INTERNATIONAL ASSOCIATION
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High growth companies and how to fund them – a real driver of economic growth?

Corporate Acquisitions and Joint Ventures Commission

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National Report of Belgium

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The working session in Prague is entitled "*High growth companies and how to fund them – a real driver of economic growth?*" In the working session we plan to address funding alternatives for high growth companies (i.e. companies with significant annual growth over time); opportunities and challenges that both entrepreneurs and investors may encounter in your jurisdiction. The working session will also look at corporate governance issues in connection with investments in high growth companies. This questionnaire mainly concentrates on these two topics in relation to high growth companies, but will also cover commercial and regulatory opportunities and constraints.

1. CORPORATE FINANCE – FUNDING ALTERNATIVES

1.1 Which financial instruments are typically used when investing in high growth companies; ordinary shares, preference shares, convertibles, warrants, stock options, debt instruments such as bonds, hybrid instruments such as participating debentures etc.?

Growth financing is provided by a wide range of investors, ranging from banks to private equity funds, specialized mezzanine funds, CVs, family offices, business angels, FFF, using an even wider range of instruments. As elsewhere, bank lending has become harder to get, compared to the period before the crisis of 2008. It must also be noted that specialized VC players are still less active in Belgium in comparison with many other countries.

Investors use the same type of instruments as in many other jurisdictions: ordinary shares, preference shares, convertibles, warrants, stock options, debt instruments and hybrid instruments.

1.2 Please elaborate on the pros and cons of the instruments used (ref. 1.1 above) (Describe 2-3 most widely used instruments more in-depth (any combinations as well, if applicable). Also other features, i.e. typically electronically registered instruments or not? etc.)

An interesting development is the current popularity of mezzanine financing[1], in terms of both direct lending and bond issues. Many players, including family offices, business angels and private equity funds are stepping in the market of direct mezzanine lending. Mezzanine has the advantage of leverage: the interest that has to be paid can be quite high, but high growth should compensate for that, and at the end of the loan, the entrepreneur is still 100% owner of his company.

Also, it is interesting to note the wide variety of government initiatives that have been taken in recent years – *e.g.* guarantees (*e.g.* Gigarant), tax cuts (*e.g.* *winwinlening*), the upcoming incorporation of a SME[2] debt fund, etc (for a more detailed overview, see also Section 2).

Finally, it is also not uncommon for equity investors to structure their investments as convertible debt.

[1] Mezzanine financing is usually granted by banks and venture capitalists. Its interest rates are higher than senior secured loans, to which mezzanine loans are always subordinated. In some cases the loans are convertible into shares and sometimes they also benefit from the same security, yet rank lower than the senior loans

[2] Small and medium-sized enterprises ("*kleine en middelgrote ondernemingen*" or *"KMO"/ "petites et moyennes entreprises"* or *"PME*")

Convertible debt has all the rights of debt financing, requires reasonable interest payments, and can be converted to common or preferred stock, depending on the structure of the deal. The value of the company at conversion is predetermined and is often based on a modest discount to the pricing of a future round of investment.

Investors insist upon, or agree to, convertible debt financing for a number of reasons. Debt is a lower risk investment than equity: debt must be repaid prior to any liquidation to shareholders. Convertible debt instruments allow the investor to enjoy a modest return on investment as interest with all the upside opportunities of shareholders after conversion.

From the point of view of the entrepreneur, interest payments are reasonable and are tax deductible. However, since the conversion from debt to equity is almost always at the option of the lender, most entrepreneurs consider this a form of equity investment and therefore an expensive source of capital.

1.3 Are there any regulatory constraints to the instruments used (ref. 1.1 above)?

There obviously is a whole range of legal rules relating to these instruments. For instance, a very recent law on financing to SMEs which provides for additional obligations for certain professional lenders when they provide debt financing to SMEs. One must always take note of general rules of lender's liability (*e.g.* a professional lender must undertake a proper due diligence before it lends money), general corporate laws (for instance, if put options are used in a VC structure, one must bear in mind that a *societas leonina* (lion's share) is not valid under Belgian law (see also Section 4), corporate limitations on issuance of (preference) shares without voting rights, …), etc.

1.4 Is crowdfunding a funding alternative in your jurisdiction? How wide is the practice? If at all, please describe pros and cons.

