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Venture capital / private equity – investors vs founders: Who is the boss?

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Introduction

- Main determining features
 - Corporate Governance
 - Different classes of shares
 - New financing rounds
 - Exit: Initiating, Leading, Implementing
- Two main scenarios:
 - VC / PE as minority shareholder
 - VC / PE as majority shareholder

Corporate Governance (examples) (I)

- Veto rights
 - Important shareholder matters and board matters (control-related rights on shareholder and board level)
 - Implementation of different classes of shares
 - Reflection in board regulations
- Right to appoint
 - Contractual right to appoint a representative to the board
 - If not formally represented on the board = observer

Corporate Governance (examples) (II)

- Good leaver vs bad leaver concept
 - When a shareholding manager leaves, remaining shareholders will not want him/her to continue to be involved
 - Determination what price should be paid for the shares (good leaver: market value; bad leaver: less)



Management and Consulting Fees

- Conflicting interests of Investors and founders
- Corporate governance issues (links to board remuneration)
- Tax issues (market value)
- May help investor block other advisors / potential new investors

Different Classes of Shares

- Determined by jurisdiction and corporate form
- Financial advantages:
 - Liquidation preference
 - Pricing for subsequent investor rounds
 - Dividend preference
- Corporate advantages:
 - Restrict founders/executive sale
 - Ease granting security over shares
- Other advantages:
 - Right to appoint board members
 - May add protection in addition to SHA

New Financing Rounds / Dilution (I)

- Two scenarios:
 - Issuance of shares to existing shareholders
 - Issuance of shares to new shareholders
- Issuance of shares to existing shareholders
 - Shareholder resolution
 - Simple majority / qualified majority / veto rights
 - (Pro rata) pre-emption right
 - Pay or dilute

New Financing Rounds / Dilution (II)

- Issuance of shares to new shareholders
 - Via issuance of shares (see above)
 - Adherence to the SHA
 - Mandatory financing by shareholders
 - External financing from banks



Exit: Initiating, Leading, Implementing

- Most investors will invest solely to ultimately exit from such investment
- Preferred exit vs qualified exit
- Liquidation preference: 'waterfall'
- Obligation for founders/directors to stay on
- Tag along / drag along rights
- Preference for IPO?
- Market standard stand-off / lock-up in IPO
- Registration rights post-IPO



Thank you for our attention!

Questions?



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