



TAKE THE MONEY AND RUN! THE DOS AND DON'TS OF INVESTMENT AGREEMENTS

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Microsoft Flux



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CASE STUDY

- A Finnish company with a killer idea for a mobile app that will revolutionize food delivery industry
- The company has shown promising growth
- Looking for investors in order to grow into a big player in the field
- A Finnish professional venture capitalist company
- A lot of experience in investing in startups



BACKGROUND AND TIMELINE



BACKGROUND

- Setting up a company
 - Remember to keep your documents in order, either electronic or paper
 - Shareholder's agreement, employment contracts, taxes...
- Business plan is now ready and you wish to expand but where to find the money?
 - Venture capital, Angel investor, TEKES



TIMELINE

What happens after you have found a potential investor?

- Term Sheet: setting forth the conditions under which the investment will be made
 - Defines economic rights, control rights and relevant terminology
- Due Diligence: investigation of a company before signing the contract
 - This is when all those documents become useful
 - Be honest, no one expects your company to be pitch perfect
 - Everything you present during DD reflects to the IA and especially to representations and warranties
- Investment Agreement



TYPICAL INVESTMENTS?



TYPICAL INVESTMENTS

- Financing rounds & primary investors
 - Pre-seed financing
 - Series Seed financing
 - Series A, B, C... financing
- Common stock vs preferred stock
 - Founders and typically early stage investors own common stock
 - VC's are typically given preferred stock during Series financing
- **Typical Finnish investments?**
 - Pre-seed & Series Seed financing, typically 10 – 20 %
 - Series A, typically 10 – 30 %; EUR 1–10M



INVESTMENT

- The Investors shall make the investment in one (1) tranche. The Investment consists of 15,000 new Series Seed Shares issued to the Investors for a maximum aggregate subscription price of EUR 15,000 (the Investment). The subscription price of each Series Seed Share shall be EUR 1. The Investment and the issued Series Seed Shares shall be divided as set out below:

Investor	Investment (EUR)	Shares
Seed Investor LLP	15 000	15 000



LEGAL RISKS



REPRESENTATIONS AND WARRANTIES (R&W)

- Anglo-American legal tradition and common M&A practice
- Supplements the Due Diligence process
- Finnish legal literature & interpretations
 - R&W may remove the burden of proof regarding causality; as a rule it is considered that the warranted matter has affected the trade
 - R&W may limits the buyer's duty to inspect
 - Language & detail of R&W should always be considered separately



REPRESENTATIONS AND WARRANTIES (R&W)

- The Company and each Founder, severally but not jointly, **hereby represent and warrant to the Investors that**, except as set forth in the Disclosure Letter, which exceptions shall be deemed to be part of the representations and warranties made under this Section **the following representations are true, correct and not misleading** as of the Effective Date, except as otherwise indicated.



INTERACTIVE EXERCISE



- 1. What would be the legal risks that might come up?**
- 2. What would you like to know about the company (like buying a car, house)?**



SOME RISKS THAT MIGHT COME UP...

- Intellectual property
 - Exclusivity and transferable rights of works performed by the employees or subcontractors.
- Contracts
 - All agreements of the company oral and/or written are in full force and effect with their respective terms.



- Compliance with the law
 - Compliant with the law and regulations applicable to it.
- Employment Matter
 - Company has complied with all employee matters under the law, as well as the company has no complaints in those remarks.
- Taxes
 - Pay all taxes



- **After signing the contract a conflict occurs. What would you do when everything goes wrong?**



GOVERNING LAW

- Which country's law is applicable?
- What is the best choice?
- Parties have a choice of law – there should be a careful consideration
- "This Agreement, including the arbitration clause, and any dispute, claim or controversy arising out of or relating to this Agreement, or the breach, termination or validity thereof, are governed by the laws of Finland."



DISPUTE RESOLUTION

- Litigation
 - Slower process due to case floods, process usually not confidential
- Alternatives to litigation
- Arbitration
 - Relatively easy access, quick procedure, outcome can be held to be confidential
 - However, it can be very expensive



QUESTIONS?