As elsewhere, crowdfunding makes a lot of buzz in Belgium, but it is not widely used. For very small enterprises is seems to be an interesting marketing and financing tool, especially in the area of online gifts. In case debt or equity are provided, negative points are the potential negative reactions from future investors contemplating to step in and the very large list of laws such as the prospectus law and the bank law that prohibit many aspects of crowdfunding. However, government initiatives have recently taken place to support and further develop crowdfunding. Also, an amendment to the prospectus law is in the making. Currently, a public offer of financial instruments of EUR 100,000 and more needs prospectus approval by the Belgian financial regulator. This EUR 100,000 limit is clearly an issue to realize the potential of many start-ups. The contemplated amendment to the prospectus law raises the bar to, a still moderate, EUR 300,000.

2. INVESTORS VIEWPOINT – OPPORTUNITIES AND CONSTRAINTS, LEGAL AND COMMERCIAL

2.1 Who are typical investors into a high growth company in your jurisdiction? Sources of funding (i.e founders-family-friends, angel investments, venture capital investments, private equity)[3]

Venture capital funds have invested in 2013 almost EUR 77 million in Belgian high growth companies. Investments mainly consisted of seed and growth capital investments, mostly focusing on the life sciences/biotech and the ICT sector. With respect to the identity of the venture capital funds, it should be noted that traditionally, as a result of Belgium's open economy, international private equity houses (UK and US, but also – and increasingly – Dutch, French and Asian) have been active on the Belgian market. There is also an ongoing trend whereby wealthy individuals and/or wealthy families set up new investments funds or family offices. The traditional players on the venture capital market are also seeing more and more competition from university incubators and funds as well as business angels (although their investments are smaller).

2.2 Is there a typical size of the investment into a high growth company in your jurisdiction?

The largest Belgian investment in a high growth company in 2013 was undertaken by the Belgian/Swiss biotech company Biocartis, who collected EUR 30 million from Belgian and international investors (including both wealthy individuals and venture capital funds). However, since Belgium is a country with a high number of small and medium-sized (often family owned) companies, overall investments in high growth companies tend to be relatively limited in amounts, with deal values not exceeding EUR 20 million.

2.3 **Describe the process of documenting the investment** (Which documents are typical? Which terms need to be included in the articles to be enforceable? etc.)

How the investment is documented will mostly depend on whether the investment is structured as debt financing, or as an equity investment. In exceptional circumstances, we see the issuance of debt instruments or other instruments which are convertible in equity, but we will not further elaborate hereon.

3 Sources: S. Deckmyn and W. Vande Velde, "*Belgium*", in *The Private Equity Review*, K. August Radke (ed.), Law Business Research Ltd., London, 2013; "*2013 - The Belgian private equity and venture capital market: an outlook*" (www.nautadutilh.com); and various publications in "*De Tijd*" (www.tijd.be)

Equity investment. Investors in high growth companies usually acquire minority stakes in the target companies. Such investments are mostly organised as a traditional share sale process and to a lesser extent as a subscription to newly issued shares at the occasion of a capital increase. Documents used in such process will depend and vary on the basis of the specific circumstances of the transaction at hand, but the following steps are usually taken before a final purchase agreement is signed or a deed of capital increase is passed before a Belgian notary public:

- Letter of intent (memorandum of understanding) – in most transaction negotiations, parties will at some stage sign a letter of intent. The nature and scope of this document will vary on a case-by-case basis. In some transactions, the letter of intent will already provide for the main terms of the transaction, and so further letters of intent are limited to confirming the parties' intention to continue negotiations, setting out the framework for future negotiations and possible due diligence, etc. In the Belgian context, a letter of intent should always be carefully drafted as, under Belgian law, a binding sale and purchase agreement will in principle exist as of the moment the parties have reached an agreement on the object of the sale (*e.g.*, shares of the target company) and on the price. A letter of intent providing, for example, for a fixed price for the shares of a target company, could thus be considered as a binding sale and purchase agreement.

- Due diligence - the degree and organisation of due diligence will depend on the specific circumstances of a transaction (and the extent to which parties and their advisers are familiar with this process), but investors generally at least carry out a financial and legal due diligence (although sometimes only focusing on very high-level issues). In the framework of the due diligence, the investor will normally be required to sign a confidentiality agreement.

