

## BVCA model documents for early stage investments updated

The British Venture Capital Association has re-launched its standardised documents for early stage venture capital investments.

Marriott Harrison is part of the BVCA's working group and pleased to have contributed to the development of these documents. They represent a significant update the previous versions.

The previous versions were a decade old and reflected a different fundraising landscape to what we have now in the UK. The new documents acknowledge the standardisation of certain terms globally, longer cap tables with more stakeholders involved, and a more balanced position between investors, companies and founders.

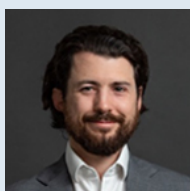
While the new documents by their nature do not reflect any party's preferred position in all respects, we are confident they generally provide a fair balance and will help with ensuring efficiency in fundraising transactions. The documents are primarily aimed at Series A companies but will clearly influence fundraising terms at all stages.

A summary of the key changes are set out below. The documents can be located [here](#).

February 2023

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- **Subscription and Shareholders' Agreement replaced with separate Subscription Agreement and Shareholders' Agreement.** This reflects common practice and that subscription terms are relevant at the time of the investment whereas terms applicable to the ongoing relationship between shareholders and the Company are housed in the Shareholders' Agreement.
  - **Completion mechanics updated.** The Subscription Agreement now provide for multiple completions, investment across multiple tranches, conversion of existing convertible securities and late payment by investors of subscription funds, reflecting common market practices.
  - **Warranties are no longer provided by Founders.** Only the Company provides warranties to the Investors under the Subscription Agreement. This reflects growing practice in the UK as influenced by the US and elsewhere, and aims to remove a common sticking point in negotiations. It will be interesting to see if earlier stage investors (seed, pre-seed), follow suit.
  - **Warranties and limitations updated.** ESG and sanctions warranties are now included (and Company ESG undertakings are included in the Shareholders' Agreement). The small claims threshold and basket threshold for warranty claims has been removed, on the basis that investor warranty claims remain uncommon. A pro-forma disclosure letter is included as an appendix and the contents of any data room are not deemed generally disclosed.
  - **Clarity around waterfall.** The new Articles of Association make clear that on a liquidity event, Series A Preference Shareholders receive the greater of (i) their investment amount and (ii) the amount they would receive if their Series A Shares were converted into Ordinary Shares immediately prior to the distribution. The previous versions technically required Series A Preference Shareholders to convert their Series A Shares into Ordinary Shares in order to receive a pay-out under limb (ii) above.

- **Optional terms included for EIS/VCT investors.** We welcome the standardisation of terms such as the liquidation preference where EIS/VCT investors are involved, which should assist non-EIS/VCT investors to get comfortable with such terms. Additional optional common terms have been added which are applicable to investors based in the US.
  - **A variation of class rights now requires majority consent of the class.** In the previous versions, the variation of rights of a class of shareholders required the written consent of holders of more than 75% of shares in the class. This change makes it easier for class consents to be passed.
  - **Pre-emption rights on the issue of new securities are provided for Investors / Major Investors only.** This makes it easier for companies to raise financing from outside investors and prevents minor shareholders from taking up capacity in a round. The default position continues to be that there is no 'super pro-rata' or 'gobble-up' right for investors on an issue of securities, but this has now been included on a transfer of existing securities.
  - **Anti-exclusion language has been included as an option.** If pre-emptive rights on an issue of securities are disapplied with Investor Majority Consent but securities are subsequently proposed to be allotted to a waiving investor, each investor is entitled to participate on the same terms. This protects investors from being "crowded out" by the rest of the investor syndicate waiving their rights and then taking up the pre-emption themselves.
  - **Bad Leaver definition extended.** A Service Provider can now have all of their shares converted into Deferred Shares where, after ceasing to be a Service Provider, they commit a material breach of any non-compete obligations owed to the Company under the Shareholders' Agreement or any terms of employment / engagement.
  - **Consideration payable on a dragged share sale may be subject to escrow / holdback.** This amendment means that price adjustment mechanisms (such as an earn-out or completion accounts adjustment) may be included in the Sale Agreement in connection with a dragged share sale. Contribution obligations of called shareholders are limited to a reduction of unpaid consideration and do not extend to consideration already paid out.
  - **Founders must be employees or consultants of the Company to have director appointment rights.** The inclusion of Founder director appointment rights reflects common market practice, but this term also provides that Founders who have ceased to be engaged in the business forfeit their right to appoint directors to the Board.
  - **Standardised amendment provisions added.** Amendment and restatement provisions for the Shareholders' Agreement have been added so that the documents can be updated on each fundraising without getting all shareholders' approval.
  - **Consent items.** These have been reorganised and streamlined, while retaining the core protections for investors.
  - **All shareholders are subject to a maximum 180-day lock-up on an IPO.**
- Many of these terms are already in use by Marriott Harrison and other firms on the working group and we expect a quick uptake in the new documents. The publishing of these new documents presents an opportunity for investors to revisit their templates. It will be interesting to see how the ecosystem adjusts.
- Please contact Marriott Harrison if we can assist you by presenting a deep dive into the new documents or with updating house templates.

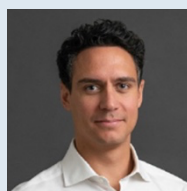
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