

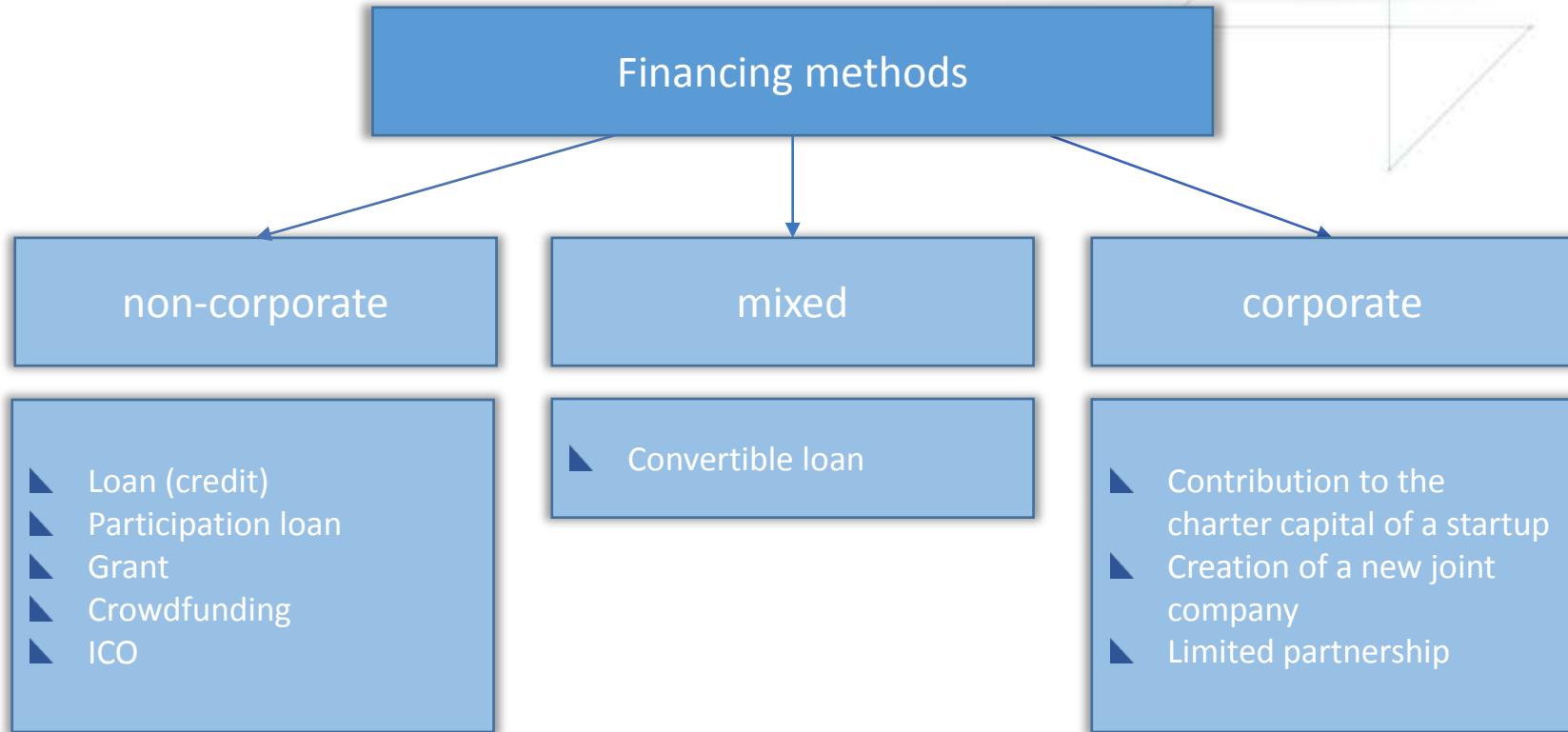
Legal aspects of startup financing

Elena Cherkasova, senior associate

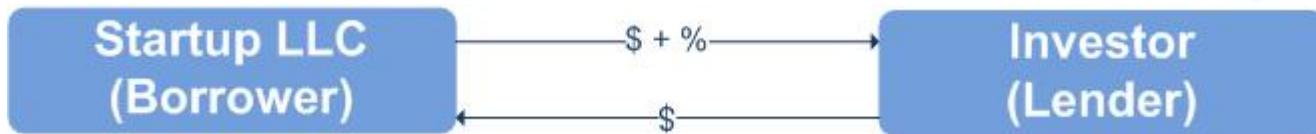
The meeting of the Work group on Startups of the Committee for digital technologies of the
Russian-German Chamber of Commerce (AHK)

