



UIA 6th Winter Seminar

Nuts and Bolts of Shareholders Agreements

Shareholders Agreements in High Growth Companies in Switzerland

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Introduction (1/2)

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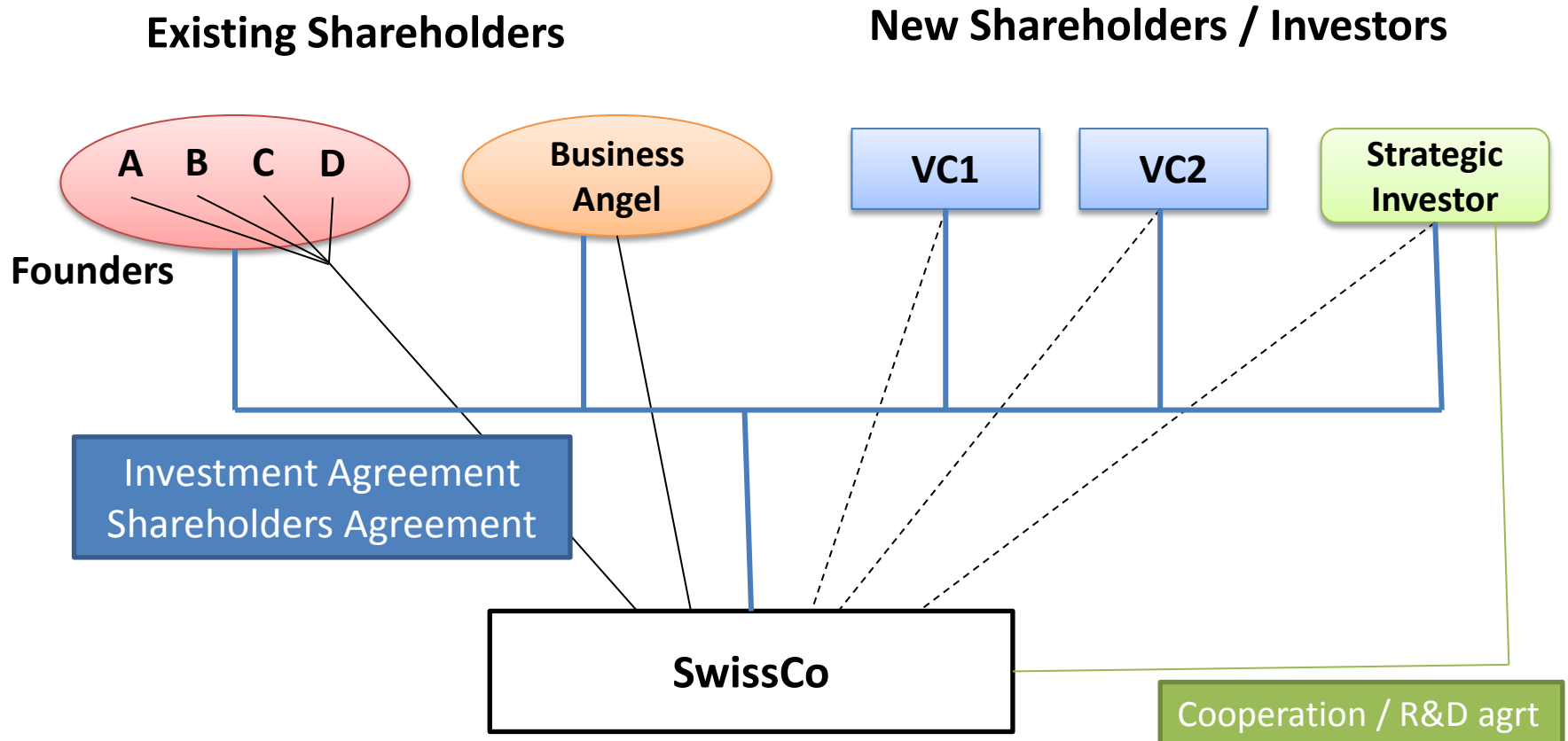
1. Introduction
2. Case Study – Setting the Stage
3. Nuts and Bolts in Shareholders Agreements
4. Discussion

Introduction (2/2)

- Starting point – the relevant facts
- Some principal topics in SHA
 1. Purpose
 2. Governance matters, control, minority protection
 3. Different shareholders and interests, different contributions and a matching capital structure
 4. Conduct of business
 5. Further financing
 6. Exits, share transfers
 7. Enforcement and control over shares
 8. Term, termination
 9. Miscellaneous (e.g., governing law, dispute resolution)

... and there are many more.

