



The common practice is for the issuing company or the buyer in an M&A transaction to be responsible for drafting the documents.



K-NOTES

Series A Preferred Stock Agreement



Marc Halsema
Attorney

Comstock Mining

Foster Good Investments

Series A preferred stock entices venture capital investors to fund start-ups with the promise of substantial returns down the line. This kind of financing is often the first big move companies make to grow with outside support. The process is guided by the Series A Preferred Stock Agreement.



Key Takeaways

➔ Purpose of the Agreement

Series A Preferred Stock Purchase Agreement (“SPA”), governed by Delaware law, is designed to memorialize venture money to the company. It usually comes into play after a startup company has been running for a couple of years and is looking to issue common stock.

➔ Ancillary Documents

Whether it be the purchase or the indemnification agreement, they are modeled after the National Venture Capital Association standard template documents that makes it useful as documents become predictable.

➔ Dispute Resolution Clause: Simple vs Complex

The company raising capital will usually draft the documents as opposed to the company that has the money. On the simple side, parties will do everything under state law to resolve a dispute in the local courts. On the more complex side, there have been situations that require binding arbitration.

➔ Raising Money as a Company

Raising money via the private transaction route is a good idea. The U.S. securities laws are less onerous in terms of compliance for private transactions. If you go above \$5 million, a certain additional layer of disclosure needs to be done. You would need accredited investors when you are doing a private transaction.



Whether it’s a public or a private transaction, the overwhelming challenge for a company raising capital is not only to identify people who are interested in investing but the kind of control they are willing to give up. And for a startup company, that’s a really important river to cross.”