INTERNATIONAL ASSOCIATION
OF YOUNG LAWYERS

High growth companies and how to fund them – A real driver of economic growth?

Corporate Acquisitions and Joint Ventures Commission

Prague, 2014 – Working Session 04

National Report of France

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31 January 2014

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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.?

The financial instruments typically used when investing in high growth companies, other than ordinary shares, are:

- **hybrid instruments** such as shares with warrants attached (*actions à bons de souscription d'actions*), convertible bonds (*obligations convertibles*) and preferred shares (*actions de préférence*),

- **debt instruments** such as bonds, or bonds with warrants attached (*obligations à bons de souscription d'actions*),

- **capital instruments** such as stock-options, free shares (*actions gratuites*), warrants for subscription to business creator shares and business creator shares (*BSPCE*).

1.2 Please elaborate on the pros and cons of the instruments used (ref. 1.1 above)

The three **hybrid instruments** are the most widely used by investors.

Each instrument has its own characteristics and its own advantages and drawbacks:

- Shares with warrants attached:

A warrant is a financial security to subscribe to another financial security for a specified period in an amount and at a price fixed in advance. The warrants are often attached to the issuing of shares. They are referred to as "shares with warrants attached".

Shares with warrants attached offer flexibility in defining the subscription terms and conditions. They have a favorable tax regime when the risk of requalification into professional income is eliminated. The main difficulty is indeed to avoid the requalification into professional income since it is difficult to define the subscription price and the exercise price of the shares with warrants attached. They also require an immediate investment from the manager.

- Convertible bonds:

A convertible bond is a contractual bond, usually at a fixed rate, which gives the subscriber the right to an exchange against one or more shares of the issuing company during the conversion period.

In subscribing to convertible bonds, the manager only takes a limited financial risk since if he fails to convert his bonds, he can retrieve the amount of his initial investment. The main difficulty with convertible bonds is to avoid the requalification into professional income. They also require an immediate investment from the manager.

- Preferred shares:

Preferred shares offer flexibility regarding the specific rights attached to the shares.

Preferred shares are often implemented in a particular context, such as an LBO or the development of a subsidiary. Within a group, preferred shares can allow the parent company to be involved in the growth of its subsidiaries. However, preferred shares require a financial investment from the manager. Furthermore, they are more difficult to implement, since there are numerous constraints and the characteristics of preferred shares must be thoroughly described.

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

The main regulatory constraints to the instruments used are the following:

a. Stocks-options:

The **eligible companies** for stock options are the following stock companies: limited companies (*sociétés anonymes*), limited stock partnerships (*sociétés en commandite par actions*) listed on the stock exchange market and simplified joint-stock companies (*sociétés par actions simplifiées*).

The **beneficiaries** must be employees and corporate officers of the company issuing the stock-options, or directors belonging to the same group as the issuing company if the stock-options granted concern listed shares.

Stock-options relating to non-listed shares can be granted to employees of companies of which at least 10% of the capital or voting rights are held, directly or indirectly, by the company issuing the stock-options.

Stock-options relating to listed shares can be granted to:

- employees of subsidiaries of which 10% of the capital is owned by the issuing company;
- employees of parent companies holding 10% of the issuing company;
- employees of sister companies of which 50% of the capital is held by a company holding itself 50% of the issuing company's capital.

The allocation of stock-options is nevertheless subject to a double threshold in terms of shareholding:

- an individual threshold: in order to be awarded stock-options, the employee or officer must not hold individually more than 10% of the share capital of the company at the time of the grant (or a third of the capital in certain cases);
- a collective threshold: the total number of stock-options granted and not yet exercised must not give right to a number of shares exceeding 1/3 of the share capital in cases of options to subscribe to shares or 10% of the capital in cases of share purchase options.

b. Free shares:

The **eligible companies** for free shares are all stock companies: limited companies, limited stock partnerships listed on the stock exchange market and simplified joint-stock companies.

The **beneficiaries** must be employees or corporate officers of the issuing company, and corporate officers bound to the issuing company on a regulated market.

