



Model Documentation for a Limited Partnership for Collective Investment

drawn up by SECA and AMAS

14 July 2015

(Status as of 24 January 2022)

Please note: The following model prospectus including the company agreement for the Limited Partnership for Collective Investment is based on (i) the Swiss Federal Act on Collective Investment Schemes (referred to below as the “CISA”) and the attendant ordinances of the Federal Council (referred to below as the “CISO”) and of the Swiss Financial Market Supervisory Authority FINMA (referred to below as the “CISO-FINMA”), (ii) the Federal Act on Financial Services (referred to below as the “FinSA”) and the attendant ordinance of the Federal Council (referred to below as the “FinSO”), and (iii) the provisions of the Swiss Code of Obligations (referred to below as the “CO”).

The model documentation for Swiss Limited Partnerships for Collective Investment¹ has been **developed jointly by the Asset Management Association Switzerland (AMAS) and the Swiss Private Equity and Corporate Finance Association (SECA)**². The **Swiss Financial Market Supervisory Authority FINMA** has acknowledged and accepted the documentation as the basis for applications for authorization.

No single model agreement can cover the wide range of provisions and variations in company agreements in the fund business concerning alternative investments generally and private equity and hedge fund business in particular. The model agreement serves as a **basic framework**, which will have to be modified and refined in practice in line with the requirements of the parties involved. Many provisions are “optional” or need to be adapted to the individual objectives of the parties concerned.

In light of the broad scope of application covered by Limited Partnerships for Collective Investment, this model agreement has had to be geared to one **basic type of structure**. The basic structure in this instance is a closed-end (i.e. no termination option) private equity fund for a fairly small number of (qualified) investors, who have joined together for a limited term (of 6 to 12 years).

Under the terms of the CISA and CISO, all types of hedge funds, construction, real estate, and infrastructure projects, as well as hybrid forms and funds of funds for the aforementioned investments, may be set up in the form of a Limited Partnership for Collective Investment. These are in part established for longer periods and/or unlike the present model envisage the possibility of terminations and subscriptions (after founding).

¹ Footnote only relevant for the German version.

² The documentation was originally edited primarily by Dr. Hannes Glaus (attorney at law, BWB Services AG) on behalf of the two associations, and this work is being continued by Dr. Claudio Bazzi (attorney at law, Bratschi AG).

Model Prospectus³ for a Limited Partnership for Collective Investment including the Company Agreement

The following information gives a brief partial summary of the following Company Agreement. If the data in this prospectus and the Company Agreement overlap, the Company Agreement will take precedence.⁴

Company

- Name, object and registered office
- Capital
- Legal structure
- Authorization from and supervision by the Swiss Financial Market Supervisory Authority FINMA

General Partnership AG

- Object, name and registered office
- Capital and shareholders
- Board of Directors
- Financial Auditor

Executive officers,
key persons

[Names and background, specifically regarding qualifications and track record]

[Investment manager, advisor, administrator,
insofar as the said are envisaged]

[only in the case of delegation:]

- Information on the companies and persons to whom management and/or representation or parts thereof have been delegated (including their authorization status).
- Reference to significant agreements.

[Advisory Board, insofar as envisaged]

[Function]
[Names and background, specifically with regard to qualifications and track record]

Object, investments

- Object
- Investments
- Investment policy:
 - stage of the investments (e.g. venture/early stage, buyout, etc.)
 - geographical focus
 - sector focus (e.g. biotech, etc.)

³ Pursuant to Art. 49 para. 2 FinSA in conjunction with Art. 102 para. 1 let. h CISA, the prospectus specifically sets out the investments, investment policy, investment restrictions, risk diversification, risks associated with investment, and investment techniques. All other aspects listed in this model document are optional. However, in the case of larger limited partnerships in particular, more detailed information is both prudent and customary. It should be noted that, from the legal perspective, changes to the Company Agreement are subject to the approval of the Swiss Financial Market Supervisory Authority FINMA, but changes to the prospectus are not.

⁴ In principle, information that also forms part of the Company Agreement is to be provided only in summary form, with a reference to the corresponding sections of the Agreement.

	<ul style="list-style-type: none"> • Investment restrictions: exclusion of ... • Risk diversification: no more than [x]% per investment, diversification in terms of geographical mix, stages, etc. • Investment techniques • Details on the selection and monitoring processes
Risks	<ul style="list-style-type: none"> • Illiquidity, total loss of investment, etc.
Paying Agent and Custodian⁵	[Name, etc.]
Regulatory Auditor / Financial Auditor⁶	[Name, etc.]
Term	[...]
Limited Partners; subscription	<p>Qualified investors, restrictions (US investors, etc.)</p> <p>Key subscription information:</p> <ul style="list-style-type: none"> • Subscription period: [initial and second] closing • Minimum subscription: institutional / private investors • Investment phase
Reporting	<ul style="list-style-type: none"> • Valuation, reporting, company meetings • Corporate governance: SECA Code of Conduct
Further information	<ul style="list-style-type: none"> • Overview of costs • Tax aspects • Co-investments
[Glossary]	[Typical private equity terms]

⁵ A custodian bank is not mandatory, and makes sense above all for listed securities pursuant to Art. 54 CISA; a custodian must be named for non-bankable assets (in particular contracts).

