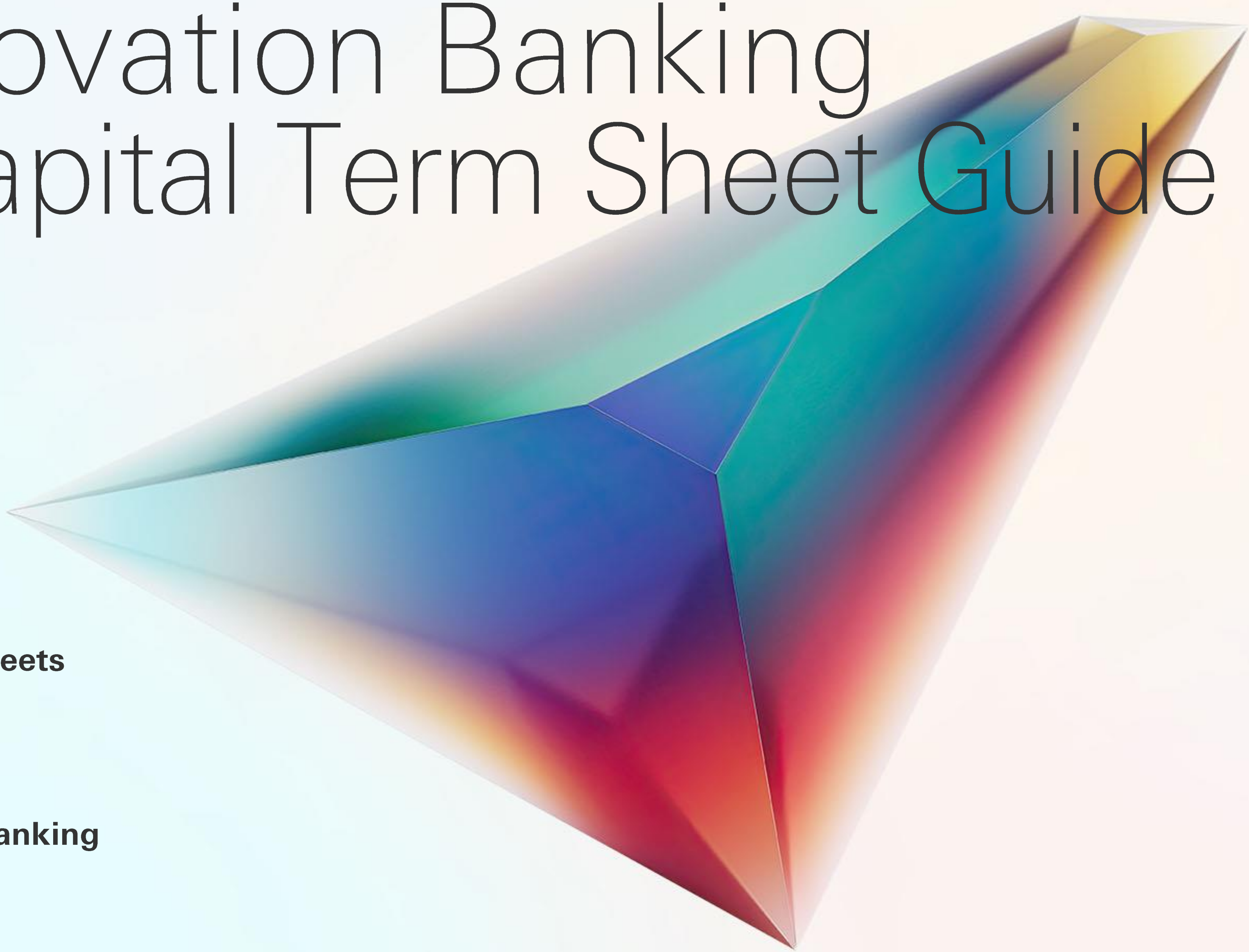
HSBC Innovation Banking Venture Capital Term Sheet Guide 2024



A Commercial Guide to VC Term Sheets

Lead Author:

Glen Waters, Head of Early Stage Banking

HSBC Innovation Banking

Defining the market standard for Venture Capital term sheets
Foreword

We are pleased to present the second edition of our annual term sheet guide. Building on the success of last year's inaugural report, this edition delves deeper into the evolving landscape of Venture Capital ('VC') term sheets.

Demystifying VC Equity Terms sheets

Although investors often claim that term sheets are 'market standard', VC term sheets can vary depending on factors such as the state of the market, specific industry, the stage of the start-up, and the preferences of the individual investors involved.

These agreements – which define the basic terms and conditions of a proposed investment – are often full of complex legal jargon that can be confusing, particularly for founders.

To demystify these documents and identify the current market, **we have analysed anonymised, aggregated data from 426 final and completed, signed term sheets**: documents that would have formed the basis of long-form deal agreements (rather than standard, pre-negotiation term sheets).

Our research was conducted in-house through surveying 21 UK and international law firms who specialise in venture deals. Each law firm responded by submitting data from completed transactions across different investment stages from Seed to Series C+ over the course of 2023. Through our analysis we identified and tracked the key term sheet themes and trends year-over-year and quarter-over-quarter. Of the 426 term sheets analysed, 95% were headquartered in the UK, with the remaining headquartered in Europe (5%). The lead investor location mix was broader, with UK (58%), Europe (22%) US (15%) Other (5%, Middle East, Africa and Asia) represented in our survey data.

Our goal is to empower founders

The report aims to provide a practical understanding of the key terms and clauses of a term sheet;

- An independent view of what is considered the current 'market standard' for term sheets at Seed, Series A, Series B, Series C+ and by different VC (and Angel) investor types. As the VC landscape has changed in 2023 the report dives into how these changes are reflected in term sheet provisions, providing the latest data and analysis; and
- A commercial perspective of the key items in a term sheet and tips for term sheet negotiations.

It also gives VCs a way to compare their standard term sheets against the wider market and is a useful resource tool for the VC community.

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Of course, equity VC term sheets only cover one type of financing. To offer a more complete perspective, we have included a summary of the key structural and economic terms of venture debt agreements based on our experience of the market. Venture debt is particularly relevant as founders continue to look for investment partners that can help them minimise dilution while extending their cash runway.

The guide is split into two parts 1) an **executive summary** with the key take aways from the survey and 2) a **comprehensive "how to guide" detailed section.**

We hope this annual guide which is part of our wider founder success initiatives, including further content and exclusive events – helps founders and early stage-businesses succeed and makes a difference by increasing transparency across the ecosystem. Think of us as your trusted partner, an extension of your team – now with the strength and stability of HSBC's global platform.

Please reach out to us with your thoughts and for more details about our upcoming initiatives.

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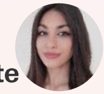

Sara Pereira
Senior Associate
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HSBC Innovation Banking: we are at the centre of the innovation economy and are your trusted strategic partner

"We offer more than commercial banking services. We have the expertise, agility and connections that high-growth technology, private equity, and venture capital businesses need to accelerate their growth. Our purpose is to support founders, firms and funds as they evolve by focusing on three key areas that empower them with everything they need to reshape our world."

Simon Bumfrey, Head of Technology & Life Sciences UK & Nordics, HSBC Innovation Banking

Specialist people

- Dedicated Relationship Manager
- Deep sector and life-stage expertise
- Long-standing relationships

Bespoke solutions

- Banking that scales with you
- Solutions designed specifically for innovation
- Gateway into the broader
- Strength, stability and international reach of the HSBC platform

Connecting the innovation economy

- Investing in inclusive innovation
- Making meaningful connections
- Delivering real thought leadership
- Hosting ecosystem events

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We work with the most innovative, equity-funded businesses and their investors across all life stages, within the technology, life sciences and health care sectors - learn more here: www.hsbcinnovationbanking.com

A big thank you to the law firms who participated in the HSBC Innovation Banking 2024 term sheet survey!

21
Participants

426
Completed term sheets

£4.5bn
Aggregate investment value

Bird & Bird
Cooley
fieldfisher
Founders Law
CMS
DENTONS
fladgate
fox williams
GOODWIN
HUMPHREYS LAW
MARRIOTT HARRISON
FORSTERS
Harbottle & Lewis
HAYNES BOONE
MBM ENTREPRENEURIAL BUSINESS LAWYERS
orrick
Osborne Clarke
TaylorWessing
Mishcon de Reya
SHOOSMITHS
withersworldwide

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We are grateful to the team at Capsule for their valuable insights on insurance terms
Capsule

Comments from the innovation community

"I love the transparency of this report by HSBC Innovation Banking, mainly because I dislike it when investors and lawyers who negotiate regularly, try to convince founders to acquiesce by stating, "you need to accept because these are the market standards" and then have no data to prove that this is so. This is a pretty elementary negotiation tactic but, with data, both investor and founder can agree, line by line, what is indeed "market." HSBC Innovation Banking's report goes some way to help founders to engage in fairer negotiations with their investors and their investors' lawyers!."

Chris Adelsbach
Partner, Outrun Ventures

"There are only a handful of real gotchas in any term sheet but in essence the key is to understand that the energy must be in balance. Many founders I work with at first draft act like it's my way or the highway until I remind them. Great VCs will protect not only their interest, but the startup's and the team's into the future, as that's just smart business."