The beneficiary cannot hold more than 10% of the capital of the issuing company at the time of the grant or as a result of the grant.

c. Warrants for subscription to business creator shares:

The **eligible companies** for warrants for subscription to business creator shares are joint-stock companies (limited companies, limited stock partnerships and simplified joint-stock companies) not listed on the stock exchange market.

If the company is listed on the stock exchange market, its average market cap must not exceed €150 million. If the threshold is exceeded, the company can still emit warrants for subscription to business creator shares within the 3 years following the exceeding of the threshold.

The issuing company must have been incorporated for less than 15 years, and be subject to corporate tax. Companies can be owned by at least 25% of individuals, or by entities owned themselves by at least 75% of individuals.

The **beneficiaries** can be employees and directors of the issuing company (with the exclusion of the subsidiary); the directors must be subject to the employees' tax regime.

There are no restrictions in terms of shareholding.

d. Convertibles bonds:

The **eligible companies** for convertible bonds are all stock companies: limited companies, limited stock partnerships listed on the stock exchange market and simplified joint-stock companies.

There are no restrictions regarding the **beneficiaries**.

There are no restrictions regarding the percentage of capital which can be granted by way of convertible bonds.

e. Preferred shares:

The **eligible companies** for preferred shares are all stock companies (whether listed or not).

There are no restrictions in terms of **beneficiaries**.

There are no restrictions in terms of shareholding. However, preferred shares without voting rights may not represent more than the half of the capital in a non-listed company, and more than a quarter of the capital in a listed company.

f. Shares with warrants attached:

The **eligible companies** for shares with warrants attached are all stock companies (whether listed or not).

There are no restrictions regarding the **beneficiaries**.

There are no restrictions in terms of shareholding.

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

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Crowdfunding is a mechanism that is gaining in popularity. It has indeed been attracting a large number of participants over the last two years in France and a number of projects have started to be part-financed via Internet. In 2012, more than 40 million euros were collected in France for around 60,000 different projects.

The French government is actively supporting this growth.

Crowdfunding in France is mainly used by individuals to finance a project, a film, an album, a showcase or a business that banks have not accepted to support.

The banking and financial regulations are still an obstacle to the expansion of crowdfunding in France.

Two guidelines were thus published by the AMF and by the ACP on 14 May 2013 in order to lay out which rules are to be applied while waiting for the implementation of new French regulations.

The new French regulations are aiming to provide a status to the crowdfunding platforms, which would allow them to be more efficient. The draft regulations circulated last September (they are part of a global law for the "simplifying and securing of corporate life"), and as regards crowdfunding lay out 4 main points:

- the creation of a special status of advisor crowdfunding (*conseiller en investissement participatif – CIP*), more flexible than the current status of provider of investment services, while defining the incompatibilities with other financial activities,
- the adaptation of the regime of securities' offerings to the public, by putting into place a threshold of €300,000 over 12 months ,the establishment of an exemption to the banking monopoly, which will allow loans by householders,
- the reduction of requirements on payment services for crowdfunding platforms.

<u>PROS:</u>

- Crowdfunding minimizes the fundraising process (and its associated time and cost) so that entrepreneurs can spend more time dealing with their business.
- Anyone who is interested and has a little capital to spare can participate in financings.

CONS:

- By investing less of their own money and no longer facing investors, entrepreneurs lose the truly valuable stage of convincing others.

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, love money)

The kind of investors involved in high growth companies depend on the characteristics of the company itself. Both the maturity of the company and its financial needs are two key factors.

More the company is mature, more its financial needs grow, and more the investment may be significant.

Entrepreneurs often start their ventures with "informal" financing, i.e. their own funds or those of friends and family. Depending on the size and scope of the venture, entrepreneurs may need other external sources of seed capital such as angel investment or venture capital. Typically, these types of investments are focused on potential innovative high-growth firms.

- Founders, friends and family, love money:

The majority of financing comes from entrepreneurs self-financing their ventures. This might be through investing their existing personal assets or leveraging credit cards. The next source of financing typically consists of support from friends and family.

