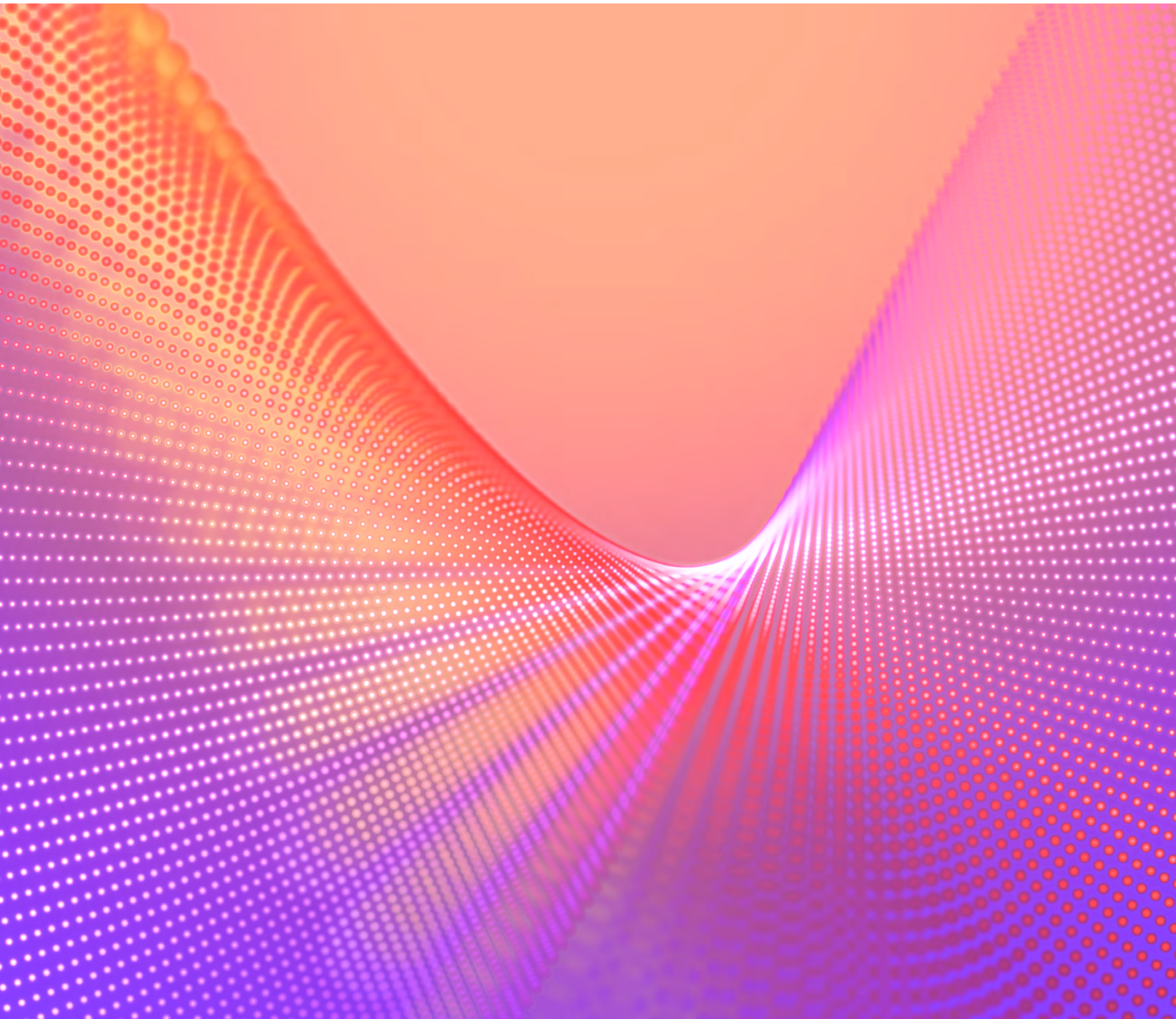
CUATRECASAS

Corporate Venture Capital: key points

April 2025



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Introduction

In an increasingly competitive and dynamic business environment, companies are constantly seeking new ways to innovate and grow. The corporate venture capital (CVC) model is a hybrid solution that combines the strength and experience of companies with the agility and innovation capacity of startups. The aim, therefore, is not only to achieve a financial return, but also a strategic return, allowing companies to access emerging technologies and new products, and create disruptive business models that can be crucial for their operations and long-term strategies.

