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# Best Practices for Corporate Venture Capital & Strategic Investment Programs

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**PRESENTED BY**

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# Speakers

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# Agenda



- Venture Capital and Corporate Venture Capital Overview
- CVC Governance and Structure
- Investment Terms
- Risk Mitigation
- Exit Planning



# Venture Capital and Corporate Venture Capital

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# What is Venture Capital (VC)?

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- Primary goal of financial VC investors is financial return
- Typical structure:
  - Preferred stock
  - Special stockholder rights
- Other structures:
  - Convertible debt
  - Other convertible securities (e.g., SAFEs, warrants)



# What is Corporate Venture Capital (CVC)?

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- Investment in startup companies by established companies
- Investments focus on both strategic/commercial and financial goals
- CVC goals for making investments
- Company goals for taking CVC



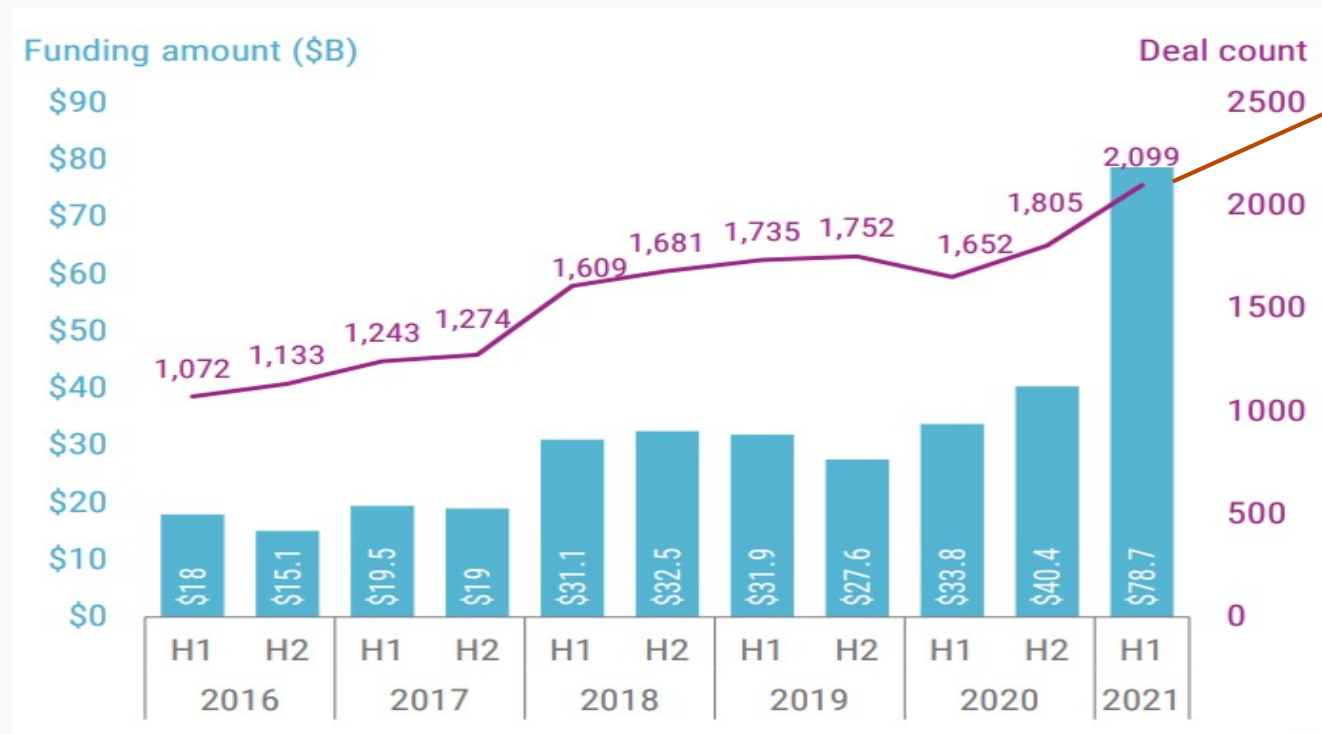
## Key Differences with Financial VC

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- Greater variety of positive outcomes
- Lower level of control sought
- Not subject to typical 10-year VC fund structure
- Relatively limited financial exposure
- Focus on side letter agreement
- Commercial agreements