- Angel investment:

Angel investors, who are often experienced entrepreneurs or business people, have become increasingly recognized as an important source of equity capital at the seed stage and at the start-up stage. They operate in a segment which falls in between founders, friends and family financing, and formal venture capital investors.

- Venture capital:

Venture capital is “formal” or “professional” equity, in the form of a fund run by general shareholders to invest in early to expansion stages of high growth firms. Buyouts are normally focused on medium to large companies. Venture capital is an important source of funding for young, technology-based companies and plays a key role in industries such as information communication technology (ICT) and biotech and, more recently, in the cleantech industry.

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

The typical size of the investment into a high growth company in France depends on the type of investors:

Informal investors		**Formal investors**
Founders, friends and family	Angel investors Typical investment size: €25,000-€500,000	Venture capital funds Typical investment size: €3-5 million
Initial stage investments	Early stage investments	Later stage investments

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.)

The typical documents for an investment into a high growth company (other than the due diligence documentation and an NDA) are the following:

- **Term Sheet**, which sets forth the basic terms of the investment structure (sometimes stand-alone, sometimes as part of a letter of intent, if any); generally not intended to be binding on the parties, with the exception of certain provisions.

- **Investment Agreement**, which confirms the financial commitment of the investors to purchase the financial instruments of the company, and sets out the representations and warranties, covenants, and terms and conditions of the investment.

- **Shareholders' Agreement**, signed between the investors and the management shareholders (in presence of the company), which is specific to each investment, but will typically include usual rights requested by the investors, rules of governance, key management and information rights provisions, intellectual property rights.

- **Amended Articles of Association of the company**, in order to take into account certain terms and conditions agreed to in the Shareholders' Agreement that need to be enforceable against third parties.

  Indeed in France, the Articles of Association better secure enforcement than a Shareholders' Agreement, which is why it is generally appropriate to include in the Articles of Association all provisions regarding share transfer obligations, prior approvals of share transfers or preemption rights. Indeed, non-compliance with statutory obligations is sanctioned by nullity, whereas non-compliance with non-statutory obligations is rarely awarded by nullity and most often by damages (grounded on Article 1142 of the Civil Code which states that "any obligation to do or not to do resolves itself in damages in case of non-performance on the part of the debtor"). Pursuant to Article L. 235-1 of the Commercial Code, the nullity of non-statutory acts or deliberations other than those amending the articles of association ("*engagements extra-statutaires*") may result only from the breach of a mandatory provision in the Commercial Code or in the acts governing contracts.

  Furthermore, it is generally appropriate to include the various management bodies in the Articles of Association in order to inform third parties of existing supervisory or executive committees (however, in such a case, clerks of the Trade and Company Registry in certain jurisdictions require that all management bodies being able to bind the company appear on the Corporate Extract of the company; therefore, this is sometimes an issue for certain investors).

- **Corporate documents linked to the investment**, such as shareholders' resolutions and specific terms and conditions of issuance of financial instruments.

- **Management package**, which is a set of documents setting forth the incentive remuneration system of the management, including any issuance of financial instruments to the benefit of management.

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.)?

There are a variety of financial incentives for business investments and the support from the French authorities, mainly allocated to the company itself and not to the direct investors, comes in various forms, such as:

- limited or interest-free loans,
- grants for physical investments' projects and R&D (research and development),
- reduced tax estate costs,
- tax exemptions.

Support can be provided at national level and by regional and local authorities, depending on the size of the companies (SMEs, large companies), on their location (AFR - *Aide au Financement Régional*: recognized areas for regional funding), and on the nature of the investments.

Investment projects receiving financial support are required to remain in the same region for five years (large companies) or three years (SMEs).

In a given regional area (AFR), the financial support ranges from 10 to 15% of the investment for large businesses, and up to 35% for SMEs. The financial support comes in the form of subsidies or repayable advances, aid for real estate or tax/social security contribution exemptions.