This combination has made CVC become an increasingly prominent mechanism in recent years, which has encouraged many companies to diversify their business and invest in emerging companies.

This document provides a legal perspective on how companies can leverage CVC to drive their innovation and strategic growth, highlighting best practices and current trends in this field. It explores the objectives and main benefits of CVC; analyzes the most common investment structures and operations in the Spanish market; and, finally, it details the corporate governance issues, transfer restrictions, and exit clauses that should be considered when carrying out these types of operations.

Diana Rivera

Our venture capital practice

Team offering funds and investors a comprehensive and specialized service for VC transactions

We regularly advise national and international VC funds and investors, including corporate ventures, on all aspects of their activity: ranging from their early development stages incorporating the fund or vehicle, regulatory compliance, participation in financing rounds in startups and companies in all stages, to sales processes and exits.

Our team regularly advises on recapitalization transactions and divestments. We focus on designing and implementing innovative strategies and structures that are optimum and efficient from a tax and commercial perspective.

Through our VC team, made up of lawyers from all specialties (including corporate and commercial, intellectual and industrial property, data protection, labor and tax), we offer a wide range of services in the entrepreneurial ecosystem, understanding entrepreneurs' day-to-day challenges and sharing their business vision.

Market recognition

Mergermarket

Leading law firm by deal volume in private equity and venture capital transactions in Spain and Portugal (2024).

Legal500

Leading firm – Tier 1 in **venture capital**

Chambers AND PARTNERS

Highly recommended firm and **top ranked lawyer (Band 1)** in **venture capital**

"Very close and understands clients' needs."

Chambers, 2025

"They have lawyers with the technical skills and exposure to the most important deals to get a very granular view on the VC market standard in any given moment."

Chambers, 2024

Cuatrecasas at a glance

TALENT

Our multidisciplinary and diverse team is made up of over 1,300 lawyers and 29 nationalities. Our people are our strength and we are committed to inclusion and equality.

EXPERIENCE

We have a sectoral approach focused on each type of business. With extensive knowledge and experience, we offer our clients the most sophisticated advice, covering ongoing and transactional matters.

SPECIALIZATION

We offer optimal value thanks to our highly specialized teams made up of lawyers from different practices. Their cross-sectoral approach to our clients' business enables us to offer efficient solutions.

KNOWLEDGE AND INNOVATION

We promote an innovation culture applied to legal activity that combines continuous training of our team and adaptation to the latest technological resources, including artificial intelligence.

RESPONSIBLE BUSINESS

We incorporate environmental, social, and governance ("ESG") criteria into our service provision and internal management. See our Corporate Sustainability Report and the main parameters we use to measure our ESG performance.

FT INNOVATIVE LAWYERS EUROPE 2023 WINNER

Most Innovative Law Firm in Continental Europe, 2023

Chambers AND PARTNERS · IFLR1000 · LATIN LAWYER 250 · Legal500

Recommended in the main areas of law in Europe and Latin America

THE LAWYER

Highly commended in Iberia, 2024

Law Firm of the Year in Europe and Iberia, 2022

LACCA

Fifth most popular international law firm in Latin America, 2023

GOLD | Top 5% ecovadis Sustainability Rating FEB 2025

Gold Rating – Ecovadis 2025

bsi. ISO/IEC 27001 Information Security Management

ISO 27001 certification for our information security management systems ("ISMS")

