each VC fund follows its own investigation process, although these can generally be divided into three steps:

- VC funds first screen potential investee companies. They search for enterprises that fit into their investment strategy using one-on-ones, management presentations, business plans, or information and private placement memoranda.
- After the initial screening process, the VC fund usually conducts high-level due diligence.
- If the findings are satisfactory, the VC fund then conducts thorough (including legal, financial, business, tax, environment and/or IP) due diligence.

15. What are the principal legal documents used in a venture capital transaction?

The investment process usually starts with a term sheet and a non-disclosure agreement (although a non-disclosure agreement is not always accepted by some investors who argue that they are bound to confidentiality by the Code of Conduct for Private Equity Professionals, issued by SECA). Occasionally, some VC funds insist on an exclusivity agreement (which sometimes forms part of the term sheet).

The main document in the financing round is the investment agreement. The agreement regulates the subscription (or the sale and purchase) of the shares by the investor(s), and the representations and warranties made by the existing shareholders and managers.

A shareholder agreement gives the details of the share subscription, and generally requires an amendment to the articles of association, and an amendment to the organisational rules of the investee company. The amended documents are usually annexed to the shareholder agreement, as they are crucial for investors from a corporate governance point of view (*see Question 19*).

Other important documents can include:

- New employment agreements for the senior management (*see Question 26*).
- Loan agreements between the company and the investor(s).
- Escrow agreements between the shareholders of the investee company to safeguard the selling restrictions provision in the shareholders' agreement (*see Question 20*).

16. What form of contractual protection does an investor receive on its investment in a company?

Generally, investors look for the following protections:

- Preferred shares (*see Question 17*).
- Staggered financing (that is, financing being subject to certain milestones being reached).
- Veto or control rights in shareholders and/or board meetings (*see Question 19*).
- Information rights, including board representation (*see Question 19*).
- Restrictions on the transfer of shares (*see Question 20*).
- Anti-dilution protection (*see Question 22*).
- Vesting and bad-leaver provisions (*see Question 26*).
- Exit rights (*see Question 29*).
- Conditions to closing (such as shareholder meetings, signing of new employment agreements and assignment of intellectual property rights).
- Representations and warranties from existing shareholders or managers.
- Indemnities in relation to damages, liabilities and expenses incurred as a result of a material breach of any representation, warranty or covenant.
- Key personnel insurance or directors and officers' insurance for board members.
- Payment of expenses (typically the investee company covers the (capped) expenses of the investors for their due diligence).

17. What form of equity interest does a fund commonly take (for example, preferred or ordinary shares)?

In most financing rounds, investors take preferred shares. However, in some cases investors (in particular business angels) also subscribe for ordinary shares. Sometimes the investee company does not formally issue preferred shares, but grants the VC preferred rights in the shareholder agreement.

18. What rights does a fund have in its capacity as a holder of preferred shares (for example, what rights to capital and/or to interest)?

Preferred shares can confer rights in relation to:

- Dividends.
- Voting.
- Liquidation proceeds.
- Subscription.
- Any other economic rights.

In addition, the holders of preferred shares are entitled to nominate at least one board representative on their behalf (*SCO*) (*see Question 19*).

19. What rights are commonly used to give a fund a level of management control over the activities of an investee company (for example, board representation, certain acts of the company subject to investor consent)?

Investors usually exercise their right to nominate at least one board representative (or an observer entitled to attend board meetings for information reasons without officially forming part of the board). This nominee may have a wide range of veto rights over important actions of the company.

Investors do not have a direct influence on the management's conduct of daily business. The board of directors is responsible for recruiting, instructing, supervising and dismissing staff.

Investors have the right to extensive information from the company, including financial statements on a monthly or quarterly basis, and access to budgets. Each board member has a right to examine the corporate books and is entitled to engage professional advisers to do so.

20. What restrictions on the transfer of shares by shareholders are commonly contained in the investment documentation?

Generally, the transfer of the investee company's shares is restricted for the duration of the shareholder agreement (which cannot last for an indefinite period). Common exclusions from this strict provision include:

- Transfers due to the execution of any right of first refusal (*Vorhandrecht*).
- Pre-emption rights (*Vorkaufsrecht*).
- Call or put rights (*Kaufs-/Verkaufsrecht*), for example, in case of death, bankruptcy or permanent decrease in mental capacity (where the enforcement of the provision is contested).

In addition, intra-group transfers (from one fund to another, or transfers within the immediate family of a shareholder) are generally exempt from the transfer restrictions, provided that a new party to the agreement agrees to adhere to it.

