VC Investment Terms

2025

fladgate

Key contact

Lucie Burniston
Partner
+44 (0) 7484 984 756
lburniston@fladgate.com

Lucie advises companies and investors on venture capital investments.

She enjoys meeting founders early in their fundraising journey to understand what drives their businesses in order to become their trusted adviser. She is passionate about supporting female founders.

She finds it most rewarding to see a long-standing client achieve their fundraising milestones, helping them with strategic acquisitions and ultimately assisting with a successful exit.

Lucie has recently raised venture capital for restaurants, online fashion brands, women's health platforms and other technology businesses.

She has experience raising SEIS/EIS/VCT funds from high-net-worth individuals, crowdfunding platforms, accelerators and VCT investors.

Lucie was an invaluable asset as we reached the final stages of our VC investment. Lucie consistently supported us and fought our corner for the best possible terms; we would have been lost without her help. I wholeheartedly recommend her to anyone in a similar position.

Founder client

Venture capital

We advise **institutional and private investors, start-ups and other high-growth companies** in venture and growth capital. We have a particularly strong track record in advising founders, management teams and PE and VC houses.

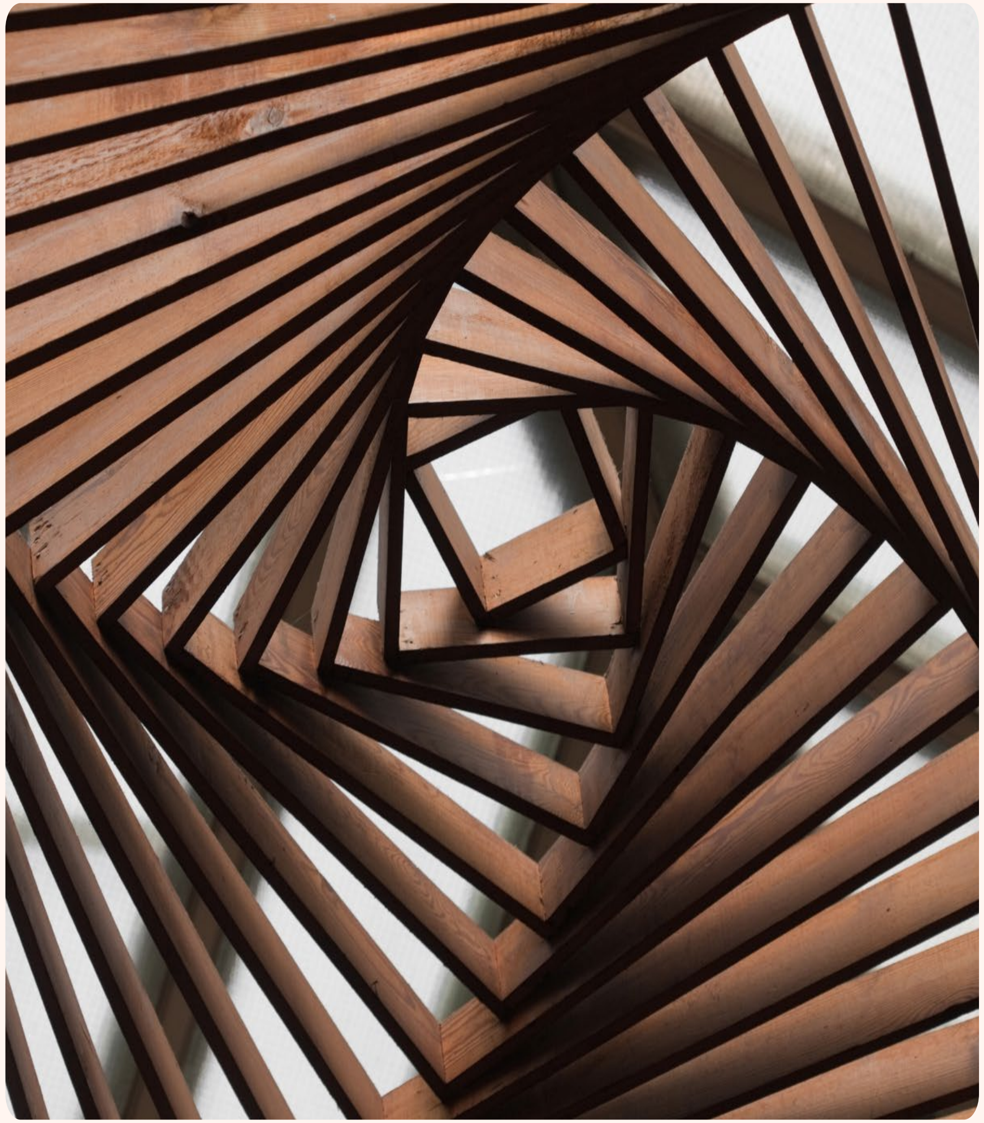
The team within our Corporate department advises investors, founders, start-ups and established companies on the full range of fundraisings, **from Seed/Angel to Series C and beyond** through subsequent **rounds of growth** and **development capital to eventual exit**, whether by way of buyout, trade sale, AIM or full market listing.

We also act for businesses considering **alternative funding mechanisms**, and have recently advised two early stage businesses on their completed Initial Coin Offerings.

Venture capital investors frequently target **IP rich** start-ups whose mission is to develop **technology designed to disrupt** and improve established sectors and media and to **scale at speed**. We are firmly embedded in this space and our team of specialist commercial, outsourcing, IT and IP lawyers help our clients protect their interests and maximise the opportunities.

Recent clients include Atomico, CommerzVentures, Makers Fund, Cherry Ventures, RTP Global, Volt Technologies, BDMI, Alpha, Doccla, Tripledot Studios, Fiinu PLC, Truesight Ventures, Alchimia Investments, Jones Food Company, BeyondPlay and Deblock.