1

Aim of corporate venturing

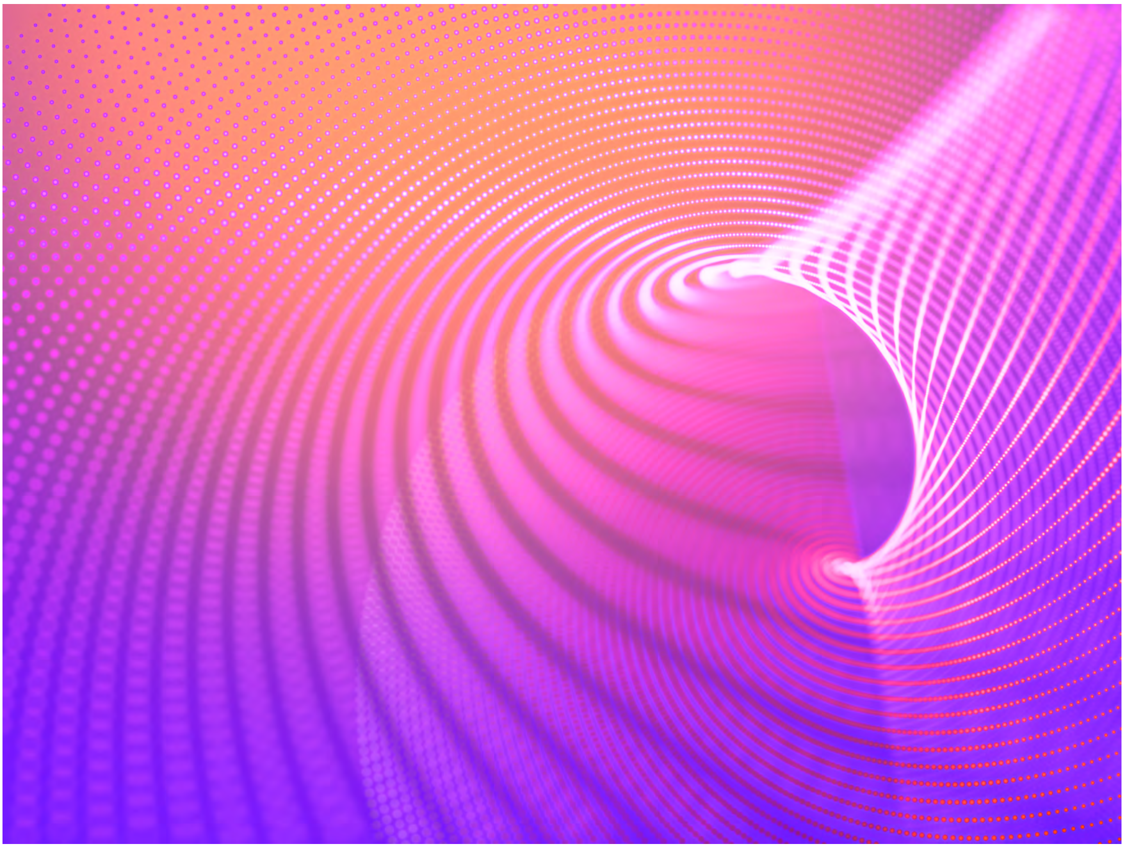
Seeking a financial and strategic return in a win-win environment

Corporate venture capital ("**CVC**") is a hybrid venture model in which corporations contribute—together with their investment capital—their extensive experience and consolidated knowledge, and startups contribute their business model and innovation capacity.

Corporations that invest in startups seek to achieve a strategic return as well as a financial return. Through these investments, they seek access to new technologies, products and business models that will benefit their core operations or long-term strategies.

Therefore, it is common to find corporate investments in startups that, despite not being directly related to their core business at the time of the investment, may be strategically relevant to them.

Besides the capital investment, corporations provide startups with access to the market and provides assistance in the form of resources, infrastructure, network of contacts and production capacity, thus taking a markedly different approach compared with purely financial investors.