For large companies, the financial support is capped at €200,000 per company over three years.

Outside recognized areas for regional funding, financial support is capped at 10% of the investment for medium-sized companies and 20% for small companies (or €200,000 over three years if it is more favorable), and €200,000 for large companies over three years.

Government support for innovation and R&D is provided by the **research tax credit** ("CIR", *crédit d'impôt recherche*), calculated at 30% of all R&D expenditure incurred in France up to €100 million (5% above this threshold). In 2013, the research tax credit was extended to innovation spending by SMEs of up to €400,000 and the status of "innovative new company" (JEI – "*Jeune Entreprise Innovante"*) encourages their development in France (tax relief, social security contributions' exemptions, and exemptions on capital gains from equity transfer). The level of support depends on the stage of R&D underway (fundamental research, industrial research or experimental development).

Government contributions to large businesses conducting shared experimental R&D may cover up to 40% of the total cost.

In such a case, the aid comes mainly from the regional development grants for research, development and innovation, the grants from the Ministry of Industry, BPI France, the National Research Agency, or the National Investment Program.

BPI France (initially called OSEO, created in 2005, by bringing together ANVAR (French innovation agency) and BDPME (SME development bank), and now called BPI France since July 2013) has as mission to provide assistance and financial support to SMEs and VSEs in the most decisive phases of their life cycle: start up, innovation, development, business transfer / buy out. By sharing the risk, it facilitates the access of SMEs to financing by banking partners and equity capital investors.

BPI France covers three areas of activity:

- **Innovation support and funding:** for technology transfer and innovative technology-based projects with real marketing prospects.
- **Guaranteeing funding granted** by banks and equity capital investors (by shouldering between 40 and 70% of the risk, depending on the risk of the project).
- **Funding investments and operating cycle** alongside the banks.

Business support is well-structured and important for the company, but there are only few **direct aids to investors**.

There are two direct ways:

- to reduce income tax (“IR”): the French General Tax Code provides that persons resident in France may qualify for a reduction in income tax in the event of common share purchases in SMEs, and may deduct the interests of loans taken out for the recovery of a company (FGTC, Article 199 *terdecies*-0-A et 199 *terdecies*-0-B).

- to reduce the solidarity tax on wealth (“ISF”): both the possession and the acquisition of professional or social assets can decrease the amount of tax on wealth (FGTC, Article 885 I *quater*, 885 I *ter*).

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?

From the point of view of an investor, be it international or domestic, the following financial instruments are usually preferred:

- **Preferred shares**: since the investor becomes a shareholder directly and the regime applicable to the preferred shares is very flexible, at the moment of their creation as well as in the course of their management. The rights pertaining to the preferred shares are set forth in the Articles of Association or in the issuing agreement *(contrat d'émission)* and can be of all kinds. The preferences may be temporary or permanent, and they may also be terminated. Preferred shares may pay higher dividends than ordinary shares and dividend income provided to investors is treated favorably from a tax perspective relative to other forms of income. Therefore, preferred shares are often able to offer a good after-tax yield. When the investment is made in tranches, a warrant is sometimes attached to the preferred share to allow the further purchase of the relevant shares once agreed milestones have been achieved.

- **Convertible bonds**: in certain cases, investors prefer convertible bonds since they can exchange them for a specific amount of shares at a later date, subject to a pre-determined formula. Unlike non-convertible bonds, they have the potential to rise in price if the company performs well. In the rare event the issuer goes into bankruptcy, investors in convertible bonds (as in non-convertible bonds) have a higher priority to claim to the company's assets than ordinary shareholders.

As a general principle, financial dealings between France and foreign countries are unrestricted. However, certain foreign investments are subject to regulations: an administrative or statistical declaration with the French Ministry of Economy, or a prior authorisation by the French Ministry of Economy[1], and in certain cases, a statistical declaration with the *Banque de France,* may be required depending on the type of investment and place of residence of the investor.