- Depending on whether the shares are acquired by means of a traditional sale process or a subscription to newly issued shares at the occasion of a capital increase, (i) a share purchase agreement will be signed (which needs not to be notarised), or (ii) an authentic deed of an extraordinary shareholders' meeting deciding on a capital increase with issuance of new shares will be passed before a notary public. After the acquisition of the shares, the new shareholder will be recorded in the company's share register, making the acquisition enforceable vis-à-vis the company and third parties.

- Shareholders' and/or subscription agreement – a shareholders' agreement is usually entered into to protect the interests of the minority shareholder-investor. The minority shareholder will, subject to specific provisions in the company's articles of association, be able to appoint on or more representatives at the level of the company's board of directors, obtain veto rights or qualified majorities in the shareholders' meeting, etc. (for a more detailed overview, refer to Section 4) Other clauses which we typically see in shareholders' agreements and articles relate to share transfer restrictions to guarantee stability of the shareholding, rules governing the dividend policy and funding undertakings. If the investor will subscribe to new shares, a subscription agreement will usually be included in the shareholders' agreement, which will be signed prior to the actual capital increase.

Debt financing. If an investor does not wish to participate in the target's equity, the investment is usually structured as a long term loan based on a loan instrument such as a subordinated loan agreement. The bond issue market is also growing in Belgium, but mostly in the segment of large Belgian unlisted companies.

Whether or not the investor is located in Belgium will not alter the investor's rights, as the same corporate rules apply regardless of the country where the investor or its sponsor are located. However, it may be advisable for the investor to set up an acquisition vehicle in Belgium (or another EU country, or a country with which Belgium has entered into a tax treaty) to optimise the transaction from a tax perspective. To the extent that a transaction (either an investment or an exit) would include payments being made to or received from bank accounts in certain 'tax haven' jurisdictions, additional formalities and money-laundering regulations may apply.

2.4 Are there incentive schemes for investing into high growth companies (governmental grants (including co-investment funds, state as a guarantor of loans, etc.)?

The government is quite active in Belgium when it comes to helping companies access financing or supporting particular investments. Early-stage healthcare investors, for instance, are supported by public investment funds and subsidies. Each euro invested by a seed fund upon incorporation is usually matched by a public investor. There are also several tax incentives and subsidies for R&D activities in Belgium. This is certainly part of the explanation for the success and leading position of Belgium in the life sciences sector, in particular biotechnology.

ParticipatieMaatschappij Vlaanderen (PMV) is a public investment fund, which is quite active on the market as it is involved in over 150 projects. Its activities are structured around four pillars: providing risk capital (acquiring stakes, through share capital or subordinated loans, in innovative, fast-growing companies with a sustainable competitive advantage), providing guarantees for loans (provision of guarantees to financial institutions, including banks and leasing companies to cause them to offer more financing to companies active in Flanders, at more attractive terms), extending advantageous loans, and investing through external funds. PMV works with 22 financial institutions to guarantee company loans. It provides two types of guarantees: (i) a generic guarantee (for guarantees < EUR 1.5 million) and (ii) Gigarant (for guarantees > EUR 1.5 million). Through

ARKimedes, PMV acquires significant minority stakes in so-called ARKIVs, *i.e.* private funds that invest in promising, rapidly-growing SMEs.

The Walloon investment firm SRIW, is also a key player at the heart of the economy of Wallonia (the Walloon region of Belgium), which provides similar services as PMV in Flanders. Other examples of (partial) governmental investment firms are: SFPI-FPIM (the federal participation and investment firm), SRIB-GIMB (the investment firm of the Brussels' region), Gimv (a listed private equity and venture capital provider who has a leading role among Belgian private equity funds with an increasingly international investment strategy), Limburgse Reconversie Maatschappij (LRM), etc.

Given the multitude of other existing governmental initiatives relating to the financial or operational support of start-ups, SME's and larger companies (under the form of subsidies, guarantees, credit, tax incentives, operational assistance, etc.) it would lead us to far to further elaborate on this topic. More detailed information is readily available at the websites of the different Belgian regions.

2.5 Any instruments referred to in section 1 preferred from the point of view of an investor? Why? Would the answer differ if the investor is international or domestic?

