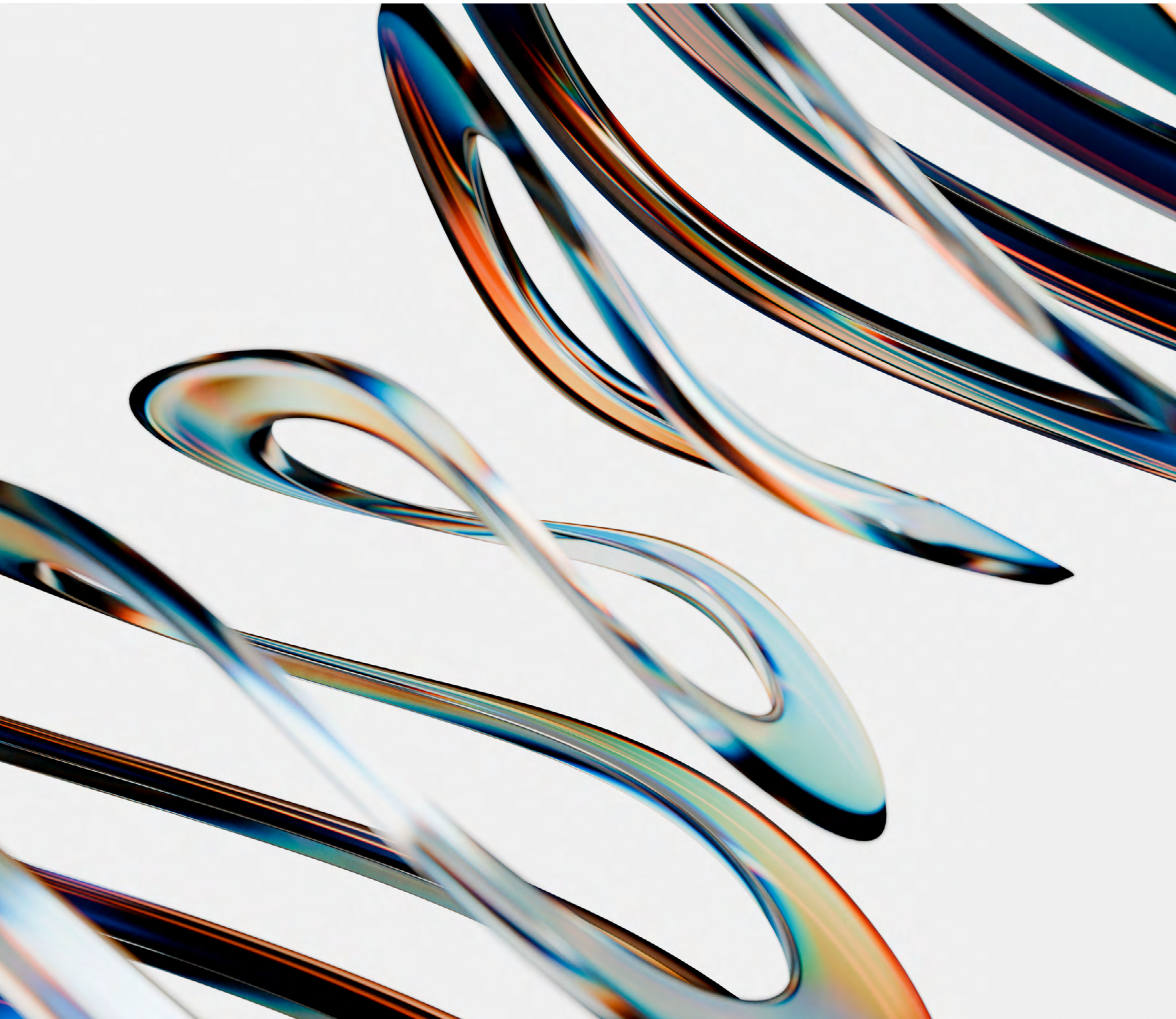
Key aspects of venture capital transactions in the Iberian Peninsula

October 2025



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Introduction

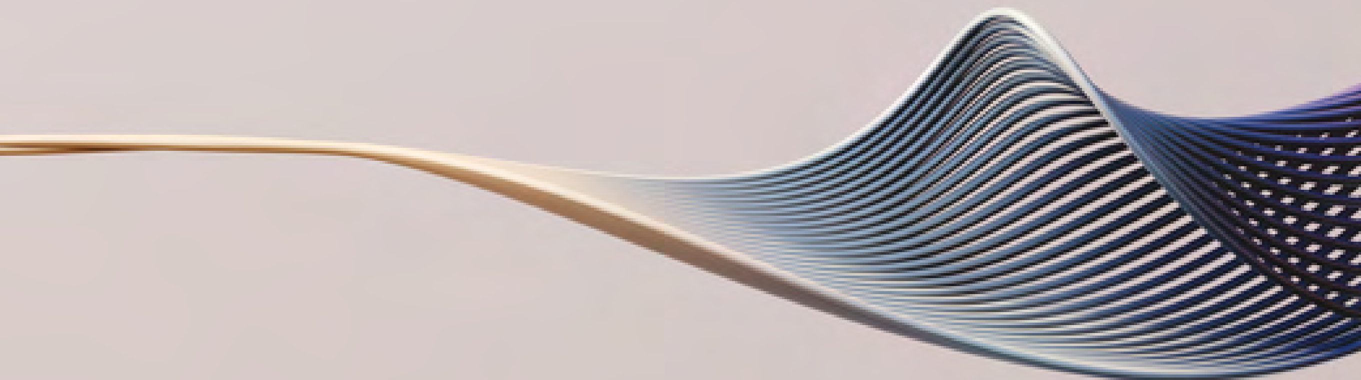
Against the backdrop of a decade of strong growth and heightened international participation, the Portuguese and Spanish venture capital (“VC”) markets have matured along distinct trajectories that matter for investors, founders, and dealmakers. Spain has consolidated a comparatively larger, more diversified market by volume, with a steady presence of international investors. Portugal, while smaller by number of deals, has accelerated in aggregate value and remains markedly crossborder.

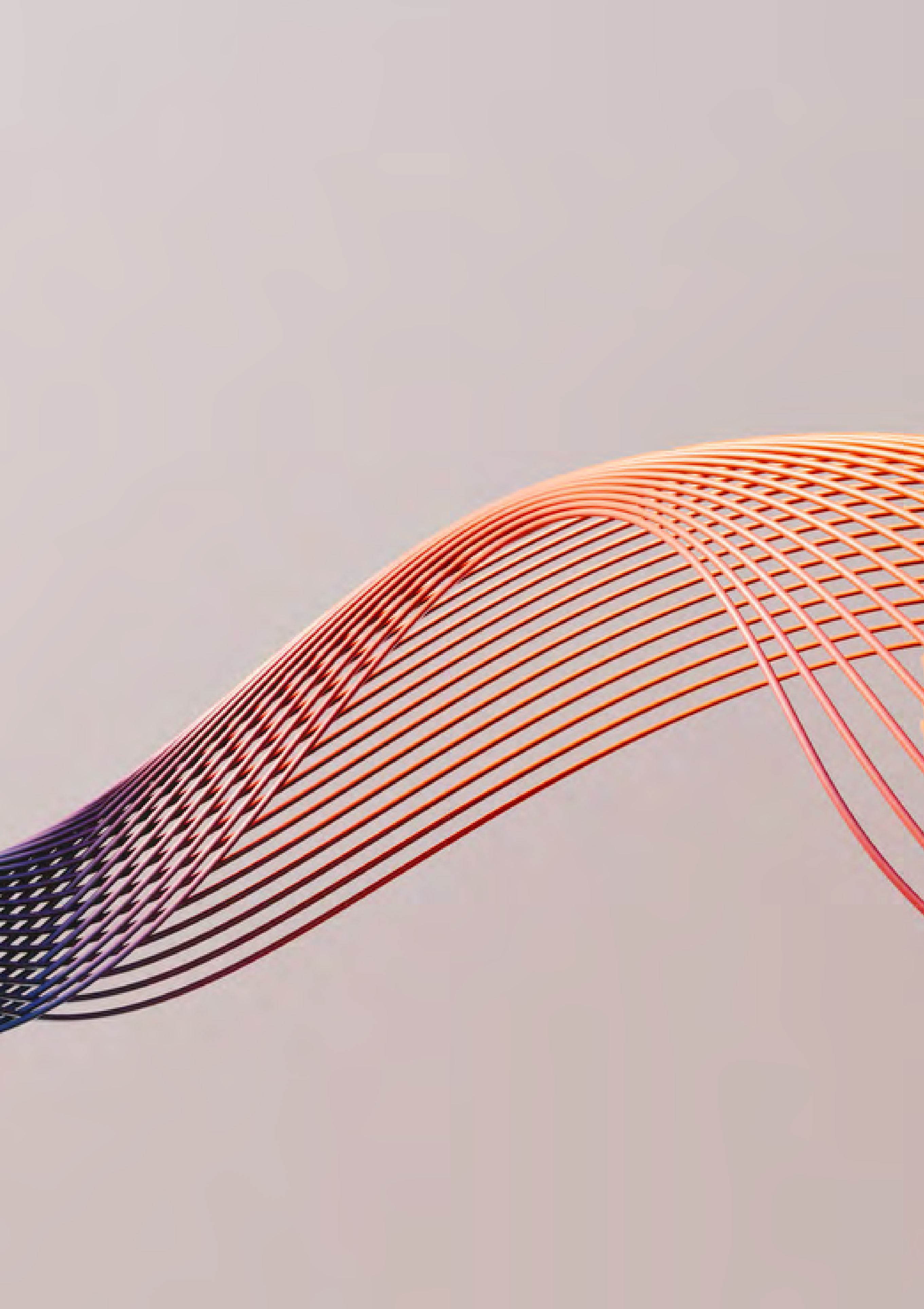
From a legal framework perspective, both jurisdictions share a common VC toolset—investment and shareholders’ agreements, differentiated share classes, liquidation preferences and drag/tag structures—tempered by local company law and regulatory nuances.

