MILLS & REEVE

launchPAD

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glossary of key terms

AGM: a company's annual general meeting. A private company does not have to hold an AGM (unless its articles require one). A public company must hold an AGM within six months, beginning with the day following its accounting reference date.

AIM: the Alternative Investment Market, part of the London Stock Exchange for smaller companies.

Articles of association: part of the company's constitution documents, which must be filed at Companies House. Regulate such things as issues and transfers of shares, proceedings of and appointment of directors and borrowing powers.

Business angels: high net worth individuals who invest in early stage businesses. Typically business angels have significant industry or investment experience.

Company: a legal entity incorporated following the registration of certain documentation at Companies House.

Copyright: copyright protection is given to original literary, dramatic, musical or artistic works (including software), sound recordings, films, broadcasts, cable programmes and to the typographical arrangement of published editions.

CREST: the UK electronic share settlement system, which records the title to shares electronically as opposed to paper share certificates.

CRO (contract research organisation): a company specialising in organising and managing clinical trials, which is appointed by a sponsor to conduct clinical trials on behalf of that sponsor.

Debenture: a type of loan made to a company, which is usually made for a set period of time and carries a fixed rate of interest (also refers to a security document in respect of a loan).

De facto director: a person who fulfils the functions of a director and holds himself/herself out as such, although he/she is not formally appointed as a director. Such a person has all the duties and responsibilities of a director, as if they had been appointed.

Dilution: the extent to which new shares being issued "dilute" the percentage holdings of existing shareholders. "Anti dilution" provisions prevent/restrict this.

Directors: the persons with key day to day control of the company. Every private company must have at least one director. Every public company must have at least two directors. All companies must have at least one director who is a natural person (ie not a corporate director).

Dividend: a portion of a company's profit paid to a shareholder of the company – usually expressed as an amount per share.

Drag along rights: rights, usually in articles, whereby selling shareholders can force other shareholders to sell.

EIS (enterprise investment scheme): certain investors in trading companies may be able to take advantage of a range of tax benefits on any gains on their investment subject to certain conditions being satisfied.

EMI (enterprise management incentives): employees in independent trading companies with gross assets not exceeding £30 million can each be given tax advantaged options over shares worth up to £120,000 at the time of grant.

Employee benefit trust: a "vehicle" through which shares are held by trustees for the benefit of employees.

Equity: share capital in the company.

Exit: shareholders realising their investment, usually by IPO or trade sale.

Floating charge: a charge over the assets of a company – it is not fixed to one particular asset but floats over the assets of the company until crystallised by some predetermined event. A floating charge can include continually changing assets, such as trading stock.

Fraudulent trading: arises when, in the course of winding up a company, it is shown that the business has been carried on with intent to defraud creditors or for any fraudulent purpose. Directors participating in the fraud commit a criminal offence and may be made personally liable for the company's debts.

Garden leave: a right in a contract of employment to require an employee to remain at home during his/her notice period.

GM: a general meeting of shareholders (including AGMs).

Investment agreement: see shareholders' agreement.

IPO: initial public offer (listing on an investment exchange).

IRR: internal rate of return (way in which venture capitalists value their return on an investment).

Licence: a right to use a right, eg, intellectual property rights (IPR).

Liquidation preference: the phrase used by venture capital investors where they have a right to a preferred return on their investment ahead of other shareholders on an exit event, usually liquidation, sale or float.

Lock out: an agreement not to negotiate with any other person for a specified period of time. Must be drafted clearly to ensure enforceability.

LSE: London Stock Exchange.

Members/shareholders: the "owners of the business", persons who hold shares in the company and therefore control key constitution decisions and share in profits of the company.

Memorandum of association: part of the company's constitutional documents, which must be filed at Companies House.

MTA (materials transfer agreement): an agreement where materials, typically biological samples, are provided to another party to enable that party to conduct research.

NASDAQ (National Association of Security Dealers Automated Quotations): currently the largest US electronic stock market, which is based in the US and regulated by the US Securities and Exchange Commission. NASDAQ specialises in emerging companies, especially technology and telecommunications companies.

NDA: non-disclosure agreements or confidentiality agreements. It is important to ask for these from persons to whom company confidential information is disclosed.

Nomad: AIM nominated adviser. All AIM companies are required to retain a nominated adviser.

Officers: the directors and the company secretary.

Ordinary resolution: a resolution of shareholders that requires a simple majority (ie, more than 50 per cent of shareholders with voting rights present in person or by proxy at a GM) to vote in favour. See also “written ordinary resolution”.

Par value: also known as a “nominal value”. The nominal amount of a share rather than the total amount paid for a share.

Patent: protects the rights in an “invention”. To qualify as an invention the thing in question must be novel (not used or published before), involve an inventive step (not be obvious to those working in the field) and be capable of industrial application (ie, not purely aesthetic).

Phantom schemes: these schemes involve the payment of a cash bonus, which is calculated by reference to the value of the shares in the company. Normally, for a start-up company where share valuation is difficult, a phantom scheme would only be appropriate if the cash pay out occurred on sale or flotation of the company. Naturally, bonus arrangements linked to profit or turnover (rather than share value) are possible at any stage in the life cycle of a company.