⁶ The regulatory auditor is responsible for the regulatory audit, and must meet the requirements set out in Art. 126 para. 1 CISA. The financial auditor is responsible for the financial audit, and must meet the requirements set out in Art. 126 para. 5 CISA. In practice, the regulatory audit and financial audit are, as a rule, performed by the same company.

Model Company Agreement for a Limited Partnership for Collective Investment

between

[name of General Partnership AG], [location of registered office], as general partner
(referred to below as “**General Partnership AG**”)

and

the Limited Partners pursuant to the register of Limited Partners
(referred to below as the “**Limited Partners**”)

TABLE OF CONTENTS

Preliminary remarks	5
I The Limited Partnership	5
A Company name, object, and governing and executive bodies	5
B Term	6
II Capital.....	6
A Limited Partners’ capital	6
B Additional capital	6
C Subscription	7
III Investments.....	8
IV Limited Partners	9
A Powers.....	9
B Right to receive information; confidentiality	10
C Liability.....	10
D Transfer of Participations	10
E Death, insolvency, incapacity and expulsion of a Limited Partner.....	11
V Company Meeting	11
A Powers.....	11
B Convocation and conduct of the Company Meeting	12
C	13
D [Advisory Board].....	13
VI General Partnership AG	14
A Management and representation.....	14
B Responsibility and delegation.....	16
VII Accounting, distribution of income, Regulatory Auditor and Financial Auditor	16
A Accounting, valuation and reporting	16
B Repayment of capital and appropriation of income.....	17
C Regulatory Auditor and Financial Auditor	17
VIII Miscellaneous provisions	18
A Dissolution	18
B Notices.....	18
C Arbitration.....	18
D Entry into force.....	18
Appendices	19
Subscription Form	19
[Definitions]	19

Preliminary remarks

The Limited Partners and General Partnership AG as general partner intend to establish a closed-end limited partnership for collective investment in [investment area]. The Limited Partnership is based on (i) the Swiss Federal Act on Collective Investment Schemes (referred to below as the “CISA”), the attendant ordinances of the Federal Council (referred to below as the “CISO”) and the Swiss Financial Market Supervisory Authority FINMA (referred to below as the “CISO-FINMA”), (ii) the Federal Act on Financial Services (referred to below as the “FinSA”), and (iii) the provisions of the Swiss Code of Obligations (referred to below as the “CO”). It is subject to the supervision of the Swiss Financial Market Supervisory Authority (referred to below as “FINMA”).

I The Limited Partnership

A Company name, object, and governing and executive bodies

1. Under the company name [name of Limited Partnership]⁷ (referred to below as the “**Company**”), a company has been established as a Limited Partnership for Collective Investment pursuant to Art. 98 et seqq. CISA. The company has its registered office in [town/city].
2. The sole object of the Company is collective investment in [investment area]⁸ pursuant to point 21 et seqq. The Company is entitled to effect all actions and legal transactions that are directly or indirectly conducive to it achieving its object.
3. The governing and executive bodies of the Company are (a) the **Company Meeting**, comprising the Limited Partners and General Partnership AG, (b) **General Partnership AG** and (c) the **Regulatory Auditor / Financial Auditor**⁹.
4. In addition, the Company will appoint a Paying Agent [and a Custodian]¹⁰. General Partnership AG is free to change the Paying Agent [and the Custodian] at its own discretion at any time.

⁷ In accordance with Art. 101 CISA, the partnership name must contain a description of the legal form (“Kommanditgesellschaft für kollektive Kapitalanlagen”, “Société en commandite de placements collectifs”, “Società in accomandita per investimenti collettivi di capitale”, or “Limited Partnership for Collective Investment”) or its abbreviation (“KmGK”, “SCmPC”, “SAcCol”, or “LP”).

⁸ Example in the case of a venture capital fund: “... in risk capital, specifically participations in young companies in growth sectors with high value-creation potential ...”.

⁹ cf. comment in footnote 5.

¹⁰ The appointment and above all the deployment of a custodian bank is required only if the Company holds listed securities pursuant to Art. 54 CISA. In the private equity business, but also in the case of construction and real estate projects, the investments do not generally take the form of listed securities; a custodian must be named for such non-bankable assets.

B Term

5. The term of the Company is [number of years (e.g. 8)]¹¹ [e.g. from its entry in the Commercial Register or from the close of the first subscription period], subject to any extensions determined by the Company Meeting (cf. point 39 let. b below).
6. Following the conclusion of the subscription period, the Company will invest the capital in portfolio companies pursuant to point 21 during the investment phase of up to [number of years (e.g. 3-5)] (referred to below as the “**Investment Phase**”). In the years thereafter, the activities of the Company will concentrate on the management and gradual liquidation of the portfolio companies.
7. New investments are permitted after the end of the Investment Phase only in the exceptional cases set out in this Agreement. Furthermore, subject to the exceptions set down in this Agreement (cf. point 39 let. a below), the proceeds from the sale of individual investments will not be used for reinvestment and will instead be distributed to the partners in accordance with this Agreement.