2nd of November 2017

Interaction with investors on the early stage



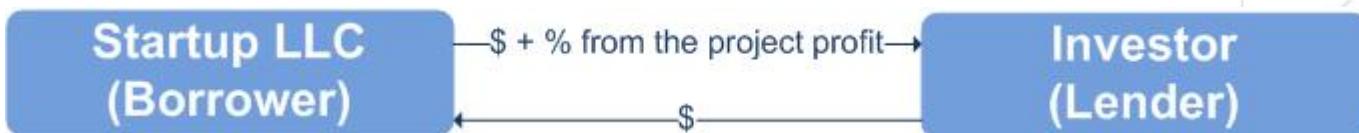
Loan (bank loan)



Usually non-gratuitous granting of funds subject to return

Loan can be both special-purpose and free purpose

Participation loan



- In case of no profit:
 - ▀ Fixed % can be set forth
 - ▀ The loan becomes gratuitous
- Risks:
 - ▀ Not directly provided in the Civil Code of RF, foreign law may need to be applied
 - ▀ Requalification as loan on call, if the term of the project profitability is not precisely defined → the obligation to return the loan within 30 days as of the notification on refund

Grants

Gratuitous, non-returnable granting of funds

Granted for a special-purpose

In case of non-performance of the contract, the grant recipient returns the grant with interest



SKOLKOVO: grants and venture investments

- ▀ Essentially - two types of funding:
 - ▀ SKOLKOVO grants (in fact, government funding)
 - ▀ Venture investments (organizational support to investors)

Grants:

- ◀ 1st stage: the status of SKOLKOVO resident
 - ◀ 2nd stage: consideration of application for grant

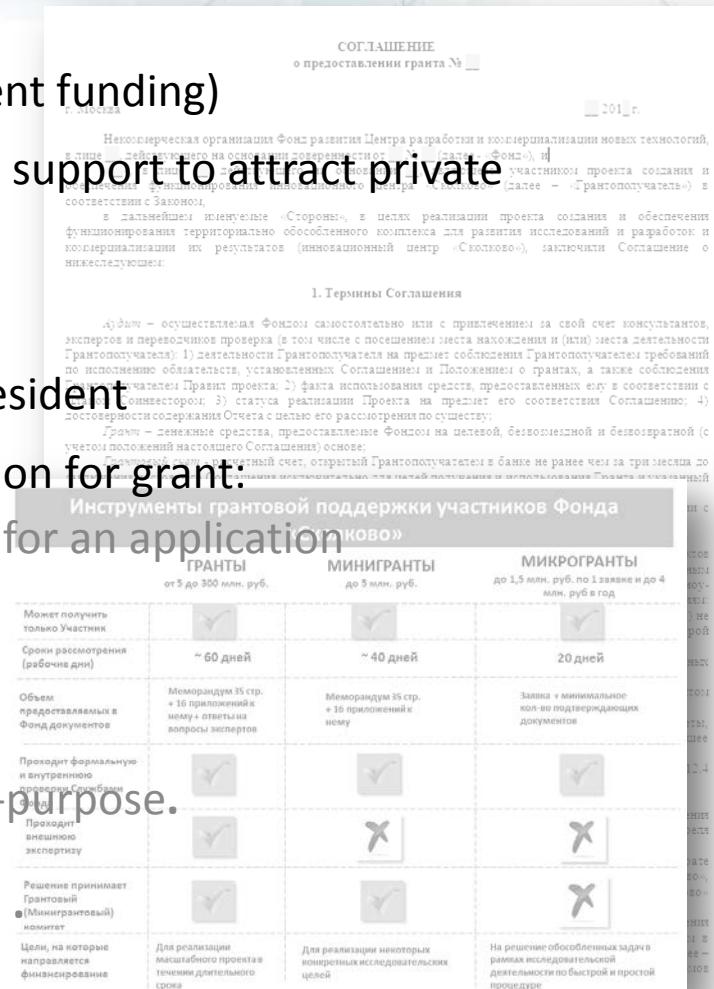
Microgrants: up to 1.5 million RUB for an application