We have particular experience in setting up **tax-efficient structures** for investors and entrepreneurs in order to maximise returns on investment.



Our core services

- Representing investors and start-ups on equity rounds ranging from Seed to Series C and beyond
- Venture debt capability involving our dedicated debt finance team
- Tailored, focused due diligence with an eye on the key risks and value drivers
- Drafting and negotiation of term sheets and transaction documents
- Structuring and strategic advice
- Bolt-on acquisitions, further equity and debt raises and corporate restructurings
- Employee and management share schemes and incentives
- Acting on eventual exits whether by way of buyout, trade sale, AIM or full market listing

Commercial advice to start-ups post-raise includes:

- Fintech, blockchain & digital assets
- AI and automation
- Cybersecurity
- IT and digital platforms
- Software development & licensing
- Outsourcing
- Data protection & GDPR
- IP protection and exploitation
- Business transformation and digital projects

A

- **Abort Fee:** An agreed fee, usually included as a binding provision of the heads of terms, which is payable by a company to certain advisors or investors in the event that a proposed transaction does not proceed.
- **Accelerator:** Similar to an Incubator, accelerators provide mentors, workspace, funding and networking opportunities to help early-stage companies build out an initial business over a set time frame of between a few weeks and a few months. Accelerators often take Equity in return for participation in the programme and may also choose to make further cash investment in their participants.
- **Advance Assurance:** A written assurance from HMRC that a proposed investment will meet the requirements for a tax-advantaged investment scheme, such as SEIS/EIS. It does not say whether a particular investor will meet the requirements.
- **Advance Subscription Agreement (ASA):** An agreement enabling investors to subscribe in advance for shares, typically at a discount to the price (per share) in the next funding round. Investors pay now and receive the shares later – on the next funding round (when the discounted price is known) or on a long stop date (with a default valuation). A useful tool for companies to get in cash quickly whilst the documentation for the next funding round is negotiated. Can be tailored to ensure the investment is EIS compliant.
- **Advisory Board:** A group of strategic advisors (usually independent), who are formally appointed by the company to assist in advising the board on the strategic direction of a company, often with specialist knowledge or experience of relevant markets. Sometimes members receive Equity in return for their advice. A member of an advisory board is not a director of the Company and therefore does not have the same fiduciary duties. The Board is not obliged to follow the advice of the Advisory Board but may have to account to the company's stakeholders if it repeatedly fails to do so without good reason.
- **AIM:** Formerly, the Alternative Investment Market. As a sub-market of the London Stock Exchange, it allows smaller companies to float shares with a more flexible regulatory system than is applicable to the main market.
- **Angel Investor:** An affluent individual who provides capital for a business start-up, usually in exchange for Convertible Debt or Equity. They often invest at the earliest funding rounds alongside friends, family and/or other Seed investors. Angel Investors are often knowledgeable entrepreneurs who not only contribute capital but also offer valuable industry experience and mentorship to the investee company.

A

- **Anti-Dilution:** A contractual protection which protects an investor's equity stake in a company becoming diluted or less valuable upon the issue of further Equity by the company. Venture capital investors often require anti-dilution protection to protect the value of their investment if new shares are issued in a Down Round. A formula will be included in the Articles which calculates the number of new shares which the company shall issue to the investors, at no cost, to offset the dilutive effect of the issue of cheaper shares.

- **Aquis:** A stock exchange for listed and unlisted Equity and debt securities. It is a smaller competitor to the London Stock Exchange, with simpler and more accessible regulatory requirements.

- **Articles of Association (Articles):** The constitutional document that specifies the regulations for a company's operations. It is a binding legal document between the shareholders and the company, without needing to be signed by either party. It requires the consent of holders of at least 75% of voting shares to be amended, often in addition to Class Consents (where applicable). It is publicly available at Companies House.

- **Asset Sale:** A sale of substantially all of a company's assets. A common Exit event although the ownership of the company does not change, as no Equity is transferred. The proceeds of an Asset Sale are often then distributed in accordance with the provisions in the Articles upon the company being wound up. An alternative to Share Sale.

B

- **Bad Leaver:** As specifically defined in a contract or the Articles. A Bad Leaver is an employee shareholder who has left the company where they are culpable, often covering summary dismissal, gross misconduct, breach of non-competes and (sometimes) resignation, perhaps prior to an agreed minimum term. A Bad Leaver is often required to sell their shares at a price lower than Fair Market Value or convert their shares into Deferred Shares. Bad Leaver also tends to encompass departing consultants and directors as well as employees. See also Leaver Provisions.

- **Board:** The board of directors of a company - in legal terms, being those who are appointed as statutory directors of the company. Informally, often misleadingly used to also include those who have management roles or "director" titles but are not legally directors and must avoid being "shadow director" if they do not want to assume the legal responsibilities of being a statutory director. Includes Executive Directors and Non-Executive Directors.

- **Board Observer:** An individual who is allowed to attend and participate in board meetings but is not allowed to vote. A Board Observer will usually be entitled to receive full board packs of information, inspect the company's books and records and attend committee meetings.

- **Bootstrapping:** A start-up that grows its business with little or no venture capital or outside investment. A bootstrapped start-up will instead fund its operations by relying on the Founders' personal wealth and the revenue generated by the company.

- **Bridging Finance:** A form of financing used to solidify a company's short-term position until a more permanent form of financing can be secured.

- **Burn Rate:** The rate at which a company is using up its cash reserves or capital over a specific period, usually before it becomes cashflow positive. Burn rate is often expressed as a monthly or yearly figure.

- **Buyback:** A process where a company buys shares in itself from its investors, reducing the number of its shares in issue. I.e. those shares are effectively "cancelled". The Companies Act 2006 prescribes a strict process for completing buybacks and, in certain circumstances, requires a company to have distributable reserves. Failure to comply with the Companies Act procedures can render the Buyback void and result in the transferor continuing to hold those shares. Inadvertently void buybacks often cause problems on a subsequent sale of the company.