PLUS: (formerly OFEX) a London based stock exchange operating both secondary and primary markets via its PLUS-listed and, for smaller, growing companies seeking access to equity finance, its PLUS-quoted markets.

Pre-emption rights: rights usually contained in articles requiring existing shareholders to be offered any shares issued or offered for sale first.

Preferential shares: shares that carry an enhanced right to dividends, usually non-voting.

Principal investigator: the lead researcher responsible for conducting clinical trials, usually appointed by a CRO.

Registered design rights: it is possible to register a new design to protect the outward shape, texture, features, colours and contours of products. For a design to be registrable, it must be new and have individual character. Such registration gives the owner the exclusive right to use the design for a period of up to 25 years.

Restrictive covenants: restrictions on the activities of a person after they cease to be an employee or officer, for example on soliciting staff, customers or suppliers, or being engaged in competing businesses.

Service contract: a contract of employment for directors.

Shadow directors: a person in accordance with whose directions or instructions the directors of a company are accustomed to act, except where this is only because the directors act on advice given by him/her in a professional capacity. It is possible for somebody who is not formally appointed as a director still to have certain responsibilities of a board member if they are a shadow director. See also “de facto director”.

Share incentive plan: a plan designed to give employees tax and NICs advantages when they buy or are given shares in the company they work for. Formerly known as the new all-employee share ownership plan.

Share premium: the amount paid up on a share in excess of its nominal value.

Shareholders’ agreement: an agreement between shareholders and often the company.

Shelf company: an already incorporated company ready to be tailored by changing its name, officers, shareholders and registered office.

Short notice: enables a shareholder meeting to be called by shorter notice than that normally required (14 clear days for a GM or 21 clear days for a public company AGM) provided the shorter notice is agreed to by shareholders representing a majority in number and holding the requisite percentage. In the case of a private company GM 90 per cent is required (articles can specify higher up to 95 per cent), for a public company GM (other than an AGM) 95 per cent is required and for a public company AGM all the shareholders must agree to short notice.

Site: the place at which clinical trials are to be conducted, typically a hospital.

Special resolution: a resolution of shareholders that requires at least 75 per cent of shareholders with voting rights present in person or by proxy at a GM to vote in favour. See also “written special resolution”.

Sponsor: the company or institution that commissions research to be carried out for the purpose of clinical trials.

Subscriber shares: the shares subscribed by the initial shareholders.

Subscription agreement: an agreement, usually between the shareholders and the company under which new shareholders subscribe for shares.

Tag along rights: rights, usually in articles, whereby shareholders wishing to sell shares can only do so if an offer is made to buy out all other shares.

Term sheet or heads of terms: a summary of the key terms of an investment, usually not legally binding.

Trade mark: a sign (usually a word or symbol) which is used to identify a business’ goods or services as its own and distinguish them from those of other businesses. Under UK law, smells, sounds and the shape of goods can also be trade marks.

Unregistered design rights: these arise when original designs are created and recorded. Design rights include the shape or configuration of any article. These rights last for the shorter of fifteen years or ten years from the date on which an item containing the design is first marketed. Unregistered designs could be a book end, steering wheel or circuit board.

VCs: venture capital firms.

Written ordinary resolution: an ordinary resolution passed as a written resolution by a simple majority (ie, more than 50 per cent) of those shareholders eligible to vote and in accordance with provisions set out in the Companies Act 2006. No need for a GM.

Written special resolution: a special resolution passed as a written resolution by a majority of not less than 75 per cent of those shareholders eligible to vote and in accordance with provisions set out in the Companies Act 2006. No need for a GM.

Wrongful trading: occurs if a company is in insolvent liquidation and at some time before the commencement of the winding up a director knew (or ought to have known) that there was no "reasonable prospect" of the company avoiding insolvent liquidation but then failed to take every step to minimise the potential loss to creditors. If a director is found to be liable for wrongful trading he/she can be required to make a contribution to the company's assets.

launchPAD pricing structure

We offer new businesses a free hour's consultation at the end of which we give a fixed price quote on the documentation required to get the business started. We have developed an up to date jargon free set of documents which can be adapted so that competitive quotes can be given which take into account the limited resources of a new business without compromising on the quality of advice given.

A new business will need to get the legal foundations in place, quickly, at a time when it can often least afford to pay professional fees. The LaunchPAD team is therefore ready and willing to invest in building a relationship by agreeing up front:

- an appropriate fee; and
- terms of payment which suit your budget.

Flexible terms might include:

- stage payments;
- deferred fees;
- contingency arrangements;
- taking equity in exchange;
- a retainer for ad hoc advice.

Terms of payment will be considered and agreed on a case by case basis to ensure that they are realistic on both sides.

In the case of staged, deferred or contingency arrangements we would agree a legal budget at the outset including financial milestones which would trigger payment of any deferred fees. We would want to review any business plan and assess the likelihood of financial milestones being achieved. Usually we would expect the milestones to be achievable within a six month timescale from taking instructions/carrying out the work. We reserve the right to charge interest, commonly 2 per cent over base, on the deferred element of the fees to account for the delayed receipt of fees and the risk that the milestones may not be achieved. If the milestones are not achieved we would expect to discuss the company's financial arrangements with you to agree revised milestones and/or payment of some or all of the fees. We have an association with consultants who can help review business plans for an agreed fee.

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