II Capital

A Limited Partners' capital

8. The Limited Partners' contribution is CHF [amount in numbers] ([amount in words]), divided into [number of Limited Partnership Shares] Limited Partnership Shares of CHF [amount in Swiss francs] (referred to below as “**Limited Partnership Shares**”). The Limited Partners pay in their proportion of the Limited Partners' contribution when the Company is founded. This contribution is entered in the Commercial Register as an asset base to satisfy liability claims and is repaid only upon the liquidation of the Company¹².
9. General Partnership AG, its executive officers pursuant to Art. 119 para. 3 CISO and (provided they meet the requirements for qualified investors) any other founders are entitled to subscribe directly or indirectly up to [percentage rate] % of the Limited Partners' contribution (they are referred to below as “**Founding Limited Partners**” and “**Founding Limited Partnership shares**”). The following provisions relating to additional capital and minimum subscriptions do not apply to the Founding Limited Partners.

B Additional capital

10. With the exception of the Founding Limited Partners¹³, the Limited Partners undertake when subscribing Limited Partnership Shares to provide an additional financial contribution equal to [number] times the subscribed Limited Partnership Shares (referred to below as “**Additional Capital**”). Internally, the Additional Capital represents equity but is not entered in the Commercial Register and does not form an asset base to satisfy liability claims; it may be repaid at any time subject to a corresponding resolution by General Partnership AG in accordance with the present Agreement.

¹¹ In the venture capital sector, a term of eight years with two extension options of two years each is a common scenario.

¹² It is also conceivable to have different categories of Limited Partnership Shares to reflect different interests.

¹³ Founding limited partnership shares confer the same entitlement to participate in earnings as the other limited partnership shares, but without the obligation to provide additional capital.

11. Notwithstanding the rules on the distribution of income (point 73 et seqq. below), interest will not be paid on the Limited Partnership Shares and the associated proportion of the Additional Capital (referred to jointly below as the “**Participation**”).
12. The Limited Partners must pay in the Additional Capital in one or more installments within [number of days, (e.g. ten)] business days after receipt of the corresponding demand from General Partnership AG. Once the Investment Phase has expired pursuant to point 6, General Partnership AG may only demand the payment of the uncalled Additional Capital on the basis of a resolution passed by the Company Meeting [the Advisory Board if applicable] (cf. point 39 let. a). An exception in this regard is the calling of Additional Capital to cover costs (including the remuneration of General Partnership AG) [and to make investments that are also permitted after the Investment Phase pursuant to this Agreement or by resolution of the Company Meeting (point 39 let. a)]. [On subscription, General Partnership AG may release Limited Partnership Shares from the obligation to pay Additional Capital. Such shares are referred to as “**Nominal Limited Partnership Shares**”). With the exception of repayment on liquidation, Nominal Limited Partnership Shares confer no rights, in particular no voting rights and no right to a share of profit. If a Nominal Limited Partnership Share is transferred to another investor before the end of the subscription period, it is automatically reclassified as a Limited Partnership Share with all rights and obligations under this Agreement (in particular the obligation to provide Additional Capital pursuant to point 10 above) with immediate effect, provided the said other investor is a qualified investor. Shares may not be transferred after the end of the subscription period.¹⁴
13. If, despite receiving a reminder, a Limited Partner fails to remit the demanded payment of the Additional Capital within [number of days, (e.g. ten)] calendar days of receipt of the reminder, their Participation may be sold to the highest bidding Limited Partner in accordance with the rules on the transfer of Participations (point 33 et seqq.). General Partnership AG is responsible for settlement. If there is no Limited Partner willing to take on the Participation (together with the obligation in respect of the Additional Capital), General Partnership AG may, at its own discretion, offer the said Participation to external third parties.
14. The sale of the Participation is permitted only if the acquiring party also takes on the obligation to pay in the Additional Capital. Interest will be charged on outstanding installments in respect of the Additional Capital at [percentage rate, (e.g. 1)]% per month, accruing to the Company. The right to pursue further claims is reserved.

C Subscription

15. The subscription period will run to [date]¹⁵. During this period, General Partnership AG may found the Company and conduct one or more capital increases.¹⁶

¹⁴ A rule to this effect can prevent the need to amend the Company Agreement (including having it signed by all Limited Partners) and the Commercial Register entry every time if there are multiple subscription periods, each resulting in a capital increase. Instead, a sponsor closely linked to the Limited Partnership subscribes the Nominal Limited Partnership Shares equally in bulk, and additional investors acquire them at a later date, not directly through subscription but indirectly through transfer (with the Nominal Limited Partnership Shares thus becoming fully entitled Limited Partnership Shares).

¹⁵ As a rule, the subscription period runs only up to the start of investment activity, although investments may be made before the end of the subscription period. Within this period, all subscriptions should be made at the same conditions, possibly modified by an interest premium for later subscriptions.