These complementary profiles create tangible synergies conducive to an Iberian VC hub. Spain’s scale, sectoral breadth and mature governance playbook pair naturally with Portugal’s crossborder capital channels and founder-friendly flexibility, enabling integrated fundraising pathways that can attract global lead investors, while sustaining deep innovation pipelines locally. As seen in Nordic ecosystems, where coordinated regulatory clarity, investor mobility and shared market practices have supported crossborder growth equity and exits, the Iberian VC hub can also leverage harmonized documentation standards to reduce friction in multi-jurisdictional rounds. The result will be a more liquid, founder- and investor-ready platform across the Iberian Peninsula, capable of accelerating late-stage financings and institutional exits, while maintaining the early-stage dynamics that underpin sustainable innovation.

This guide on key aspects of VC transactions in the Iberian Peninsula seeks to provide a small contribution to that objective by offering a clear, comparative roadmap to the Spanish and Portuguese legal VC frameworks, equipping stakeholders with shared terminology, model solutions and practical guidelines.

General market overview in Spain





General market overview in Spain

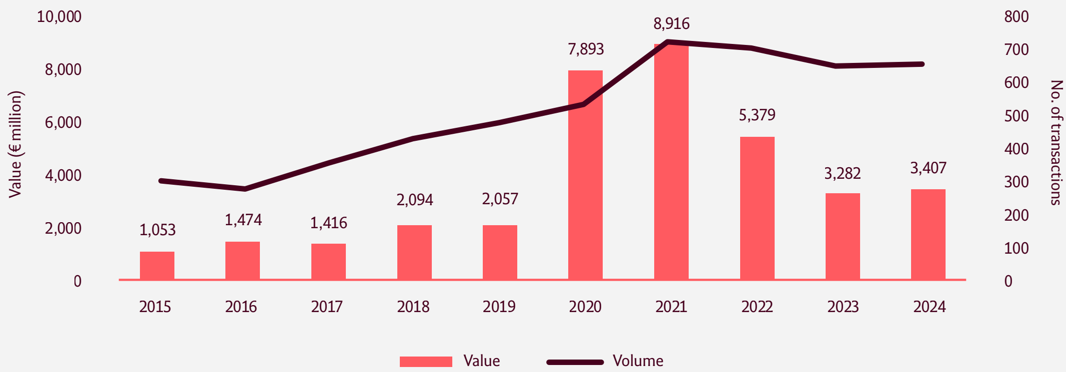
Market evolution

In the last decade, the Spanish VC market has undergone considerable growth both in terms of transaction volume and value. This growth was constant until 2020, when there was a significant spike in the value of investments attributable to an increase in investment in technological and digital sectors against the background of the COVID-19 pandemic.

In 2024, the market showed signs of stabilizing. According to TTR, the total transaction value rose to €3.4 billion, which is a slight improvement of 4% compared to 2023. The number of transactions also slightly increased by 1%, with 658 transactions recorded.

Spanish VC transactions 2015-2024

(Source: TTR)



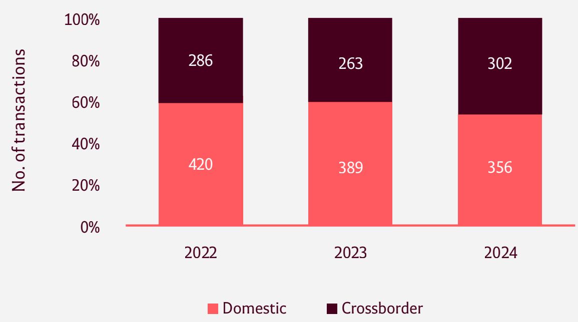
Source of investment

The Spanish VC market has shown a slight, although progressive, decrease in the number of domestic transactions.

International investments have remained relatively steady in terms of the number of transactions, and while domestic investments are still dominant, international investors tend to engage in higher-value transactions.

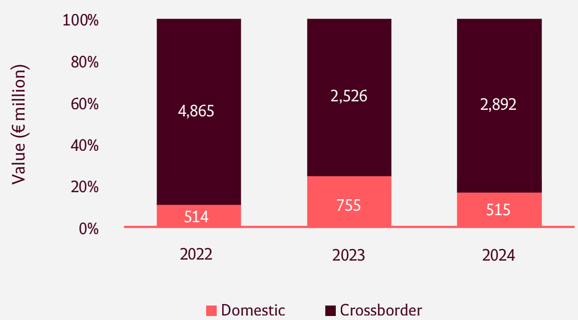
Source of VC transactions in Spain (by volume) 2022 v. 2023 v. 2024

(Source: TTR)



Source of VC transactions in Spain (by value) 2022 v. 2023 v. 2024

(Source: TTR)



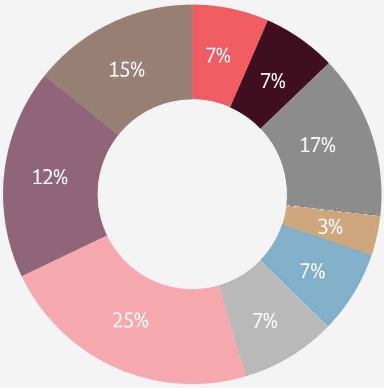
Most active sectors

The volume of VC transactions in Spain has shown significant changes by sector.

Although the internet sector continues to dominate the market, in the last year, it experienced an 11% drop in transaction volume. However, sectors such as technology (excluding internet) and health have gained ground once again this year. This reflects a global trend towards digitalization and wellbeing.

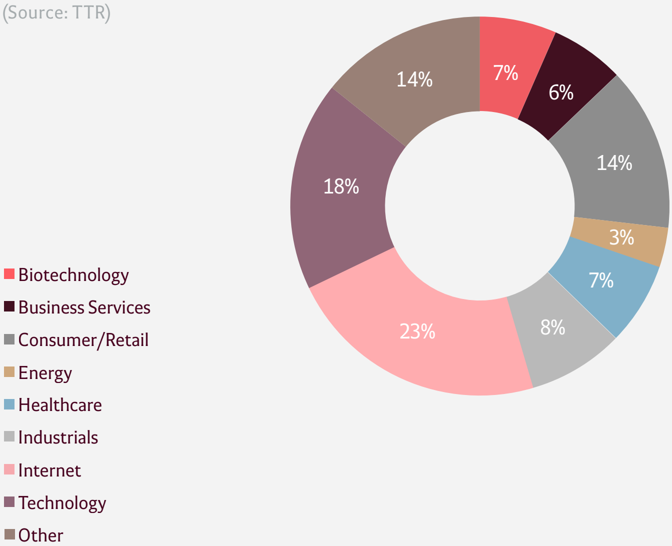
Most active sectors in 2024 (%)

(Source: TTR)



Most active sectors in 2023 (%)

(Source: TTR)



10 keys to negotiate venture capital transactions in Spain

10 keys to negotiate venture capital transactions in Spain

1

Transaction types

Fast and complex transactions

These transactions are typically completed in short periods of time and with very tight schedules, which requires the parties and their advisors to have specific knowledge of market standards and negotiation readiness. They are technically highly complex, as it is necessary to align the interests of fragmented shareholders with significant differences in investment value (both in the total amount and in the valuation of the company in which they invested). This poses continuing legal challenges and the need to come up with innovative solutions.

Main agreements: investment agreement and shareholders agreement (or, in a single document, "ISHA")

Non-disclosure agreements ("NDAs"), common in M&A, are rare in VC. This is due to the speed of these transactions and the high number of opportunities analyzed by investors. Investors, whether VC funds or corporate ventures, undertake confidentiality commitments under the term sheet or directly on executing the transaction agreements.

It is customary to sign a term sheet outlining the main terms and conditions of the transaction. The term sheet is not binding (except, if applicable, for certain specific aspects such as the negotiation exclusivity clause, the confidentiality obligation and the obligation to pay certain transaction-related expenses) and is usually signed by the founders, the company and the lead investor.

