

HUMPHREYS
LAW

Negotiating series A term sheets
by Henry Humphreys



Who am I?

Henry Humphreys

- Private equity and venture capital lawyer
- Decade + in the City
- Founded Humphreys Law in 2017
- Personally advise on 30+ deals per year



Who are we? Team of 17

- Hand picked from major City law firms
- Work in tech and media as a vertical sector
- Closed 60+ deals in under two years
- Ranked in PitchBook's top 20 European legal advisors 2018

Capabilities

- Transactional
- Business operational
- Funds and upstream fundraising
- Management incentives
- Tax reliefs and incentives
- Crypto & blockchain

Recent deals...

- **Founders Bank** – Maltese challenger bank's seed funding round from Binance, largest crypto exchange in the world
- **Hubble** – series A funding round into UK PropTech led by JLL from the US
- **ADC Bio** – series C and then series D funding round into BioTech venture backed by Downing, Maven and Seneca
- More here: <https://humphreys.law/deals/>

Any good deal starts with a term sheet



- Objectives...
Founders | Investors | (Company)
- Wireframing the deal
- Not legally binding (except re exclusivity)
- Term sheet / heads of terms / MOU etc

The cap table

- Valuation
- Amount(s) being invested
- Tranching
- Names of investors
- Share classes – new class for the investor (series A)

Long form documents...

- Subscription agreement
- Shareholders' agreement
- New articles of association
- Disclosure letter
- Service agreements
- Raft of ancillary documents
- Agreed form documents – management accounts, business plan & budget, management questionnaires etc

Who's involved and who gets lawyer'd up...

General		
1.	The Company	[●] Limited
2.	[Lead] Investor	[●]
3.	[Co-Investor[s]]	[●], [●] and [●]
4.	[The A Majority]	[The holders of [●]% by number of the A Ordinary Shares]
5.	Founder[s]	[●], [●] and [●]

Getting to close...

6.	Target completion date	No later than [●] weeks from the date of signature of this term sheet.
7.	Completion deliverables	<p>The following must be satisfied or delivered prior to or on completion [of Tranche 1]:</p> <ul style="list-style-type: none">(a) completion by the [Lead] Investor[s] of focussed legal and commercial due diligence;(b) delivery of the KYC information on the Founder[s] (listed in Annex E) to the [Lead] Investor[s];(c) completion by the [each] Founder[s] of the Management Questionnaire;(d) [delivery of the KYC information listed in Annex F in respect of the [each] Co-Investor to the [Lead] Investor[s];](e) Delivery by the [each] Co-Investor of a high net worth/sophisticated investor certificate to the [Lead] Investor[s];(f) provision by the Founder[s] of a business plan to, and in the form agreed with, the [Lead] Investor[s];(g) the [Lead] Investor[s] being satisfied that the Company has obtained, or will obtain in advance of completion, advance

Warranties



- Warranties are contractual promises...
- Disclosure (de facto DD)
- Who gives the warranties?
- Max £ liability, time limit, £ de minimis etc
- Joint and several?

Warranty subjects...

- Share capital
- Information supplied to the [Lead] Investor[s]
- Business plan
- Accounts
- Intellectual property
- Commercial contracts
- Data, privacy and GDPR
- Compliance with laws
- No arrangements with connected persons
- No litigation
- Records and registers
- Insurance
- List of employees (and remuneration) to be set out in the disclosure letter
- Details of pension arrangements to be set out in disclosure letter
- List of properties to be set out in the disclosure letter
- Tax

Written into long form...

9 Litigation

- 9.1 Neither the Company nor, so far as the Warrantors are aware, any person for whose acts and defaults it may be vicariously liable, is at present engaged whether as claimant, defendant or otherwise in any legal action, proceeding or arbitration which is either in progress or is threatened or so far as the Warrantors are aware is pending (other than as claimant in the collection of debts arising in the ordinary course of the business carried on by it none of which exceeds £1,000 and which do not exceed £5,000 in aggregate) or is being prosecuted for any criminal offence and no governmental, regulatory or official investigation or inquiry concerning the Company is threatened or in progress or, so far as the Warrantors are aware, pending.