¹⁶ Another common provision is that General Partnership AG may extend the subscription period or may order a further subscription (a “second closing”).

16. By signing the subscription form as per the appendix (referred to below as the “**Subscription Form**”), the subscriber irrevocably undertakes to make the immediate payment of the corresponding Limited Partner's contribution and, when called upon to do so by General Partnership AG, to remit that proportion of Additional Capital that is payable by them. All payments are to be made within the period set down in point 12.
17. The minimum subscription amount per subscriber or Limited Partner is CHF [amount in CHF] (Limited Partner's capital and Additional Capital). [Compensation for the capital previously subscribed and paid in (referred to below as “compensation”) is added to the subscription amount for subscription periods after founding. This compensates existing subscribers (including the founders) for providing capital and for any reduction in value that may have occurred since they did so. It amounts to [e.g. 4]% p.a. of the amount of new subscriptions called, calculated from when they were paid in by the previous subscribers (including the founders) up to the close of the subscription period, plus the additional amount to compensate for any reduction in the value of previously subscribed Limited Partnership Shares. The compensation is requested with the first capital call.^{17]}
18. At the time of the subscription, the subscriber must be a qualified investor pursuant to Art. 10 para. 3 and para. 3^{ter} CISA or a Founding Limited Partner. Furthermore, the subscribers must meet the broader requirements and conditions set down in the Subscription Form. They must provide General Partnership AG with the information and documents it requires to carry out its tasks. The Company may enforce the repurchase of Participations provided it has sufficient financial resources and it emerges that the investors do not meet the relevant requirements.
19. Should an assurance given in a Subscription Form prove to be incorrect and the aforementioned requirements are therefore not met, the corresponding Participation will be sold pursuant to point 13. Moreover, the subscriber will be liable for any losses incurred.
20. General Partnership AG is also free to decide at its own discretion on whether to accept subscriptions; it may reject subscriptions without specifying reasons.

III Investments

21. The Company will invest in [specific investment purpose, e.g. investments in venture-stage high-tech firms in Europe].¹⁸
22. [Details on: Investment policy, investment restrictions, risk diversification, risks and investment techniques].¹⁹
 - stage of the investments (venture/early stage, buyout, etc.)
 - geographical focus
 - sector focus (biotech, etc.)
 - investment restrictions: exclusion of ...
 - risk diversification: no more than [percentage rate]% per investment, diversification in terms of geographical mix, stages, etc.

¹⁷ A rule to this effect serves to equalize risks in favour of the previous investors.

¹⁸ In the private equity sector, for example, it is customary to provide information on the industry, geographical location, stage (early and late stage, buyout). In the case of funds of funds, and especially in the case of hedge funds and real estate projects, the description of the investments is correspondingly different.

¹⁹ Details might also be given on minimum and maximum investments, borrowing, granting loans, limits, and leverage in respect of any investments, specifying the corresponding threshold values.

- investment techniques pursuant to Art. 102 para. 1 let. h CISA
- possibly information on
 - due diligence process
 - milestones, monitoring]

23. [Provisions regarding investments made by way of exception after the Investment Phase has expired].

23a. Due to the characteristics of investments in venture capital, the possibility of a total loss on the value of shares cannot be ruled out. Risks involve in particular a lack of divestment opportunities in respect of portfolio companies, a lack of market success on the part of portfolio companies, and unfavorable price trends. The risk of key people leaving must also be taken into account, as must credit, interest rate, and inflation risks as well as commercial, regulatory, technological, and company-specific risks. Furthermore, the investments involved are illiquid. For the entire term of the Company, Limited Partners have no right to return their shares or withdraw from the Company.²⁰

IV Limited Partners

A Powers

24. Each Limited Partnership Share confers the right to a proportionate share in the income of the Company (pursuant to point 73 et seq.) as well as one vote at the Company Meeting; the Founding Limited Partners do not participate in the Additional Capital. The Limited Partners exercise their voting rights at the Company Meeting.

25. The Limited Partners have no management powers. If General Partnership AG has a conflict of interests or if it is unable to make a decision for other reasons, the Company Meeting [or the Advisory Board in its stead] may take the corresponding fundamental decision. The implementation of such a decision and the related work (preliminary checks, etc.) are the responsibility of General Partnership AG.

26. The Limited Partners may conduct other transactions and participate in other companies for their own account and for the account of third parties.

27. [The Limited Partners (including the Founding Limited Partners) are entitled to invest directly in portfolio companies of the Company (referred to below as “Co-Investments”), provided the other Limited Partners are not disadvantaged as a result and the equal treatment of the Limited Partners is ensured. In particular, potential conflicts of interest, the allocation of costs and fees, and the sharing of costs with third parties must also be taken into account. The decision on the permissibility and the corresponding conditions is at the discretion of General Partnership AG [and the Advisory Board].]²¹

²⁰ Depending on the specific circumstances, it may be necessary to list additional risks.

²¹ It is prudent for the corresponding frameworks to be set down in separate regulations, e.g. the precedence of the Company in respect of the investments and liquidation.