- **BVCA:** The British Venture Capital Association. The industry association for venture investing in the UK, which has produced model Series A investment documents that are frequently used by Venture Capital investors as a starting point for negotiations for their Series A or sometimes pre-Series A investments.

C

- **Cap Table / Capitalisation Table:** A Cap Table sets out details of a company's Equity ownership, including names of its shareholders and the number of ordinary shares, preferred shares, warrants and other Convertibles that have been issued or granted.

- **Capital Return:** The return on an Equity investment generated by the move in the share price or net asset value of the Company excluding dividends or income, which is realised on an Exit.

- **Chairperson:** The chair of the Board, who chairs Board meetings. This can be any director, who can be appointed on an ad hoc basis but usually means a fixed appointment of an individual (usually an independent NED) to act as a figurehead of the Board, monitoring its performance and acting as a check and balance on its Executive Directors and non-independent Investor Directors.

- **Class Consent:** The shareholder consent required from a specific class of shareholders to vary the shareholder rights of that particular class of shares in a company's Articles. Class consent is needed in addition to any other consents or resolutions required to amend the Articles. For example, holders of at least X% of A ordinary shares will need to approve any changes to the rights of all A ordinary shareholders.

- **Class Rights:** The rights attaching to a specific class of shares issued by a company, such as Ordinary Shares, Preference Shares etc. Each class may carry distinct rights to dividends, voting and/or capital returns, as well as different Anti-Dilution or Pre-Emption Rights on Allotment or Pre-Emption Rights on Transfer.

- **Cliff:** Employee Incentive Schemes or Leaver Provisions will often include a cliff, which is the point after which options or shares begin to vest. For example, a one-year cliff means that nothing vests for the first year, but after a year the vesting will either begin (at a monthly rate) or will automatically catch-up to the 12 month position (as if vesting had occurred during the one year) and then continue to vest monthly.

- **Conditional Precedents (CPs):** A term in a contract which must be satisfied (or waived by the other parties) before a party's obligation(s) under that contract come into force.

- **Co-Investment:** A minority investment in a company made by investors alongside a Venture Capital fund or other Lead Investor.

- **Consent Rights:** Also called 'Reserved Matters' or 'Veto Rights'. A protection for investors. A list of certain high-level decisions that the company cannot take without the prior written approval of certain named investors and/or investors holding a specified percentage of shares (or class of shares).

C

- **Conversion Rights:** The right to convert one type of shares into another or debt into Equity, in each case of the same company, triggered by events as defined in a contract or (in the case of shares) the Articles.
- **Convertible Loan Notes/Debt:** A debt obligation of the company where all or part of the loan shall or may be repaid by converting the debt into a pre-determined number of shares (the conversion rate) at a certain point in the future.
- **Convertible Preference Shares:** Preference Shares which are convertible at the option of the holder into a pre-determined number of ordinary shares in the future.
- **Convertibles:** Used to refer to Options, ASAs, Warrants and other forms of instrument which may result in the holder being issued Equity. Frequently also used to refer to Convertible Debt.
- **Co-Sale Right:** A contractual right allowing certain minority shareholders to participate in a share sale between the majority shareholder and a buyer on a proportional basis at the same price. Usually relevant where a majority shareholder proposes to sell less than 100% of their shares, meaning that if a majority shareholder wishes to reduce their interest by selling X% of their holding, then the relevant minority shareholder(s) shall be entitled to reduce their holdings by the same percentage, by selling to the same buyer.
- **Crowdfunding:** Raising capital from a large number of individuals who contribute relatively small amounts, often through online platforms.
- **Cumulative Dividend:** A dividend where, if a company is unable to pay the dividend when due, the dividends owed will be carried forward and shall accumulate until the company has the cash for those dividends to be paid in full before any other dividends are paid to the company's ordinary shareholders.
- **Cumulative Preference Shares:** Preference shares with a right to a Cumulative Dividend, which is paid ahead of dividends to ordinary shareholders.

D

- **Deed of Adherence / Deed of Accession:** A short contract intended to bind a new party (often an incoming shareholder) to an existing agreement (frequently, a shareholders' or investment agreement) as if they were an original party.

- **Deferred Shares:** Shares with limited or no capital rights and not entitled to vote or receive dividends Often issued following the exercise of Conversion Rights, for example, a Bad Leaver's ordinary shares being converted into Deferred Shares so that, on conversion, the company does not suffer a reduction in capital.

- **Dilution:** Happens when further shares are issued and a shareholder's stake in the company is reduced as a percentage. Anti-Dilution (Rights and Pre-Emption Rights (if taken up) can prevent this from happening.

- **Directors' Fees:** Investors might take a seat on an investee company's board, in which case the investor will often charge a Director's Fee.