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Main benefits of CVC for corporations

Access to innovation and new technologies, project streamlining, business diversification, promotion of business culture and improvement of corporate image

The strategic benefits of CVC for corporations are very diverse and will depend on each specific case. We highlight the most significant benefits below:

- **Access to innovation, new technologies and disruptive business models:** startups are usually at the forefront of innovation and technological development. CVC allows corporations to access these emerging technologies without the need to develop them internally, which tends to be more costly, both in terms of resources and time. Moreover, the internal procedures to drive these initiatives within the corporation itself could restrict their viability in practice.

  These investments provide a competitive differentiator by allowing corporations to identify and capitalize on emerging trends, recruit young talent, and identify opportunities more quickly.

- **Acceleration and greater viability of initiatives and projects:** the internal bureaucracy of some corporations can hinder the development of certain initiatives or projects, especially when the schedule is tight or it is necessary to take advantage of market momentum. On the other hand, the pace of development of most startups, due to their efficient structure and way of working, allows them to adapt to competitive schedules with moderate risk for corporations.

- **Diversification of investment portfolio:** CVC can help companies mitigate the risks associated with depending on a single sector, project or product line.

- **Fostering corporate culture:** collaborating with startups can foster a more entrepreneurial, innovative and agile mindset in the company's corporate culture, allowing it to optimize processes and improve its ability to adapt to change.

- **Improved corporate image:** investing in startups can help convey a public image of commitment to innovation and sustainable economic development.

As well as the non-financial benefits for each corporation, the prospect of a potentially successful investment adds further incentive to the operation and its materialization helps sustain the corporation’s interest in engaging in CVC.

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Increasing tendency to invest through the creation of an *ad hoc* fund

Investment structure

Investment can be made in many ways, the most common being the following:

- **Direct investment** by the corporation in the share capital of the startup, usually by acquiring a minority stake through a capital increase.
- **Creating an investment fund** of which the corporation is the sole limited partner ("**LP**") or, at least, the anchor or reference investor along with other investors. This approach is currently on the rise.
- **Investing in an existing venture capital ("VC") fund**, the investment policy of which is aligned with the corporation's objectives (e.g., matching the company's sector). This option, which used to be much less common, is becoming more popular, especially with fund managers that are specialized or have an outstanding track record in the corporation's target sector.

Finally, a much more common practice is to pinpoint the opportunity (the corporation identifies a technology or product that is strategic to its interests) and then search the market for an emerging company that can provide that knowledge, rather than creating a new company for that purpose within the corporation.

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Complex operations, with due diligence of the startup and occasional negotiation of non-disclosure agreements

Types of operations

Unlike typical VC investments, when it comes to direct CVC investments or when the corporation is the sole LP of the investing entity, it is common to conduct a more thorough legal audit or due diligence process of the startup, and confidentiality agreements are sometimes negotiated at the outset of the operation. This, combined with the need to comply with the corporation's internal procedures, often makes these operations follow schedules more similar to traditional M&A operations than to VC operations.

As in conventional VC operations, it is common to enter into a letter of intent or term sheet outlining the main terms and conditions of the operation, as well as an investment agreement and shareholders agreement (either separately or as a single agreement) to which the startup will be a party.

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Structure of the operations

Funding rounds are formalized through cash capital increases or by settling convertible loans, which is also common

Corporations, like VC funds, usually acquire a minority percentage of the startup's capital (most startups are structured as private limited companies) by assuming newly issued shares from a capital increase (primary transactions).

In general, startup financing does not take place all at once, but in different stages, depending on the company's evolution and cash needs. This financing is mostly made through investment or financing rounds. These rounds are carried out through capital increases paid with cash contributions or by settling convertible loans.