Dan Bowyer,
Partner, SuperSeed

"First-time founders face unique challenges in today's economic climate, and this report by HSBC Innovation Banking offers invaluable insights for those looking to secure VC funding. The Entrepreneur's perspectives streamline key structural, economic, and market standard terms and encourage transparency across the startup ecosystem."

Carolyn Dawson OBE
CEO, Founders Forum Group

"Securing early-stage venture capital for high-growth, pre-revenue ventures at the best of times is challenging for ambitious founders. This essential evidence-led guide offers to alleviate that by providing macro-economic and deal insights, transparency, and clarity vital for effective fundraising, driving alignment between the various constituents that make up the innovation economy."

Gerard Grech
Managing Director, Founders at the University of Cambridge and founder, Tech Nation

"In order to increase the transparency in the early stage startup ecosystem we need to demystify term sheets, provide guidelines on the terms to look out for and make the market standard terms available. We need to remove all the friction so that founders can make well informed decisions, move fast and spend as little time away from building their businesses as possible."

Triin Linamagi
Founding Partner, Sie Ventures

"Understanding term sheets and their associated legal wording is one of the most underappreciated skills. This is especially true from early stage founders across Europe where, even for operators who have had experience in venture-backed businesses, the understanding of these terms are still limited. HSBC Innovation Banking has done a great job of articulating the different parts of the term sheet puzzle with this report and it will hopefully serve as an additional valuable resource for founders when discussing financing events with investors."

Antoine Moyroud
Partner, Lightspeed

"Participating in more than 50 investments annually, we witness the emergence of our own micro-economy within the European startup landscape. Through meticulous analysis of our data, we ensure equitable terms for both founders and investors. This guide offers an extensive and transparent dataset, empowering us and our founders when raising their early investment rounds. It serves as a valuable tool for benchmarking within the ever-changing early-stage market, facilitating informed decision-making and fostering sustainable growth."

Vanessa Vasquez
Head of Legal, Seedcamp

"Despite challenging market conditions, there has never been a better time than now to start a company, which means, as an ecosystem, we should be doing everything we can to give founders the best chance of success. By providing practical insights into the world of VC term sheets, this report by HSBC Innovation Banking will allow founders to make informed decisions to help their businesses grow and will foster greater transparency within the early-stage ecosystem."

Tom Wehmeier
Partner, Atomico

HSBC Innovation Banking Venture Capital term sheet guide contents

Section 1: Foreword 2

Section 2: Executive Summary 7

Section 3: Detailed Report – Term Sheet analysis 21

- Overview of Term Sheets and Survey 22
- Economics of VC Term Sheets 28
- Control Terms 39
- Other Terms 46

Section 4: Venture Debt 55

Section 5: HSBC Innovation Banking Biographies 57

Section 6: Survey Participants Biographies 59

Section 7: Glossary 65

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Executive Summary

Section 2

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There has been a shift in valuation, not the structure of investment terms
Term sheet survey findings and recap of 2023

2023 in context

- **European VC investment activity in 2023 stabilised**. After a relatively more muted H1 2023, **investor activity picked-up in the second half of the year with H2 2023 investment value up 18% vs H1 2023.**
- **Notably, 2023 investment volume (deal) activity was down less than investment value**, declining 25% and 38% respectively vs 2022, as investor focus shifted to smaller, earlier stage transactions.
- Although the headline rate of new investment value declined in 2023 (unsurprisingly given macro uncertain and market volatility), **2023 was still the third largest European VC investment year on record**[1].

Characteristics of term sheets in survey

- **Valuation aside, our term sheet survey data indicates that, surprisingly, terms did not become more investor friendly in 2023.**
  - **Key clauses remained broadly in-line with 2022**, for example, a 1x non-participating liquidation preference continues to be the standard preference share type - this type of preference is the most founder friendly.
- For founders and investors alike, **control and oversight remains an incredibly important balance to get right** – 79% (86% if including observer only seat) of term sheets had an investor board appointment. With several public boardroom disagreements in 2023 (e.g. Klarna, ChatGPT) **we anticipate board control vs board representation will remain top-of-mind in 2024.**
- Our survey data confirms the **increasing market norm of company only warranties** (the clause was identified in ~80% term sheets surveyed), as reflected in the new BVCA model form documents. Concurrently, founders' warranties declined by 25ppt to 44% of term sheets in 2023.

Key term sheet trends

- **ClimateTech and AI investment saw the greatest % increase share of total term sheets,** combined these industries increased to ~20% of term sheet surveyed from ~9% in 2022. This trend was also reflected in the market, accordingly to Pitchbook, as ClimateTech and AI combined represented ~40% of total European VC investment in 2023[1].
- Our survey highlights a significant uptick in % and total number of term sheets for **Seed (<£2m) investment between 2021-2023**, demonstrating the resilience of early-stage, but also had an interesting impact on our data - we saw **board representation and anti-dilution decrease across the total survey, as these terms are typically less prevalent at the Seed stage.**
- **Seed investment was dominated by UK domestic investors,** whereas later-stage UK venture backed businesses continue to seek funding from international investors from the US and Europe - **as larger funding sizes and scaling opportunities, particularly to the US remain in focus.**

2024 outlook

- **European VC Investment levels steadily recover through 2024 as investors return to new deal activity.**
- **Continued momentum in early-stage**, and **late-stage market will bifurcate**, with climbing valuations for high-performing companies off the back of public market reference points while others struggle with recaps and down rounds.
- **Increased cross-border investment** from US VC investors into UK and European companies, and increased UK and European company focus on scaling into the US market.

1 Pitchbook as of March 2024.

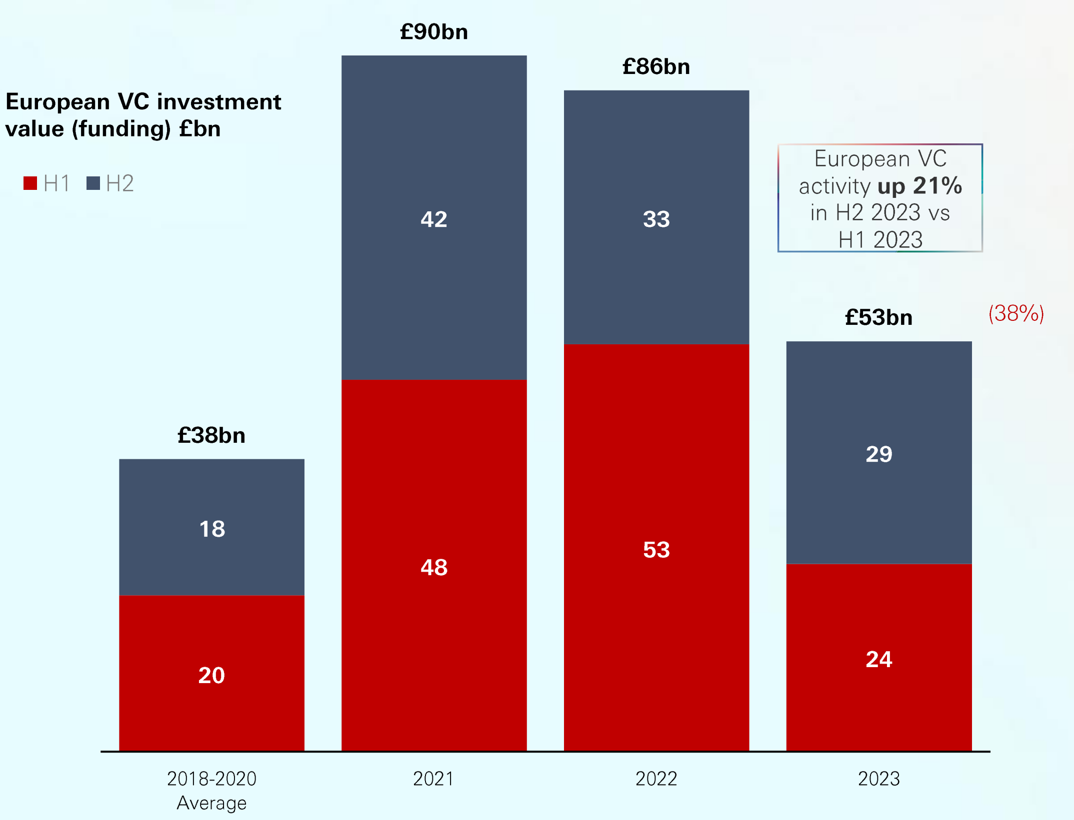
Term sheet survey in numbers: 6 key take-aways

