

Towards (More) Flexible Corporate Law  
Corporate structures and requirements of  
venture financing and innovative economy  
The example of Polish Simple Joint-Stock  
Company

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## Plan of the intervention

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- Financing Innovation and Modern Corporate Law: a Paradigm Shift?
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- Polish Simple Joint-Stock Company: General Characteristics
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## Introduction

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## Closely-held limited liability companies' law

- Mandatory vs. dispositive provisions
- Strict rules vs. standards
- Examples:
  - Statutory fixed share capital
  - One share – one vote rule
  - Limitation on class shares
  - Corporate governance rules

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# Financing Innovation and Modern Corporate Law – a Paradigm Shift?

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## Start-up (1)

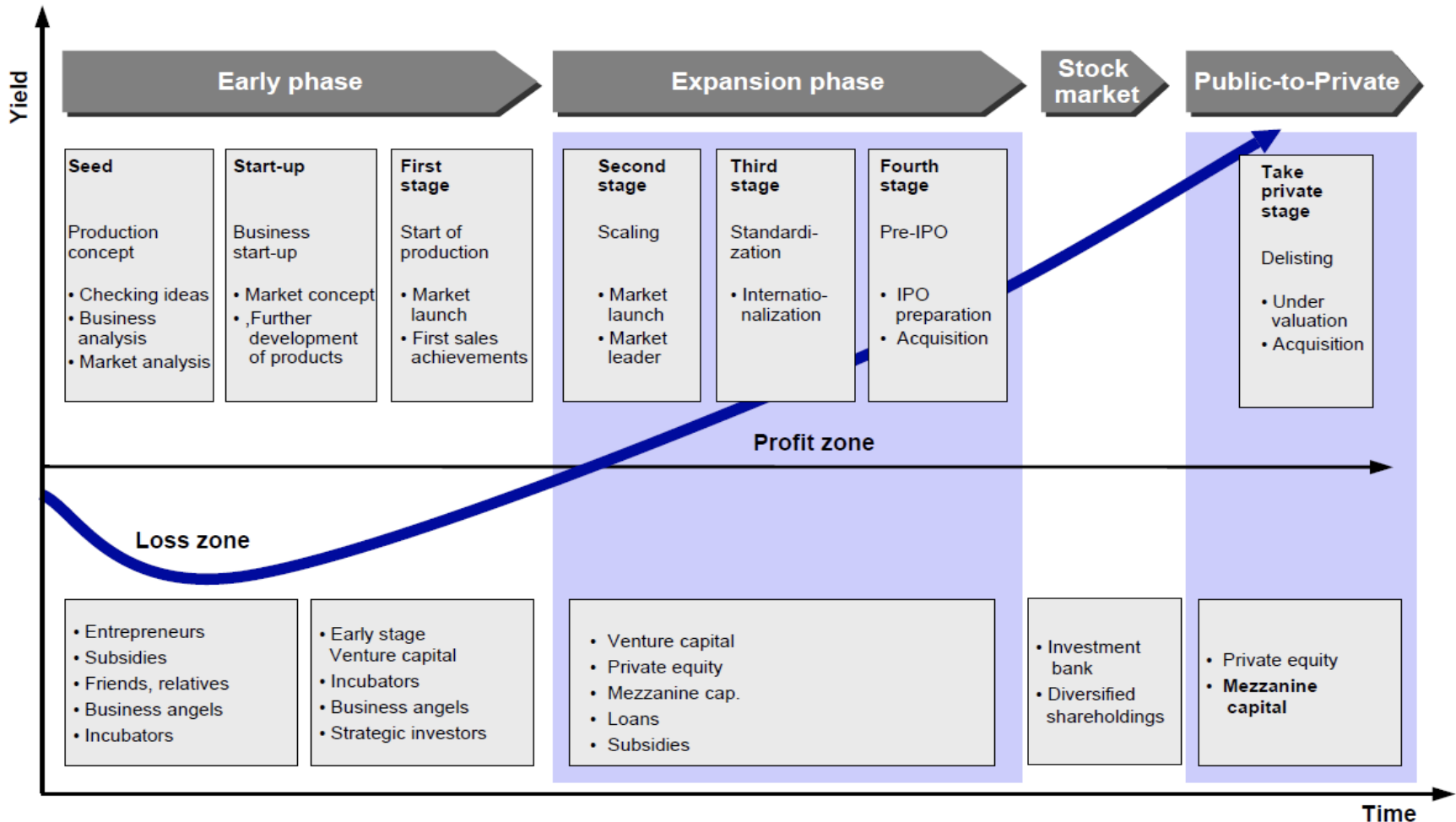
- high-tech company with significant growth potential, started by entrepreneurs (innovators) alone or with small teams of employees, aiming to develop an innovative product or service and create high growth and revenues potential for greater risk and requiring of significant financial outlays, supported by external investment exiting through a trade sale of the company or IPO
- Elisabeth Polmann, 2019; Paolo Giudici and Peter Agstner, 2019; Paul Gompers and Josh Lerner, 2001; Josh Lerner and Ramana Nanda, 2020; Bob Zider, 1998; Karen Wilson, 2015; European Commission Communication, *EU Startup and Scaleup Strategy – Choose Europe to Start and Scale*, 2025