3. ENTREPRENEUR'S VIEWPOINT – OPPORTUNITIES AND CONSTRAINTS, LEGAL AND COMMERCIAL

3.1 Which company form is most popular? (Special company forms for high growth companies? Tiers of management typical for a high growth company? Liability point of view?)

In Belgium, two commercial company forms are typically used for high growth companies, *i.e.*, the private limited liability company ("*BVBA/SPRL*") or the public limited liability company ("*NV/SA").* Although the statutory minimum capital of the NV (EUR 61,500) is significantly higher than the statutory minimum capital of the BVBA (EUR 18,600), the NV will most often be the preferred company form since its shares can be easily transferred and it allows the issue of specific financial instruments (shares without voting rights, preferred shares, (convertible) bonds, warrants).

The NV must have at least two shareholders. If during its existence all the shares are united in the hands of one person (or legal entity), that person (sole shareholder) will become jointly and severally liable with the company unless a second shareholder joins the company within one year, or the company is liquidated or is converted into a BVBA.

The NV is managed by a board of directors which must have at least three members, unless the company has only two shareholders in which case only two directors must be appointed. Directors are appointed for a maximum term of six years but can be re-elected. A director can be dismissed at any time, without cause, by a simple majority vote of the shareholders.

The board may entrust the day-to-day management powers to a director (who is called “managing director” or ”*gedelegeerd bestuurder/administrateur délégué*”) or to another person who is not a member of the board (most commonly referred to as the “CEO” or *“algemeen directeur”/”directeur général”*)).

Also, the board may delegate powers to a management committee (*“directiecomité/comité de direction”*), with the exception of (i) general management and strategic decisions, which, by law or by the articles of association, are exclusively reserved to the board, and (ii) the supervision of the management committee. The members of the management committee can be directors or other persons.

In some cases, the BVBA is used as company form. The BVBA is a more ”private” company than a NV and is in many ways similar to the NV. There are, however, some differences, such as a lower statutory minimum capital (EUR 18,600, as stated previously, of which a minimum of EUR 6,200 needs to be fully paid up at incorporation). Also, the transfer of shares is subject to the prior approval of at least 50% of the shareholders, who represent together at least three quarters of the share capital. However, such prior approval is not required is specific cases (among others, transfer to another shareholder, to the spouse of the transferor, to a blood relative, to another person admitted by the articles of association) unless the articles of association provide otherwise. The BVBA can have only one shareholder provided this single shareholder is a natural person.

The BVBA is managed by one or more general managers who, in principle, each have the power to individually represent the company *vis-à-vis* third parties. They can be appointed for an unlimited term. The general manager can also be appointed in the articles of association, in which case he or she will be a so-called statutory general manager. Statutory managers can only be dismissed by the shareholders with a 75% majority vote (and provided three quarters of the share capital is present or represented) unless more strict provisions are provided for in the articles of association.

The grounds for liability of directors of a NV and general managers of a BVBA are almost identical under Belgian law and will, as such, have no impact on the choice between both commercial company forms.

Originally, the NV was mainly seen as a vehicle for medium-sized or large undertakings, whereas the BVBA was intended to be used for small businesses where management and ownership often coincide. To this day, the BVBA is mostly used for smaller (privately-owned) businesses. Large multinational groups tend to incorporate their Belgian subsidiaries under the form of a NV (though some may opt for the BVBA for foreign tax transparency (check-the-box) reasons). From a Belgian tax perspective, a NV and a BVBA are subject to the same corporate tax rules.

3.2 What sectors are most preferred by high growth companies in your jurisdiction (information and communications technologies, biotech, etc.)?

The preferred sectors in which high growth companies are active are mainly the alternative energy sector (such as wind turbines, solar panels) and the biomedical sector.

3.3 Are there incentive schemes for entrepreneurs incentivising high growth companies (e.g accelerators/incubators? Other?)

Both the Belgian federal government and the Regional governments have developed an extensive set of incentives to create a business-friendly environment. These incentives range from direct aid, such as financial support for specific investments, to tax measures, labour and training incentives, stimulation of research & development and international trade opportunities and are also used to incentivise high growth companies.

Belgium also offers a valid alternative for the establishment of holding companies, through the combined availability of (its form of) the participation exemption and the deductibility of interest on loans aimed at financing the acquisition of shareholdings.