2023		2022	2021
426	**Venture Capital equity term sheets surveyed** from leading law firms: £4.5bn aggregate investment value / £10.6m average deal size	245	101
29%	**Notable % increase in Seed (<£2m deal size) investment activity from 14% of term sheets surveyed in 2021 to 29% in 2023**, highlighting investors' growing appetite and focus on earlier-stage investments versus later stage deals	24%	14%
83%	**Preference shares identified in ~80% of term sheet transactions** - key provisions remain broadly in-line in 2022 and 2021 survey results - as the **market shift has happened in valuation, not the structure of the investment**	77%	84%
~50%	**Cross-border investors into UK HQ companies represented ~50% of late-stage (Series C+; £30m+ deal size) UK investments**, while Seed investment was dominated by UK domestic investors (70%)	Not surveyed	Not surveyed
32%	**Elevated investor industry concentration** - HealthTech, ClimateTech and AI industry deals identified as the key areas of investments in 2023. The three industries combined represented over 30% of term sheet surveyed, up from 21% in 2022	21%	18%
42%	**Risk sharing on deals** - deal syndication increased to 42% from 35% in 2022, driven by investors sharing resources and expertise particularly at Series B and Series C+	35%	42%

European VC market stabilised in 2023. Investor activity picked up in the second half of the year with H2 2023 investment value up 21% vs H1 2023

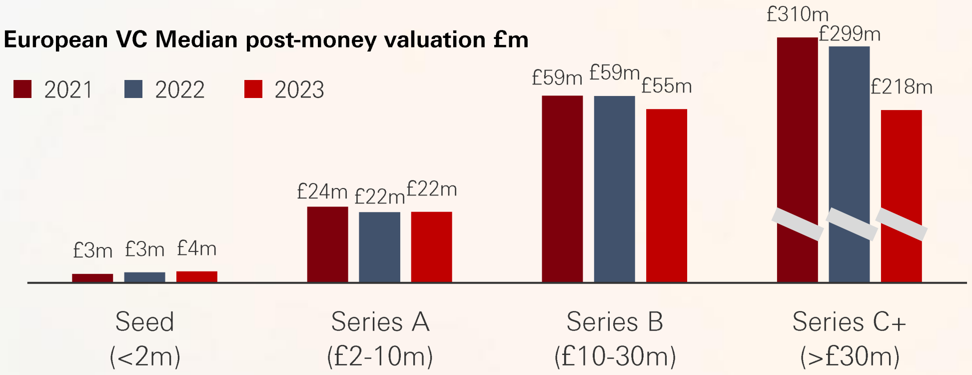
Investment volume (deal) activity down less than investment value, declining 25% and 38% respectively vs 2022, as investor focus shifted to smaller, earlier stage deals

	2018-2020 Average	2021	2022	2023	YoY % movement
Investment volume[1] (number of deals) #	11,928	13,426	12,509	9,383	(25%)



Pitchbook post-money valuations market data highlights resilient Seed and Series A valuations in 2023

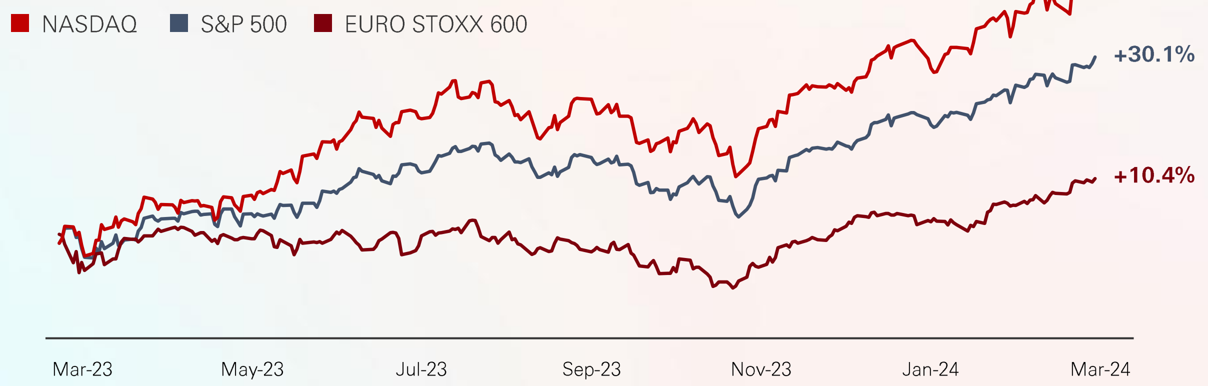
European VC Median post-money valuation £m



YoY valuation % movement	
Seed	+10%
Series A	-
Series B	(7%)
Series C+	(27%)

High-performing technology public equities have outperformed "traditional" indices over the past 12 months, which is a leading valuation indicator for VC-backed private companies

Equity indices 12-month price change %



Source: Pitchbook and CapIQ as of March 2024.
1 Number of investment (deals) where deal size disclosed.

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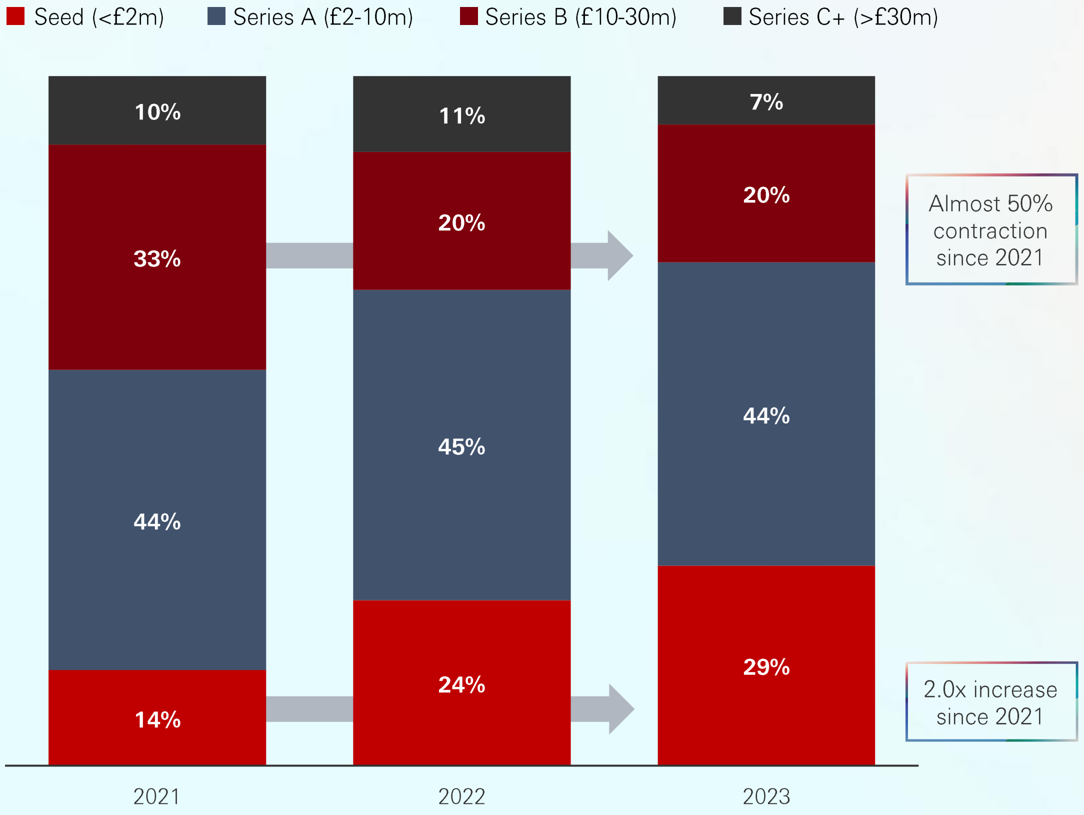
Seed stage % share of total term sheets increased from 14% in 2021 to ~30% in 2023, across all investor types, while Series A remained consistent at c.45%, Series B & C+ saw a decline

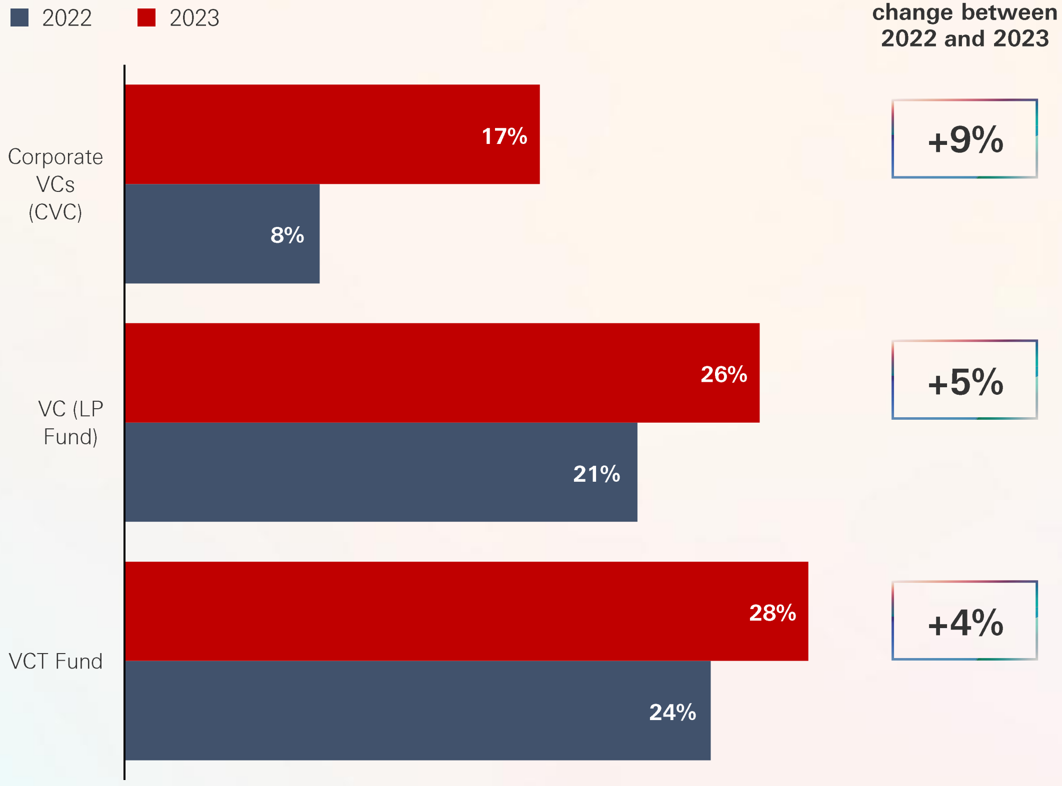
Seed investment increased to ~30% of total term sheets surveyed