[1] Foreign investments in an activity, which involves (even on an occasional basis) the exercise of public authority or pertains to activities likely to jeopardise public order, public safety or national defence interests, or relates to the research, production or marketing of weapons, munitions, explosive powders and substances, are subject to the prior authorisation of the French Ministry of Economy.

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?)

The most popular company form is the **simplified joint-stock company (*société par actions simplifiée* – “SAS”)**. This is due to the fact that it is the most flexible type of company.

The shareholders of an SAS have a lot of freedom regarding the drafting of the Articles of Association. For example, shareholders can freely determine the conditions of appointment and removal of corporate officers as well as their mode of remuneration. Shareholders also freely determine the form and the conditions under which collective decisions are taken (unanimity, simple majority and absolute majority). Only few decisions require mandatory unanimity (such as adopting or amending clauses regarding the temporary inalienability of shares, approvals in case of transfers, possibilities of excluding a shareholder, changes of nationality of the company, changes of control within a company shareholder, increases in the shareholders undertakings).

The President is the only mandatory management body. The shareholders can then contemplate adding additional management bodies (general directors, delegate general directors, supervisory committees, remuneration / strategic committees, etc.). In high growth companies, there is at the least a supervisory committee allowing investors to supervise the management of the company without increasing the risk of “piercing the corporate veil”.

The other reasons for the popularity of the SAS are the following:

- Number of shareholders: an SAS can be created by a single shareholder (“SASU”) or several shareholders.

- Capital: shareholders can freely define the amount of share capital of the company (minimum €1).

- Liability: personal liability of shareholders is limited to the amount of their contributions in capital (except in cases of fraud, misuse of corporate assets or de facto management, where the shareholders may engage their civil and criminal liability). Insofar as investors in high growth companies merely supervise the management of the company (as members of a supervisory committee or other non-management committee), liability issues rarely arise.

- Taxation: in principle, companies are subject to corporate tax (“IS”). Corporate tax is due by the company itself. But companies can opt for the income tax regime if certain restrictive conditions are fulfilled.

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

- Sustainable Development and Green Energies
- Information and communication technologies
- Biotech
- Software
- Medical Research
- Internet

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

There are more and more incentive schemes for entrepreneurs in France over the past few years (accelerators, incubators, co-working spaces and startup programs), notably incentivizing high growth companies.

Incubators are programs designed to support the successful development of entrepreneurial companies through an array of business support resources and services. Incubators provide support in terms of advice and financing in the early stages of the business cycle. Incubators vary in the way they deliver their services, in their organizational structure, and in the types of clients they serve.

There are two kinds of incubators:

- the non-profit incubators (e.g. related to R&D),
- private incubators: they generally take a percentage of the capital of the company to realize a capital gain when the company is sold.

Accelerators are programs that work with a small group of technology start-ups over a set timeframe (often three months), giving them an intense period of mentorship to “accelerate” their businesses. Many accelerators will take a small amount of equity in each company. As such, most accelerators can be seen as early-stage investment vehicles that provide start-ups with skills and knowledge that will help them achieve follow-on investment.

A good example of a French incubator is “DojoCrea”, which has three buildings totaling over 1,000 m² in Paris, providing *domiciliation* (a legal process for all companies requiring a mailing address in order to incorporate), connections with banks, lawyers, accountants, OSEO, etc. Many French universities or “*grandes écoles*” have incubators which provide access to the school’s alumni as well, notably HEC, ESCP, Sciences Politiques, and ParisTech. In addition, government-funded incubators like “Paris Incubateurs” and “PRIMA” have buildings all over Paris where startups come together.

“Le Camping” in Silicon Sentier was the first French accelerator program with a physical space in 2010 (Le Camping is a big exception to the equity rule, as they take 0% in their companies and give them €3,500 during the first six months). Currently funded through grants and sponsors under the giant umbrella of “Silicon Sentier”, the accelerator may have to start answering questions as to what the sustainability of such a program is. Other programs, like “DojoBoost”, the accelerator located in DojoCrea, offer no seed capital, but still take 5% of the company.