For the transaction, two main contracts are usually signed: (i) the investment agreement ("IA"), which sets out the terms and conditions of the investment, generally by means of cash capital increases and, if applicable, the contribution of credit claims arising from convertible loans granted by the investors to the company; and (ii) the shareholders agreement ("SHA"), which (a) sets out the terms and conditions of the relationships between the shareholders as shareholders of the company, and between the shareholders and the company; (b) regulates the share transfer conditions; and (c) establishes the operation, management and organizational structure of the company (including certain obligations specific to the founders and the consequences of breaching them). The company is a party to these agreements.

Their terms and conditions depend, among others, on the startup's stage of development as well as the fully diluted cap table showing the percentage ownership at any given time. For companies at a more advanced stage, SHAs tend to be more complex—being subject to the extensive regulation of share classes and associated rights.

In a startup, the individual bargaining power of non-investing shareholders—and even that of non-principal investing shareholders—is usually very limited given the large number of shareholders and the primary need to close the financing round quickly and efficiently. Therefore, except for the round's lead investor and, if applicable, the lead investor(s) of previous rounds, the rest of the shareholders seldom participate actively in the negotiation and simply sign the new contracts already negotiated.

Lead investor: the investor who leads the negotiation on behalf of the investors of the round with the founders and the company

Therefore, the lead investor negotiates each round's terms with the founders and the company.

2 Structure of the transactions

Minority investments in limited companies via capital increase

In Spain, startups mainly take the form of private limited companies (*sociedades de responsabilidad limitada*), i.e., closed capital companies subject to legal and bylaw restrictions on the entry of third parties. VC investors normally acquire a minority stake in the startup's share capital by assuming newly issued shares from a cash capital increase (primary transactions).

This differs from private equity transactions, where funds generally acquire 100% or a majority stake in well consolidated companies directly through the purchase of shares.

Financing rounds through cash capital increases or convertible loans

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.

Ordinary shares (founders and initial investors) and preferred shares (other investors)

As the company's business develops and successive investment rounds are carried out, different classes of shares are issued (in principle, at a higher nominal value and with more beneficial rights than the previous ones).

A distinction is made between (i) ordinary shares held by the founders and, as the case may be, by early investors close to the founders, such as "friends and family;" and (ii) preferred shares of different classes, depending on the round (e.g., A, B, C), owned by the investors.

Upward trend in convertible loans

Investors can contribute funds to the startup through convertible loans. Subject to the fulfillment of one or more milestones or events (usually by the time of the next financing round), these investors are allowed to capitalize their credit claims by acquiring shares in the company through debt-to-equity conversion. Owing to their flexibility and quick turnaround, convertible loans have become increasingly popular and used in recent years, among other purposes, to facilitate financing to startups between the conclusion of each financing round.

Among other aspects, these agreements make it crucial to consider the rights of the parties during their term, the causes for early termination, the conversion events, and their fit with the project. Likewise, it is important to set out the investors' obligation to enter into to the SHA and the IA in force at the time of the conversion (and, if applicable, the terms to be included in it).

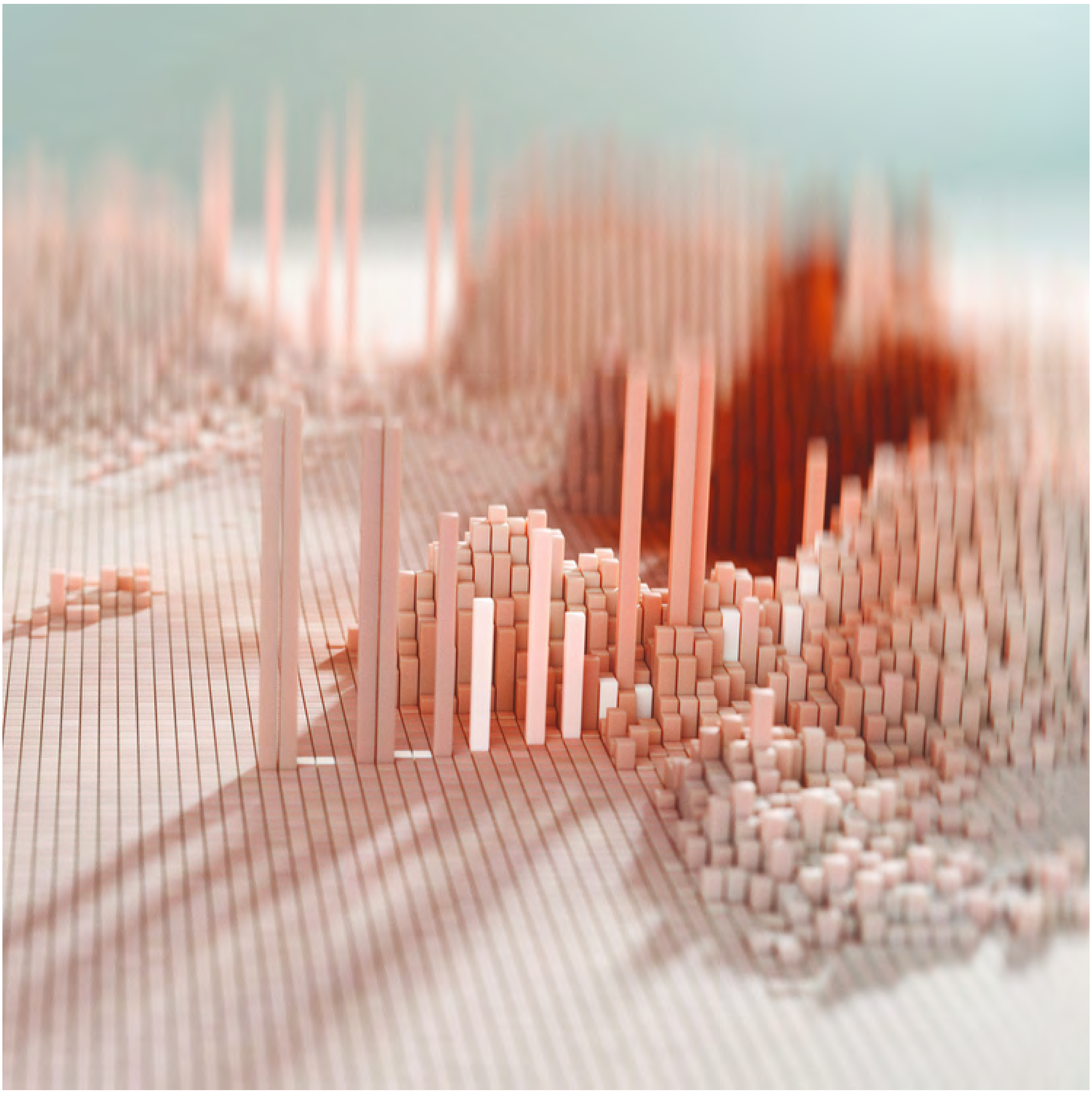
3

Merger control and foreign direct investment ("FDI") analysis is necessary

Regulatory authorizations

Even if the parties prefer quicker transactions involving simultaneous signing and closing, it is sometimes necessary to conduct a merger control assessment (antitrust) and, more often, FDI control to verify whether the transaction is subject to prior administrative clearance.

The analysis of FDI control is particularly important when the investor comes from (or has a beneficial owner in) a country that is not a member of the European Union or the European Free Trade Association and the target company is a tech or data-intensive investee company, which is not uncommon in VC investments focused on innovative companies.