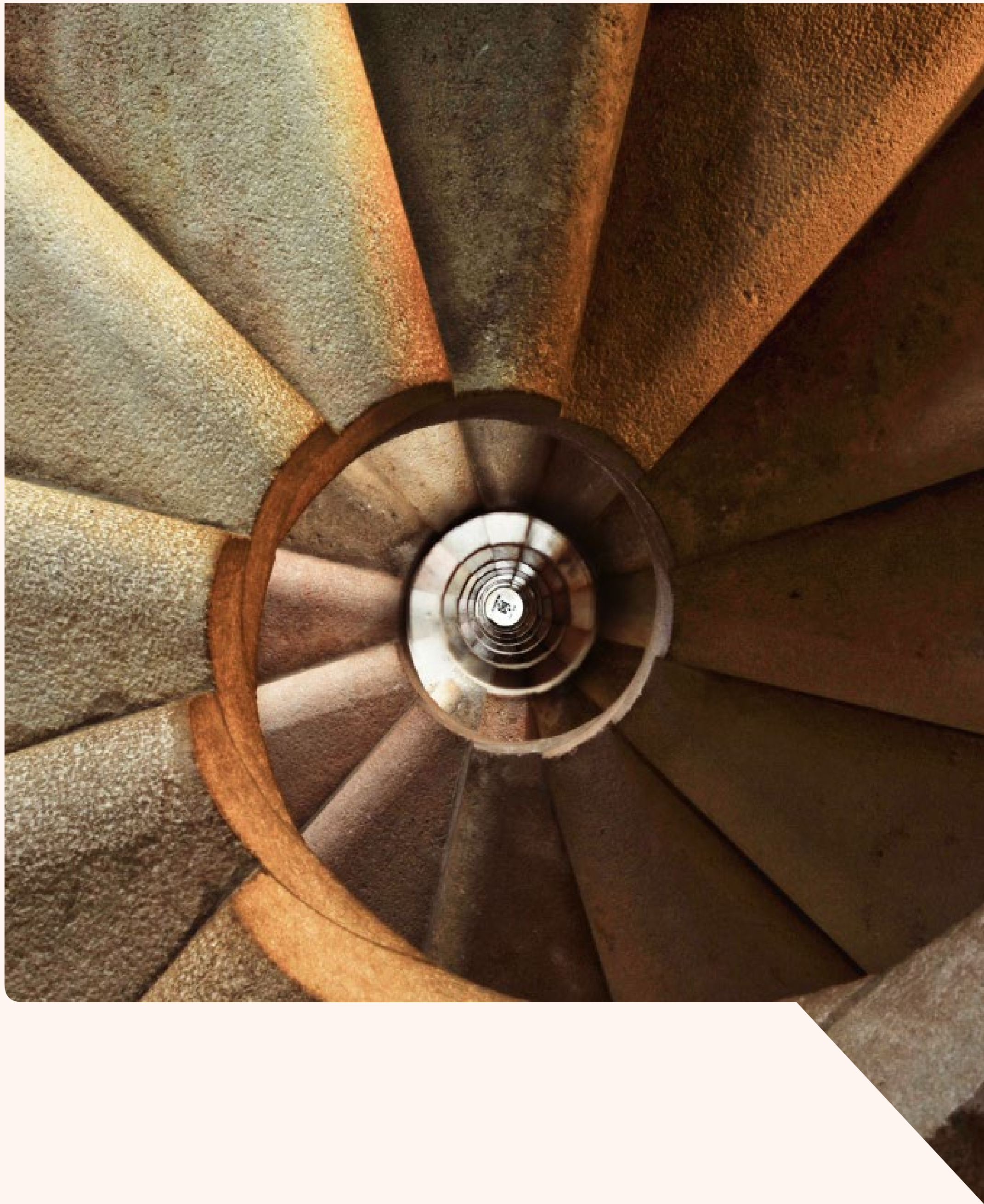
- **Directors' and Officers' Insurance (D&O Insurance):** Insurance for claims against directors and senior managers of a company, to cover compensation claims made against them for breaching their duties or making misleading statements, for example. It is often a CP for an investee company to obtain adequate Directors' and Officers' Insurance before an investor will complete their investment and certainly before they take a seat on the Board.

- **Disclosure Letter:** A legal document prepared by those giving Warranties addressed to the investor(s), in which exceptions or contradictions to the Warranties are disclosed and, as a result, in respect of which the investor cannot bring a claim for breach of Warranty.

- **Dividend Rights:** A shareholder's right to receive dividend income. Not all shares carry dividend rights. Whether a dividend is actually declared depends on the company having distributable profits (without which a dividend cannot be paid) and is usually decided in line with the company's dividend policy as set out in its Shareholders' Agreement. Early-stage companies that are in an intense growth phase may choose a dividend policy that prohibits dividends for a pre-determined period of time to allow them to reinvest all profits to continue growing the company, rather than paying dividends to shareholders. A common way of ensuring that a company is not obliged to pay dividends while it is growing is to provide the investors with Cumulative Preference Shares, which means the holders of such shares receive a right to receive accrued dividends but have to wait for payment.

- **Down Round:** A funding round where the investee company is raising money at a lower valuation than in a previous investment round. This can offer better value for investors but could also signal that a company is struggling.

D



- **Drag Along Right:** The rights of selling majority shareholder(s) (holding more than a fixed percentage of a company's issued share capital) to force the minority shareholders to also sell their shares to a potential buyer at the same price in order to ensure the sale of the entire issued share capital.

- **Due Diligence:** A comprehensive appraisal of a business undertaken by a prospective investor to evaluate its commercial potential as well as any risks facing the company in the future. Due Diligence can include a financial, legal and/or operational review.

E

- **EIS:** The Enterprise Investment Scheme provides UK tax relief to investors investing in young, higher-risk companies. Each company can raise up to £5 million per year, and £12 million over its lifetime, under EIS. However, there are strict qualifying criteria for both the company and the investor. With EIS, investors can benefit from income tax relief, capital gains tax relief and loss relief provided they hold the investment for at least 3 years and meet these criteria. Specialist advice should be taken regarding a company and an investor's eligibility.

- **EMI Options:** Options granted pursuant to an Enterprise Management Incentive scheme. Subject to both the company and the option holder meeting certain qualifying criteria, options may be granted to employees or executive directors of a company which provide certain UK tax advantages.

- **Employee Incentive Scheme / Share Option Plan:** A scheme or plan that reserves a percentage (or fixed number) of shares of the company (see Share Option Pool) for share option grants to current or future employees (and sometimes consultants or advisers) to incentivise them to reach pre-determined targets. Usually, an exception to a company's Anti-Dilution Rights or Pre-Emption Rights enabling the Board (sometimes subject to Consent Rights) to grant options from the Share Option Pool pursuant to the Share Option Plan without further shareholder approval or other implications. The Share Option Plan often includes Leaver Provisions.