B Right to receive information; confidentiality

28. Subject to the business confidentiality of the companies in which the Company invests, the Limited Partners have the right to inspect the business accounts of the Company provided this does not jeopardize the interests of the Company. In addition, the Limited Partners are entitled to receive reports pursuant to point 67.
29. Upon written request, General Partnership AG will grant the Limited Partners access to the business accounts within two calendar weeks. If General Partnership AG refuses to grant such inspection it must, upon application by a Limited Partner, instruct the Regulatory Auditor to carry out investigations and to provide information, subject to restrictions required for business confidentiality or other legitimate interests on the part of the Company.
30. [The Limited Partners must maintain confidentiality.]²²

C Liability

31. The Limited Partners are liable both personally and jointly and severally in respect of the Company's debt, albeit only up to the amount of the Limited Partners' contribution subscribed to by the individual Limited Partner.
32. The Company's creditors may not take legal action against the Limited Partners during the term of the Company. The commencement of insolvency proceedings against a Limited Partner does not *per se* render them open to legal proceedings in respect of the Company's debts.

D Transfer of Participations

33. The Limited Partners cannot terminate their Participations or return the said to the Company for redemption in any other manner. They may sell their Participation (together with the obligation in respect of the Additional Capital) to other Limited Partners or third parties provided and insofar as the said parties are willing to accept transfer of the Participation pursuant to point 13 and the number of Limited Partners does not fall below the minimum of two as a result. Furthermore, the acquiring party must be a qualified investor. Transfers to external third parties require the prior approval of General Partnership AG.
34. Participations for sale must first be offered to the other Limited Partners. The allocation will be made to the highest bidder. Part offers are permitted, and will be taken into account in descending order of the prices bid. In the event of equal offers, the allocation will be made in proportion to the holdings of Limited Partnership Shares of the various interested parties.
- 34a All costs associated with the transfer of shares (e.g. valuation, tax advice, etc.) must be borne by the selling Limited Partner, who must also reimburse the costs incurred by the Company in this regard.

²² A duty of confidentiality is customary, but not required by law.

35. A Limited Partner who wants to sell must give notice of their intention to General Partnership AG, which will then pass the offer on to the other Limited Partners. The latter must respond within [period, e.g. one calendar month] at the latest. If no response is received within this period, the party concerned will be deemed to have forfeited the right associated with the response. Any other responses relating to the transfer must also be given within one month to General Partnership AG.

E Death, insolvency, incapacity and expulsion of a Limited Partner

36. The death, insolvency, incapacity, etc. of a Limited Partner will not result in the dissolution of the Company. The Company authorizes General Partnership AG to expel an insolvent Limited Partner and to take over their Participation in accordance with Art. 615 (in conjunction with Art. 578) CO for the Company's account at the lower of its book value according to the most recent audited annual financial statements, the expelled Limited Partner's effective invested capital or the current fair market value, if no Limited Partner or external third party is willing to do so.
37. General Partnership AG may expel from the Company a Limited Partner who no longer meets the subscription requirements (cf. point 18); the same applies for further cases pursuant to Art. 105 para. 1 in conjunction with Art. 82 CISA. If General Partnership AG has unsuccessfully offered the shares of the Limited Partner concerned for sale to the other Limited Partners pursuant to point 33 et seqq., and no external third party is prepared to buy them, General Partnership AG is entitled to purchase the said shares for the Company's account by written declaration at the lower of their book value according to the most recent audited annual financial statements, the expelled Limited Partner's effective invested capital or the current fair market value.

V Company Meeting

A Powers

38. The Company Meeting is quorate if more than half of all Limited Partnership Shares are represented, unless this Agreement provides for a higher quorum. If this quorum is not reached, General Partnership AG will call a second meeting, which will be deemed quorate even if this requirement is not met.
39. The Company Meeting decides by the absolute majority of all votes represented on all matters that have not been delegated to General Partnership AG under the terms of this Agreement. This applies in particular for the following agenda items²³. If an absolute majority is not achieved, General Partnership AG may submit the matter to a newly convened second meeting, at which the decision will be carried by a simple majority.
- a) calling of the Additional Capital after the Investment Phase has expired, and the reinvestment of assets from the proceeds of investments;
 - b) extending the term of the Company on a maximum of [number of extensions (e.g. two)] occasions by [number of years (e.g. two)] years in each case;

²³ The list given serves purely as an example and there are essentially any number of possible variations.