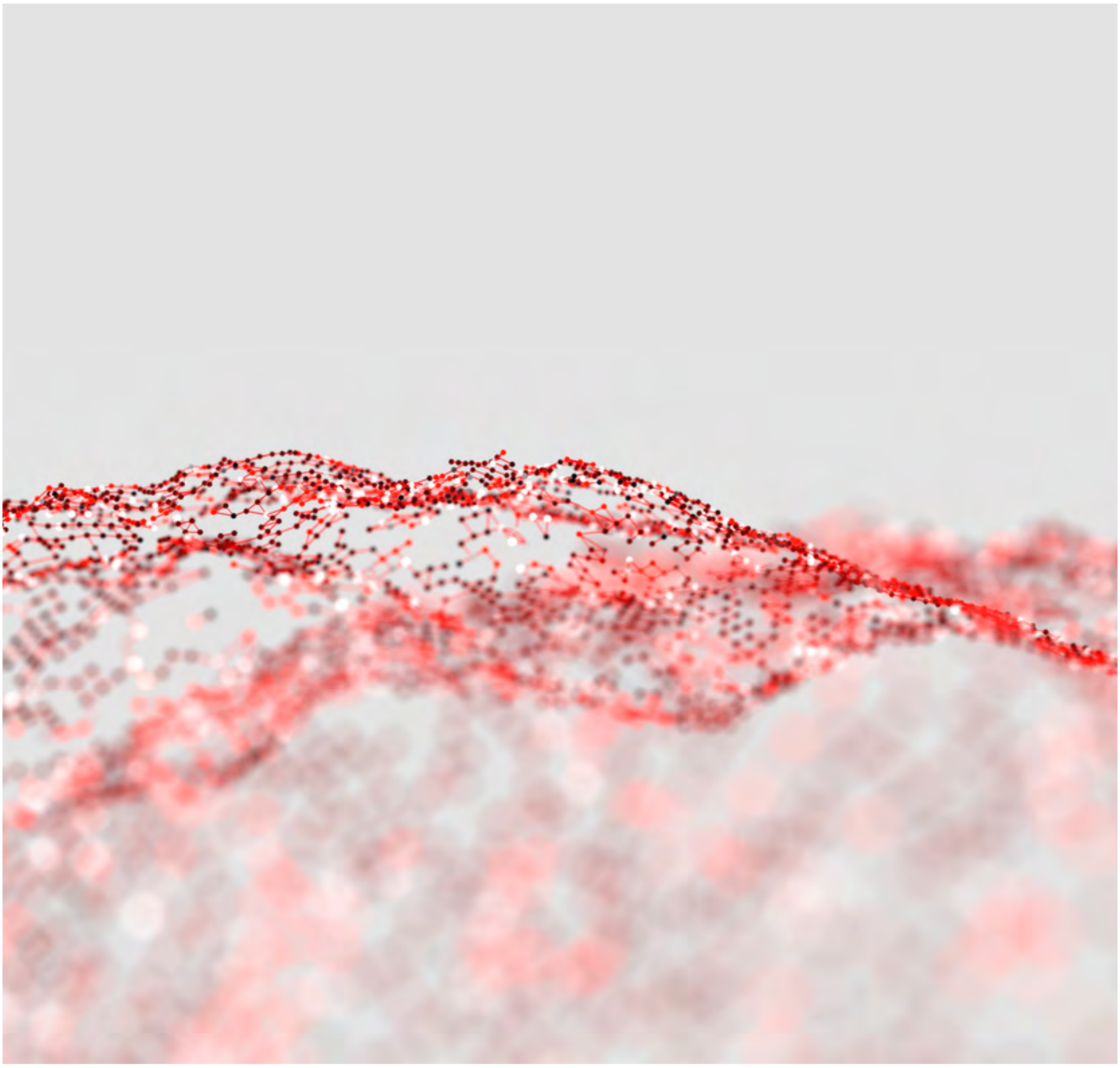
4 Allocation and use of proceeds

Smart money

On carrying out VC transactions, depending on the startup's stage of development, the founders may not only seek funding, but also "smart money." Startups with a stronger negotiating position will demand investors, in addition to their monetary investment, to add value to the company (e.g., by acting as mentors to the founders or by providing reputation or contacts with potential future investors or strategic partners).

Use of the investment proceeds

Given that the founders will continue to manage the company (subject to greater or lesser control by the investors depending on the terms of the SHA), investors often demand that their funds be used for a specific purpose (through "use of proceeds" clauses), normally linked to the business plan in force.



5 Founders' liability towards equity investors

Business representations and warranties by the founders or the company

The IA sets out the liability regime in favor of investors. Unlike in other M&A transactions, business representations and warranties are not usually given by all the shareholders, but only by the founders (and/or, as we will see in the next point, by the company itself), since they are in charge of managing the company, know it in depth and have developed its business plan.

Alternative solutions to traditional liability for breach of business representations and warranties

As the founders are individuals who invest their personal wealth in the startup and usually work exclusively for the company, they are often reluctant to undertake indemnity obligations similar to those customary in traditional M&A transactions in the event that the business representations and warranties turn out to be incorrect or incomplete. Alternative solutions require a case-by-case legal analysis.

One option is that the founders, as well as the other shareholders, limit their representations and warranties to their capacity and the title of their shares (so-called “fundamental warranties”), and that the company itself grants its business representations and warranties (so-called “business warranties”). In other cases, the “business warranties” are granted by the founders and the company.

In situations where the company assumes indemnity undertakings, they should be analyzed on a case-specific basis in the light of the prohibition of financial assistance under the Spanish Companies Act (*Ley de Sociedades de Capital*), which prevents companies from providing guarantees or any type of financial assistance for the acquisition of their own shares by third parties.

To preserve the founders’ personal assets or, if applicable, to avoid cash outflows in the company, another common alternative is that the indemnity for breach of representations and warranties be paid in kind through company shares. In this case, it is necessary to consider the restrictions on transferability both under the SHA and the bylaws.

6 Shareholders' voting and other rights

Voting proxies granted to founders

VC investments often target companies with a large number of minority shareholders. Therefore, to speed up decision-making, it is common for shareholders meetings to grant voting proxies to the founders or, less frequently, to the lead investor of the last round.

Enhanced information rights for lead investors and voluntary audits

The lead investor of each round and other significant investors usually demand the inclusion in the SHA of additional information rights to those granted under the Spanish Companies Act, allowing them to monitor the business performance and the management team's main actions. It is also increasingly common for investors to demand that companies audit their annual accounts, even if they are not legally obliged to do so, to ensure uniform and objective accounting, and compliance with their internal policies.

Greater limitations on qualified majorities at the shareholders meeting and preclusion of individual veto rights

As regards the adoption of resolutions, it is common to establish in the SHA and, if applicable, in the company's bylaws, matters subject to qualified majority. However, unlike private equity transactions, these matters are targeted and usually take share classes into account. Thus, veto rights of individual investors are uncommon except in the company's early stages.

The board as the most common management body and investors' right to appoint observers

When professional investors join the company, the management body usually takes the form of a board.

Typically, the company's CEO (as managing director or having broad powers of attorney) is a founder subject to the control of the board in a more active way.

The round's lead investor—and, if applicable, the majority of the class of preferred shares from the previous round—is often (but not always) entitled to propose the appointment of one of the directors. This will depend on the company's stage of development and each investor's percentage interest. Therefore, significant investors in VC transactions typically reserve the right to appoint an observer. Observers may attend board meetings and have access to the information the directors receive, but they do not have voting rights on the board. If the SHA establishes the right of any shareholder to appoint an observer, the rights and confidentiality obligations of that observer must be regulated in the agreement.

Independent directors

It is increasingly common to establish the obligation to appoint independent directors.

7 Restrictions on share transfers

Secondary transactions: alternative to dividends to obtain a return

Startups do not usually distribute dividends during the first years. Therefore, the way for shareholders (investors or founders) to obtain a return is through the sale of their shares (secondary transactions). This requires a detailed analysis and negotiation of the restrictions on transferability in each round.

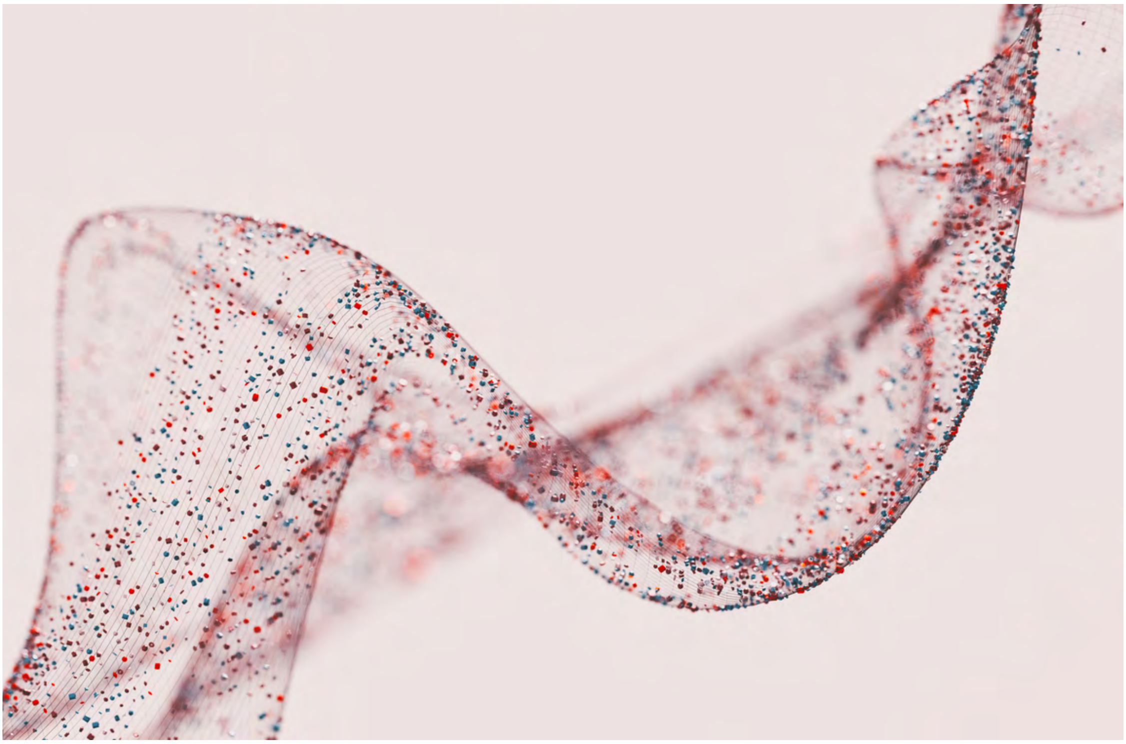
Common covenants: founder lock-up provisions, free transfer between group members, preemptive rights and tags by class and drags

Detailed covenants on share transferability are included. They often differentiate between classes of shares. The following are the most common, although they may vary depending on the stage of development of the startup:

- Lock-up periods for founders.
- Conditions on situations involving permitted transfers between group companies (with a broader definition being agreed as to the concept of "group" to be applied to investment funds).
- Preemptive acquisition rights, often differentiated by type of share class.
- Tag-along rights differentiated between cases where the seller is a founder or an investor.
- Drag along rights.