## Start-up (2)

- hardware, software & data, fintech, biotechnology, e-commerce & retail, energy and environment
- NVIDIA, Microsoft, Apple, Alphabet/Google, Amazon and Meta/Facebook, Tesla
- BlaBlaCar, CureVac, DeepL, Yoox, Scalapay, Satispay

# Lifecycle of a firm and stages of financing

[Karen Wilson, 2015]



## Conflicts of interest and agency problems in VC-backed start-up

- typical: information asymmetry, moral hazard and adverse selection,
- specific:
  - valuation of the founders' contributions;
  - measurement and monitoring of the project development >> “milestones” technique, determining the release of further tranches of financing;
  - shifting roles of founders and the VC fund (*i.a. the right to appoint directors*);
  - designing the VC fund's exit strategy;
  - the VC fund's time-limited investment horizon & its responsibility to investors

## Structure of the deal and contractual rights of the VC fund

- National Venture Capital Association (NVCA) 2019, NVCA Model Legal Documents, last amended October 2025, <https://nvca.org/model-legal-documents/>; Business Angels Netzwerk Deutschland (BAND) and German Startup Verband, GESSI Standardverträge, 2018, <https://www.business-angels.de/standardvertragswerke/gessi/>
- liquidation preferences, conversion rights, board appointment and removal rights, share transfer rights, pre-emptive rights, buyout rights, redemption rights, registration or co-sale rights, bad leaver provisions, anti-dilution provisions, ex ante waivers of fair value protections, fiduciary duty-based remedies
- [Casimiro A. Nigro and Alperen A. Gözlügöl; Paolo Giudici, Peter Agstner, and Antonio Capizzi, 2022].

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## The Changes and Limits of Existing Corporate Law

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## The state of play

- EU law: Societas Privata Europaea (SPE) and the Societas Unius Personae (SUP) initiatives; the European Model Companies Act; the Multiple-Vote Share Structures Directive 2024/2810 >> the 28th Company Law Regime – still in progress
- National laws:
  - Italy (2003 and 2012-2017),
  - Germany (2008; the Unternehmergesellschaft; UG),
  - Belgium (2010, the société privée à responsabilité limitée starter; SPRL S),
  - Greece (2013, Private Company, Idiotiki Kefalaïouchiki Etairia, IKE),
  - Denmark (2013, the Ivaersaetterselskab; IV),
  - Austria (2023, Flex-Co),
  - Poland (2019, *prosta spółka akcyjna* / simple joint-stock company; PSA)

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## Polish Simple Joint Stock Company: General Characteristics and Origins

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## The PSA concept

- Fully fledged in terms of scope of application
- "golden" rules of corporate law (legal personality, limited liability, ownership rights of investors, transferable shares and delegated management)
- broad spectrum of the private ordering and statutory freedom
- flexibility in shaping the ownership structure & management structure (one-tier or two-tier system),
- flexible financial structure – the absence of a statutory (fixed) share capital and par-value shares

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Share Fund, Shares and Contributions

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## Share fund of the PSA

- a basic fund defined by accounting rules
- the “technical” minimum PLN 1
- the amount equal to the sum of so-called capital (cash or typical in-kind) contributions
- variable in time
- not disclosed in the articles of association

## Shares in the PSA

- no-par-value shares
- the possibility of establishing different classes of shares, *i.a.*:
  - non-voting (“silent”),
  - “founding shares”
  - or introduce other corporate control enhancing mechanisms (shareholders’ individual rights, voting caps)
- dematerialized & registered
- freely transferable with a possibility of limitations by:
  - consent clause,
  - “lock-up” clause,
  - preemptive rights,
  - co-sale clauses (“tag-along” or “drag-along” clauses),
  - deadlock resolution clauses (for example “shotgun” or “shoot out” clause)

## Contributions

- any type of contribution having monetary value (possible to evaluate)
  - “capital contributions”
    - cash
    - typical in-kind contributions permitted under EU capital regime,
  - “non-capital” in-kind contributions, including work and services

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# Corporate Distributions and Creditors Protection

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## Corporate Distributions

- the modified balance sheet test
  - a mandatory write-off for future losses - 8% of the annual profit;
  - regarding to the payments made at the expense of the share fund – prior registration by the registry court;
  - distribution reducing the share fund to less than 5% of the company's total liabilities – application of rules on the reduction of a share capital in the joint-stock company (the convocation of creditors and obligation to satisfy or secure creditors exposed to risk)
- the solvency test

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# An Attempt of Evaluation & Conclusion

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## Numbers

- 2022 - 1,200
- 3Q 2024 - 2,800
- 3Q 2025 – approximately 3,500

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Thank you for your attention!  
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