Another potential transfer restriction is that, where a non-listed investee company's articles of association allow it, the board of directors (or the shareholders' meeting) can (*SCO*):

- Decline a buyer, for good cause.
- Offer to take over the shares being bought, at their fair value, for the account of the company, that of other shareholders or that of third parties.

Good cause to decline a buyer includes where aspects of the purchasing shareholders would compromise the investee company's purpose or economic independence. The investee company can refuse registration in the share ledger, if the buyer does not expressly declare that he has acquired the shares in his own name and for his own account. The legal title to the shares and connected rights remains with the seller if the required consent for the share transfer is not granted.

21. What protections do the investors, as minority shareholders, have in relation to an exit by way of sale of the company (for example, drag-along and tag-along rights)?

There are few protection rights granted by law. Therefore, shareholder agreements regularly provide customary drag- and tag-along rights for investors. Preferred shares often confer particular exit rights to the investors. For example, the investment amount (plus interest) must be paid back to investors, and the remainder of the net sales proceeds must be distributed either among all shareholders, including the investors (double-dip), or among all other shareholders other than the investors.

22. Do investors typically require pre-emption rights in relation to any further issues of shares by an investee company?

Investors do not typically require pre-emption rights, as each shareholder has a subscription right that can only be withdrawn for good cause. Good cause can include, in particular, the takeover of (parts of) an enterprise or share participations by employees. However, no one can be advantaged or disadvantaged by the withdrawal of subscription rights without proper reasons being given. Normally, the investors' board representative (*see Question 19*) must consent to a withdrawal of subscription rights.

If the issue price per share equals, or is lower than the price paid by the initial investor(s) (a down round), it is common to revert to anti-dilution provisions (*see Question 16*). This means that the initial investor(s) must be put into a position as if they had invested at the same issue price as the new investor(s), either fully (full ratchet) or partially (weighted average). Occasionally, such adjustment rights are subject to a co-investment in the new financing round (pay-to-play).

23. What consents are required to approve the investment documentation?

It is sufficient that all parties sign the investment and shareholders' agreements and other documents (*see Question 15*). However, it is common for parties to require either:

- Excerpts from the relevant commercial register (for Swiss and some European entities).
- Legal opinions as to the signatories' power to represent an entity (for US entities, in particular).

A shareholder meeting must approve any change to the articles of association (*see Question 15*) in the presence of a notary.

Where the investee company is a party to an agreement, obtaining a company board resolution from them approving the agreement is recommended.

24. Who covers the costs of the venture capital funds?

Typically, the costs of the VC fund and its advisers (which are often capped) are paid by the investee company.

FOUNDER AND EMPLOYEE INCENTIVISATION

25. In what ways are founders and employees incentivised (for example, through the grant of shares, options or otherwise)? What are the resulting tax considerations?

There are three main categories of executive compensation plans, depending on the degree of participation in the company:

- **Employee share plans (ESP).** In these, the employee immediately receives ownership over the shares. Unrestricted and restricted (vested) shares are subject to income tax at grant. The tax rate varies considerably between the different cantons and ranges between 10% and 40%. The taxable amount is generally calculated as the difference between the shares' fair market value and the price determined on the actual purchase date. For vested shares, a flat rate discount of 6% (on a gross-up calculation basis) for each full vesting year is made for the determination of the shares' fair market value. The shares are also subject to wealth tax (about 0.6% per year). The sale of shares generally qualifies as a tax-free capital gain (*see Question 2*).
- **Employee share option plans (ESOP).** In ESOPs, the employee receives the right to acquire a certain number of shares in the future, under certain conditions. Under recent developments, restricted options are usually taxed at the time of irrevocable acquisition. Therefore, for numerous standard ESOPs, options are subject to taxation at exercise. The taxable amount is the profit resulting from the exercise of the option, that is, generally, the difference between the fair market value and the purchase price of the option, if any. For unrestricted options (that is, the transfer and the receipt of the full ownership and title of the options fall together), the difference between the option's fair market value and the purchase price, if any, is taxed at the date of grant of the option. The tax rate is the same as for granted shares (*see above, Employee share plans (ESP)*). The options are subject to wealth tax from the moment of taxation, that is, in most cases from the moment of exercise (depending on the qualification of the ESOP). The sale of options (or the underlying shares) generally qualifies as a tax-free capital gain (*see Question 2*).

- **Phantom share option plans (PSOP).** In PSOPs, the employee receives a cash bonus based on the increase of a defined share (generally the difference between the market value of the shares and the fictional exercise price). Accordingly, phantom shares are used as a calculation basis only. Usually, phantom shares are subject to tax at exercise, not at grant or vesting, as they are not qualified as real option plans for tax purposes and are therefore treated as straightforward cash bonus payments. Income from PSOPs is subject to ordinary taxation.