Minigrant: up to 5 million RUB

Grant: 5 to 300 million RUB

- ## 3rd stage: control

The grant is gratuitous, but special-purpose
In case of misuse of grant, it
can be requested back with forfeit



SKOLKOVO: grants and venture investments

▀ Venture investments:

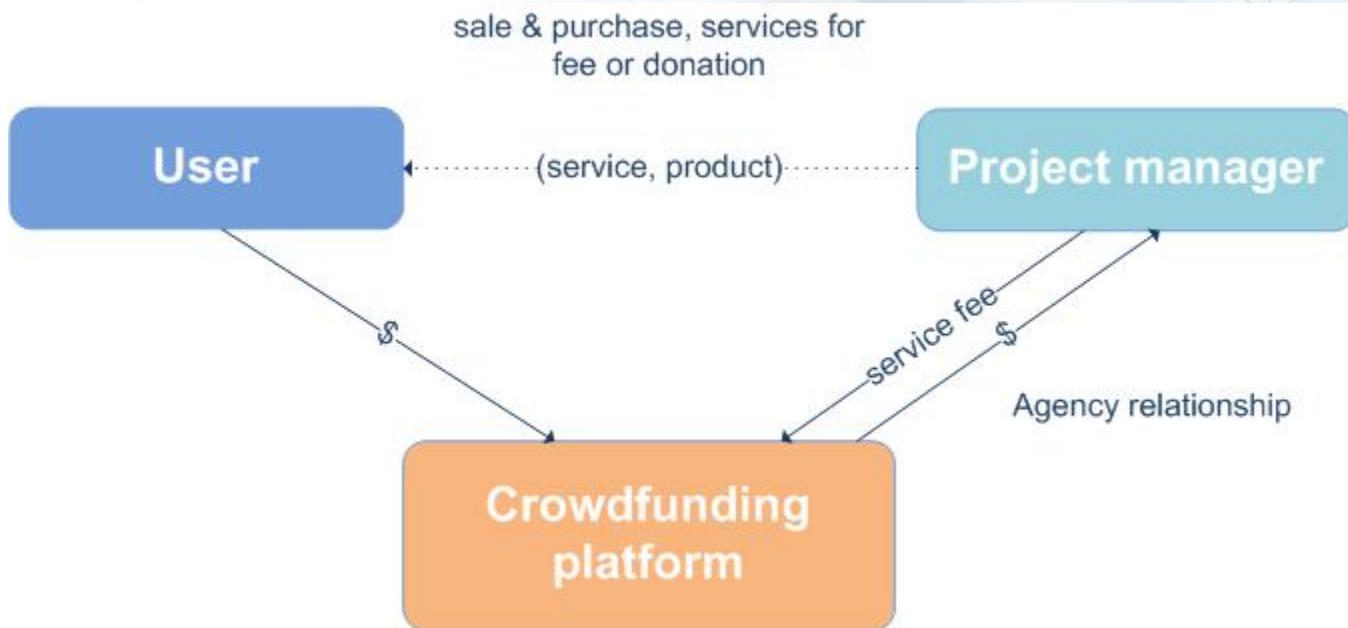
- ▀ SKOLKOVO does not invest itself, but only helps finding investors and entering into transactions
- ▀ 1st stage: evaluation of the company's development strategy
- ▀ 2nd stage: preparation of pitch
- ▀ 3rd step: finding investors
- ▀ 4th stage: negotiations with investors
- ▀ 5th stage: legal stage:
«due diligence» (check of the company and the project), elaborating the transaction structure, signing the documents:

Often, the investor becomes a shareholder and controls the company.

This investment is **not gratuitous** in its essence.