Investors do not grant business warranties or non-compete or non solicitation covenants

As regards investors' liability in sale transactions on divestment, it is usually agreed that they will not grant representations and warranties (except for title of their shares and capacity), or enforce non-compete or non-solicitation covenants.



8 Investors' anti-dilution rights in down rounds

Anti-dilution clauses

Among the standard protections investors demand are anti-dilution rights aimed at protecting the value of their investment in subsequent financing rounds on the issue of new shares at a lower price (down rounds).

Pre-emptive rights under the Spanish Companies Act or the bylaws protect investors against potential dilution, but require additional disbursements.

Investors seek to cover dilution risk in financial and economic terms, thus avoiding losing the theoretical value of their investment and obtaining compensation for down rounds.

Anti-dilution mechanisms: full ratchet and weighted average

There are basically two anti-dilution mechanisms in VC transactions:

- Full ratchet: This involves compensating the total economic dilution an investor suffers as a result of the new round, so that the company agrees to deliver a number of shares representing the loss in value of the investor’s initial investment.
- Weighted average: The current market trend is to use this mechanism, which neutralizes the negative impact of the economic dilution. A weighted average is made between the value of the investment in the company before and after the round. There are two variants: (a) narrow-based weighted average, which only takes into account the legal capital (“non-fully diluted”); and (b) broad-based weighted average, which takes into account all present and future capital (“fully diluted”), such as stock options or any other conversion right.

9 Shareholders' economic rights

Preferential conditions in liquidity events

Startups do not usually distribute dividends to the shareholders during the first years since any profits (usually not immediate even though round valuations may be high) are usually reinvested in the company itself. Therefore, return on investment comes from other types of transactions (see point 7).

This is where preferential liquidation clauses come into play, guaranteeing a certain return to investors if a liquidity event occurs (basically, the transfer of over 50% of the company's shares, the sale of the majority of its assets or its dissolution).

Conversion rights

It is commonly agreed that investors are entitled, at any time, to convert their preferred shares into ordinary shares with immediate effect.

These types of clauses typically cover two scenarios: (i) IPOs; or (ii) preferential liquidation rights where it may be in the investors' interest to convert the preferred shares into ordinary shares, depending on the sale price of the liquidity event and the distribution calculation formula specified in the clause.

Typical exit of investors is through a sale to third parties

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

Investors' put option at a symbolic price

Given the risk involved in VC transactions, funds often negotiate with the founders a put option in favor of the former, setting a symbolic sale price (e.g., €1). This enables the fund to dispose of its shares automatically if it considers advisable (e.g., to protect itself from reputational risk or avoid becoming involved in insolvency proceedings, or dissolution and wind-up proceedings affecting the startup).

10 Founders' and key personnel's commitments and rights

Founders' permanence and exclusivity obligations

Founders, together with key personnel hired throughout the life of the startup, are crucial to its success. Therefore, to encourage them and ensure their commitment to the project, they are usually subject to permanence and exclusivity obligations in discharging their duties (in addition to lock-up period mentioned above in the case of shareholders), granting a call option on their shares in favor of the investors, the company (for redemption) and/or the rest of the founders in the event of non-compliance.

Typically, there is a reverse vesting period, i.e., if the call option is exercised due to the breach of one of the founder's specific obligations, the founder's obligation to sell a percentage of the share capital decreases over time. Consideration will depend on the scenario (bad leaver or good leaver). Typical examples of bad leaver scenarios are fair dismissal or voluntary termination before the end of the permanence period. Examples of good leaver scenarios are retirement and unfair dismissal.

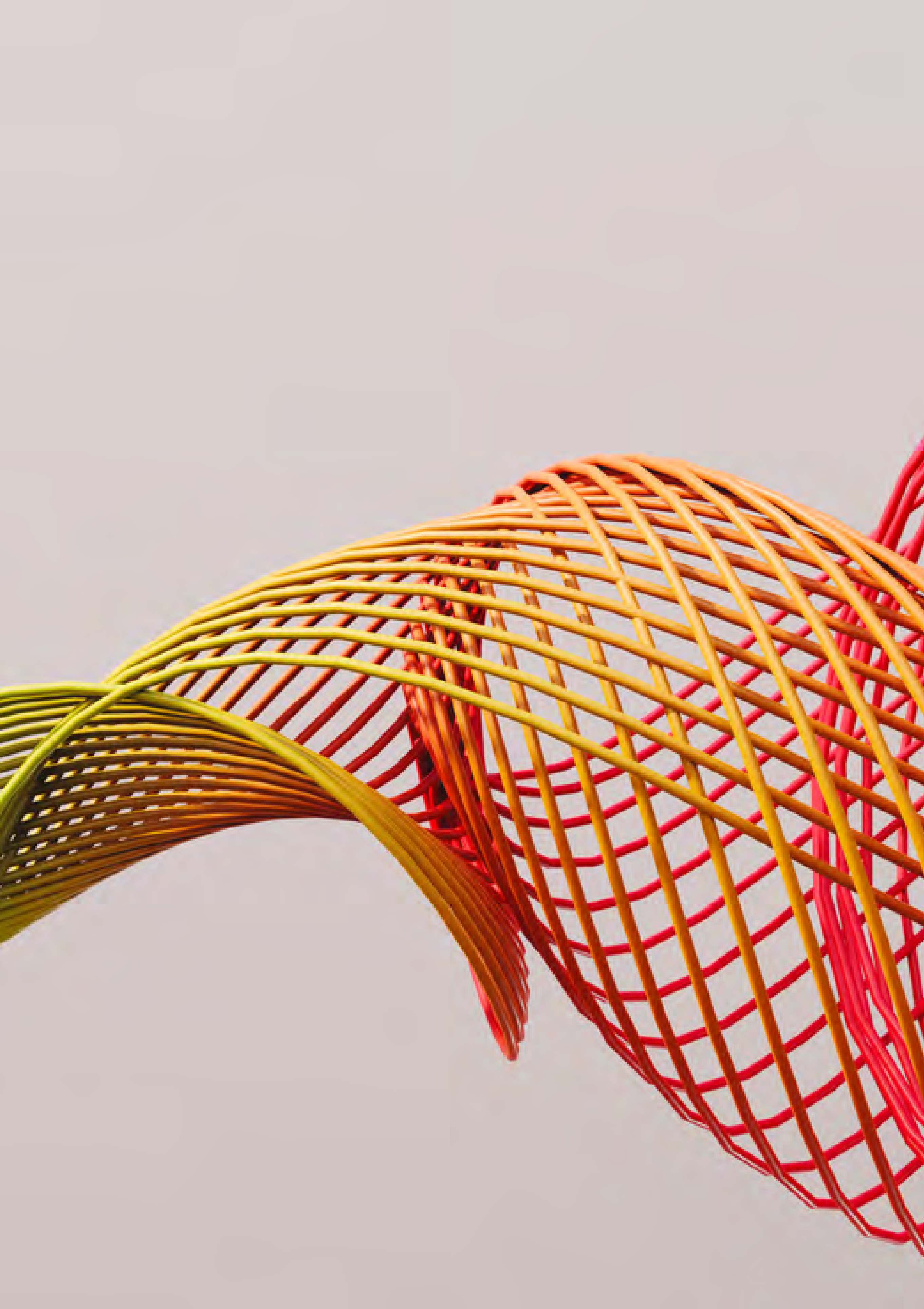
Incentive schemes

To align the interests of the management team and investors, as well as to attract strategic talent, startups often implement incentive schemes aimed at the founders and key personnel, most notably phantom share plans.

Phantom share plans are incentive schemes based on the appreciation of virtual stock that makes up the company's share capital (phantom shares). The company appoints phantom shares to the beneficiaries. The phantom shares' value mirrors that of the real underlying stock. If a liquidity event occurs, it is agreed that beneficiaries will receive (i) an amount equivalent to the economic value of the real shares on the date a liquidity event occurs, or (ii) an amount equal to the difference between the stock value at grant date and the stock value on the date of the milestone.

These rights to acquire phantom shares are subject to a vesting period, i.e., a period during which the beneficiary gradually acquires the phantom shares. Directly linked to this are cliff clauses, which establish a minimum initial vesting period to consolidate the first package of phantom shares assigned (typically one year).