- c) resolutions pertaining to management that General Partnership AG has submitted to the Company Meeting owing to a conflict of interest or for other reasons;
 - d) adopting the annual financial statements;
 - e) electing the Financial Auditor and Regulatory Auditor;
 - f) electing or dismissing members of the Advisory Board;
 - g) discharging General Partnership AG from liability;
 - h) amending the Company Agreement, provided such amendments are not governed by the provision below.
40. The following require a qualified majority of **[two thirds]** of the votes represented.
- a) dismissal and/or first-time appointment of General Partnership AG;
 - b) approval of the restructuring or replacement of General Partnership AG in the event of the departure of key persons, according to the prospectus;
 - c) delegation of management powers by General Partnership AG to third parties and significant changes to the corresponding conditions;
 - d) changes to the investment policy and guidelines pursuant to 21 et seqq.;
 - e) the early dissolution and liquidation of the Company;
 - f) the appropriation of liquidity surpluses that exceed the planned repayments and payments;
 - g) *repealed*
 - h) appointing an Advisory Board and determining its powers.
41. General Partnership AG must inform the supervisory authority of resolutions by the Company Meeting that concern amendments to the present Agreement or to General Partnership AG.²⁴

B Convocation and conduct of the Company Meeting

42. General Partnership AG is responsible for the proper convocation of the Company Meeting. The Meeting must be called at least one calendar month before it is to take place. Such notice must include information on the items on the agenda, and must enclose the necessary documents. Regular Company Meetings take place every year within 6 (six) months of the close of the financial year.
43. At the application of General Partnership AG, the Company Meeting may be held without a physical gathering by way of written approval of the motions submitted by General Partnership AG, unless the holders of more than 10% of all Limited Partnership Shares submit an objection. The aforementioned majority requirements will apply to the passing of resolutions (cf. point 38 et seqq.).

²⁴ cf. Art. 16 CISA

- 43a. If all partners are present, or if those who are absent waive this formal requirement in advance or after the fact, compliance with the formal rules on convocation can likewise be waived in application of Art. 701 CO.
- 43b. At the discretion of General Partnership AG, Limited Partners may also take part in a Company Meeting via video or telephone conferencing or similar technical tools, provided all partners taking part in the Company Meeting are able to hear the other partners' votes.
- 43c. Resolutions that do not concern a change to the Company Agreement pursuant to point 43e below may also be passed by a written vote (in particular via e-mail or similar communication tools) on the motion in question, unless at least 10% (ten percent) of all Limited Partners request a spoken discussion on the motion within 10 (ten) working days of it being put forward by General Partnership AG. Resolutions passed in writing are only valid if
- a. the motion in question was sent to all partners (at the last address they disclosed to the Company);
 - b. they were passed by the (absolute) majority of Limited Partners (unless the qualified majority provisions require a higher majority); and
 - c. the audit company confirms to the Board of Directors of General Partnership AG that these requirements have been met.
- 43d. Provisions of this Agreement that require a larger majority than the absolute majority of Limited Partners present to pass certain resolutions may only be added or changed with the specified majority.

C Changes to the Company Agreement

- 43e. Changes to the Company Agreement require a resolution by the Company Meeting and must be publicly documented and approved by FINMA. No changes may be made to the Company Agreement that adversely affect the inalienable rights of any individual Limited Partner or result in an obligation to provide Additional Capital.

D [Advisory Board]²⁵

44. An Advisory Board may be set up by the Founding Limited Partners, or at a later stage by the Company Meeting. The Advisory Board represents the interests of the Limited Partners and advises [and monitors] the management. It is entitled to obtain information from General Partnership AG on the management and to inspect the Company's business accounts. The Advisory Board may exercise certain of the powers granted to the Company Meeting; this applies in particular to the resolutions pursuant to points 39 let. a to 39 let. c.
45. The Advisory Board has the following specific powers:
- [exercising all powers delegated to it by the Company Meeting;]
 - [decisions on conflicts of interest between General Partnership AG and the Company and/or the Limited Partners;]
 - [...]

²⁵ The appointment of an Advisory Board is optional and the structure is largely at the discretion of the Limited Partners or Founders; an Advisory Board is typically set up at foundation.

46. The Advisory Board has **[at least three]** members. It is elected at the foundation of the Company or thereafter by the Company Meeting. The members of the Advisory Board may be dismissed at any time by the Company Meeting.
47. General Partnership AG will send at least one representative to the meetings of the Advisory Board. However, the said representative will only have the right to participate in the meetings, and no voting rights. The members of the Advisory Board need not be Limited Partners.
48. The Advisory Board is quorate if more than half of its members are present. Resolutions by the Advisory Board must be carried by the majority of the members present. **[In the event of a tie, the Chairman will have the casting vote/a new meeting will be convened/the matter will be passed back to the Company Meeting.]**
49. The members of the Advisory Board are obliged to maintain confidentiality, even after their period in office expires. They must disclose all current and potential conflicts of interest; where appropriate, they must abstain and may not participate in consultations.
50. The Company will remunerate the members of the Advisory Board appropriately for the expenses relating to their office **[-; there will be no additional remuneration over and above this for their activities].**

VI General Partnership AG

A Management and representation

51. Management is transferred to General Partnership AG as general partner in accordance with the CISA and CO. General Partnership AG alone is responsible for management, although it may delegate certain tasks to third parties pursuant to point 65 below. General Partnership AG signs on behalf of the Company in accordance with its regulations on authorized signatories.²⁶
52. General Partnership AG is responsible for the operational business of the Company within the framework of this Agreement. It evaluates potential portfolio companies, structures and decides on the investment of the Company in the said. It constantly monitors the portfolio companies, specifically with regard to their achievement of set parameters (milestones). It is entitled to intervene in the management of the portfolio companies at its own discretion and, among other things, to take up a position on the Board of Directors of the companies in question.
53. General Partnership AG decides on the calling of Additional Capital and its repayment. Subject to the exceptions set down in this Agreement²⁷, the calling of Additional Capital is permitted only in the Investment Phase.
54. General Partnership AG may, in principle, invest the capital of the Company only once. Liquidity that is not required and the proceeds from the sale of portfolio companies are repaid to the Limited Partners on an ongoing basis, subject to the provision of an appropriate level of liquidity for the Company and the exceptions set down in this Agreement.