Case Study – The Facts (1/2)



Case Study – The Facts (2/2)

- Swiss start-up company (SwissCo)
 - Active in business with high growth potential
 - Legal form: Swiss share corporation (*Aktiengesellschaft*)
 - Current shareholders: 4 founders, 1 business angel
- SwissCo is seeking additional financing
- Negotiations with potential investors
 - 2 financial investors (VCs), 1 strategic investor
 - Work on term sheet for series A financing round: issuance of preferred shares to investors
- Interests of the parties

Case Study - VC-Transaction/SHA (1/2)

- Structure of series A financing round
 - Capital increase of SwissCo (issuance of new shares)
 - Investment and subscription agreement (IA)
 - Shareholders agreement (SHA)
 - Corporate documents:
 - articles of incorporation (*Statuten*) and
 - organization by-laws (*Organisationsreglement*)

- Term sheet and related issues
 - Business case and valuation
 - Due diligence (e.g., business, financial, IP, legal and tax DD)
 - Term sheet

Case Study – VC-Transaction/SHA (2/2)

IA – key aspects:

- a) Terms of investment
- b) Obligations of parties:
 - Existing shareholders: implementation of capital increase, waiver of preferential subscription rights; and
 - Investors: subscription and payment of subscription amount for new shares
- c) Reps & warranties, indemnification/remedies
- d) Conduct of business until closing
- e) Closing, incl. conditions precedent
- f) Gov. law, dispute resolution

SHA – key aspects:

- a) Governance matters:
 - Articles, organization by-laws
 - Control, minority protection
 - Composition of board of directors and executive management
 - Information rights
- b) Business related matters
- c) Further financing
- d) Capital structure, rights of shareholders (e.g., preferences)
- e) Exit provisions, share transfers
- f) Enforcement (e.g., liquidated damages)
- g) Term, termination
- h) Non-compete/non-solicitation
- i) Gov. law, dispute resolution

Nuts and Bolts in SHA (1/4)

- General provisions
 - General undertakings of shareholders
 - Exercise of voting and other rights in line with SHA, e.g.,
 - in shareholders meeting(s)
 - through representative(s) on board of directors

- Control, governance matters
 - Structure of articles and organization by-laws
 - Minority protection (quorum for important resolutions, in SHA, articles and organization by-laws)
 - Board of directors (nomination of members, constitution, committees, competences of board and executive management, etc.)

- Information rights of shareholders

Nuts and Bolts in SHA (2/4)

- Conduct of business, financial matters
 - Use of proceeds
 - Business plan
 - Transactions with related parties
 - Dividend policy
 - Auditor, accounts, financial reporting to shareholders
 - Principles of remuneration of management

- Further financing
 - Additional commitments of shareholders (if any)
 - Further financing rounds
 - Preferential subscription rights

Nuts and Bolts in SHA (3/4)

- Shareholder and capital structure
 - Common shares vs. preferred shares
 - Conditional share capital (e.g., for stock options)

- Preferences of preferred shares
 - Corporate basis
 - Rights defined in articles
 - *Examples:* Dividends, liquidation and subscription preferences
 - Contractual basis
 - Creation in SHA
 - *Examples:* Preference in sales proceeds, anti-dilution protection
 - Conversion of preferred into common shares

Nuts and Bolts in SHA (4/4)

- Exits, transfer of shares
 - Possible exits: e.g., trade sale, secondary sale, IPO
 - Clauses on sale and transfer of shares
 - Transfer restrictions and permitted transfers
 - Rights of first offer/first refusal
 - Drag-along and tag-along rights
 - Call and put options
 - Instruments for protecting transfer restrictions
 - Transfer restrictions in articles (*Vinkulierung*)
 - Issuance of physical shares / share certificates
 - Escrow arrangements
 - Advance assignment of shares?

- Other issues (e.g., liquidated damages, term and termination)

Discussion

- Level of comfort needed (e.g., by Founders, VCs)?
- Required terms (*sine qua non*) in SHA (e.g., for Founders, VCs, Strategic Investor)?
- Benefits and risks of a detailed SHA?

Contact

Thank you for your attention

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