Term sheets by investment stage %



Corporate VC's (CVC) by investor type saw the largest increase in Seed investment

Select investor type % Seed investment and YoY change



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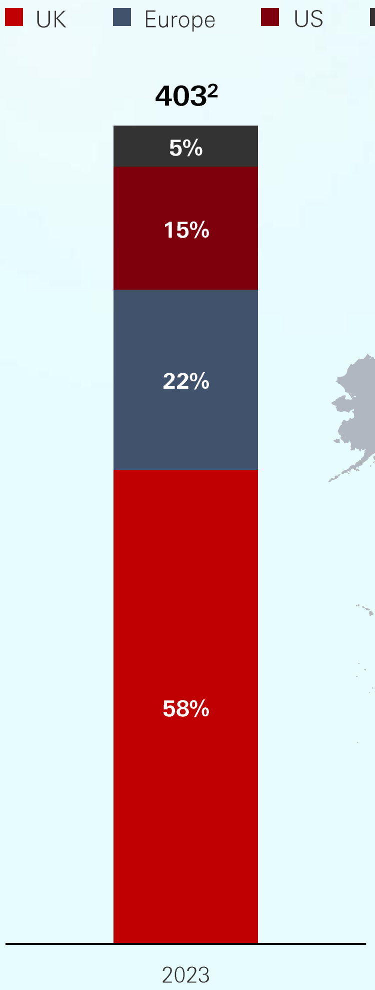
The Seed stage has become an increasingly attractive place for multi-stage funds to invest. The risk-reward ratio and price of investing at the Series A stage compared to the Seed stage encourage these multi-stage funds to enter early. Particularly, US funds have been aggressively entering the Seed stage in Europe. I have personally witnessed the growing difficulty for local European funds to compete at the Seed stage. I refer to this phenomenon as the "crowded middle".

Reece Chowdhry, Founding Partner, Concept Ventures

Cross-border investors into UK HQ companies remain prevalent at the later-stages (Series B & C+), driven by international funds with larger reserves of capital, as well as companies at this stage looking to scale to the US market

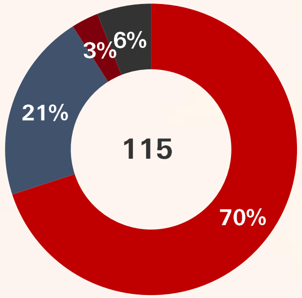
Term sheet – lead investor primary location

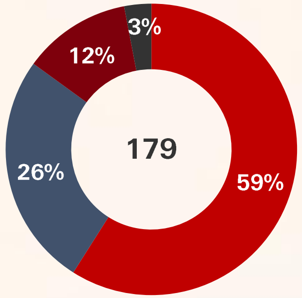


Seed stage (<£2m) lead investor location

Series A (£2m-£10m) lead investor location

UK Europe US Other[1]

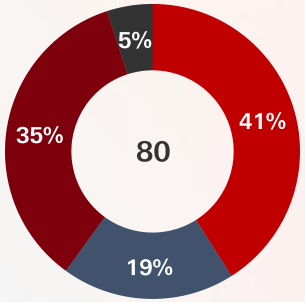


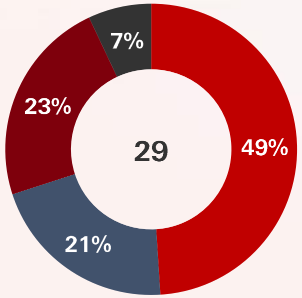


Series B (£10m-£30m) stage lead investor location

Series C+ (>£30m) lead investor location

UK Europe US Other[1]





1 "Other" refers to investors in the Middle East, Africa and Asia.
2 UK headquartered companies only, represented 95% of VC term sheet survey responses (403 out of 426 term sheets).

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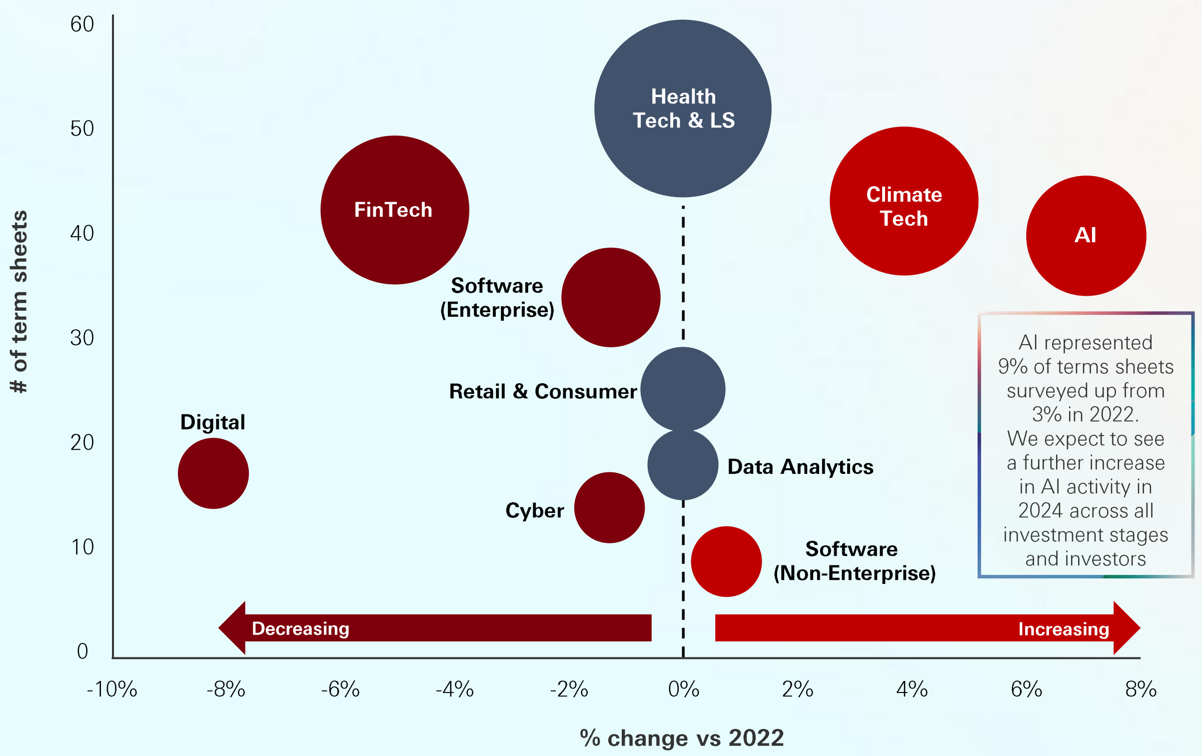
ClimateTech and AI increased to ~20% of term sheets surveyed in 2023, while Fintech saw a 5% decline