The French accelerator called “TheFamily” was set up in 2013. Instead of offering a traditional co-working space, it runs a house in Paris where start-ups can work, and also provides accommodation for visiting investors. They operate at a tiny 1% stakeholder level.

The city of Paris has officially launched the anxiously anticipated and much debated “1000 Startups @ La Halle Freyssinet” project (which will be largely financed by Xavier Niel with additional financial support from the *Caisse des Dépôts et Consignations*). Starting in 2016, the “Halle Freyssinet” will be completely transformed into a massive tech incubator with 30,000 m² of co-working and office space, accelerators, incubators, event facilities, and other services focusing on the tech community.

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

From the point of view of an entrepreneur, stock options (even though the tax regime is less interesting than previously) and warrants for subscription to business creator shares are the most interesting.

The financial advantage lies in the fact that the share price is fixed when the shares are granted (and not at the time of exercise). The more the company creates value between the date the shares are allocated to the manager and the date the shares are sold, the more the capital gain is important. The entrepreneur is thus seriously involved in the increased value of his company.

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:

In a typical investment into a high growth company, a typical investor would naturally try to keep some control over management and request certain limitations of powers depending on the size and the structure of the company (limitations would be required as regards sale and purchase of corporate assets, guarantees to be granted, important contracts to be signed, key people to be hired or dismissed, taking on debt, etc.).

A number of management decisions are indeed subject to the prior approval of the board at a simple or qualified majority, according to their importance. Often the prior approval of the preferred shareholders is not required. This is to avoid cumbersome and expensive shareholders' meetings when, due to a qualified majority requirement, it is obvious that the required majority will not be reached in shareholders' meetings. However, under the influence of foreign investors, prior approval of the preferred shareholders is becoming increasingly common.

On the contrary, an entrepreneur will try to maintain as much freedom as possible in order to avoid burdensome authorisation procedures on a day-to-day basis. He or she will also attempt to avoid time-consuming monthly reporting to shareholders.

The difficult balance to find is that investors need to be reassured, day-to-day management needs to remain straight-forward and any authorisation process needs to remain cost-effective. However, as a reminder, interfering in the management of a company can be considered as de facto management, particularly in cases of bankruptcy.

A typical investor will also request the following measures to maintain control over the management of the company and their shareholding:

a. Anti-dilution measures: these will be systematically requested.

b. Rights of first refusal, pre-emption rights, drag and tag along rights: these will be systematically requested.

c. Protective provisions: these will be more rarely obtained unless the investor is significant.

d. Information rights: these will be systematically requested (generally on the basis of a minimum quarterly accounting reporting by management, but this will depend on the size of the company).

e. Dead-lock resolution: this will be requested by an investor if the number of shareholders and their shareholding is similar.

f. Board seats / observer rights: board seats go to the most significant investors to keep boards as small and efficient as possible. Some investors (such as mezzanine investors) satisfy themselves with observer seats.

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?

The most common exits regarding high-growth companies are trade sales and sales to private equity funds or venture capital funds. An IPO is far from being the most widely used exit. The repurchase of a company by its management team is also becoming more and more successful in France.

A typical transaction length goes from 2 to 4 months.

5.2 How are new investors dealt with in your jurisdiction? How would the control issues set out in section 4 above be dealt with? Are initial investment and shareholders' agreements upheld in the next round, or a new agreement is entered into?

The control issues set out in section 4 above are generally dealt with in the same way in the next round as in the previous round, depending on the importance of the new investors.

Most often, new investment and shareholders' agreements are entered into in the next round if the investor is essential to the development of the company. Where new investors are small minority investors, the initial investment and shareholders' agreements are upheld and the new investors adhere to said agreements).

6. REGULATORY ISSUES

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

High growth companies are normally subject to corporate tax. This means that companies are taxed at 15% for the part of their taxable profits below €38,120, and at 33.1/3% for the remaining part of their profits.