Another tax incentive introduced at the federal level focuses on intellectual property and came into force in 2008. It is called Patent Income Deduction ("PID") (see also Section 6). In order to stimulate the registration of new patents in Belgium, companies are able to deduct from their taxable income 80 % of the income generated by newly registered patents. As a result, the corporate taxation on the income from patents effectively dropped from 34 % to only 6.8 %.

Furthermore, an incentive was introduced by the implementation of a European Directive (90/434/EC as amended by Directive 2005/19/EC) which creates a tax neutral regime for cross-border restructurings involving entities located in Belgium and other EU-resident companies.

Under specific circumstances, the government also reduces social security contributions to be paid by employers.

Belgium has also developed an innovative and unique tax incentive. The so-called "notional interest deduction" ("NID") (see also Section 6) allows all companies subject to Belgian (resident and non-resident) corporate tax to deduct from their taxable income, an amount equal to the interest they would have paid on their capital, had it been subject to long-term debt financing. In essence, the NID is largely intended to replace the coordination centre tax regime, which was phased out in 2010, as instructed by the European Commission. However, in the context of a high growth company, the NID is less likely to be applied by the entrepreneur.

3.4 Any instruments referred to in section 1 preferred from the point of view of an entrepreneur? Why?

In a high growth company, the entrepreneur would commonly prefer to keep the control over the management of the company, by maintaining the majority of voting rights in the general meeting of shareholders. Hence, such company would prefer financing of the company through debt, rather than by attracting other investors/shareholders. The advantages and disadvantages of the different instruments have been elaborated in Section 1 of this report.

4. CORPORATE GOVERNANCE – CONTROL ISSUES

4.1 In a typical investment into a high growth company, whether a loan related investment or equity investment, how much control would a typical investor take? and what is of particular importance to an entrepreneur? In particular, please elaborate on the following terms from the perspective of your jurisdiction and practice:

a. Anti-dilution measures

b. Rights of first refusal, pre-emption rights, drag and tag along

c. Protective provisions

d. Information rights

e. Dead-lock resolution

f. Board seats / observer rights

g. Any other terms specific/important in your jurisdiction?

Investors usually try to protect their investment by obtaining control or at least influence, over a high- growth company. In order to gain, but also maintain and/or increase, their power of control or influence over the targeted company, investors will usually ensure that the subscription agreements and/or related shareholder agreements include one or more (depending on the negotiating power of the parties and the circumstances of the transaction) of the following rights or clauses.

- **Anti-dilution measures** whereby the investors will receive additional shares if new shares are subsequently issued at a lower subscription price to new investors. This mechanism avoids the 'dilution' of control or influence over the company of the earlier investor.

In practice, privileged shares are issued to investors which automatically convert into a higher number of ordinary shares, without new contribution from the investors, if new shares are issued at an inferior subscription price to other investors at a later date.

This protection mechanism is authorised under Belgian law. However, it requires the articles of association of the company to specify it when the privileged shares are initially issued.

- **Pre-emption rights and right of first refusal/offer clauses** whereby shareholders who wish to transfer their shares commit themselves to first offer their shares to existing investors, in order to enable them to increase their control or influence over the company. This type of clause also allows investors to select their partners within the company.

  However, the Belgian Companies Code states that this type of contractual arrangement with respect to companies limited by shares may not have as a consequence that shareholders are prevented from transferring their shares for more than six months.

  Standstill clauses are also often required by investors to protect their investments and to avoid shareholders exiting or selling all or some of their shares to third parties during the "growth period" of the investment. Typically, standstill clauses last from 2 to 5 years. Under Belgian law standstill clauses must be limited in time and must always be in the corporate interest of the company.

- **Tag-along clauses** entitle their beneficiaries, usually minority shareholders, to sell their shares (under the same conditions) if other shareholders decide to sell their shares. In practice, a tag-along clause often makes it more difficult to transfer shares, given the need to find a buyer willing to purchase the other shares as well. Therefore, a tag-along clause is often combined with a pre-emptive clause. If a shareholder wishes to transfer its shares, the beneficiary (shareholder) will be given a first option to acquire all or part of the offered shares. However, if the beneficiary shareholder chooses not to use its pre-emptive right, it then has the right to transfer its shares at the same time and under the same conditions as the other shareholder.