- **Enhanced Voting Rights:** The grant of weighted voting rights (i.e. more than one vote per share) to certain classes of shares or specific investors, as set out in the Articles.

- **Entrenched Director Rights:** The right of a Founder or investor to be appointed as (or to nominate) a director of the Company for so long as the hold a fixed number or percentage (or sometimes any) shares in the company. Sometimes also linked to the continuing employment of the Founder. Any removal of that person as a director during this time will be a breach of contract. This right is often included in a Shareholders' Agreement and the Articles to ensure it binds all shareholders in the company, to deter them from trying to remove such directors under the Companies Act procedures.

- **Equity:** Used to refer to shares in a company or Convertibles.

- **Excess Application Facility:** Connected to Pre-Emption Rights on Allotment. The rights of existing shareholders to subscribe for additional new shares in the company (in excess of their proportionate shareholding in the company) after those shares have been offered to existing shareholders on a pro rata basis (but which have been not accepted by other shareholders) and before they are offered to third parties. This allows an existing shareholder to increase their proportionate shareholding in the company.

E

- **Exclusivity:** Where one or both parties to an exclusivity agreement are restricted from negotiating with any other parties for the duration of the exclusivity period. Can be included as a legally binding clause of a Term Sheet.
- **Executive Director:** A director who is also an employee of the company that performs managerial duties within the business.
- **Exercise Price:** The price at which the owner of an Option is entitled to exercise the Option to convert into the underlying share(s).
- **Exit:** The process whereby an investor sells (or often all investors sell) their investment in the company and realise its value. Usually, an Asset Sale, Share Sale or Listing.

F

- **Fair Market Value:** The price at which the market dictates an asset should change hands between a willing buyer and seller. In the absence of agreement between the parties as to the Fair Market Value of shares, it is often set out in the Articles that this will be determined by an independent auditor or accountant, applying specified valuation criteria.

- **Family Office:** An advisor which manages the wealth and investment needs of specific high-net-worth families.

- **FCA:** Financial Conduct Authority, the regulatory body responsible for enforcing the rules on Financial Promotions.

- **Financial Promotion:** A financial promotion is any communication that either invites or induces a person to engage in investment activity that is communicated in the course of a business. They can include information on websites or social media, pitch events, statements made in meetings, online videos or email and the IM or Pitch Deck.

- **Financial Promotions Rules:** Colloquially used to refer to the various legal statutes and FCA regulations governing the law of Financial Promotions which prohibits Financial Promotions unless they are issued or approved by a firm which is authorised by the FCA or are permitted within an exemption (for example, in accordance with the rules on Financial Promotions to High Net Worth Individuals or Sophisticated Investors). Legal advice should be taken on how to make a Financial Promotion in accordance with the Financial Promotions Rules.

- **Follow-on Funding:** Where an investor invests more money into a company, that they already have invested in, at a later funding round.

- **Founder(s):** The entrepreneur(s) who starts a company and often starts off as the company's CEO or COO.

- **Founder Shares:** Shares issued to the Founder(s) of a company. Founder Shares can have special rights affecting voting powers and are often subject to Leaver Provisions.

- **Founder Undertakings:** Often included in Shareholders' Agreements. Ongoing obligations given by the Founder(s) (and usually also the Company) to continue to comply with a list of duties for the duration of the parties' investments, which can include ongoing compliance with SEIS/EIS eligibility criteria, promoting the best interests of the business, maintaining adequate D&O insurance, meeting certain corporate governance standards etc.

- **Friends and Family Round:** An early round of investment aimed towards close contacts of the Founder(s). Friends and family may be less motivated by proven financials or a developed business plan and can be persuaded to invest in the entrepreneur(s) owing to their relationship with him/her. The round typically aims to raise between £50,000 - £250,000.

- **Fully Diluted Share Capital:** The total Equity capital of the company, taking into account issued shares and Convertibles, assuming all Convertibles are fully converted. For this purpose, the full Share Option Pool is included.

G

- **Good Leaver:** As specifically defined in a contract or the Articles. A Good Leaver is an employee shareholder who has left the company in circumstances which do not make them a “Bad Leaver”, for example due to retirement, ill-health, redundancy or perhaps voluntarily after a long period of service. It often also includes where an employee shareholder has been unfairly or wrongly dismissed. In other words, “no fault” reasons. Founders like to see a Good Leaver drafted widely, often as being everything other than a short list of Bad Leaver circumstances. A Good Leaver will generally be permitted to keep their shares (sometimes all, or sometimes only their Vested Shares) following termination of their employment and/or they make be permitted to sell their Vested Shares at Fair Market Value. A Good Leaver usually also covers termination of consultants and directors in similar circumstances. See also Leaver Provisions.

- **Growth Capital:** A type of private equity investment, usually a minority investment, in relatively mature companies that are looking for capital to facilitate growth by expanding, restructuring operations financing a significant acquisition without a change of control of the business, or seeking to enter new markets.

- **Growth Shares:** A class of shares in a company that allows the holders, often employees, to participate in the value of a company over and about a valuation hurdle. This means that other shareholders' economic interests are diluted only if/when the value of the company exceeds that hurdle.

H

- **High Net Worth Individual (HNWI):** A person who has validly completed and signed the prescribed investor statement self-certifying their status as a high net worth individual and is in receipt of a Financial Promotion with the prescribed risk warning and explanatory note in accordance with the Financial Promotion Rules.

- **Incubator:** Similar to an Accelerator, an incubator is an organisation which fosters early-stage companies through their developmental phases by providing support, resources and mentorship, and sometimes initial funding.

