

Test

Startup's Lifecycle

Nova Law School, Master Law and Technology

Assessment 12<sup>th</sup> December 2019

**I. Classify as True or False FOUR of the following questions and briefly justify your answer. (1 v. per question [for a maximum of 3 v.]; kindly note each wrong answer will have a penalty/discount of 0.5 v.)**

1. Nondisclosure Agreements are very common in both venture capital and M&A.
2. A Founders' Agreement is always concluded before the incorporation of the company.
3. There are five basic entities that make up a VC fund: the management company, the Business Angel, the Limited Partner, the Insurance Authority and the General Partner.
4. Tax considerations are of the utmost importance when a startup decides to flip.
5. With a convertible debt structure, the stock price is set on day one.
6. A typical VC fund has a 3-year life span.
7. Implementing a vesting schedule is a way for employers to reward and benefit employee loyalty.
8. The only legal concerns for founders in the pre-investment stage revolve around protecting IP and nothing further.

**II. Please name and explain the main characteristics/features of an emerging company. (2.5 v.)**

**III. Relate business model and addressable market and identify 3 main aspects investors should ponder/consider before investing. (2 v.)**

**IV. Common law jurisdictions favour physical stock option plans and civil law jurisdictions favour virtual stock option plans. Please comment. (2.5 v.)**

V. Link the provisions on the left column with their respective wording on the right column. (2 v.)

1. Term Sheet ✓	i. The shares set aside by a company to provide stock options to workers.
2. Reserved Matters	ii. The Parties agree not to disclose any of the contents of this Agreement, including its Schedules, all documentation issued with respect thereto, and related past and future negotiations, to third parties, during the term of the Agreement and during one year following the end of the agreement.
3. Employee pool	iii. An instrument whereby an investor invests in a company with the intent that it will later convert to equity and not be repaid.
4. Fully diluted	iv. The group of investors who invest in a startup.
5. Syndicate	v. The date in which the rights and obligations provided under the Investment Agreement are in full force and effect and which shall be after the Conditions Precedent are fully satisfied or waived.
6. Pay-to-play	vi. If there is the need to flip the corporate structure to a foreign jurisdiction in order to fundraise, the Investors Majority must approve the transaction and be accorded shares with terms not less favourable than the ones provided for under the original investment, at the same time as the Founders.
7. Closing ✓	vii. A term explicitly defining that all rights to purchase equity should be in deemed exercised.
8. Representations and Warranties	viii. The matters included under Schedule X shall only be approved by the Board of Directors with the consent of the majority of the members of the Advisory Board, provided such majority includes the favourable vote of the Advisory Board member appointed by the New Investors.
9. Convertible debt	ix. Process of offering shares of a private corporation to the public in a new stock issuance.
10. Roll-up rights	x. Document declaring the preliminary commitment of one party to do business with another. It outlines the terms of a prospective deal. Commonly used in major business transactions, such as investment rounds.
11. IPO	xi. A term that forces VCs to continue to invest in future company financings or suffer adverse consequences to their ownership positions.
12. Confidentiality	xxi. Provisions whereby a given person makes certain statements of fact or warrants certain conditions about itself.

- VI. Imagine that “12 December, Lda.” is a Portuguese limited liability company (the “Company”) founded by 3 friends, A B and C, in 2017, with a share capital of EUR 2,000. The following table reflects the percentage of capital that each of them had in the company at the time of its incorporation).

Party	%	Nominal value
A	35%	EUR 700.00
B	40%	EUR 800.00
C	25%	EUR 500.00
<b>Total</b>	<b>100%</b>	<b>EUR 2,000</b>

1. In the beginning of 2018, the company won a startup competition and received an EUR 10,000 equity award from “Banco Dinheirinho” for a 20% fully-diluted stake in the Company. Calculate each partner's ownership interest and complete the following table. Explain your reasoning. (1 v.)

Party	%	Share premium	Nominal value
A		N/A	EUR
B		N/A	EUR
C		N/A	EUR
<b>Banco Dinheirinho</b>			<b>EUR</b>
<b>Total</b>	<b>100%</b>		<b>EUR</b>

2. In February 2019, founder B decided to leave the company and A and C agreed that they would each acquire all of B's shares (so each bought 20% of the entire share capital of the Company). In December 2019, a German investor, Oliver Kahn, decided to invest EUR 5,000,000 in the company against a 25% interest but demanded that the company become a public limited company (S.A.) before making the investment. Complete the following table (1 v.) AND calculate the pre-money and the post-money valuation of the Company of Kahn's investment (explain the reasoning). (2 v.)