Top 10 industries by # term sheets and YoY % change

Size of bubble represents % size of total



Top 10 industries 2023 vs 2022

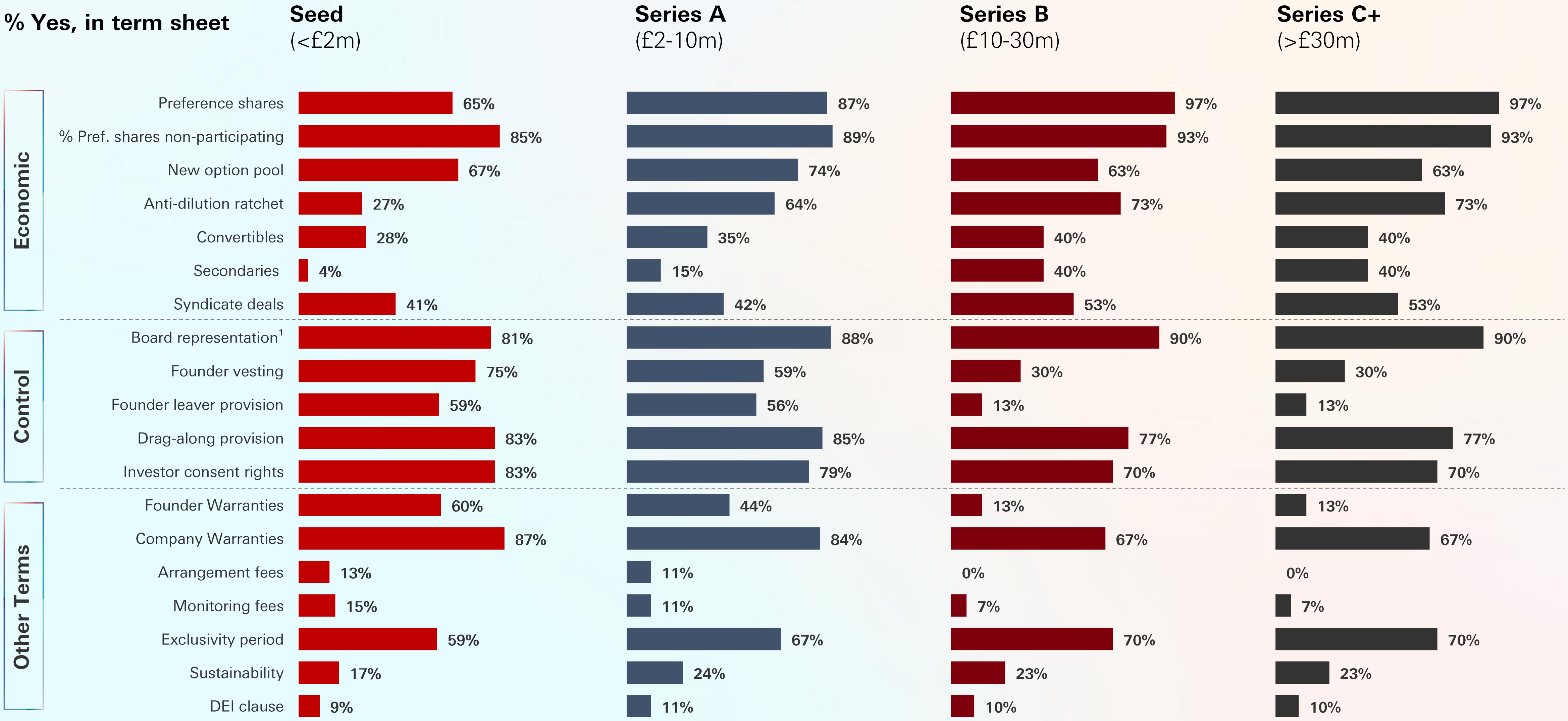
Sorted by 2023 % number of term sheets	2022 %	2023 %
HealthTech & LS	12%	**13%**
ClimateTech	6%	**10%**
Fintech	15%	**10%**
AI	3%	**9%**
Software – Enterprise	8%	**9%**
Retail & Consumer	6%	**6%**
Data analytics	5%	**4%**
Digital	13%	**4%**
Cyber	4%	**4%**
Software – Non-Enterprise	1%	**2%**
Top 10 % Total	**74%**	**70%**
Other[1] % Total	**26%**	**30%**

"With AI and Climate term sheets rising to the fore, particularly at the earlier stages, it is clear to see that the European ecosystem is not only becoming a leader in AI innovation, but it is also committed to solving humanity's toughest challenges, even amidst difficult market conditions."
Tom Wehmeier, Partner, Atomico

Survey industry classification defined as the primary end market or consumer

Note: ClimateTech includes Energy and HealthTech includes Life Sciences.
1 "Other" refers total level industry sectors that are individually less than 2.0% of total: AdTech (0.2%), AgTech (0.7%) Blockchain (0.9%), Crypto (0.5%), EdTech (1.9%), Esports/Gaming (2.1%), FoodTech (2.1%), Government (0.0%), Hardware (1.9%), IoT (1.9%), Marketplace (0.7%), Media (1.9%), NanoTech (2.1%), Real Estate (2.3%), Robotics (2.1%), Social Impact (2.1%), SpaceTech (2.1%), Telecoms (0.0%)., Transportation (2.1%) and WearableTech (2.1%).

What did a "typical" VC term sheet by stage look like in 2023?



Note: As noted elsewhere in this report, several terms are found in long-form document rather than the term sheet.
1 Board representation excluding observer.

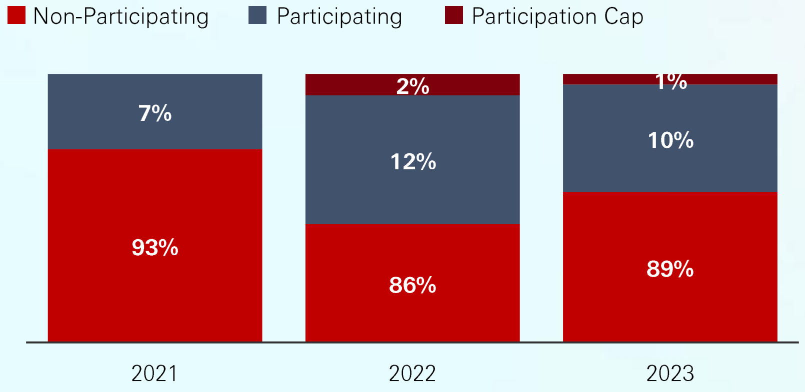
Main movement in economics has been valuation rather than the investment structure; 1x non-participating liquidation preference has remained market standard and there has been a decline in anti-dilution provisions representative of a greater proportion of Seed stage term sheets in 2023

Investment structure

Preference shares, % Yes

84% 77% 83%

Where liquidation preference, % type

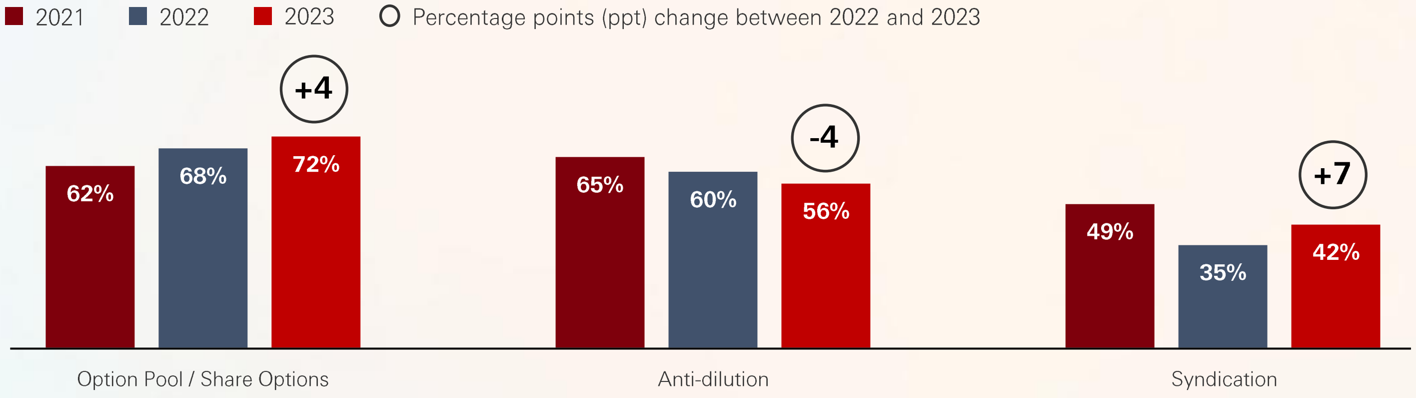


“Valuation and preferred shares are frequently linked and it can be helpful to think of them as a sliding scale – the higher the initial valuation vs comparable businesses, the more likely there will be a preference share proposed and, if valuation is materially above market comparables, it might be more than 1x. This serves to continue to align investor and founder interests – investors may take more certainty of a lower return at the expense of greater share of the upside. It is important to ensure both founders and investors are aligned in long term objectives and the structure reflects this – having too high a valuation or non-standard preference can cause problems later on for both parties. Usually a lower valuation and cleaner structure is better in the long run for all parties.”

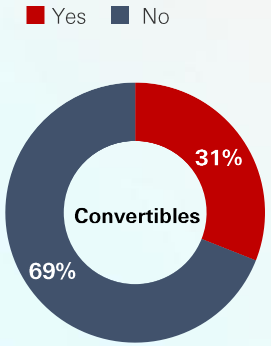
Ashley Abrahams,
Head of Origination, Guinness Ventures

Other economic terms included in term sheet

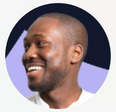
Last 3 years survey results % Yes



2023 survey results % Yes

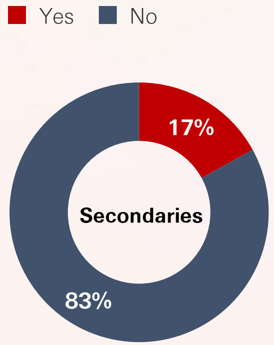


Convertibles triggered as part of the round (i.e. existing investors converting alongside new equity investors)



“Convertibles remain a useful tool for founders, particularly in an environment where raising capital at a valuation acceptable to founders and existing investors is taking longer. By extending the cash runway without re-visiting the valuation of the business, founders are afforded more time to achieve their milestones and maintain trading momentum. We are seeing convertibles being used more frequently at Series A which has clearly undergone a slowdown in activity in the last 12-18 months.”