- **Information Memorandum/Investment Memorandum (IM):** A legal document that a company presents to potential investors to explain the objectives, risks, and investment terms surrounding a funding round. It is used to gauge interest from potential investors at an early stage of the sale process. As a Financial Promotion, it must include appropriate disclaimers and warnings (as prescribed by law) to alert investors of the risks of investing and it must only be provided to narrow categories of investors unless the IM has been approved by an FCA-regulated firm.

- **Information Rights:** The rights of an investor to receive certain information from the company beyond what is required by statute. This can cover management accounts, minutes of board meetings, regular commercial email updates, budgets, cash flow analysis etc.

- **Institutional Investor:** An organisation which invests money on behalf of others (typically other companies). Examples include Venture Capital Funds, pension funds, investment funds and banks.

- **Intellectual Property (IP):** Intangible assets such as brand names, logos and product designs. They can be legally protected so they cannot be used by others without the company's consent. It is important to investors that a company owns, or is properly licensed to use, the IP it requires to run the business. Due Diligence often focusses on ownership of IP and employment contracts of key employees should make sure that the investee company and not the individual owns any IP the employee develops in the course of carrying out their duties.

- **Investment Agreement:** A legal agreement outlining the terms of an investment in a company, covering similar terms to a Subscription Agreement. It will also set out the ongoing rights and obligations of the investor, the company and the Founders that apply for the duration of that investor's investment, as an alternative to a Shareholders' Agreement.

- **Investment Committee (IC):** The body that has ultimate authority to make an Institutional Investor's decision whether to invest and on what terms. An Institutional Investor's analysts will often submit papers analysing an investment for the IC's consideration, who will then either give their approval or ask the analyst to reconsider or move onto another opportunity.

- **Investor Director:** An individual nominated by an investor as a director of the investee company to represent that investor's interests on the Board and to ensure that the investor has access to adequate information on the company.

I

- **IPO:** Initial Public Offering. The public listing of a company's shares and a means of Exit.
- **Issued Share Capital:** The total number or value of shares which a company has issued to its shareholders. It excludes rights to acquire shares in future and therefore excludes Convertibles.

K

- **Key Man Insurance:** A life insurance policy bought by a company to cover the death or critical illness of key workers (usually the Founder(s)) who are essential to the company in the event they are stopped from working. Often a CP to an investment being made.
- **Knowledge Intensive:** A classification of company that carries out research, development or innovation at the time they are issuing shares. The classification gives a company access to preferential EIS terms. Generally speaking, to qualify they need to be e developing IP as their main business and 20% or more of employees who are doing the research must have a masters or higher degree for at least 3 years from date of employment. There are strict qualifying criteria and specialist advice should be taken.

L

- **Lead Investor:** The venture capitalist or individual that leads an investment round and usually has the ability to act on behalf of the other investors, whether by negotiating the Term Sheet and key investment documents or by having Consent Rights.
- **Leaver Provisions:** Terms in an employment contract, the Articles or Share Option Plan which set out the circumstances in which an Equity holder leaving the business as an employee, consultant or director will be a Good Leaver or a Bad Leaver. They act as a deterrent for employee shareholders to leave the business.
- **Liquidation Preference:** A right attaching to a certain class of shares that sets out the return certain preferred investors are entitled to on at Exit (before other shareholders. A Liquidation Preference can be either Non-Participating or Participating.
- **Liquidity Event:** A full or partial Exit, which typically converts the Equity held by a company's Founder(s) and investors into cash or other marketable securities.
- **Listing:** Initially occurs on an IPO and then when additional shares in a company are admitted to trading on a stock exchange.

M

- **Milestones:** Clearly defined points in the duration of, for example, the investment lifecycle which mark a significant stage of progress.
- **Monitoring Fee:** Sometimes known as management fees. A fee charged by an Institutional Investor to the investee company for ongoing advisory and management services provided by it after its investment.

N

- **New Money:** Additional financing provided to a company by way of a new share or debt issuance.
- **Nominal Value:** Also known as par value. The legal denomination value of shares as set out in the Articles excluding any premium paid and as opposed to their market value.
- **Non-Executive Director (NED):** A member of a company's Board but who is not an employee of the company. A NED acts as an independent advisor and is typically involved in policymaking and planning exercises rather than the day-to-day management of the business. Usually, the Chairperson is a NED.
- **Non-Participating Preference:** On a liquidation or other distribution of assets of the company (for example, following a Share Sale), a Non-Participating Preference shareholder is only entitled to their Liquidation Preference (i.e. their preferential liquidation payment), but does not receive a share of the remainder of the excess proceeds.

O

- **Observer Right:** The right of an investor to be a Board Observer.
- **Options:** A benefit or incentive in the form of an option given by a company to an employee, consultant or adviser to buy shares in the company at a discount or at a stated fixed price.
- **Ordinary Resolution:** A binding resolution passed by shareholders holding more than 50% of voting shares in the company, which must be proposed and passed in accordance with the provisions of the Companies Act 2006 and the Articles. The Companies Act 2006 and/or the Articles will require the company to have passed an Ordinary Resolution before taking certain actions, for example, the Board issuing new shares where it has more than one class of shares.
- **Ordinary Shares:** The most common class of share issued by a company. The Articles will set out the rights of the holders of ordinary shares and they typically include the right to vote, the right to dividends and to receive a return on capital after any Liquidation Preference.

