

Legal structuring of financing rounds

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A Swiss biotech start-up is usually organised as a company limited by shares under the Code of Obligations. Venture investors typically subscribe to preference shares, which the Code permits under Article 654 and which can confer preferential rights to dividends and liquidation proceeds.¹ The liquidation preference ensures that investors recover their investment, often with a multiple, before ordinary shareholders receive anything in a sale of the company. Because Swiss corporate law limits what can be enforced through the articles of association alone, the main terms of the investment are usually laid down in an investment agreement and a shareholders' agreement. These contracts include anti-dilution protection, rights of first refusal, drag-along and tag-along clauses, information rights and seats on the board of directors.

Model documents published by the Swiss Private Equity & Corporate Finance Association have standardised much of this practice.² The corporate law reform that entered into force in 2023 brought several improvements for start-ups. The capital band allows the board of directors to increase or reduce the share capital within a range authorised by the general meeting for up to five years. The reform also permits share capital denominated in a foreign currency and general meetings held electronically.³ Conditional capital, under which shares are issued when employees or creditors exercise option or conversion rights, remains the usual instrument for employee participation plans and convertible loans.

The federal issuance stamp duty of one per cent on equity contributions above an exempt amount of one million francs is a cost of financing for growing start-ups.⁴ Its abolition was rejected by the voters in a referendum in 2022. Contributions that are recorded as capital contribution reserves can later be repaid without withholding tax, which makes the precise accounting of financing rounds important for later distributions.

1 Notes

1. Art. 654 and 656 of the Swiss Code of Obligations on preference shares (Vorzugsaktien), as revised by the corporate law reform in force since 1 January 2023. To be verified. ↩
2. SECA model documentation for venture capital financing (term sheet, investment agreement, shareholders' agreement, articles of association). To be verified. ↩
3. Corporate law reform of 19 June 2020, in force 1 January 2023, in particular Art. 653s ff. CO on the capital band and Art. 621 para. 2 CO on share capital in foreign currency. To be verified. ↩
4. Federal Act on Stamp Duties (StG), Art. 5 and 6, on the issuance stamp duty of one per cent with an exemption for the first CHF 1 million of capital contributions; the proposed abolition of the issuance stamp duty was rejected in the referendum of 13 February 2022. To be verified. ↩

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