Due to their flexibility and effectiveness, it is very common to use convertible loans in CVC operations. These loans have a similar structure to those used in conventional VC operations. The corporation provides funds to the startup. Subject to the fulfillment of one or more milestones or events (usually by the time of the next financing round), the corporation is allowed to capitalize its credit claims by acquiring shares in the company through debt-to-equity conversion.

It is also common to issue different classes of shares (in principal, at a higher subscription price and with more beneficial rights compared to the classes of shares issued before the new financing or investment round), distinguishing between (i) ordinary shares, held by the founders and, where applicable, collaborators and early investors close to founders; and (ii) preferred shares, of different classes, depending on the round (e.g., A, B, C), held by the corporation and, where applicable, by third-party investors.

Finally, in direct investment operations or when the corporation is the sole LP of the investing entity, financing commitments by the corporation are usually regulated for cases where certain milestones stipulated in the investment contract are met.

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Regarding the appointed directors, it is necessary to analyze issues related to the duty of secrecy, potential conflicts of interest, non-competition obligations, and remuneration

Corporate governance

In startup investments, investors often negotiate their participation in the board of directors, by appointing either a member or a board observer. It is also common to include an ad hoc majority system on the company's governing bodies, general meeting, and board of directors.

While in conventional VC operations it is not unusual for funds to opt for an observer on the board, in CVC the corporation more typically has the right to appoint one or more members of the board of directors.

Regarding the administrator or administrators appointed by the corporation, issues arise related to the duty of secrecy, potential conflicts of interest, directors' non-competition obligations, and their remuneration. These are complex issues that need to be analyzed in depth on a case-by-case basis. Below we set out some precautionary measures requiring specific advice:

- **Duty of secrecy:** Bearing in mind directors' duty of secrecy regarding the information they obtain when performing their duties, it is necessary to analyze whether it is advisable to include the corporation's information rights in the investment agreement, enabling it to be promptly informed of the startup's progress.

- **Conflict of interest:** It is necessary to analyze the circumstances in which a conflict of interest may arise that prevents the conflicted director from voting. Likewise, the startup's bylaws and the shareholders agreement should be reviewed jointly to ensure that the qualified majority system the shareholders have agreed on for certain matters is not incompatible with the applicable legal framework in the event of potential future conflicts of interest, and that it does not result in—de facto—a potential deadlock of the governing body.

- **Non-competition obligations:** Competition issues between the corporation and the startup become even more pressing in CVC. In general, it is common practice to negotiate contractual regulations adapted to each specific case to avoid certain risks. Moreover, according to corporate regulations, it is necessary to obtain a specific waiver at the company's general meeting for directors who require one due to their circumstances.

- **Remuneration:** It may also be necessary to analyze whether the startup's general meeting should authorize the proprietary director to receive—for holding that post—remuneration paid by the shareholder that appointed the director.

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Restrictions on transfers

It is common to regulate restrictions on transfers in favor of competing companies

As with VC operations, in CVC, lock-ups for founders, free transfers between group members, drag-along rights, and rights of first refusal and tag-along rights are characteristic.

It is also common in CVC to regulate restrictions on transfers in favor of companies that are competitors of the corporation.

Furthermore, in cases where control over or a greater presence in the capital is desired from the outset, operations may include transfers from the founders to the corporation, known as secondaries transactions, to increase the corporation's stake in the startup's capital.