26. What protections do the investors typically seek to ensure the long-term commitment of the founders to the venture (for example, good leaver/bad leaver provisions and restrictive covenants)?

In addition to incentives (*see Question 25*), VC funds usually enter into employment agreements with key employees for a certain minimum duration (for example, two years) and insert non-compete or non-solicitation provisions in the shareholder and employment agreements. However, to be enforceable, non-compete clauses must be limited:

- In time (typically for less than three years).
- Geographically (for example, to German-speaking Europe).
- In content (for example, and in most cases, to the company's activities).

Good and bad leaver provisions are also standard in shareholders' agreements.

EXITS

27. What forms of exit are typically used to realise a venture capital fund's investment in an unsuccessful company? What are the relative advantages and disadvantages of each?

VC funds usually stop further financing of an unsuccessful company that does not grow as predicted (although, they may keep the participation in their portfolio, known as the living dead).

Another option for disposing of an unsuccessful company is a redemption right, that is, a put option to sell the shares either to other shareholders or to the investee company for a given price. If so, the company is obliged to buy back shares only if:

- It has sufficient freely available cash to do so.
- The buyback does not exceed 10% (in some cases up to 20%) of all outstanding shares.
- A provision in the amount of the purchase price is made in the books of the company.

The most common way of dealing with an unsuccessful company is liquidation, provided there is still enough money available to fully cover all creditors. The shareholder meeting must confirm agreement to liquidation, and the process lasts months, if not years. The liquidators sell all assets, pay all liabilities and distribute the proceeds, if any, to the shareholders, pro rata to their shareholding or according to any preferred rights. The company (and investors) have more control over the liquidation process compared to a bankruptcy procedure.

Ultimately, if the investee company is over-indebted (that is, the amount of all liabilities exceeds the amount of all assets) or if the company turns out to be illiquid, the board of directors must file for bankruptcy. The receiver then takes over, sells the company assets and pays all liabilities. Any remainder is distributed according to a sophisticated system with three different types of creditor classes. The company (and the investors) lose control over the process of winding up the company, and the filing for bankruptcy can risk a VC fund's reputation.

28. What forms of exit are typically used to realise a venture capital fund's investment in a successful company (for example, trade sale, initial public offering and secondary buyout)? What are the relative advantages and disadvantages of each?

VC funds usually exit their successful investments either by an initial public offering (IPO) or by a trade sale. Secondary buyouts occur occasionally.

An IPO is advantageous for a number of reasons, including that:

- Selling shareholders get a higher price.
- The company increases its visibility and credibility in the market.
- Employees can be bound to the company with marketable (although vested) shares.
- The company receives a second currency (that is, shares) for add-on acquisitions.
- Future financing can be obtained in the capital market.

The drawbacks of IPOs are that:

- Lock-up provisions between the issuing bank(s) and the core shareholders for a period (normally about six to 18 months).
- The transaction costs are relatively high (about 5% to 9% of the funds raised).
- The process draws public attention.
- The listing process uses a lot of resources of both the company and the VC funds over a considerable time period.
- The company becomes regulated and may be forced to staff itself with experts in communications, legal issues and/or general administration.

After the financial crisis and global recession, Swiss IPOs are again viable (with two listings in the first half 2010), and about six IPOs are expected to take place before the end of 2010.

The alternative exit route is a trade sale. Trade sales have the advantages of:

- A fast disposal process, typically with lower transaction costs.

- Selling shareholders instantly get the purchase price (save any escrow amount).
- The sale can be confidential.
- The company may get further strategic options.

The downside of a trade sale can be the loss of the company's autonomy.

29. How can this exit strategy be built into the investment?

Standard shareholder agreements contain IPO rights for the benefit of the investors. Such IPO rights entitle the investors to force all other shareholders (or the company) to approve a listing of the company's shares on a recognised stock exchange and to accept the bank's conditions (for example, lock-up agreements). Co-sell rights for an IPO at a Swiss stock exchange (piggy-back rights) are not usual, as all classes of shares are typically converted into common shares before an IPO, and all shares of the same class must be listed under the listing rules.

VC funds make use of drag-along rights to ensure that all shareholders must co-sell if the VC fund (or a certain percentage of shareholders) wishes to sell its shares to an independent third party.

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Recent transactions

- Representing Peach Property Group AG in its IPO on the SIX Swiss Exchange.
- Advising Vienna-based venture capital group Gamma Capital Partners in its first round investment in Icomasoft, a Swiss pioneer of agent-less software solutions.
- Advising EGL and Statoil, two major European energy suppliers, in a joint venture regarding Trans Adriatic Pipeline, a gas pipeline project between Greece and Italy.