²⁶ In accordance with Art. 12 para. 2 CISO in conjunction with Art. 98 para. 2^{bis} CISA, the authorized signatories of General Partnership AG must sign jointly.

²⁷ For example, investments in existing portfolio companies after the Investment Phase.

55. General Partnership AG must observe strict confidentiality, and must also impose this obligation on its executive and governing bodies, employees and advisors.
56. General Partnership AG is responsible for keeping the Company's books of account and providing regular reports to the Limited Partners. It must keep and update the register of Limited Partners and the capital accounts of the Limited Partners. It appoints the Custodian and the Paying Agent. In accordance with point 33 et seqq., it decides at its own discretion on any transfer of Participations (including commitments for Additional Capital) to third parties.
57. General Partnership AG may only be the general partner in this Company²⁸. It may conduct other business transactions for its own account and for the account of third parties or participate in other companies if such actions are disclosed and the interests of the Company are not impaired, or if the Company Meeting [or Advisory Board] has explicitly approved the business transaction in question (point 39 let. c).
58. General Partnership AG [and related parties] may not conduct any business transactions or pursue any other interests that conflict with the interests of the Company or that might lead to such a conflict of interests, except in cases where such transactions are approved by the Company Meeting [the Advisory Board if applicable]. Any remuneration and benefits (management fees, retrocessions, etc.) it receives in connection with its function for the Company must be passed on to the Company.
59. General Partnership AG must inform the Company Meeting [the Advisory Board if applicable] about all business transactions in which it, its executive officers, or related parties of General Partnership AG or its executive officers have a direct or indirect interest that might conflict with the interests of the Company.²⁹ The Company Meeting [the Advisory Board if applicable] will then decide on the further action to be taken. The executive officers must be listed in the prospectus.
60. For its activities, General Partnership AG will receive a fixed remuneration of [percentage rate]% p.a. of the amount of the total capital (Limited Partnership Shares and Additional Capital).³⁰
61. [Share of profits]³¹

²⁸ Alternative contractual formulations are possible, since multiple general partner relationships are permissible, subject to the conditions set out in Art. 98 para. 2 CISA.

²⁹ ... including preceding and successor funds that invest in the same portfolio companies, etc.

³⁰ There are any number of variations in practice; many companies provide for a reduction in the percentage rate and the basis (e.g. on the value of the remaining investments) after the Investment Phase has expired.

³¹ The share of the profits of the General Partner of General Partnership AG is equally important. The share of profits – referred to in the private equity business as 'carried interest' – is generally 20% of the profits. This is mostly carried out by a direct allocation of this share to the General Partner as part of the distribution of profits to the Limited Partners. This method is commonly used worldwide, and is also entirely conceivable under the CISA. In the present model documents, the share of profits is distributed via the Founding Limited Partnership Shares pursuant to points 9 and 10.

B Responsibility and delegation

62. General Partnership AG is liable to third parties for the Company's debts. The liability is unlimited and secondary. General Partnership AG may be sued by the Company's creditors only if the Company has been dissolved or unsuccessfully sued for collection by other parties, or if the Company itself has become insolvent.
63. General Partnership AG must ensure compliance with this Agreement and any Appendices as well as with the pertinent legislation, specifically the CISA. It must make the required reports to the supervisory authority and provide information requested by the latter.
64. General Partnership AG may appoint an expert advisory body, the remuneration of which must be made from the fee of General Partnership AG. The said body has a purely advisory function; it has no management or representation powers.
65. General Partnership AG may delegate the following powers to qualified external third parties³²:
 - [..]
 - [..]³³
66. Management powers may be delegated only to appropriately qualified persons or companies; General Partnership AG must ensure the diligent instruction, monitoring and controlling of such delegated parties.

VII Accounting, distribution of income, Regulatory Auditor and Financial Auditor

A Accounting, valuation and reporting

67. General Partnership AG must issue a quarterly report on business performance. The Annual Report must contain the information specified under Art. 89 CISA.³⁴
68. The financial year of the Company is the [calendar year]. The reference currency is [..].
69. General Partnership AG must keep a capital account for each Limited Partner. This account is used to hold the Limited Partnership Shares subscribed by the Limited Partner and the Additional Capital, the deposits paid in respect of the latter and the amounts reimbursed to the Limited Partner in respect of the Additional Capital and the Limited Partners' contribution, as well as the proportion of income paid out to them. [Additional current account, possibly a loss carry-forward account]
70. The Company must keep separate accounts for capital gains on the one hand and interest and dividends on the other.