General market overview in Portugal



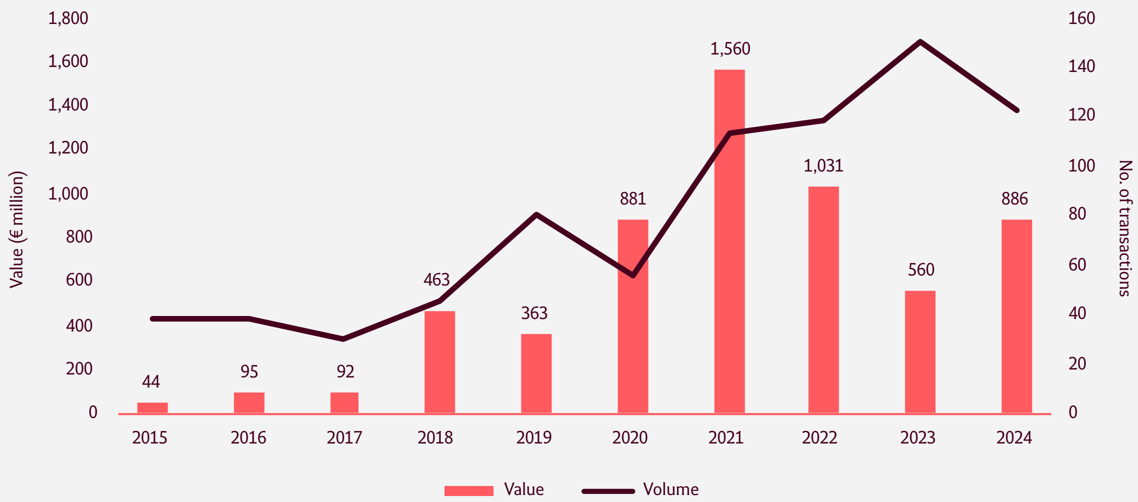
General market overview in Portugal

Market evolution

In 2024, the Portuguese VC market exhibited mixed signals, showing a 19% decrease in the number of transactions compared to the previous year, yet a 58% increase in the total value of those transactions, according to TTR. In fact, the actual value was likely higher than the €886 million shown on the graph, as the values of 27% of the deals were not disclosed.

Analyzing the market evolution over the past decade, the transaction volume has tripled, and the total value of transactions is now more than 20 times greater than it was in 2015.

Portuguese VC transactions 2015-2024
(Source: TTR)



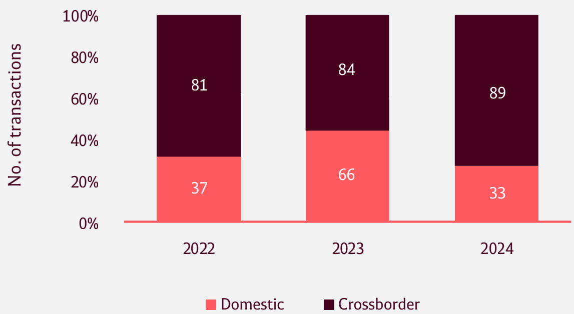
Source of investment

Domestic VC transactions in Portugal, which are only 27% of the annual volume, dropped to half in 2024. However, their total value increased 158% compared with 2023.

As for crossborder VC transactions, which account for 73% of the total deal flow, their number increased slightly (6%) and their total value increased by 42%. The fact that around two-thirds of the total capital is invested in crossborder deals is a steady trend in Portugal, indicating a sustained preference for international investment opportunities.

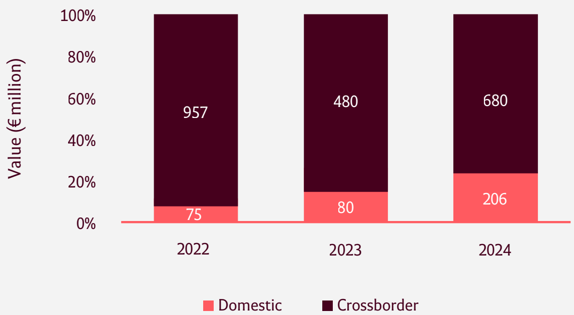
Source of VC transactions in Portugal (by volume) 2022 v. 2023 v. 2024

(Source: TTR)



Source of VC transactions in Portugal (by value) 2022 v. 2023 v. 2024

(Source: TTR)



Most active sectors

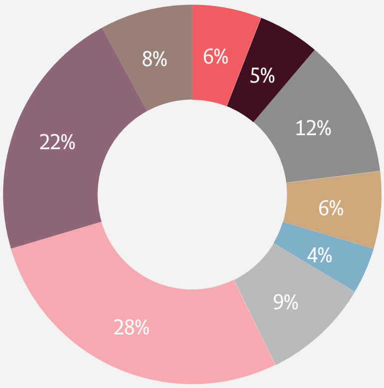
The IT sector is by far the most active sector in VC in Portugal. Within this sector, deals related to internet, software and IT services are the most numerous (42 deals), followed by other tech subsectors such as industry-specific software, computers and electronic components (33 deals). Together they account for 50% of the total 2024 deal flow.

The top five sectors for VC in Portugal have not changed between 2023 and 2024: internet, technology, consumer and retail, energy, and healthcare. Although the internet, healthcare and consumer sectors remained some of the most active, they experienced significant decreases in the number of transactions last year: -21%, -67% and -22%, respectively.

The sector with the highest growth in number of deals (75%) in 2024, compared with the previous year, has been the industrial sector, with a particular emphasis on the waste management and transportation subsectors, with three deals each.

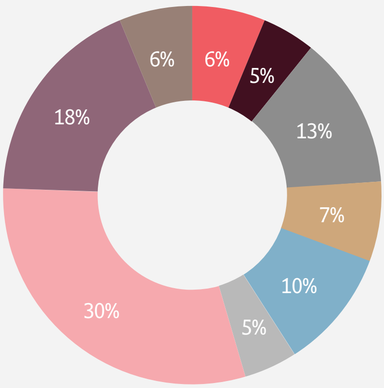
Most active sectors in 2024 (%)

(Source: TTR)



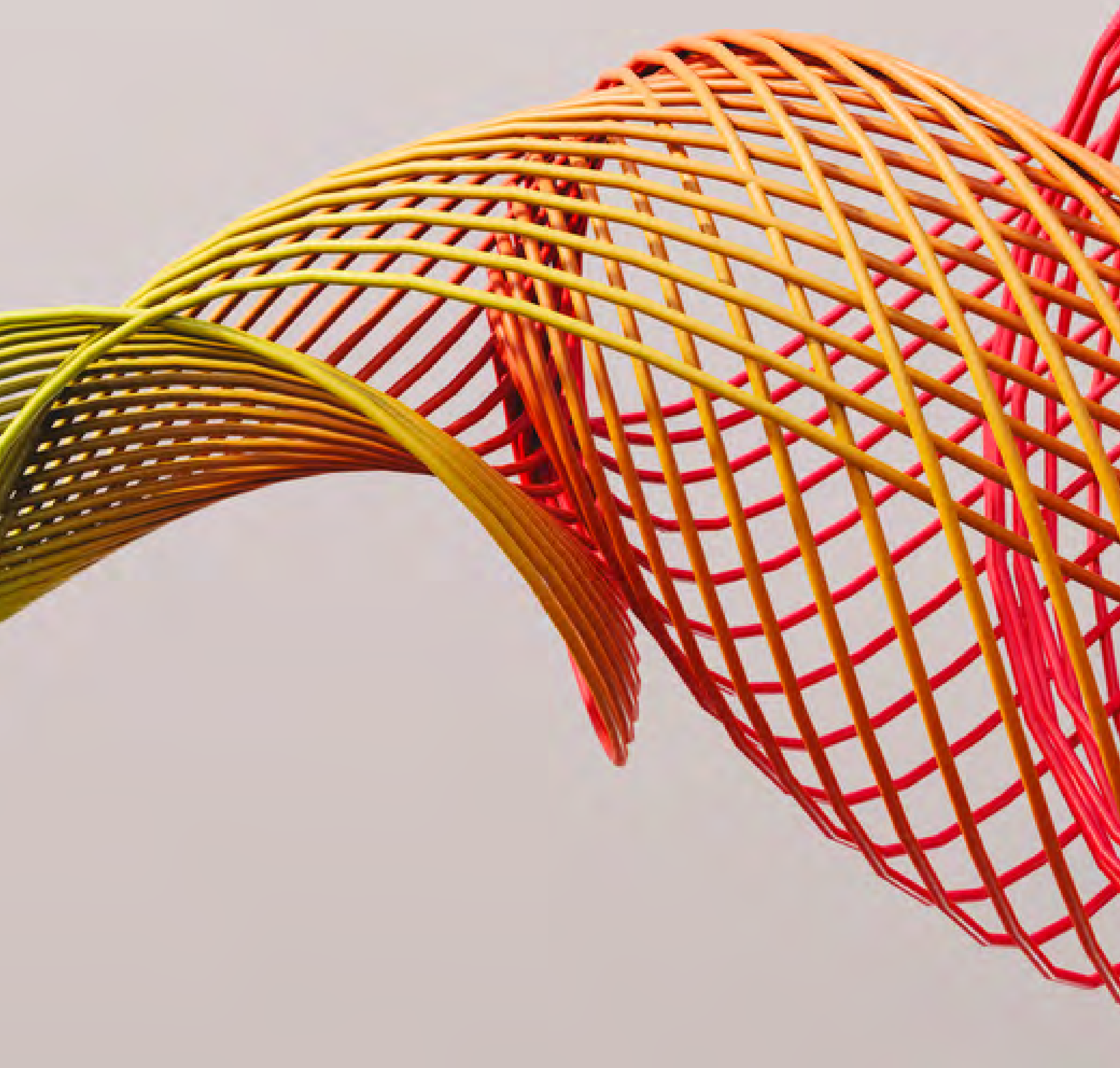
Most active sectors in 2023 (%)

(Source: TTR)



- Biotechnology
- Business Services
- Consumer/Retail
- Energy
- Healthcare
- Industrials
- Internet
- Technology
- Other

10 keys to negotiate venture capital transactions in Portugal



10 keys to negotiate venture capital transactions in Portugal

1 Structure and steps of transactions

Equity rounds

Most transactions adopt the form of equity rounds (also known as priced rounds), through which the investors subscribe and pay for preferred shares of the target company in cash in the context of a share capital increase, while founders remain the holders of ordinary shares.

