

SECA CLA Model Documentation for startup investments: Most important changes since the first version from February 2022

This second edition of the SECA CLA Model Documentation for startup investments has gone through a first review and incorporates a number of smaller changes and improvements compared to the last version dating back to February 2022.

Apart from some minor tweaks, the new templates contain changes in terminology and rules due to the new Swiss corporate law in force since 1 January 2023, namely in the subordination clause (Section 14).

Besides these template-encompassing changes, the revised versions offer the following updated specific terms:

- **Interest:**
 - o A new option for interest-bearing CLAs referring to the maximum safe-harbor rate of the Swiss Federal Tax Administration is available to ensure compliance with tax law for loans that bear interest.
 - o Clarifications regarding the entitlement of the borrower to deduct withholding tax regarding interest, if any, and the accrued interest being added to the outstanding loan amounts in case of a conversion have been added (relevant for long-form CLA only).
- **Conditions Precedent (relevant for long-form CLA only):** A new condition has been added requiring that the Maximum Investment Amount of the respective CLA Round shall not be exceeded.
- **Conversion:** A new general (and optional) provision for conversion events has been added that states that the right of a lender to a specific conversion event is forfeited if the lender defaults on its subscription or payment of the subscription price.
- **Representations and Warranties (relevant for long-form CLA only):** Two new (optional) representations for lenders have been introduced:
 - o Lenders warranting to act for their own account;
 - o Lenders warranting not to be subject to sanctions or do business with sanctioned jurisdictions or sanctioned targets;
- **Covenants (relevant for long-form CLA only):**
 - o An additional option for a company-friendly “most favored nation”-clause has been added.
 - o A best-efforts requirement has been introduced to obtain the necessary consent declarations from shareholders (in case this is not already covered as a condition precedent).
 - o An explicit duty of the borrower to notify the lender of an upcoming (qualified) equity financing round for purposes of the Pro Rata Right has been added.
 - o A duty for the borrower has been added to ensure compliance with the 10/20 non-bank rule.
- **Applicable law and jurisdiction:** An optional arbitration clause has been added.