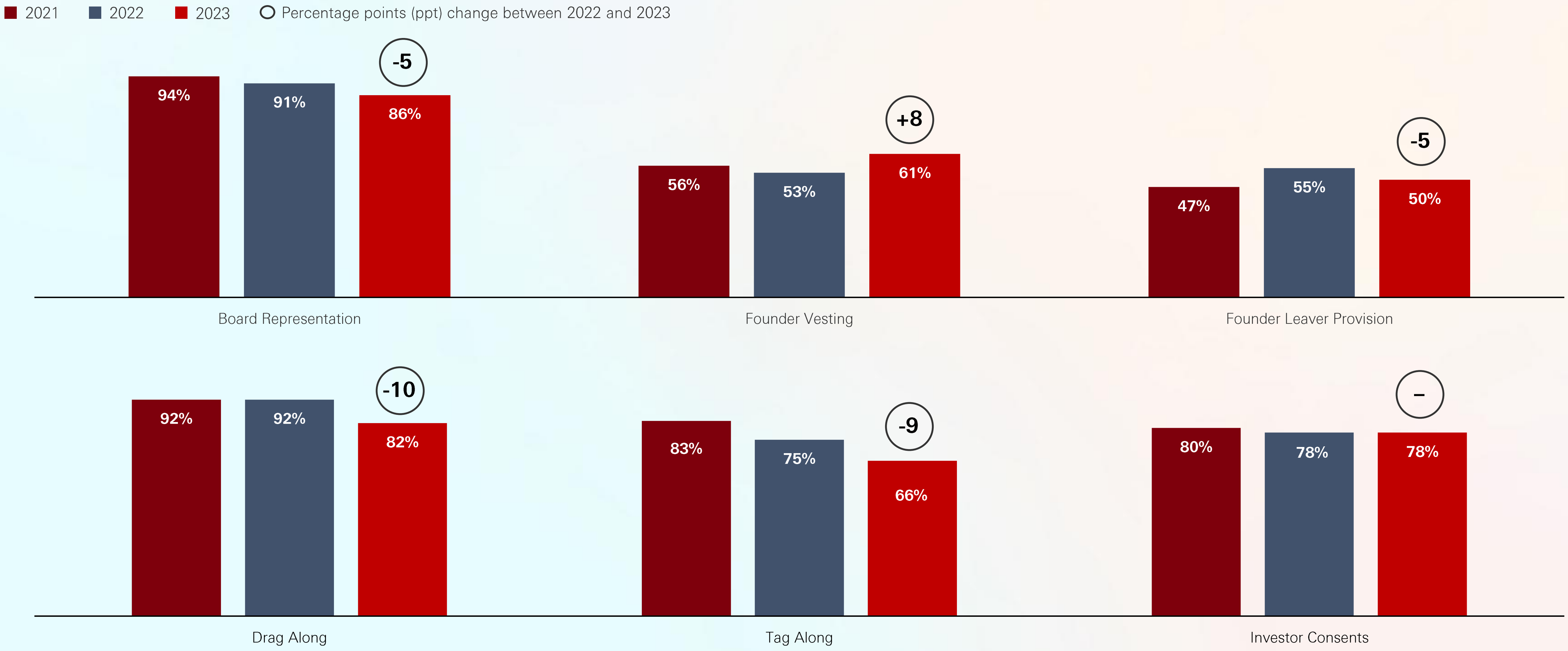
Rodney Appiah, Managing Partner,
Cornerstone VC



Founders should consider the balance of control terms vs economics when negotiating the term sheet; board representation is typically seen once institutional investors are involved and founders need to carefully consider board dynamics, investor consents and founder vesting conditions

Control term included in term sheet

Last 3 years survey results % Yes



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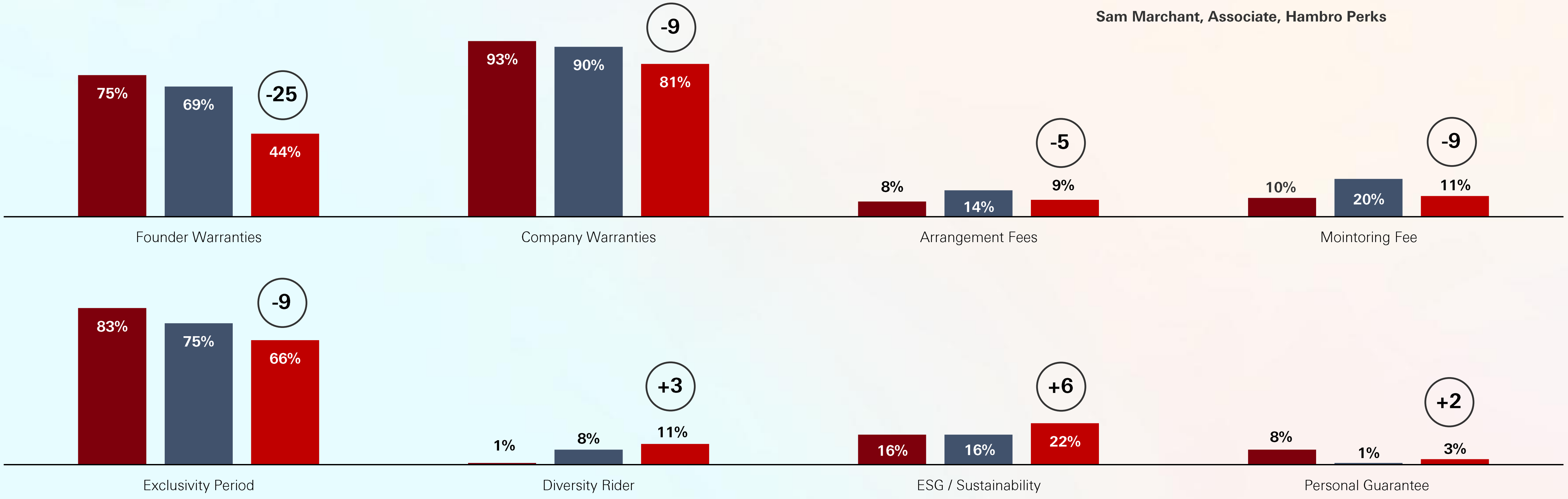
In other terms, founders' warranties decline by 25ppt to 44% of term sheets in 2023 as a result of the new BVCA model documents stating company-only warranties. ESG / sustainability clauses saw a 6ppt increase to 22% of term sheets in 2023

Other terms included in term sheet

Last 3 years survey results % Yes

■ 2021 ■ 2022 ■ 2023 ○ Percentage points (ppt) change between 2022 and 2023



"The updated BVCA Subscription Agreement is having the desired change in reducing founder warranties. However, as this guidance is likely to be used by more established companies (typically raising series A rounds), we're interested to see whether other seed stage-focused investors adopt these terms where, historically, warranty exposure has shown founders having 'skin in the game'."

Sam Marchant, Associate, Hambro Perks

Investor by type - key take-aways from the 2023 survey

% Yes, in term sheet		EIS	VCT	VC	Family Office	CVC	Angel
Economic	Preference shares	52%	79%	91%	60%	86%	12%
	% Pref. shares non-participating	100%	78%	90%	100%	88%	100%
	New option pool	57%	68%	74%	40%	71%	0%
	Anti-dilution ratchet	0%	54%	63%	40%	63%	6%
	Convertibles	29%	28%	34%	20%	29%	18%
	Secondaries	0%	12%	18%	20%	25%	6%
	Syndicate deals	52%	49%	45%	0%	20%	59%
Control	Board representation[1]	90%	84%	87%	80%	86%	71%
	Founder vesting	57%	58%	66%	0%	44%	71%
	Founder leaver provision	57%	63%	48%	0%	46%	65%
	Drag-along provision	76%	74%	84%	60%	83%	100%
	Investor consent rights	71%	79%	78%	80%	80%	88%
Other Terms	Founder Warranties	71%	51%	40%	60%	39%	53%
	Company Warranties	90%	84%	78%	80%	85%	82%
	Arrangement fees	38%	32%	4%	0%	3%	6%
	Monitoring fees	38%	26%	5%	20%	8%	18%
	Exclusivity period	62%	72%	70%	40%	61%	18%
	Sustainability	19%	28%	22%	0%	22%	6%
	DEI clause	0%	14%	12%	0%	8%	0%

Note: As noted elsewhere in this report, several terms are found in long-form document rather than the term sheet.
1 Board representation excluding observer.