P

- **Participating Preference:** On a liquidation or other distribution of assets of the company (for example, following a Share Sale), a Participating Preference shareholder is entitled to their Liquidation Preference (i.e. their preferential liquidation payment), and also to receive a share of the remainder of the proceeds.
- **Permitted Transfers:** A transfer of shares to a defined list of permitted transferees which will be allowed under the Articles without restriction. By contrast, share transfers to non-permitted transferees may be subject to prior Board or shareholder approval or be required to be offered to existing shareholders under pre-emption rights.
- **Pitch:** An entrepreneur's attempt to convince a venture capitalist that a business idea is worth investing in.
- **Pitch Deck:** A pitch deck is a presentation that is used to Pitch your idea or company to any number of audiences, generally investors.
- **Post-Money Valuation:** The estimated value of a company after external investment is added to the balance sheet.
- **Pre-Emption Rights on Allotment:** The rights of existing shareholders to subscribe (in proportion to their existing holdings of shares) for any new issuance of shares before those new shares are offered to third parties (at the same subscription price that will be offered to those third parties). A form of right of first refusal. If pre-emption rights are not taken up by existing investors, their proportionate shareholding in the company will be diluted.
- **Pre-Emption Rights on Transfer:** The rights of existing shareholders to purchase their pro rata entitlement (and sometimes more) of any shares which are proposed to be sold by an existing shareholder to a third party at the same price as that third party is proposing to pay for them. A right of first refusal.
- **Preference Shares:** A class of share which entitles the holder to, for example, a fixed dividend and/or a return on capital, which in each case takes priority over the rights of holders of ordinary share.
- **Pre-Money Valuation :** The estimated value of a company before external investment is added to the balance sheet.

Q

- **Qualifying Financing:** Usually defined in Convertible Loan Notes or ASAs. A form of financing (or series of financings) raising over a certain monetary target which triggers the automatic conversion of the Convertible Loan Notes or ASAs into shares.
- **Quorum:** The minimum number of shareholders or directors that must be present at a general (i.e. shareholders) meeting or Board meeting, respectively, to make the proceedings of that meeting valid.

R

- **Ratchet:** A contractual mechanism to vary the amount of Equity held by existing shareholders post-investment. For venture capitalists, a Ratchet provision can be used to as an Anti-Dilution mechanism by ensuring that any further issue of shares by the company will entitle them to "free" additional shares so as to maintain their ownership percentage. Founder(s) or other management may use a Ratchet to increase their shareholding if certain performance targets are met.

- **Redeemable Shares:** Shares that the company has the option to redeem (i.e. purchase) from the shareholder at a specified price or that the company must redeem on a fixed date at a specified price.

- **Redemption Date:** The date on which a company is to redeem any Redeemable Shares or is required to repay the principal amount plus interest on any loan.

- **Registration Rights:** Relevant to shares in US companies. Contractual rights to participate in or require a public offering of Equity securities.

- **Reserved Matters:** Also called 'Consent Rights or 'Veto Rights'. A protection for investors. A list of certain high-level actions that the company cannot take without the prior written approval of certain named investors and/or investors holding a specified percentage of shares (or class of shares) as set out in the Shareholders' Agreement.

- **Restrictive Covenants:** A contractual agreement where one party (in a venture capital context, the Founder(s)) agrees with the shareholders and the company to refrain from competing with the company and/or soliciting, enticing away or dealing with its customers, suppliers and key employees during their period of employment and for a period thereafter. This is a means of protecting the value of the business and ensuring the Founder does not walk away and immediately set up in competition.

- **Return on Investment (ROI):** Ratio used to evaluate the efficiency of an investment by comparing the return of an investment to its cost.

- **Rights of First Refusal (ROFR):** The rights of a person (often a specified investor) to first be offered new shares on a proposed fundraising, or existing shares on a proposed sale, before other parties. Whilst pre-emption rights are a form of ROFR, this tends to refer to a more generous right which goes beyond being offered a pro rata share.

- **Runway:** The amount of time a company can operate before it runs out of cash given its Burn Rate.

S

- **Seed:** The Seed Enterprise Investment Scheme. SEIS is a UK tax-advantaged investment which provides tax relief to investors investing in very early-stage companies. Each company can raise up to £250,000 through SEIS. Investors benefit from income tax relief, capital gains tax relief and loss relief provided they hold the investment for at least 3 years and meet strict criteria. There are also strict qualifying criteria for the company. Specialist advice should be taken.

- **SEIS:** The Seed Enterprise Investment Scheme. SEIS is a UK tax-advantaged investment which provides tax relief to investors investing in very early-stage companies. Each company can raise up to £250,000 through SEIS. Investors benefit from income tax relief, capital gains tax relief and loss relief provided they hold the investment for at least 3 years and meet strict criteria. There are also strict qualifying criteria for the company. Specialist advice should be taken.

- **Service Agreement:** An Executive Director's employment contract with the company.

- **Shareholders' Agreement:** Similar to an Investment Agreement. An agreement between shareholders and the company setting out the ongoing rights and obligations of each party during the term of their investments.

- **Share Option Pool:** The amount of Equity, usually expressed as a fixed percentage of issued share capital, which is available to be issued by a company under its Share Option Plan(s). The Share Option Pool is usually quantified in the Shareholders' Agreement and dovetails with the provisions in the Articles, which will permit the Board to issue options from the Share Option Pool as an exception to the Pre-Emption on Allotment provisions. The size of the Share Option Pool is subject to negotiation.

- **Share Sale**: A sale of shares conferring a controlling interest (usually more than 50% of the voting shares) on the buyer, as opposed to an Asset Sale. A form of Exit or Liquidity Event.

- **Simple Agreement for Future Equity (SAFE):** Similar to an ASA and more commonly used in the US An agreement enabling investors to subscribe in advance for shares, typically at a discount to the price (per share) in the next funding round. Investors pay now and receive the shares later – on the next funding round (when the discounted price is known) or on a long stop date (with a default valuation). A useful tool for companies to get in cash quickly whilst the documentation for the next funding round is negotiated.

- **Sophisticated Investor:** A person who has validly completed and signed the prescribed investor statement self-certifying their status as a sophisticated investor and is in receipt of a Financial Promotion with the prescribed risk warning and explanatory note in accordance with the Financial Promotion Rules.