Party	%	Share premium	Nominal value
A		N/A	EUR
C		N/A	EUR
<b>Banco Dinheirinho</b>		N/A	<b>EUR</b>
<b>Oliver Kahn</b>			<b>EUR</b>
<b>Total</b>	<b>100%</b>		<b>EUR</b>

VII. Analyze the following Term sheet and, out of the highlighted provisions, please analyze and suggest amendments in THREE PROVISIONS taking into consideration you are acting for/advising the founders). (4 v.)

NON- BINDING TERM SHEET December, 2019

VAMOSDARMUITODINHEIRO, LDA

For a € 100.000 Equity Investment by QUEREMOSGANHARDINHEIRO, S.A.

The purpose of this preliminary term sheet ("Term Sheet") is to set out the terms and conditions of a transaction between the Shareholders defined below in 1.1. as the "Current Shareholders", VAMOSDARMUITODINHEIRO, Lda. (the "Company"), and QUEREMOSGANHARDINHEIRO, S.A. (the "Investor").

This Term Sheet is strictly for discussion purposes only and is not binding (except for the provisions related to Confidentiality (clause 5.4), Subject to Contract (clause 5.5), Exclusivity (clause 5.6). It does not constitute an offer or commitment nor does it contain any representation or warranty on the part of the Investor. All terms and conditions, and figures contained herein are subject to change. The participation of Investor with respect to the proposed financing is contingent upon the final results of a comprehensive due diligence, the approval of the Investor's corporate bodies, the approval of the board of directors and General Assembly of the Company, the conclusion of negotiations on mutually satisfactory terms and conditions, and the execution of legally binding agreements.

1. DEFINITIONS

1.1.	The Current Shareholders	Alberto Alves (NIF: 000.000.000) Bento Berlindes (NIF: 123.123.123)
1.2.	The Investor	QUEREMOSGANHARDINHEIRO, S.A., with registered office in Lisbon, having its business premises at Rua do Dinheiro, 9999-999 Lisbon, Portugal, registered with the commercial register under registration number 090.909.009.
1.3.	The Company	VAMOSDARMUITODINHEIRO, Lda, with registered office in Porto, having its business premises at Rua dos Falidos, 0000-000 Porto, Portugal, registered with the commercial register under registration number 111.111.111.
1.4.	The Parties	The parties to these discussions under this Term Sheet and in pursuance to the proposed investment in the Company are the Current Shareholders, the Company, and the Investor.
1.5.	Nature of Business	Development of a data analytics tool.
1.6.	Use of Proceeds	The proceeds from the proposed investment shall be used to finance the development of the software product.
1.7.	IRR	In this document, IRR means the annualized effective compounded rate of return on any invested amount in the Company or its subsidiaries and any proceeds received thereafter by the Investor, net of any taxes and fees, denominated in EUR.
1.8.	Affiliate(s)	Are considered as affiliates of the Company all entities that directly or indirectly through one or more intermediaries, control the Company, or are controlled by the Company, or are under common control with the Company.

2. PROPOSED EQUITY INVESTMENT

2.1.	Instrument and Principal Amount	The Investor proposes to invest up to € 200,000.00 (two hundred thousand Euros) in the form of equity to subscribe to newly issued ordinary shares of the Company ("Investment"). The Investment will be done with the following assumptions:  (i) The amount invested will be enough to develop and successfully run the pilot without the need of more funding; (ii) A Pre-Money valuation of the Company of € 333.333.
2.2.	Shareholding	The initial shareholding is as follows: 50% Alberto Alves 50% Bento Berlindes The final shareholding after the Investment shall be as follows: 28,25% Alberto Alves 28,25% Bento Berlindes 8,50% ESOP