Each financial instrument that a high-growth company can put into place has its own tax regime:

- Stock options

  Gains of exercised options are subject to income tax and there is a 8% social tax levy (including 5.1% of deductible generalized social security duties). The salary contribution is 10%.

  Capital gains or capital losses are taxed under the income tax regime and there is a 15.5% social tax levy (including 5.1% of deductible generalized social security duties).

  Dividends entail a tax allowance of 40%. Dividends are taxed under the income tax regime and there is a 15.5% social tax levy (including 5.1% of deductible generalized social security duties).

- Free shares

  Gains of exercised options are subject to income tax and there is a 8% social tax levy (including 5.1% of deductible generalized social security duties). The salary contribution is 10%.

  Capital gains or capital losses are taxed under the income tax regime and the tax allowance depends on the holding period of the shares. Social tax levies amount to 15% (including 5.1% of deductible generalized social security duties).

  Dividends entail a tax allowance of 40%. Dividends are taxed under the income tax regime and there is a 15.5% social tax levy (including 5.1% of deductible generalized social security duties).

- Warrants for subscription to business creator shares

  Capital gains are taxed under the income tax regime: 19% tax rate (for more than 3-year companies when the transfer is completed) or 30% tax rate (for less than 3-year companies). Social levies amount to 15%.

- Convertible bonds

  There is no tax burden at the time of the acquisition or conversion of the convertible bonds. If the shares are sold, the operation is governed by the income tax regime and social levies amount to 15.5%.

- Preferred shares

  Capital gains are taxed at 19% under the income tax regime, but there is a legal exemption if the shares are held for more than 8 years, but social levies amount to 12.3%.

- Shares with warrants attached

  There is no tax burden for the company and the President when the shares with warrants attached for subscription to business creator shares are exercised.

  Capital gains are taxed under the income tax regime (with a tax exemption for the holding period). Social levies amount to 15.5%.

6.2 In addition to any of the issues set out above, any other regulatory incentives or constraints with respect to high growth companies? Any constraints deriving from obligation for local participation in a high growth company? Co-investment obligation? Etc.

In connection with high growth companies, the status of "Young Innovative Company" ("JEI" – *Jeune Entreprise Innovante*) allows, under certain conditions, tax and social relief.

- Exemptions of 100% social charges: the draft Finance Bill for 2014 introduces an extension of the status of JEIs until 31 December 2016. The main advantage of the status is restored: JEIs benefit from an exemption of the employer's social security contributions at full rate for the seven years following the incorporation of the company.

- JEIs benefit from the tax research credit (CIR): the JEI status perfectly matches with tax research credit regarding R&D expenses.

- Tax exemption for operations eligible to the “Innovation Tax Credit” (“CII” - *crédit d’impôt innovation*) In line with the creation of the CCI and the CIR, the JEIs benefit from an extension of the exemption of contributions allocated to specific operations such as design, prototypes, new products, that is to say activities related to innovation and not only to R&D. The CII is capped at €80,000.

- Tax Credit for encouraging Competitiveness and Employment (CICE, *crédit d’impôt pour la compétitivité et l’emploi*): effective since 1st January 2013, the aim of this new tax credit is to reduce labor costs for French companies (with respect to low to medium wages) and to generate an expected €20 billion tax break for businesses. The CICE is a tax credit equal to 6% (since beginning 2014, 4% in 2013) of certain wages paid to salaried employees in a given calendar year. Eligible salaries must not be more than 2.5 times the French minimum wage (referred to as the *SMIC* or not more than approximately €43,000 per year).

- Immediate repayment: after imputation of taxes due, JEIs benefit from an immediate refund of the excess fraction of their tax credits. It is a major asset to companies in full development.

To benefit from the JEI status, 5 conditions are required:

- Being an SME,
- Having been incorporated for less than eight years,
- Research expenses eligible to the R&D tax credit equal to at least 15% of their tax deductible expenses,
- Share capital mainly held by individuals or venture capital funds,
- Not being created through a merger, reorganization or extension of preexisting activities).

There are no specific obligations for local participation in a high growth company, and no co-investment obligations.

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.