³² Delegation is permitted provided it is in the interests of efficient management (Art. 119 CISO). In addition, the Company Agreement must contain provisions on the delegation of management or representation (Art. 102 para. 1 let. i CISA). The content and scope of the delegation together with the names and addresses of the delegated parties are to be listed in the prospectus where applicable, with reference to the corresponding agreements where applicable.

³³ Art. 119 CISO refers to the delegation of investment decisions. Delegation will often also affect administrative functions such as accounting and reporting, or support functions such as due diligence, monitoring, etc.

³⁴ A semi-annual report with a balance sheet and income statement is not required.

71. The valuation of the assets and liabilities, specifically the portfolio companies, will be based on the following principles.³⁵
- [...]
 - [...]
72. [Other accounting principles].

B Repayment of capital and appropriation of income

73. General Partnership AG will decide at its own discretion on the amount and timing of distributions of earnings and capital gains realized during the financial year, provided sufficient liquidity is available and appropriate reserves have been created for the current and foreseeable obligations of the Limited Partnership (including management costs and any financing commitments). Provided the provisions of this Agreement are met, the Company may distribute realized earnings and capital gains at any time.
74. Subject to any taxes or other sovereign duties (including any withholding tax), all distributions of disposable earnings and capital gains accounted for as described in point 73 will be made in accordance with the following principles (after the liabilities and any debts of the Limited Partnership have been covered)³⁶:
- a) firstly, to the Limited Partners in relation to the called Additional Capital, until the latter has been repaid in full;
 - b) [secondly, to the Limited Partners in relation to the called Additional Capital, until the distribution of an amount corresponding to [percentage rate] % p.a. of the called Additional Capital;]
 - c) thereafter, to the Limited Partners in relation to their Limited Partnership Shares.
75. After the liquidation of the Limited Partnership, the Limited Partners will receive repayment in respect of their Limited Partnership Shares provided these are not used to cover liabilities or the liquidation costs of the Limited Partnership.

C Regulatory Auditor and Financial Auditor

76. The Regulatory Auditor is responsible for the regulatory audit in accordance with Art. 126 para. 1 CISA and the Financial Auditor for the financial audit in accordance with Art. 126 para. 5 CISA. The Regulatory Auditor and Financial Auditor are appointed for the first time when the Company is founded. Any dismissal or new appointment will be made by the Company Meeting. The requirements in respect of the Regulatory Auditor and Financial Auditor are set out in Art. 126 CISA. The tasks of the Regulatory Auditor and Financial Auditor are determined by the CISA and the present Agreement. The same company may be appointed to act as both Regulatory Auditor and Financial Auditor provided it meets the requirements for both tasks.

³⁵ The Agreement should list the most important valuation principles. In most cases, it also makes reference to the rules of the corresponding associations. SECA (Swiss Private Equity and Corporate Finance Association) is to be mentioned. Its guidelines correspond largely to those of the EVCA (European Venture Capital Association) and the International Private Equity and Venture Capital Valuation Guidelines. The US private equity guidelines (issued by "PEIGG") are also very significant.

³⁶ Almost every option is used in practice; the order of appropriation of income described in this case has been kept deliberately simple and serves only as an example.

VIII Miscellaneous provisions

A Dissolution

77. The Company will be dissolved if one of the following events occurs:
- a) if the minimum number of two Limited Partners required under the CISA is not reached within the subscription period;
 - b) upon expiry of the term, including any extensions, pursuant to the present Agreement;
 - c) by resolution passed by the Limited Partners (point 40 let. e);
 - d) by decision of the competent authorities.

B Notices

78. Notices to the Limited Partners and General Partnership AG must be made in writing, by fax or email. The onus of proof of dispatch and receipt lies with the sender.

C Arbitration

79. Any dispute, controversy or claim arising out of or in relation to this Agreement including the validity, invalidity, breach or termination thereof, will be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce in force on the date when the Notice of Arbitration is submitted.
80. The number of arbitrators will be three. The seat of arbitration will be [place]. The arbitral proceedings will be conducted in [German].
81. The rights of the investor and powers of the supervisory authority pursuant to the CISA are reserved.

D Entry into force

82. The Agreement will become legally effective upon its approval by the Swiss Financial Market Supervisory Authority FINMA and with the subsequent entry of the Company in the Swiss Commercial Register.

Place, date / signatures: [...]

Appendices

Subscription Form

[... contains provisions relating to the identification for KYC purposes, nationality requirements (US residents) and qualification pursuant to Art. 10 para. 3 and para. 3^{er} CISA]

[Definitions]

Participation
Co-investments
Custodian
Company
Company Meeting
Investment Phase
CISA
CISO
CISO-FINMA
Limited Partners
Limited Partnership Shares
General Partnership AG
LP
CO
Regulatory Auditor
Financial Auditor
Founding Limited Partners, Founding Limited Partnership Shares
Paying Agent
Subscription Period
Subscription Form