		35,00% Investor 100,00%
2.3.	Exit mechanisms	<p><b>Liquidation Preferences.</b> Upon a liquidation, dissolution, winding up, merger, acquisition, sale, exclusive license or other disposal of substantially all of the assets or a majority of the shares of the Company (a “<b>Change of Control</b>”), the holders of the Shares shall receive the higher of: (a) one times the original purchase price for the Shares; and (b) the amount they would receive if all shareholders received their pro rata share of such assets or proceeds.</p> <p><b>Priority exit.</b> As long as the Investor holds any shares in the Company, he will have priority over other shareholders in selling all or part of its shares. In the case of a trade sale by any of the shareholders, the selling shareholders will have the obligation to first propose these opportunities to the Investor and the Investor shall have the right to sell the shares it holds in the Company in priority over the seller at the same terms as proposed to the seller;</p>
2.4.	Transfer Provisions	<p>The Principal Agreements shall provide for:</p> <ul style="list-style-type: none"> <li>• Each shareholder to have <b>pre-emptive rights</b> on subscription to new equity issued by the Company;</li> <li>• The Investor shall have a right of first refusal on any share transfers.</li> </ul>
<b>3. GOVERNANCE and CONTROL</b>		
3.1.	Board of Directors Representation	<p>Each shareholder shall have the right to appoint the majority of the board.</p> <p>For so long as the Investor holds one share in the Company, the Investor shall have the right to nominate at least one Board member and one board observer.</p>
3.2.	Corporate Governance	<p>The Company shall comply and the Parties shall cause the Company to comply with best practice and good corporate governance rules.</p> <p>The Investor will have the standard/costumary information rights in order to comply with its regulatory obligations.</p>
3.3.	Dividend Policy	<p>The Parties agree to cause the Company to pay in dividends, once the Company is profitable and the distribution does not jeopardize the development of the Company’s projects.</p>
<b>4. REPRESENTATIONS, WARRANTIES, UNDERTAKINGS and WITHDRAWALS</b>		
4.1.	Representations, Warranties and Undertakings	<p>The Company and the Current Shareholders will provide the Investor with standard representations, warranties and undertakings to be provided by the Company including, without limitation, those related to:</p> <ul style="list-style-type: none"> <li>• Corporate governance and ownership;</li> <li>• Power and authority;</li> <li>• No default;</li> <li>• No misleading information;</li> <li>• Taxes and past tax liabilities;</li> <li>• Compliance with relevant laws and regulations and possession of required permits and licenses as customary and required for operators in the industry;</li> <li>• Full disclosure of all material contracts;</li> </ul>
<b>5. UNDERTAKINGS and GENERAL</b>		
5.1.	Share Retention	<p>Shares held by the Current Shareholders will be subject to reverse vesting provisions over five years as follows: 25% to vest one year after Closing and the remaining 75% to vest in equal monthly installments over the following years.</p> <p>If a Current Shareholder leaves the Company, vested and unvested shares will be sold to the Investors at nominal value.</p>
5.2.	Principal Agreements and related documents	<p>These include but are not limited to:</p> <ul style="list-style-type: none"> <li>• Shareholder’s Agreement;</li> <li>• Investment Agreement;</li> <li>• Updated Articles of Association of the Company;</li> </ul>
5.3.	Confidentiality	<p>The Parties agree with each other that neither this discussion nor any of the content thereof (“<b>Information</b>”) shall be disclosed to any third parties. The Investor may disclose the</p>

		Information to their legal counsel, accountants or other professional advisors in respect of evaluating and completing this transaction. No public announcements shall be made by either party without the notification and consent of the other party.
5.4.	Subject to Contract	As stated at the top of this Term Sheet, this Term Sheet is subject, amongst others, to the execution of the Principal Agreements. This Term Sheet is NOT LEGALLY BINDING on the parties except for the provisions related to Confidentiality (clause 5.4), Exclusivity (clause 5., and this clause 5.5.
5.5.	Closing Conditions	Finally, the investment will be subject to conditions precedents, including but not limited to the following: <ul style="list-style-type: none"> <li>- Satisfactory final outcome of the legal and financial due diligence on the Company;</li> <li>- Execution of the Principal Agreements, including amendment of the by-laws and articles of association to reflect the Shareholder's Agreement;</li> <li>- Any other conditions set out in the definitive Principal Agreements.</li> </ul>
5.6.	Exclusivity	The Current Shareholders and the Company shall provide the Investor with an exclusivity right to undertake this investment. The exclusivity right described herein is valid for 180 (one hundred and eighty) days starting from the date of the execution of this Term Sheet.
5.7.	Costs	The Company shall pay any and all costs incurred by the Investor with the Transaction.

QUEREMOSGANHARDINHEIRO, S.A. (the "Investor")

Date \_\_\_\_\_

Signed \_\_\_\_\_

VAMOSDARMUITODINHEIRO, Lda (the "Company")

Date \_\_\_\_\_

Signed \_\_\_\_\_

Alberto Alves

Bento Berlindes

Date \_\_\_\_\_

Date \_\_\_\_\_

Signed \_\_\_\_\_

Signed \_\_\_\_\_

**Keep it simple and Good luck!!**