Convertible instruments

As an alternative to equity rounds, transactions can also be structured as convertibles, in particular SAFEs (simple agreement for future equity) as traditional convertible notes have fallen into disuse. SAFEs were designed as a simple way to obtain investment at a very early stage and were initially exclusively used in pre-seed investments. However, SAFEs are becoming more common as a typical instrument to be used in bridge rounds, notably between Seed and Series A equity rounds, as a way to overcome different views on the pre-money valuation of the company between founders and investors. SAFEs are usually converted into company shares upon the following equity round (qualified equity financing) but may also be converted in case of an exit (liquidity event) or the liquidation of the company.

Structure and timeline

VC transactions are usually faster and more dynamic than regular M&A deals and the first step is the negotiation of the term sheet. Then, investors typically initiate the due diligence and the long form agreements (e.g., investment and shareholders agreements) are negotiated in parallel, with the closing of the investment round usually coinciding with the signing of these agreements.

Term sheets

It is customary to sign a term sheet outlining the main terms and conditions of the transaction. Term sheets used to cover only the main financial terms of transactions but nowadays, it is common to address the vast majority of the matters to be included in the long form agreements, sometimes in significant detail. Other than in relation to provisions such as exclusivity pertaining to the negotiation of the transaction, confidentiality and costs, term sheets are usually non-binding on the parties.

Due diligence

In VC, due diligence processes are often simpler and have a narrower scope than in other transactions. Companies usually have a track record of just a few years of activity with limited resources. In addition, investors are mostly interested in confirming that the company has no major red flags on corporate and labor aspects, intellectual property ("IP"), TMT and previous financing terms.

Regarding due diligence on startup's IP, please refer to key 10 on Intellectual Property.

Long form agreements

The typical VC agreement package includes (i) an investment agreement (or subscription agreement), and (ii) a shareholders agreement. However, in case of convertible instruments, usually only a SAFE is executed in pre-seed. Nonetheless, when SAFEs are executed at a later stage of the startup lifecycle, it is also common to adopt shareholders agreements substantially identical to the ones pertaining to equity rounds.

2 Governance and majorities

Board of directors

Founders usually maintain control over the board of directors by appointing the majority of its members, but investors are entitled to appoint one company director, who usually assumes a non-executive role and has veto rights over decisions on certain matters (board reserved matters).

In a recent trend, a relevant number of VC investors are requiring that companies have D&O insurance policies in force. As an alternative or in addition to the appointment of directors, some investors are granted with the right to appoint observers to the board who are entitled to attend, and sometimes to participate in the board meetings with a similar level of information as directors, but with no voting rights.

Shareholders assembly

At the level of the shareholders assembly, veto rights on certain matters are granted to the holders of the special classes of shares (shareholders assembly reserved matters).

For that purpose, it is customary to agree that shareholders resolutions on certain matters require the favorable vote of either (i) the holders of the special class of shares created in the last round or, in later stages, (ii) a combined majority comprising several classes of preferred shares created in the company's several past rounds. Combined majorities are a good way to divide the veto power amongst investors that joined the company in different rounds and avoid the concentration of veto power in just one or two directors.

3 Milestones and pre-money valuation adjustments

Milestones and tranches

It has become common for investors to divide the investment into tranches and to link the performance of tranches of the investment to the achievement of certain milestones (e.g., minimum ARR in a certain period, minimum number of clients or amount of sales in a certain region or country or successfully obtaining a certain patent). Milestones allow investors to commit greater investment amounts and allow founders to negotiate larger rounds.

Pre-money valuation adjustments

Another recent trend is to make the pre-money valuation of equity rounds dependent on the achievement of specific milestones. In that scenario, upon the non-fulfillment of the milestone, the pre-money valuation would be decreased and, consequently, the investors of that same round would be granted with additional shares of the company for no additional consideration. This allows founders to negotiate higher valuations and add some flexibility to equity rounds.

4 Reverse vesting of the founders

Reverse vesting

To incentivize the founders' commitment to the company and its project, all or the vast majority of the company's shares held by the founders are commonly subject to reverse vesting. This means that if the founders leave their management role in the company, they may be obliged to sell all or part of their shares to the company or even to the remaining shareholders.

Vesting calendar

The reverse vesting calendar of the founders is usually four years, and the model with one-year cliff and then a linear monthly vesting across the remaining three years is often used.

Shares subject to vesting

Founders usually negotiate that not all their shares are subject to reverse vesting, in particular in later stages of the startup life cycle when several investment rounds have already took place, and they have been subject to reverse vesting before.

Bad and good leaver

If a founder resigns from the respective management role at the company without just cause or is dismissed by the shareholders with just cause, the founder would be typically regarded as a bad leaver and would be obliged to sell the respective unvested shares (and frequently, the vested shares) for their nominal value.

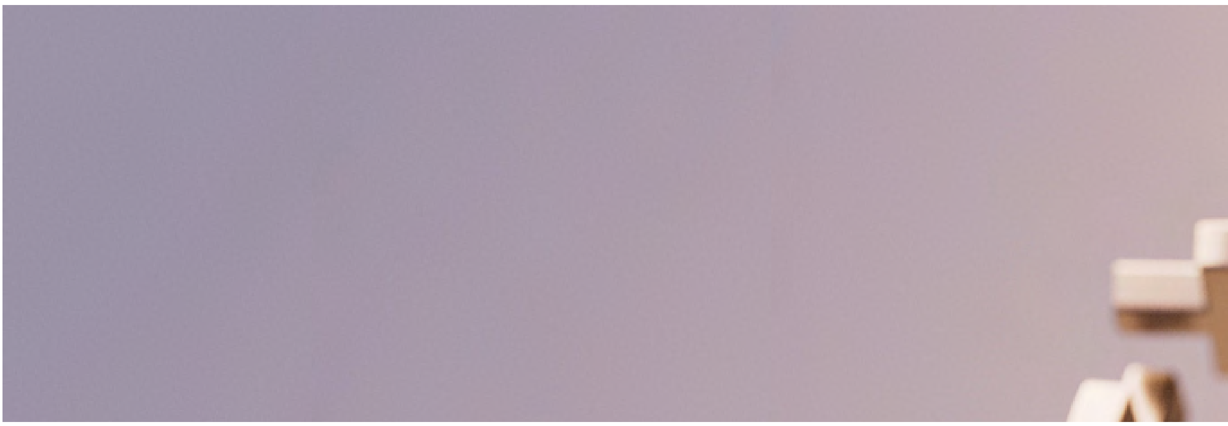
On the other hand, if a founder resigns based on serious medical reasons or is dismissed by the shareholders with no cause, the founder would be qualified as a good leaver. That founder would usually be obliged to sell the respective unvested shares at their market value with discount or at their nominal value, and to keep or sell the vested shares for an agreed price, generally the last financing round share subscription price.

Exclusivity

Usually, the reverse vesting is also associated with exclusivity undertakings from the founders, under which they agree to maintain full-time dedication to the company throughout the vesting period and sometimes beyond.

Lock-up

To ensure the enforceability of reverse vesting provisions, it is mandatory that the relevant vesting period is covered by a lock-up clause under which the founders undertake not to sell their shares in the company during that period.



5

Stock option pools and plans

Stock option pool creation

Upon investment rounds, it is common for new investors to require the existing shareholders (founders and investors from previous rounds) to create or reinforce at their expense a stock option pool (virtual or not) to be allocated in the future to company employees (or advisors). The main rationale of these allocations is to create an incentive for the company's key employees, allowing them to participate in the future earnings upon a sale or an IPO of the company, and at the same time to retain the best talent, as the right to receive stock options' earnings is usually associated with the permanence of its beneficiary in the company.

Stock option plan

To allocate the options within the stock option pool, the company already has in place (or the shareholders will undertake to approve) a stock option plan that will foresee the rules of that allocation, including (i) vesting calendars, (ii) attribution rules and forms, (iii) exercise rules and forms, (iv) bad leaver and good leaver provisions, and (v) expiry conditions.

It is a common market practice nowadays that options are represented by virtual or phantom shares, which grant some economic rights to its beneficiaries, in particular the right to receive the proceeds resulting from the sale of the relevant shares from the stock option pool but exclude the right to receive dividends and political rights, in particular the right to vote in general assemblies.