  On the contrary, a **drag-along clause** obliges the beneficiaries, usually majority shareholders, to sell their shares if another shareholder decides to sell its shares. In practice, this allows an investor which wants to sell its shares to force the other shareholders to sell their shares to the same purchaser under the same conditions. This mechanism enables an acquirer to acquire all the shares of a company at the same time.

- **<u>Protective provisions</u>**

  Put-and-call options allow investors to sell shares (put options) to, or to buy shares from (call options), other shareholders, if certain conditions are met or after a certain period of time, at a price determined at the time the option is granted.

  Please note however that, based on Article 32 of the Belgian Companies Code, any contractual provisions between shareholders and any provisions pursuant to which the investor would be completely (or to an unreasonable extent) exempted from incurring any losses, can be declared null and void. Therefore, a put option under which an investor could sell shares at a price at least equal to its initial contribution, could be challenged.

- **<u>Information rights</u>**

  Under Belgian law, any shareholder of a company has the right to be informed about the company (via the annual report, special reports, financial statements attached to such reports *etc.*).

  Typically, the information required by an investor will not be limited to the information provided to shareholders at the annual general meeting, but it will be more detailed and provided on a more regular basis. Examples of such information are quarterly financial reports, P&L statements and forecasts, although it should be noted that the directors of a company are required by Belgian law to always act in the best interest of the company, which means far-reaching rights to information might be enforceable;

- **<u>Deadlock provisions</u>**

  By including deadlock provisions, the parties aim to determine how certain key disagreements are to be resolved. In practice, they are often used in joint-venture agreements to avoid their premature termination.

- **<u>Board seats / observer rights</u>**

  Investors often make their investment subject to the general meeting of shareholders being given the right to appoint one or more of the company's directors.

  In principle, by virtue of the majority rule, a majority shareholder can determine the composition of the board of directors. However, minority shareholders, such as potential new investors, usually make their investment in the company conditional on representation on the board of directors. In practice, when a shareholder has the right to appoint a member of the board of directors, it has to present at least two candidates to the general meeting of shareholders and the shareholders will then choose their preferred candidate.

Minority shareholders often ask for veto- or co-decision rights with respect to certain key decisions made by the board of directors and/or the general meeting of shareholders, which may potentially have an impact on the value of their investments (*e.g.* investments above a certain threshold, approval of the business plan, right to amend fees paid to directors/managers, restructuring and distribution of dividends).

- **<u>Any other term specific / important in your jurisdiction?</u>**

It should be noted that, under Belgian law, it is unclear whether or not shareholder agreements can be entered into for an indefinite period. Some case law only accepts certain transfer restrictions or voting arrangements if they are in the best interest of the company and for a defined duration (usually ten years with a possibility of tacit renewal for five-year periods). In addition, if transfer restrictions are required, they should be included in the company's articles of association so that they are enforceable towards third parties (who would thus be prevented from claiming that they had acquired the shares in good faith). The Belgian Companies Code specifies quorums at general meetings of shareholders that vote on certain decisions (for example amendments to the articles of association, decisions that have an impact on shareholders' rights attached to different categories of shares and amendments of the company's corporate purpose). As a general rule, these kind of decisions can be blocked by a 25% shareholder. However, stricter rules can be specified in the shareholder agreement.

4.2 What is of particular importance to an entrepreneur?

In order to attract investors, it is crucial for an entrepreneur to have a good, solid business plan setting out his/her company's objectives, strategies, experience, opportunities, market, competitors, management structure, etc. In practice, investors are very selective, given the hundreds of business plans they receive. Moreover, an entrepreneur will want to attract the best possible investors to help him/her achieve the company's business plan. Investors focus their investment strategies on specific criteria, such as the stage of development of a business, the geographical location or the amount of investment.

The active involvement of investors in the companies in which they invest is essential. The reasons for their active implication are twofold. First, they want to control the management in order to limit the risk of their investment failing. Second, by actively increasing the value of the company, they maximize the value of their shares. In this regard, private- equity investors will ask for at least one seat on the board of directors. Likewise, they usually ask for regular, detailed reports on the company to understand its position and to take appropriate decisions if necessary.