Crowdfunding



Crowdfunding

Platforms in Russia

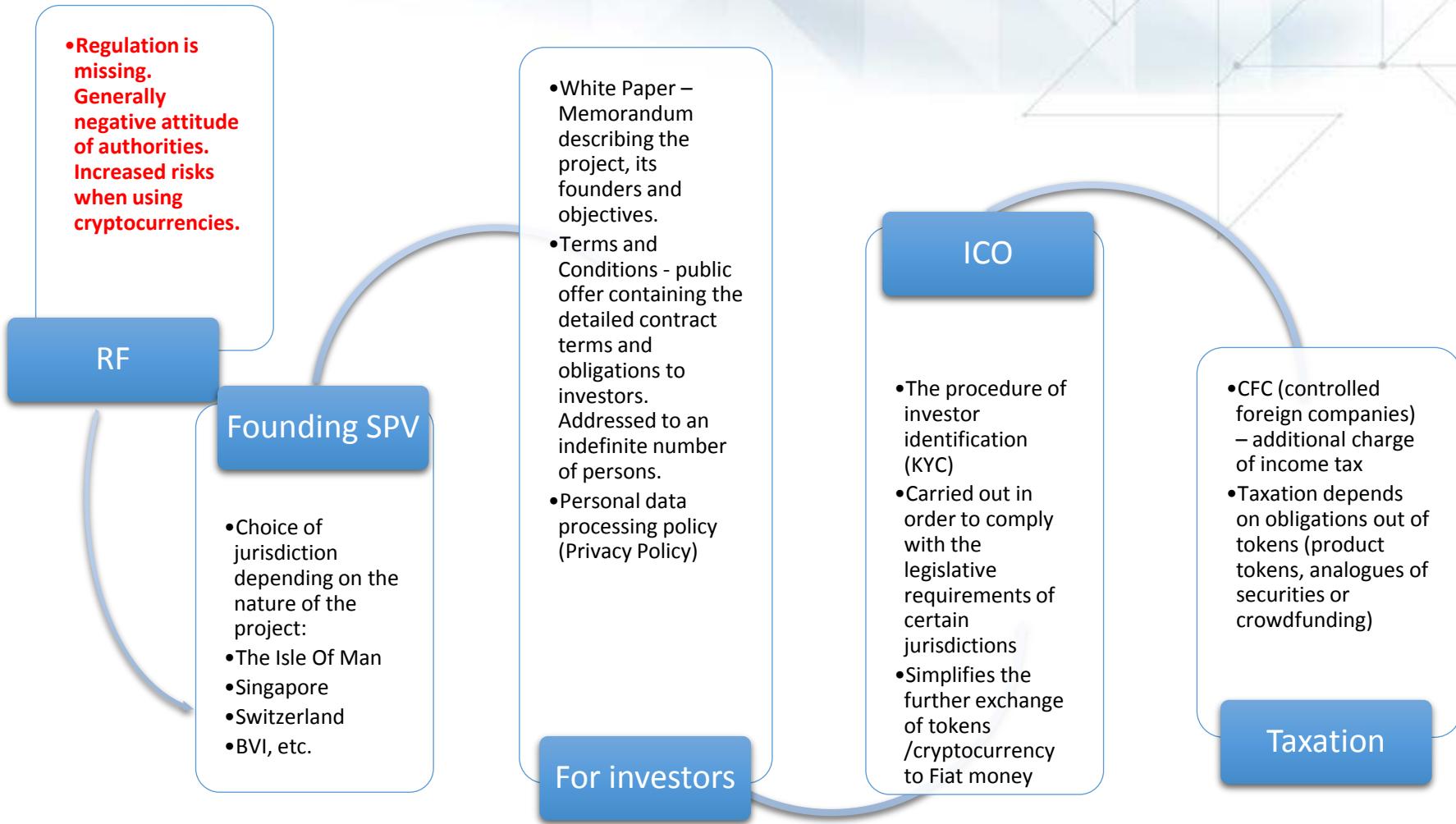
Planeta.ru

Boomstarter.ru

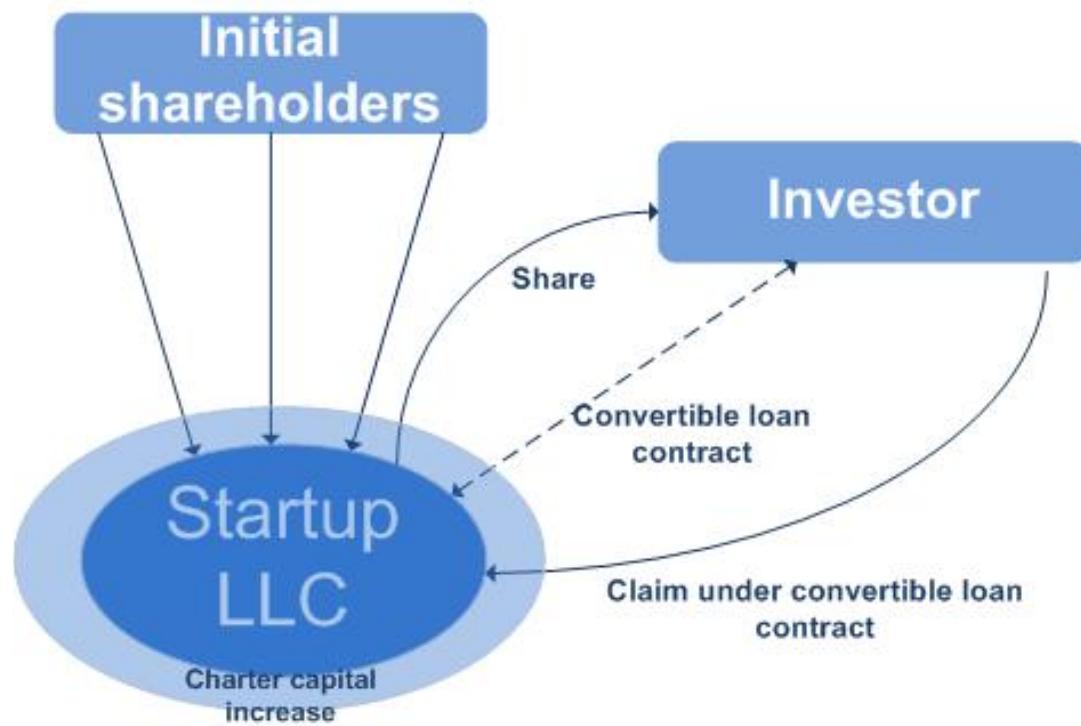
- ▶ Initially focused on music, movies, books
- ▶ Project success 50+
- ▶ Project life 100 days
- ▶ Record holder : Aquarium, BG recording of songs, 7 303 803 RUB

- ▶ Initially less connection with arts
- ▶ Project success: all or nothing/ while paid, the project manager gets \$
- ▶ Without limitation of the project duration
- ▶ Record holder: tabletop game «Scythe», 6 949 000 RUB

ICO (Initial Coin Offering)



Convertible loan



Convertible loan

Current regulation:

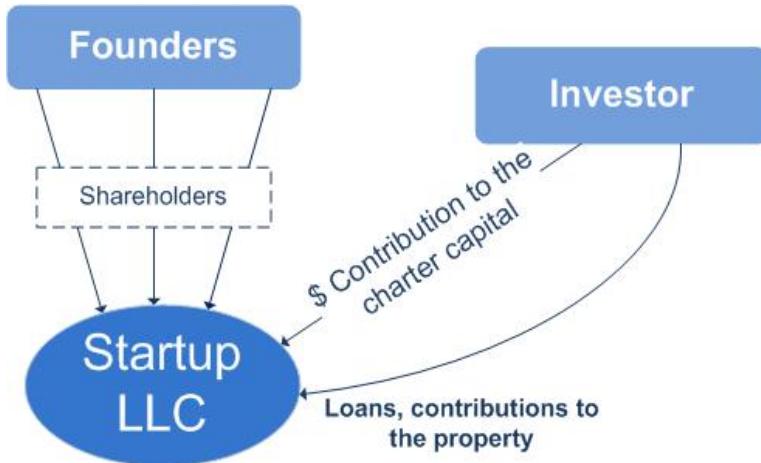


Convertible loan

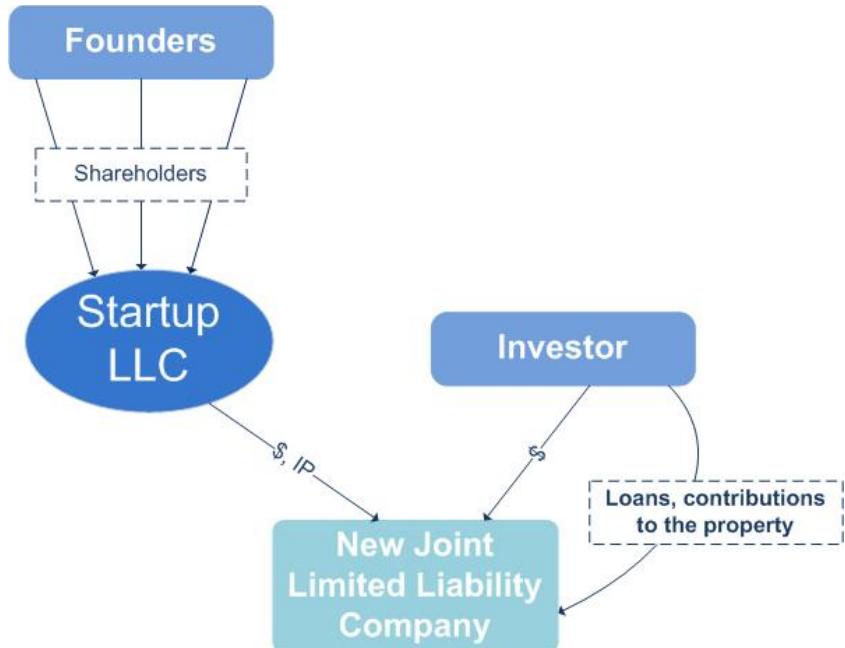
- Current regulation
 - ▀ Right to set-off a monetary claim against the company by making contribution to the charter capital is provided (part 4 of art. 19 of the Federal law on LLC), but the monetary claim should already be mature. Only few cases exist
 - ▀ No legal mechanism to force the shareholders to accept the investor into the company: shareholders are free to make decisions on the share capital increase
- Federal law draft № 189256-7 (introduced to the State Duma of RF on 31.05.2017)
 - ▀ Term «convertible loan» is introduced
 - ▀ Right to make the decision on the share capital increase and to conclude a loan contract simultaneously
 - ▀ The investor can declare set-off before the claim maturity date
 - ▀ Changes in regard of shareholders can be introduced into the Company register by court decision

Joint Limited Liability Company

Contribution to the startup charter capital



Founding a new company



Joint Limited Liability Company. Shareholders' agreement

Disproportionate distribution of profits between the shareholders

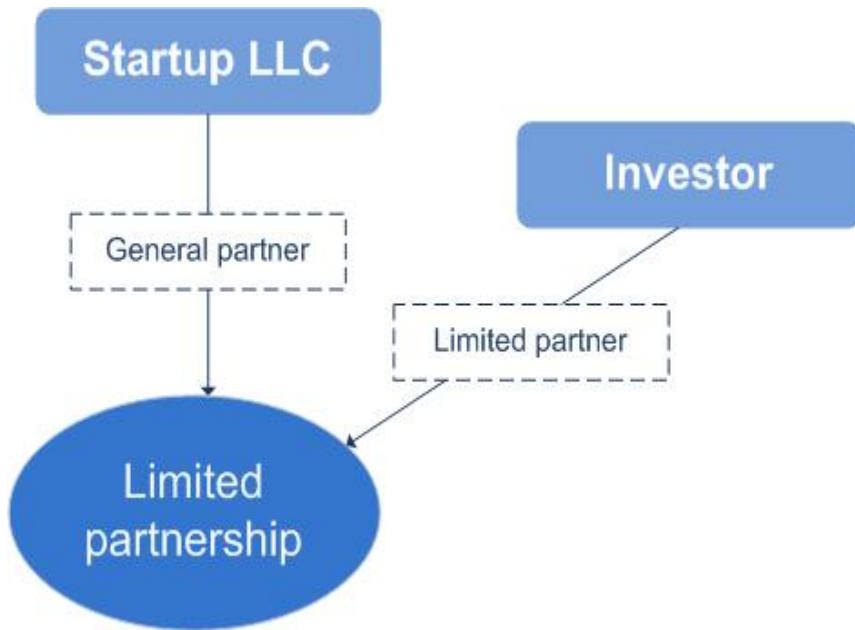
Joint (conciliation) voting at shareholders meetings

Right to demand purchase or sale of shares upon the occurrence of certain conditions (put & call options)

Pre-emption right to purchase shares sold to another party

Performance guarantees (forfeit, pledge, irrevocable power of attorney)

Limited partnership



- General partner:
 - ◀ Subsidiary liability with all assets for debts of the partnership
 - ◀ Manages the partnership
- Investor:
 - ◀ Liability in the amount of the contribution
 - ◀ Not involved in the management
- Only proportional distribution of profits, bonus to the general partner for management is possible



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