



Introduction to

# AIJA

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**May Half-Year Conference**

**Riga, 17-20 May 2017**



# **Investors at the gate: Do's and Don'ts for start-ups when negotiating term sheets with investors**

**18 May 2017, Riga (HYC)**

## **Moderator:**

Karim Maizar, Kellerhals Carrard (Switzerland)

## **Speakers:**

Milena Prisco, Studio Previti (Italy)

Pablo Vinageras, Garrigues (Spain)

Pieter Van den Broeck, Monard Law (Belgium)



## Term Sheets – market standards?

- Limited survey undertaken amongst AIJA lawyers in certain jurisdictions
- Questions asked:
  - Are there any standard documents/contracts made available?
  - By whom?
  - Are they effectively used?
  - Other relevant remarks.
- Jurisdictions for which we received input: Switzerland, United Kingdom, Sweden, the Netherlands, Belgium, Estonia, China and last but not least Latvia.

## Term Sheets – market standards?

- Standard documentation either by local Venture Capital Association or private initiative of industry-linked people
- Focus on a few countries
  - UK (input Steve Barnett): <https://www.bvca.co.uk/Policy/Tax-Legal-and-Regulatory/Industry-guidance-standardised-documents/Model-documents-for-early-stage-investments>
  - Switzerland (input Karim Maizar): <https://www.seca.ch/Templates/Templates/VC-Model-Documentation.aspx>
  - Sweden (input Mattias Larsson): [Startupdocs.se](http://Startupdocs.se)
  - The Netherlands (input Maurits Bos – Sjoerd Mol): [www.capitalwaters.nl](http://www.capitalwaters.nl)

## Term Sheets – market standards?

- Focus on a few countries (continued)
  - Estonia (input Kadri Kallas / Toomas Prangli)
  - Latvia (Indriķis Liepa / Kaspars Fridenbergs)
  - China (input Minglei Wu)
  - Belgium (input Pieter Van den Broeck)
- And what about your country?
  - Any market standard documentation made available?
  - By whom? VC Association – private initiative?
  - Freely available?
  - Widely spread and effectively used by both sides (investors and founders)?

## Term Sheets

- How important are they from a practical point of view?
- Are there any market standards (e.g. from your local venture capital association)?
- Who usually submits the first draft (startups or investors)?
- Which are the most important investment protection requests from investors in your markets?
- How does the valuation affect deal terms?



## Do's and Dont's for Startups

- A VC requests a 2x liquidation preference (participating) – how do you react as the counsel to the founders?
- A VC requests a full ratchet anti-dilution protection – how do you react as the counsel to the founders?
- A VC requests an ESOP pool of 25% to be implemented pre-money – how do you react as the counsel to the founders?
- A VC requests a drag-along right despite owning only 20% post-money - how do you react as the counsel to the founders?
- A VC requests two seats on the board and two board observers - how do you react as the counsel to the founders?



## Do's and Dont's for Startups (cont'd)

- A VC requests veto rights for his board members covering, inter alia, all company hires, ESOP allocations and capital increases - how do you react as the counsel to the founders?
- A VC requests a founders vesting over 100% of the shares with a 1 year cliff and 4 years linear vesting - how do you react as the counsel to the founders?
- A startup requests a pay-to-play clause (i.e. a clause saying that investors lose certain rights, e.g. anti-dilution rights, if they do not participate in subsequent financing rounds) – how do you react as counsel to the VC?





## The Role of Lawyers

- When are they usually retained?
- Whom do they represent if they are on the side of the startup (the founders, the startup company, both)?
- Do they usually participate in the negotiations or are they more in the background (coaching the founders)?
- Where can a lawyer add most value? Where can a lawyer make the biggest mistakes?

# Thank you !

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