Liquidation and sale preferences...

19.	1x preference (sale [and winding up])	On a sale [or on a winding up] (of all the shares) of the Company, the [Lead] Investor[s] [and the [each] Co-Investor,] can choose to either receive: (a) its pro rata proportion of the funds; or (b) the value of its investment monies in priority to all other shareholders, but not (a) <u>and</u> (b).
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Management

- Board seats
- Entrenched rights
- Observer rights
- Information rights
- Quorum
- Enhanced voting rights / swamping

Reserved matters / consents / veto rights

The consent of the Lead Investor [A Majority] shall be required for the following key decisions. The Company, and any Group Company, shall not:

1. issue any shares, loan notes or debentures or create any new shares, or issue securities convertible into shares, loan notes or debentures;
2. alter the rights attaching to any class of shares of the Company;
3. consolidate, sub-divide, convert or buy-back any of the Company's share capital;
4. grant options over shares to a director;
5. approve or register the transfer of Shares between Founders;
6. alter the articles of association of the Company or adopt or pass any resolutions inconsistent with them;
7. do or permit to be done any act or thing whereby the Company may be wound up (whether voluntarily or compulsorily);
8. create any fixed or floating charge, lien (other than a lien arising by operation of law) or other Encumbrance over the whole or any part of its undertaking, property or assets, except for the purpose of securing indebtedness to its bankers for sums borrowed in the ordinary and proper course of the Business and on arm's length terms;
9. give a guarantee or indemnity to secure liabilities or obligations of any person (other than a Group Company);
10. carry out any business other than the Business;
11. other than any expenditure specifically set out in any approved business plan, enter into any

Tag & drag

30.	Co-sale	If a shareholder wishes to sell his shares to a third party buyer, the transfer will then be conditional upon the third party buyer making an offer on the same terms for a <i>pro rata</i> proportion of all the other shareholders' shares.
31.	Mandatory offer on a change of control	Upon receipt of an offer that would cause more than 50% of the share capital of the Company to be held by a third party proposed purchaser (and those acting in concert with him), the proposed purchaser will be required to extend that offer to all of the shareholders.
32.	Drag along	Acting with the consent of the Lead Investor [A Majority], the holder(s) of [●]%+ of the share capital (who are not leavers) wishing to sell to a <i>bona fide</i> third party buyer can force the minority to sell to the same buyer on the same terms.

Leavers

- Compulsory sale
- Good and bad leavers
- Vesting periods
- See: 'The good, the bad and the ugly: a practical guide to negotiating leaver and vesting provisions'

Restrictive covenants

- Non-compete, non-poach, non-solicit, non-disparage
- In the SHA and service agreements (ideally)
- Reasonableness and enforcement

Fees

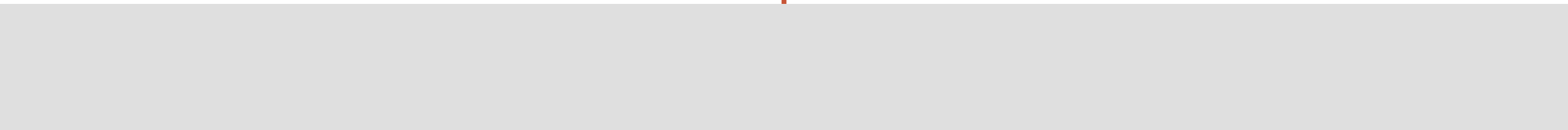
- Investor fees –
corporate finance fee
and annual management fee
- Grossing-up
- Investor's lawyers' fees –
Company usually pays

Exclusivity

- Period
- Max £ liability
- Whose liability?
- Carve outs for emergency funding
- Legally binding

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Qs?



Thank you –
see you on the next deal