

[PLEASE CAREFULLY READ THIS DOCUMENT BEFORE USING THE SEIC]

## NOTES TO THE SIMPLE EQUITY INVESTMENT CONTRACT TEMPLATE (SEIC)

### 1 Miscellaneous / Disclaimer

THE SEIC HAS BEEN PUT TOGETHER WITH DUE CARE; NEVERTHELESS, SCHÖNHERR RECHTSANWÄLTE GMBH AND ITS RESPECTIVE PARTNERS, DIRECTORS, SUBCONTRACTORS, EMPLOYEES AND AGENTS DO NOT ASSUME ANY RESPONSIBILITY IN CONNECTION WITH THE SEIC. BY USING THE SEIC, YOU ACCEPT THIS DISCLAIMER.

THE SEIC CAN ONLY BE USED AT A PARTY'S OWN RISK, AND IT IS STRONGLY RECOMMENDED THAT THE PARTIES USING THE SEIC OBTAIN PROFESSIONAL SUPPORT, IN PARTICULAR BY THEIR LEGAL AND TAX ADVISORS, BEFORE USING THE SEIC.

THESE NOTES DO NOT CONSTITUTE LEGAL ADVICE AND SHOULD NOT BE READ TO THAT EFFECT.

### 2 Background

Start-up financing should be fast and cheap. The SEIC is intended as standardized investment agreement to ensure fast, simple and efficient equity investments into an Austrian limited liability company (*Gesellschaft mit beschränkter Haftung*), subject to Austrian law. The investor provides the start-up with an investment amount and will receive equity in the form of a share (*Geschäftsanteil*) in the start-up at a later stage.

The investor will thus become a shareholder of the start-up, subject to the conditions of the SEIC. The SEIC is not a convertible loan; thus, the investor will not have a claim against the company for repayment of its investment.

### 3 How does it work?

The **investor**, the **start-up** and all **shareholders** of the start-up complete and sign the SEIC. Delivery of the new shares in the Company will occur if and when the start-up is able to raise further equity financing (a "Subsequent Investment") or if a Change of Control-event occurs. There is no threshold amount that the start-up must raise to trigger delivery; delivery will thus occur at the next equity investment round, irrespective of its size.

To safeguard the investor's investment, the parties may determine a specific date ("Long Stop Date") that triggers a mandatory delivery, if a Subsequent Investment or Change of Control has not occurred by then.

Delivery itself (i.e. the issuance of the new share to the investor) is not governed by the SEIC; further documentation will thus be required to effect delivery.

The SEIC does not provide for repayment of the investment amount. It should therefore not be considered as loan or other debt instrument.

#### 4 Parties

The SEIC needs to be signed by the start-up company, the investor and, for purposes of procuring delivery, all shareholders of the start-up company at the time of the investment.

#### 5 Deal Terms

The parties to the SEIC need to determine the following deal terms:

Cap Amount	EUR [amount]  e.g. EUR 2,000,000  <i>The Cap Amount defines the valuation cap, i.e. the maximum amount at which delivery is made. If the pre-money valuation in the Subsequent Investment or the valuation of the Company in the Change of Control-event is higher than the Cap Amount, only the Cap Amount will be relevant for calculating the New Share. If no Cap Amount should apply, insert "N/A".</i>
Company	[name of company] GmbH  e.g. XYZ GmbH, XYZ Straße 1, 1010 Vienna, Austria, FN 123456a  <i>Please add the full firm name of the Company, including the address and commercial register number (FN) of the Company.</i>
Investment Amount	EUR [insert amount]  e.g. EUR 200,000.  <i>The Investment Amount determines the amount to be invested by the Investor into the Company under the SEIC. The SEIC does not provide for milestone payments, so the Investment Amount is immediately payable.</i>

Investor	<p>[name of investor]</p> <p>e.g. XYZ GmbH, XYZ Straße 1, 1010 Vienna, Austria, FN 123456a or Mr Gabriel Angel, XYZ Straße 1, 1010 Vienna, Austria, born on 01.01.1969.</p> <p><i>Please add the full (firm) name of the Investor, including the address and commercial register number (FN) of the Investor or his/her date of birth, as applicable.</i></p>
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The following terms are optional:

Fallback Valuation Amount	<p>EUR [amount] OR N/A</p> <p>e.g. EUR 1,000,000</p> <p><i>This amount defines the valuation that applies if Delivery occurs without any Subsequent Investment or Change of Control (i.e. in the "fallback" scenario). The Fallback Valuation Amount is often referred to as "Floor".</i></p> <p><i>Insert N/A if no Long Stop Date has been agreed. The SEIC will not work, if a Long Stop Date, but no Fallback Valuation Amount, has been agreed.</i></p>
Long Stop Date	<p>[number] months after the date hereof OR [date] OR N/A</p> <p>e.g. 18 months after the date hereof OR 01.01.2020.</p> <p><i>The Long Stop Date determines the date on which Delivery occurs the latest, i.e. if no Subsequent Investment or Change of Control occurred until that date. If no Long Stop Date should apply, insert "N/A". In such case, delivery will not occur at a specific long stop date but only at the Subsequent Investment or Change of Control (whenever it occurs). <u>We generally recommend including a reasonable Long Stop Date (and a Fallback Valuation Amount) to ensure that the investor will eventually receive its new shares.</u></i></p>

## 6 Sample Calculations

The following examples are sample calculations for illustrative purposes:

### **Example 1**

#### **Assumptions**

- Investment Amount: EUR 150,000
- Cap Amount: EUR 6,000,000
- Price (investment amount) agreed for the Subsequent Investment per EUR 1 share in the Company of the highest share class: 200
- Fully diluted share capital: 35,000
- Pre-money valuation: EUR 7,000,000

#### **Sample Calculations**

Since the pre-money valuation is higher than the Cap Amount, the nominal amount of the New Share corresponds to the Investment Amount divided by the following amount: Cap Amount divided by the fully diluted outstanding share capital (Stammkapital) of the Company immediately prior to the Subsequent Investment, i.e.

$$\frac{\text{EUR 150,000}}{\left(\frac{\text{EUR 6,000,000}}{\text{EUR 35,000}}\right)} = \text{EUR 875}$$

The New Share amounts to EUR 875 and thus represents a participation in the Company after Delivery (but before the Subsequent Investment; = EUR 35,875) of 2.44% (rounded).

### **Example 2**

#### **Assumptions**

- Investment Amount: EUR 150,000
- Cap Amount: EUR 6,000,000
- Price (investment amount) agreed for the Subsequent Investment per EUR 1 share in the Company of the highest share class: 150
- Fully diluted share capital: 35,000
- Pre-money valuation: EUR 5,250,000

#### **Sample Calculations**

Since the pre-money valuation is lower than the Cap Amount, the nominal amount of the New Share shall correspond to the Investment Amount divided by the price per EUR 1 share issued in the Subsequent Investment of the highest share class.

$$\frac{\text{EUR 150,000}}{150} = \text{EUR 1,000}$$

The New Share amounts to EUR 1,000 and thus represents a participation in the Company after Delivery (but before the Subsequent Investment; = EUR 36,000) of 2.78% (rounded).

TEMPLATE