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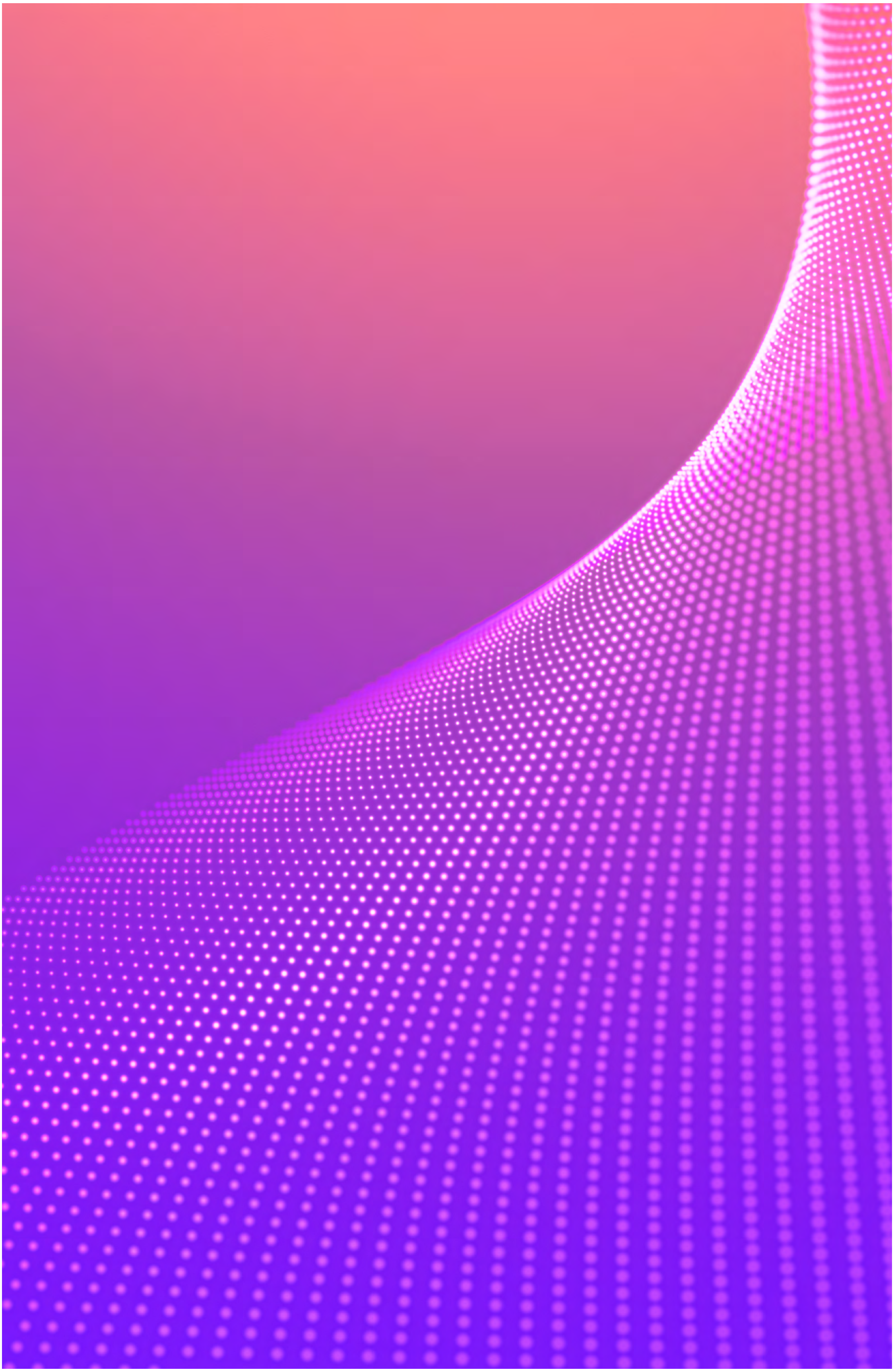
Exit clauses

A natural exit in CVC is for the corporation to acquire the startup

Although IPOs are a potential divestment objective for all VC shareholders (to increase the financial value of the company and allow shareholders to sell their interest with greater flexibility on an unrestricted secondary market), the most common exit for VC investors is to sell the startup to a third party.

While any of these options is possible in CVC, when there are strong synergies between the corporation and the startup, and the collaboration seems likely to prove successful in the long term, a natural exit is for the corporation to acquire the startup. This is due to the previously mentioned search for not only financial, but also strategic returns that corporations seek when investing in emerging companies.



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