Stock options granted to founders (recapitalization)

When the founders carrying out management positions are already considerably diluted for the phase the company is in, new investors occasionally require that a stock option pool is specifically created to be allocated to founders to ensure they remain committed to the company. As a result of this recapitalization, existing investors will be further diluted. Due to legal limitations of the treasury shares' percentage, usually these pools are created only with virtual shares.

6

Founders liability towards investors

Representations and warranties

As in regular M&A transactions, where sellers are required to give some representations and warranties to the purchasers, investors also expect founders to represent and warrant on fundamental matters (e.g., title and capacity) and business matters (e.g., corporate, taxes, IP, data protection, labor, and compliance).

Regarding IP representations and warranties, please refer to key 10 on Intellectual Property.

Joint liability

The founders' liability is usually joint and several with the company itself, who will also be liable in case a representation is considered to be incorrect, inaccurate, untruthful or incomplete.

Limitation of liability

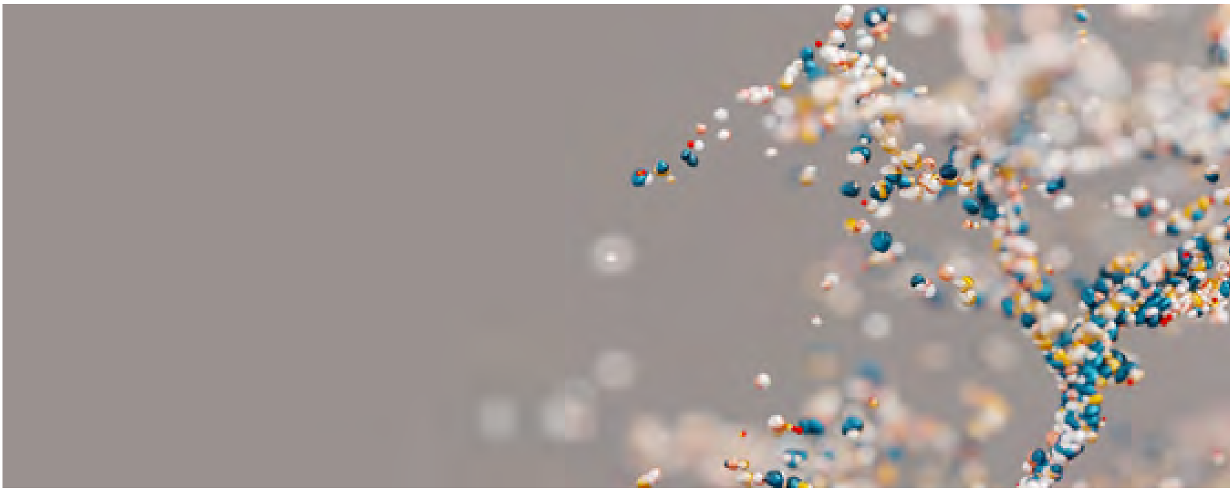
Other than in cases of willful misconduct and fraud, the company's liability arising from a misrepresentation is usually capped by the aggregate investment amount of the round, with the founders' liability being capped by a lower amount, which sometimes corresponds to a multiple of the founders' annual salary.

Payment in shares

In case of a breach of representations and warranties, it has become frequent that founders are allowed to compensate investors by delivering company's shares instead of being required to pay cash. This mechanism allows the founders to effectively pay compensation that they would not be able to pay otherwise.

Other penalties

Founders may also be liable before investors in case of a breach of material provisions (e.g., non-compete, exclusivity, and confidentiality) for the amount corresponding to the damages incurred, or, in case specific penalties were agreed between the parties, for the respective amount.



7 Exit provisions and liquidation preference

Exit clauses

To ensure the liquidity of their investment, investors normally request to include exit clauses in the agreements. These clauses foresee that, if a liquidity event (e.g., sale of the company or IPO) does not occur until a certain date, the company will hire an investment bank or M&A advisor for the purpose of selling the company in a competitive bid process.

Drag-along rights

Drag-along rights are important legal tools according to which certain shareholders are allowed to force the remaining shareholders to sell their shares in the company along with the shares they hold and, consequently, ensure the sale of 100% of the company. In addition to the majority required to exercise those rights, drag-alongs may also be subject to other limitations such as valuation floors or specific time periods for their exercise (e.g., after the fifth anniversary of the investment).

Walk-away right

Sometimes investors are granted with a put option to sell their shares to the founders for the aggregate price of €1. This right is usually only exercised when investors no longer expect to get any return from their investment, which typically occurs when the liquidation or insolvency of the company becomes imminent.

Liquidation preference

In terms of liquidation preference, classes of shares subscribed by the new investors rank more senior than shares subscribed by early investors and, ultimately, the founders' shares. Nowadays, the standard market practice is having 1x (one time) non-participating liquidation preference, meaning that the investor is entitled to receive whichever amount is higher between the 1x (one time) the investment amount and the proceeds pro rata to its shareholding percentage.

Hence, "double dipping" clauses that entail participating liquidation preferences and multiples higher than 1x (one time) have become rare.

8 SIFIDE provisions

SIFIDE tax incentive

The incentive regime for business research and development (SIFIDE, *Sistema de Incentivos Fiscais em Investigação e Desenvolvimento Empresarial*), is a legal initiative designed to encourage Portuguese companies to invest in research and development ("R&D").

This system provides tax incentives to companies that engage in R&D activities or invest as limited partners in VC funds that, in turn, invest in these types of companies, aiming to foster innovation, enhance competitiveness, and stimulate economic growth.

SIFIDE provisions

When there are SIFIDE-backed VC funds among the investors of a certain round, specific provisions have to be agreed, in particular regarding (i) use of proceeds aimed at R&D expenses, (ii) specific information rights, (iii) liability regime in connection with SIFIDE, and (iv) allocation of R&D expenses (when there are several SIFIDE-backed VC funds).

When companies have not yet been recognized and certified by *Agência Nacional de Inovação* (ANI) as companies suitable (*idóneas*) for R&D, this certification may be framed as a condition precedent to the investment.

9

Roll-over mechanisms

Roll-over mechanisms

The existence of transnational VC financing rounds has become more and more common where investors, usually SIFIDE- or PRR-backed VC funds (legally committed to deploy most of their capital in Portuguese based startups) want to invest in foreign companies (usually with UK or USA HoldCo's) via a subsidiary in Portugal dedicated to R&D.

In these cases, the investment is deployed in the Portuguese subsidiary, generally through a SAFE or other type of convertible to be swapped at a later stage by equity at the HoldCo, upon the evidence that the R&D expenses (in case of SIFIDE VC funds) were effectively made by the company resourcing to the funds from the investment or, in case of a liquidity event, at the HoldCo level, whichever occurs first.

The legal structures commonly used to swap the investment's consideration are the convertible + Exchange Agreement or SAFE + Warrant, depending on the jurisdictions involved.

However, the complexity resulting from the different jurisdictions involved has led investors to seek additional protective mechanisms, namely through the immediate acquisition of a limited number of HoldCo's preferred shares capable of granting them enforceable preferred rights adjusted to the level of protection they want, or the execution of warrant holders' agreements capable to provide them the same protection while the swap is not executed.

10

Intellectual Property

Due diligence

In VC transactions, conducting thorough due diligence on a startup's IP is crucial. Investors need to ensure that the company owns or has the right to use all the IP necessary for its operations. This includes patents, trademarks, copyrights, trade secrets, and any other proprietary technology or content. The due diligence process typically involves verifying the existence and ownership of IP assets, assessing the scope and validity of IP rights, and identifying any potential infringements or disputes. Ensuring that the startup has robust IP protection in place can significantly impact the valuation and attractiveness of the investment.

Representations and warranties

As part of the investment agreements, founders are often required to provide representations and warranties regarding the company's IP. These representations typically cover the ownership, validity, and enforceability of the IP assets, as well as the absence of any pending or threatened litigation or claims of infringement. Founders may also need to warrant that the company has taken all necessary steps to protect its IP, such as filing for patents or maintaining the confidentiality of trade secrets.

Covenants and post-closing obligations

To safeguard their investment, investors may impose certain covenants and post-closing obligations related to IP. These can include requirements for the company to maintain and enforce its IP rights, promptly address any IP disputes, and ensure that all employees and contractors have signed appropriate IP assignment agreements. Additionally, investors may require the company to implement policies and procedures for ongoing IP management and protection. By setting these expectations, investors aim to mitigate risks associated with IP and enhance the long-term value and competitiveness of the startup throughout its lifecycle.

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.

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THE LAWYER

Highly commended in Iberia, 2024

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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")

Key contacts

Our Venture Capital specialized partners

Diana Rivera
Partner
diana.rivera@cuatrecasas.com

Isabel Gandoy
Partner
isabel.gandoy@cuatrecasas.com

Elena Cuatrecasas
Partner
elena.cuatrecasas@cuatrecasas.com

Vasco Bivar de Azevedo
Partner
vasco.azevedo@cuatrecasas.com

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