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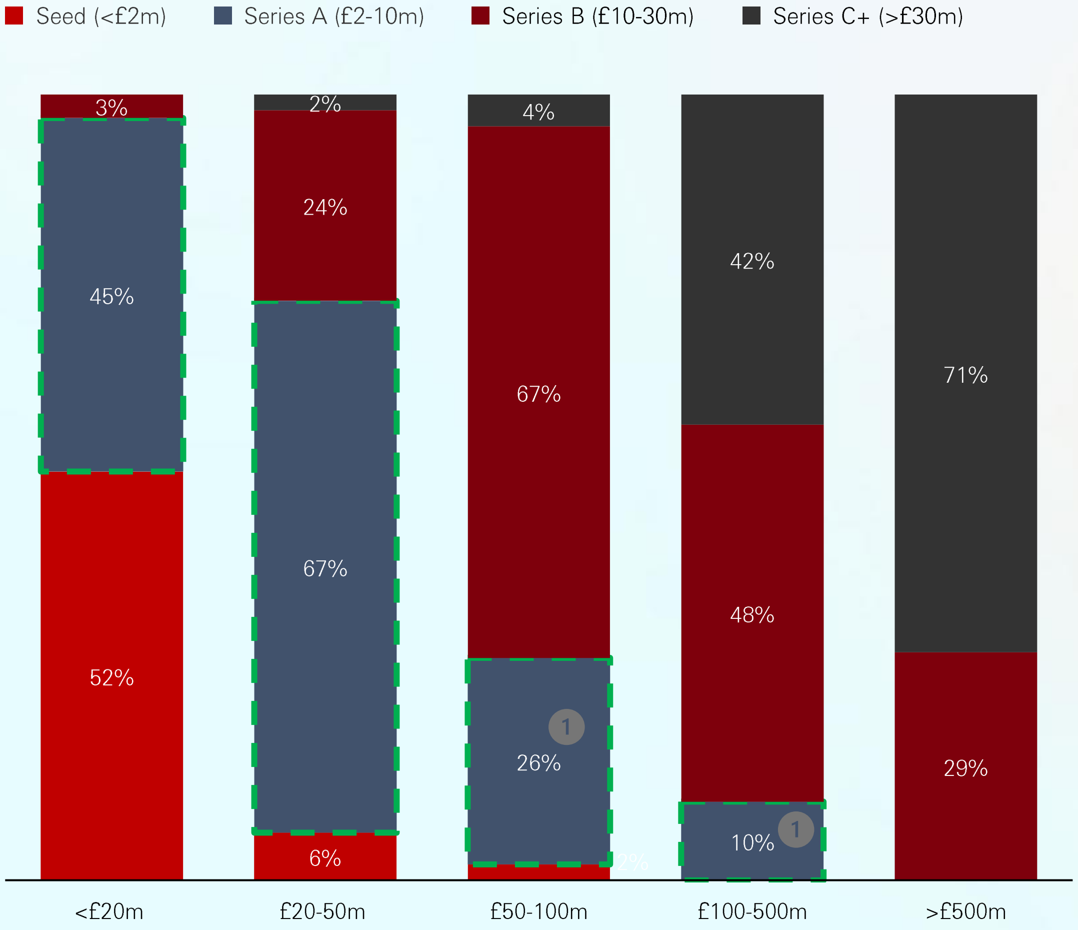
Investors remain supportive of funding Series A companies across a broad range of pre-money valuations and industries – 36% of Series A pre-money valuations were >£50m

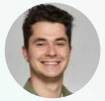
Pre-money valuation indicated in term sheet by stage



Series A investments in >£50m pre-money valuation were relatively evenly distributed across a broad range of industry, with simple non-participating preference shares seen

1 15x Series A investments >£50m pre-valuation

	Industry	Pre-money valuation	Investor	Preference share	Preference share participating	Liquidation multiple
Term sheet 1	Consumer	£350-400m	VC	Y	N	1.5x
Term sheet 2	Fintech	£200-250m	VC	Y	N	1x
Term sheet 3	Fintech	£100-150m	VC	Y	N	1x
Term sheet 4	Blockchain	£60-70m	VCT	Y	N	1x
Term sheet 5	ClimateTech	£60-70m	CVC	Y	N	1x
Term sheet 6	Consumer	£60-70m	VCT	Y	N	1x
Term sheet 7	FoodTech	£60-70m	VC	Y	N	1x
Term sheet 8	AI	£50-60m	EIS	Y	N	1x
Term sheet 9	Fintech	£50-60m	VC	Y	N	1x
Term sheet 10	HealthTech & LS	£50-60m	VC	Y	N	1x
Term sheet 11	Consumer	£50-60m	VC	Y	N	1x
Term sheet 12	HealthTech & LS	£50-60m	VC	Y	N	1x
Term sheet 13	Enterprise	£50-60m	EIS	Y	N	1x
Term sheet 14	Hardware	£50-60m	VC	Y	N	N/A
Term sheet 15	Consumer	£50-60m	VC	Y	N	1x



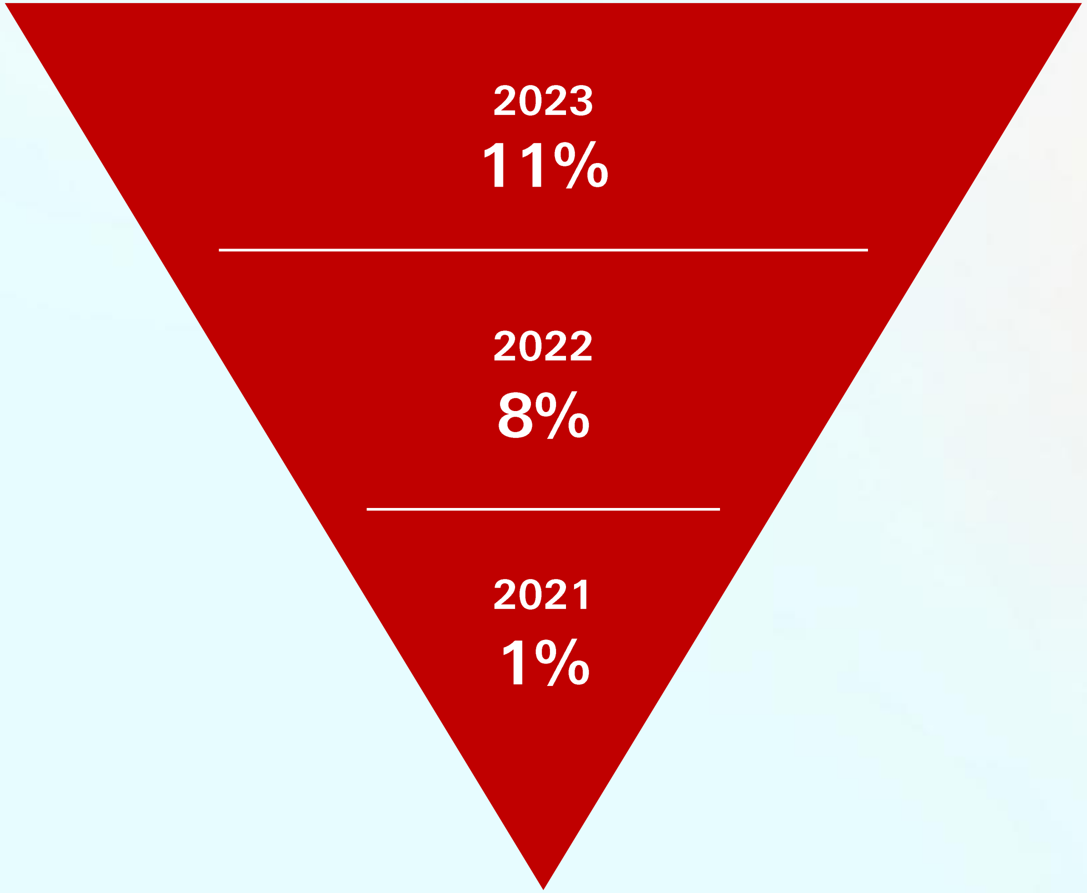
“Participating structures of more than 1x liquidation multiples should only be considered as a last resort option when the company hasn’t been able to show strong enough results to catalyze enough “traditional” investor interest. At early stage, it should be a big no-no as it reflects a misalignment of incentives with investors who are heavily optimizing for downside protection. That being said, any funding enabling founders to successfully take their company towards their next milestones and granting them “another shot at goal” should be considered. Founders should clearly understand the implications of these non-market terms as they will heavily affect the founder’s outcomes in the event of an acquisition or exit.”