# CVC Trends: Investments

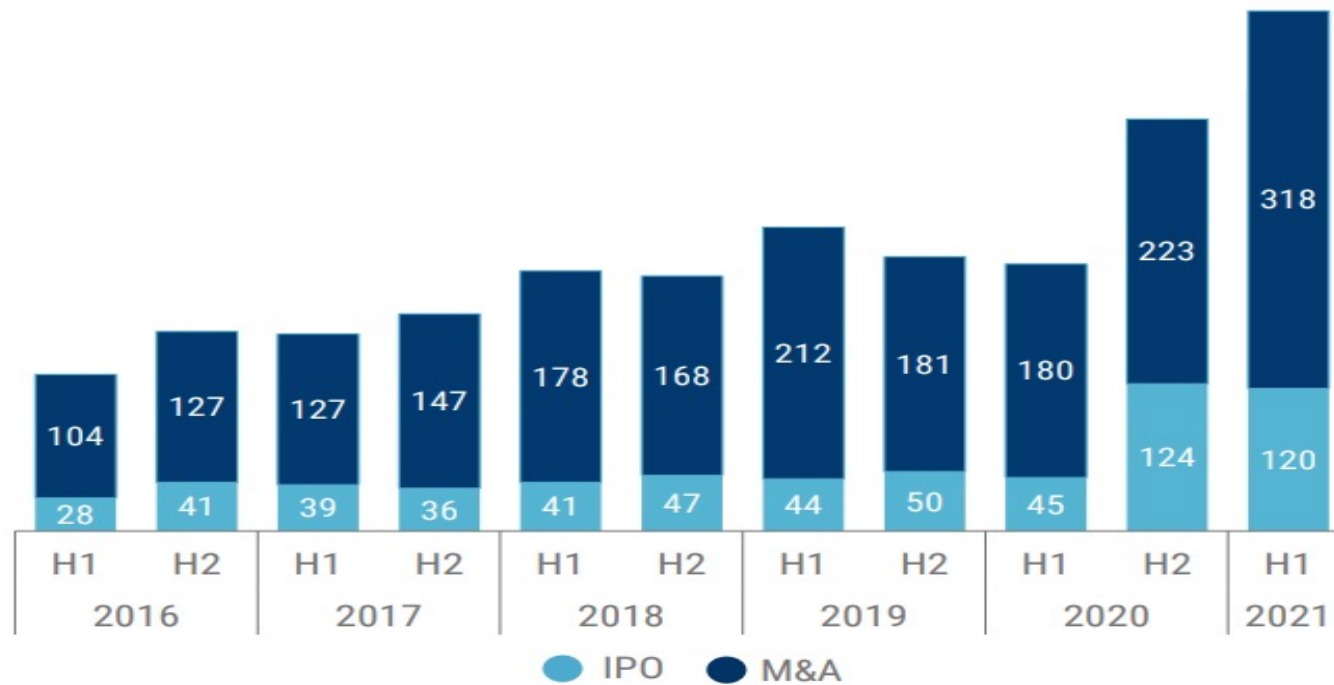


CVC investment accounted for approximately 25% of all VC investment in the first half of 2021.

Source: CB Insights, *The 2021 Mid-Year Global CVC Report*, July 2021



# CVC Trends: Exits



Source: CB Insights, *The 2021 Mid-Year Global CVC Report*, July 2021

# CVC Governance and Structure

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# CVC Program Organization

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- CVC program structuring
  - Legal structure
  - Placement within organization
- Key features of a CVC program
  - Decision-making process and authority
  - Capital allocation
  - Balancing financial vs. commercial goals
  - Compensation arrangements
- How structure impacts investment process/company relationships



# Investment Terms





# Typical VC Financing Terms

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- **Economic**
  - Dividends
  - Liquidation preference
  - Antidilution protection
  - Pro rata rights
  - Registration rights
  - Rights of first refusal on secondary transfers
- **Information**
  - Reporting
  - Inspection
- **Governance**
  - Board
  - Voting



# Typical VC Financing Documents

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- Stock Purchase Agreement
- Certificate of Incorporation
- Investors' Rights Agreement
- Voting Agreement
- Right of First Refusal and Co-Sale Agreement
- Others:
  - Letter agreement
  - Director indemnification agreement
- Similar structure for CVC investments, with focus on specific provisions and on side letter



# Key CVC Side Letter Terms

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- Basic information rights
- “Major Investor” status
- Public announcements
- Not a “Competitor”
- Right to conduct activities
- Board observer
- M&A rights
- Rights with respect to competitor financings
- Rights with respect to competitor commercial transactions
- RFP rights
- Branding
- MFNs
- Compliance / regulatory covenants
- Put rights
- Drag-along carve-outs  
*(preferably needs to go in Voting Agreement)*
- Extended survival periods
- Residuals clause



# IP Disclosure and Contamination

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- CVCs and companies must address issues regarding the disclosure of technical IP and competitive and business information
  - Concern during due diligence and post-investment
  - CVCs need to preserve freedom
  - Companies need to protect confidential information/IP
- Key considerations:
  - “Competitors”
  - Clean teams
  - Redaction/withholding
  - Board observers vs. directors
  - Residuals clauses





# Exclusivity and Notice Rights

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- CVCs may want exclusivity or visibility with respect to strategic transactions
- Companies want to limit restrictive exclusivity, notice, and negotiation rights
- Key considerations:
  - Scope of exclusivity and notice rights
  - Veto rights over exits
  - Negotiating with multiple CVCs who want equivalent rights



# Deal Timing

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- CVC investment thesis may be tied to commercial relationship, but the timing of entering into commercial agreement may not align with the financial investment
- Timing considerations
- Allocating risk of failure to reach agreement



# Risk Mitigation

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# Risk Mitigation Concerns

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- Potential reputational damage to CVC investor
- Key compliance risk areas include:
  - Anti-bribery, anti-corruption and anti-money laundering
  - Data privacy and data security
  - Business dealings with sanctioned entities or countries
  - #metoo issues
  - Jurisdiction-specific issues (e.g., local workers' rights laws)
  - Tech industry scrutiny
  - Thin line between founder puffery and fraud
- Highly regulated investors have additional concerns



# Risk Mitigation Techniques

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- Due diligence
- Investment documents
- Quick path to exit
- Stay informed
- D&O matters
- Regulatory provisions



# Board Service

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- **Director obligations**
  - Duty of loyalty
  - Duty of care
- **Board observer**
  - Contractual confidentiality obligations
  - De facto director doctrine
- **Indemnification**
  - Indemnification agreements
  - D&O coverage



# Exit Planning

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# Thinking Ahead for Exit Transactions

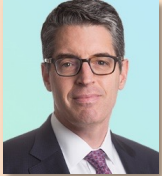
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- Planning for positive scenarios
- Planning for distressed scenarios
- Disclosure considerations for public company CVCs
- Special considerations for CVC directors



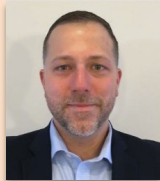
# Questions?

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