S

- **Special Resolution:** A binding resolution passed by shareholders holding at least 75% of voting shares in the company, which must be proposed and passed in accordance with the provisions of the Companies Act 2006 and the Articles. The Companies Act 2006 and/or the Articles will require the company to have passed a Special Resolution before taking certain actions, for example, to amend the Articles.

- **Subscription Agreement:** An agreement which sets out the terms of an investor's or group of investors' subscription for shares in the company, including the size of the investment and the umber of shares to be received, as well as any CPs to be satisfied. It can be used, along with a Shareholders' Agreement, instead of an Investment Agreement, which is the preferred approach in the current market as it allows the Subscription Agreement to fall away once the investment has been made (with the Shareholders' Agreement then being a standalone document that applies for the duration of the investment).

T

- **Tag Along Rights:** A contractual right allowing minority shareholders to join a share sale between the majority shareholder and a buyer on the same terms. This allows the minority to "tag along" on the sale and achieve a Liquidity Event without being left behind.
- **Term Sheet / Heads of Terms:** A non-binding document that outlines the key terms on which an investor will make an investment, which will inform the terms of the formal legal documents, such as the Subscription Agreement and Shareholders' Agreement that will follow in due course.

U

- **Unicorn:** a privately held start-up company with a valuation exceeding USD 1 billion.
- **Unvested Shares:** Shares held by an employee for the purposes of voting, dividends and capital return but which are subject to more punitive consequences under the Leaver Provisions than Vested Shares if that shareholder ceases to be employed. The number of Unvested Shares and Vested Shares will be determined according to a vesting schedule (that may include a Cliff). For example, the vesting schedule may state that X% of an employee's shares are treated as being Vested Shares for every month they remain employed until 100% are Vested Shares.

V

- **Valuation:** An estimated worth of the company. It is important to note that a company's valuation can be reached by using different models which will typically generate different values.
- **Valuation Cap:** A mechanism often requested by Convertible Loan Noteholders or those with ASAs or SAFEs, who may convert their investment into shares in the company at an as yet undetermined valuation. This imposes a maximum value on the undetermined valuation to ensure that the investor maximises their return.
- **Valuation Floor:** A minimum valuation for Convertible Loan Notes, SAFEs or ASAs below which the as yet undetermined conversion price for the investor's shares. This mechanism is intended to ensure that existing shareholders do not suffer unlimited dilution should the value of the company fall between the date of entering into those Convertibles and the conversion date.
- **VCT:** A Venture Capital Trust is a tax efficient UK closed-end collective investment scheme, whose shares are often listed on the stock market, that pools capital from individual investors to provide venture capital to portfolios of small companies with high growth potential.
- **Vested Shares:** Shares held by an employee for the purposes of voting, dividends and capital return but which are subject to less punitive (or sometimes no) consequences under the Leaver Provisions than Unvested Shares if that shareholder ceases to be employed. The number of Unvested Shares and Vested Shares will be determined according to a vesting schedule (that may include a Cliff). For example, the vesting schedule may state that X% of an employee's shares are treated as being Vested Shares for every month they remain employed until 100% are Vested Shares.
- **Vesting:** A process where an employee or Founder earns shares or the right to exercise options over time, usually as part of a long term incentive scheme.
- **Veto Rights:** Also called 'Reserved Matters' or 'Consent Rights'. A protection for investors. A list of certain high-level decisions that the company cannot take without the prior written approval of certain named investors and/or investors holding a specified percentage of shares (or class of shares), giving those investors a veto over those decisions.

W

- **Warrant:** A financial instrument that entitles the holder to buy the issuing company's shares at a fixed price up until the expiry date.
- **Warranties:** Often found in Investment Agreements or Subscription Agreements, warranties are statements of fact made by the company (and sometimes the Founders) about the company's affairs. Warranties provide assurances to the investor regarding various aspects of the business, for example, that it owns all the IP that it requires, it is not the subject of any litigation, its accounts accurately represent the company's finances etc. The main purpose of contractual warranties is to elicit information about the company to facilitate the investor's Due Diligence and to allocate risk back to the party making them, who is responsible for ensuring the statements are correct. If a Warranty proves to be untrue (and has not been disclosed in the Disclosure Letter), the investor has a claim for breach of warranty, so it can recover any loss of value to its investment arising out of the breach of warranty.
- **Waterfall:** A hierarchical payment structure which describes the stages of when and how much different investors get paid out on an Exit or Liquidity Event.
- **Weighted Average:** A calculation used to determine the average cost of an investment, taking into account a range of factors and their importance to the investor. It can be used in Anti-Dilution mechanisms on a Down Round.

Our VC team

Howard Watt
Partner
+44 (0) 7734 038 001
hwatt@fladgate.com
View Profile

Janine Suttie
Partner
+44 (0) 7507 481 062
jsuttie@fladgate.com
View Profile

Jamie Hamilton
Partner
+44 (0) 7852 040 559
jhamilton@fladgate.com
View Profile

Lucie Burniston
Partner
+44 (0) 7484 984 756
lburniston@fladgate.com
View Profile

Graham Spitz
Partner
+44 (0) 7775 894 974
gspitz@fladgate.com
View Profile

Matthew Akehurst
Senior Associate
+44 (0) 7989 065 536
makehurst@fladgate.com
View Profile

Mary Liu
Senior Associate
+44 (0) 7971 925 895
mliu@fladgate.com
View Profile

Ellie Green
Senior Associate
+44 (0) 7507 481 025
egreen@fladgate.com
View Profile

Fladgate LLP
16 Great Queen Street, London, WC2B 5DG
T: +44 (0)20 3036 7000 F: +44 (0)20 3036 7600 E: fladgate@fladgate.com

fladgate.com

fladgate