5. EXIT STRATEGIES AND TIME HORIZON

5.1 Type of exit which is most common (sale to venture capital/private equity firms/funds, trade sale, write-off, initial public offering)? Typical transaction length?

Exit strategies and investment horizons differ from one deal to another and depend on negotiations. Shareholder agreements may contain certain commitments regarding the timing of an exit (through an IPO, secondary buy-out or trade sale). Other limitations may be the result of the economic and financial environment (for example, finding an appropriate candidate buyer). The key limitations on the ability of an investor to sell its stake in a portfolio company or to conduct an IPO mainly arise from contractual obligations (shareholders' agreements and finance agreements with senior and junior debt providers).

Secondary sales remain an important exit opportunity for investors in Belgium. However trade sales are the most popular exit route for Belgian investors in companies which are well developed but are still too small to be publicly listed. The timing, the process and the conditions are less strict than for an IPO and transaction costs are thus lower. On the other hand, hurdles like the opposition of the management team, the identification of potential buyers or the deferred payment of part of the purchase price (earn-out) can make this kind of exit less attractive.

Buy-outs are often used for the sale of family-owned businesses or companies with a strong brand and identity (*e.g.* Pizza Hut). They allow the management team to retain control of the company while allowing investors to realise a return on their investments.

Since 2008, IPOs have become very uncommon exit mechanisms in Belgium.. In addition to the key procedural issues relating to IPOs, investors who use IPOs as exit mechanisms need to take into account the lock-up obligations. In 2013 however, the trend seems to have reversed as three companies (bpost, Cardio3Biosciences and Qrf) have launched an IPO.

5.2 How are new investors dealt with in your jurisdiction? How would the issues set out in section 5 above be dealt with? Are initial investment and shareholders' agreements/shareholders' agreements upheld in the next round, or new agreement is entered into?

Whether initial investment and shareholders' agreements are upheld in the next round or whether new agreements are entered into depends mainly on the specific situation at hand. If the entrepreneur is desperately in need of new funds to continue the growth of the company, he may be willing to enter into a new shareholders' or investment agreement. However, should this not be the case, the entrepreneur might be more reluctant to give up on any of the rights granted to him in the initial agreement in view of acquiring more funding especially when several new investors are willing to invest in the high growth company.

6. REGULATORY ISSUES

6.1 Any tax implications (positive or negative) that a high growth company encounters in your jurisdiction?

As the general corporate income tax rate in Belgium is rather high (33.99 %), tax optimization for a high growth company will be important.

Belgian tax law provides for various tax incentives. Due to R&D related tax incentives, Belgium is an attractive location for R&D centres owning IP as well as for contract R&D centres. Tax incentives are for instance an increased R&D investment deduction or tax credit, a payroll wage tax reduction, expat status for foreign executives and researchers temporarily assigned to Belgium, a foreign tax credit on royalty income). Also, a Patent Income Deduction regime is provided for on the basis of which Belgian taxpayers are entitled to an 80% deduction of their patent income from their taxable basis, resulting in an effective tax rate of maximum 6.8%.

Choice between debt or equity funding might be considered in view of its tax treatment. For equity funding, Belgian tax law provides for a notional interest deduction regime, which allows Belgian taxpayers to deduct from their taxable income a fictitious interest calculated on the equity. The rate is 2.63% for the year 2014. In case of intercompany debt financing, a debt to equity ratio of 5 to 1 should be observed (only intercompany financing and financing granted by tax haven companies are considered to be "tainted debt" for the 5 to 1). This is the so-called thin cap rule. In principle, an interest withholding tax of 25% is due on interest payments. However, this can be avoided by proper structuring since many exemptions exist under Belgian tax law and under the treaties.

On distributions of profits to the shareholders, in principle a 25% dividend withholding tax applies. An exemption applies (in general) if paid to a corporate shareholder, located in the EU or in a treaty country, that holds at least 10% in the Belgian company for at least one year.

In its dealings with group entities, transfer pricing regulations should be observed.

Tax rulings can be obtained with the Belgian tax authorities on almost any tax issue (for instance on the tax treatment of a restructuring or on the transfer pricing aspects).

7. OTHER

7.1 Please elaborate on any other issues relevant to your jurisdiction with respect to high growth companies which have not been discussed in responses to earlier questions (if any).

Nil.