

STRUCTURING & PROTECTION OF INVESTMENTS

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STRUCTURING AND RESTRUCTURING OF INVESTMENTS

- **Successful exits:** “Paysolut“, “Marguard“, ”Deeper“, “Aggredium Finance“, etc.
- **Financing attracted:** “Nord Security”, “Kevin”, “Argyle”, “Zenith Chain”, etc.

What are the key legal takeaways that are relevant to us today?

- Deals are multi-jurisdictional, hence investment structures need to take into account various legal elements, including corporate structures and international treaties
- Debt and equity investments are prevailing, hence it is important to master debt instruments, including the rights and limitations, at the earliest stage of investment
- Exits happen via the M&A transactions, hence we must think about the most flexible investment structures at the very initial stage of investments

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How can investors provide funding for business:

- **debt investment** (an amount owed to an individual or entity for borrowed money to be repaid on an agreed-upon maturity date, typically with interest)
- **equity investment** (money that is invested in a company by purchasing shares of that company, either directly or via the stock exchange)
- **convertible instruments** (a loan made by an investor to a company that can be (fully or partially) converted into a different security)

Who is an “investor”?

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- An “**investment structure**” refers to how an investment is legally owned
- Reasons for structuring: legal and tax considerations
 - (-) Who should receive income, now and in the future?
 - (-) How to receive the capital, now and in the future?
 - (-) What level of flexibility is needed as far as debt and leverage is concerned?
 - (-) What are the tax implications of each structure?
- Most popular investment structures: individuals, partnerships, LLCs, corporations (S / C)
- Multiplied investment structures (US – SPV – Lithuania)

FUND (pooled investment vehicle) – when each investor makes an investment in the fund by purchasing an interest in the fund entity, and the adviser uses that money to make investments on behalf of the fund

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A few **treaties** between the United States of America and the Republic of Lithuania:

- Agreement between the US and Lithuania concerning the development of Trade and Investment relations (1992)
- Treaty between the US and Lithuania for the encouragement and reciprocal protection of investment (1998)
- Agreement between the US and Lithuania to improve international tax compliance (2014)
- Convention between Lithuania and the US for avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (1998, “income tax treaty”)

EXIT STRATEGIES

- Selling your stake to an investor (make sure you are not restricted to sell your stake (price, duration, first rights of refusal) under the certificate of incorporation, bylaws or shareholders' agreement)
 - Partner of external investor buyouts
 - Management and employee buyouts
- **M&A deals** (selling your stake to another company, who may want to increase their geographic footprint, eliminate competition, or acquire start-up's talent, infrastructure or product)
- Initial Public Offering, IPO (when a company goes public, the previously owned private share ownership converts to public ownership, and the existing private shareholders' shares become worth the public trading price)
- Liquidation (priority line: creditors and shareholders) or bankruptcy

DISPUTE RESOLUTION

- Why important?
- **Arbitration** is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute
- Arbitration: ICSID, ICC, SCC

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

- US – LT BIT:
 - (i) court or administrative tribunals; OR (ii) agreed dispute settlement procedures; OR
 - (iii) ICSID or UNCITRAL Arbitration.
- Where: BIT, shareholders' agreements, SPAs, etc.

#idiom

the devil is in the details

The details of a matter are its most problematic aspect.



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