Antoine Moyroud,
Partner, Lightspeed

Under-represented founder diversity remains a very relevant and important topic, with term sheet clauses continuing to increase in 2023

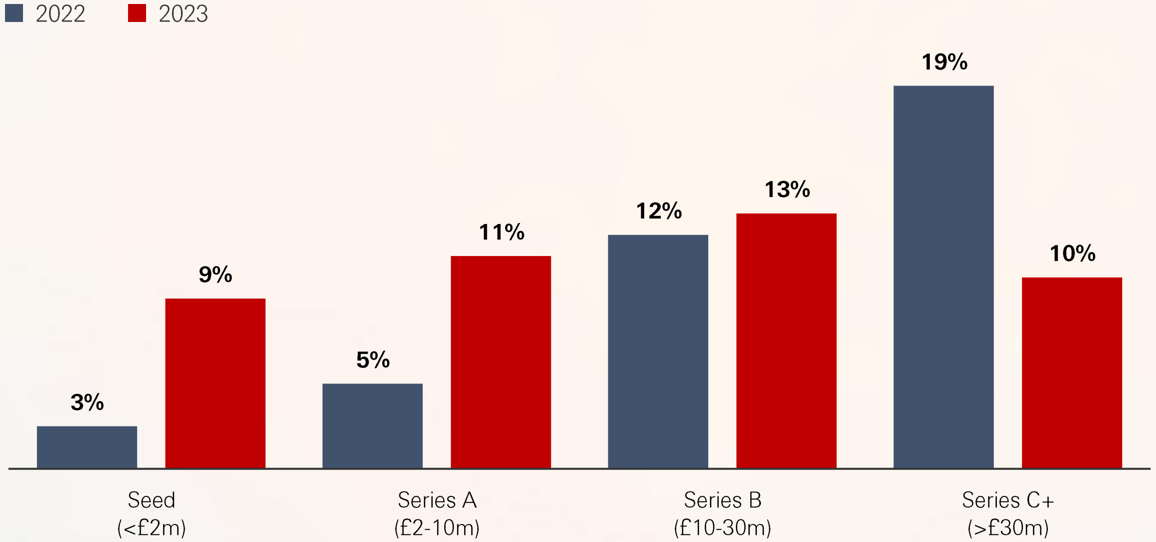
Inclusion of a diversity clause in a term sheet has surged since 2021…

% term sheets with a diversity clause



…2023 saw an increase across all investment stages apart from Series C+

% term sheets with a diversity clause by stage



Steady, incremental change can create remarkable, monumental results. A modest increase in the implementation of a diversity rider represents a crucial step forward for inclusivity within a sector that has a profound influence on our economy. Our hope is that VCs continue this positive momentum and use their position to build a more equitable ecosystem, which in turn, promises enhanced returns."
Ladi Greenstreet, Diversity VC

By including diversity rider clause in term sheets we can make a tangible effort to have more diverse cap tables and provide more investors from underrepresented backgrounds equal opportunities and access to deals."
Triin Linamagi, Founding Partner of Sie Ventures

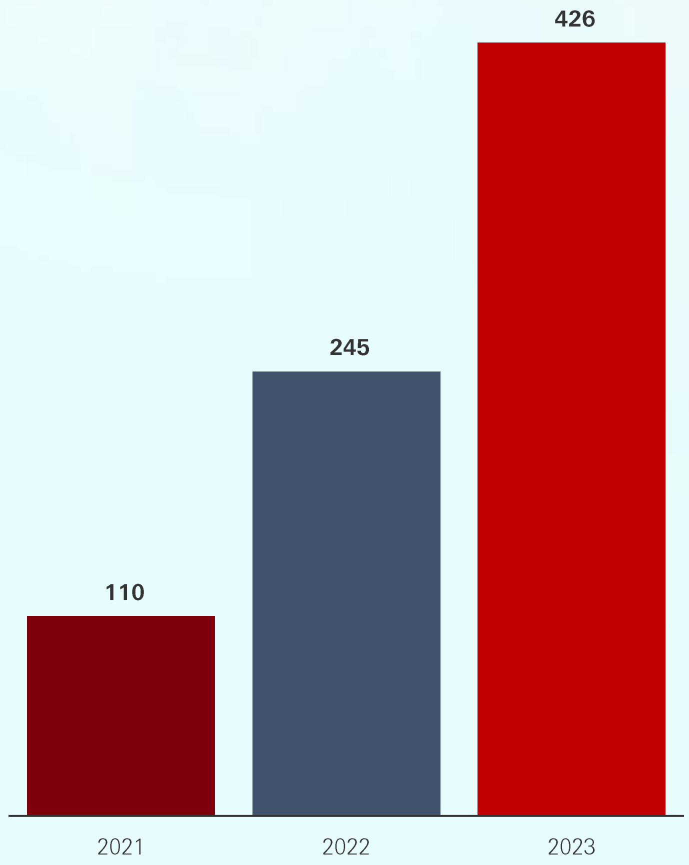
Overview of Term Sheets and Survey

Section 3

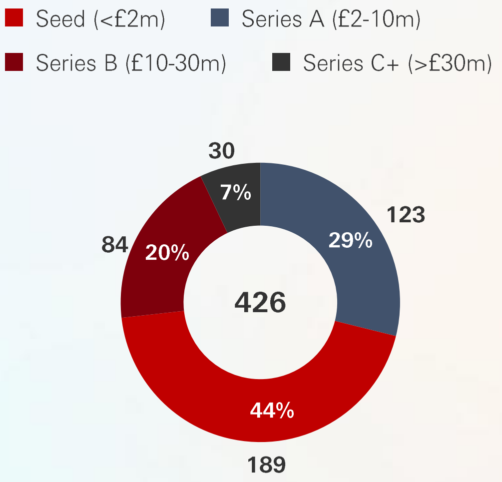
HSBC Innovation Banking – 426 VC term sheets sampled from 21 law firms

Record participation (+74%) in the HSBC Innovation Banking 2023 term sheet survey

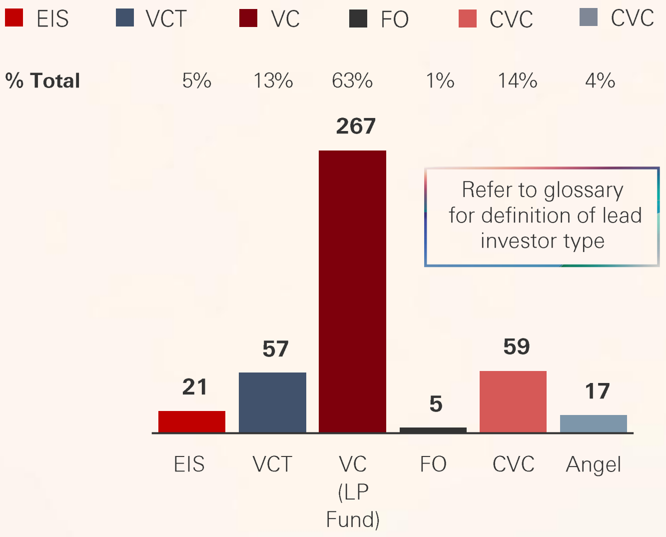
 # term sheets analysed in survey year



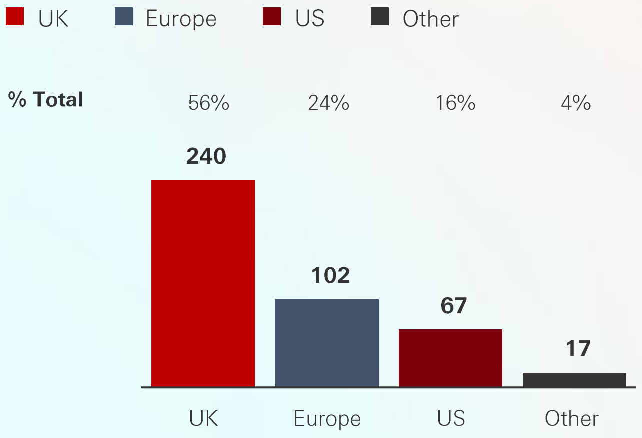
Term sheets by investment stage / size



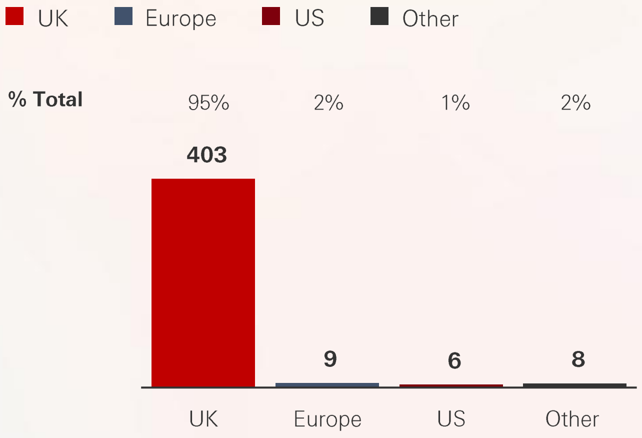
Term sheets by type of lead investor



Term sheets by lead investor location



Term sheets by company location



PUBLIC

Illustrative VC investment process and the role of the term sheet

01 — **Reach out to investors** Build investor relationships in advance of a fundraise / **Get warm introductions** to investors

02 — **Pitch deck shared**

03 — **Pitching** to investors & follow up meetings

04 — VC investment committee **('IC') meeting**

05 — **Term sheet** issued, negotiated and signed

06 — **Due diligence and investment agreements** (or 'long-form' documents) (articles of association, shareholders agreement and subscription agreement)

07 — **Final IC meeting** (some investors have 'wrap-up' IC meeting post DD)

08 — **Funds raised** and **money in bank**

3-12 months

"Engaging a 'good lawyer' isn't just a choice—it's a vital investment for any business navigating the complexities of the legal landscape. Beyond bolstering your company's credibility, the impact of expert legal guidance extends to significant time and cost savings in the long run. Opting for shortcuts over quality and experienced counsel may detrimentally affect the company's future prospects. In mature startup ecosystems where access to experienced legal firms is abundant, prioritizing top-tier legal representation is paramount. Ultimately, adept legal counsel not only secures your present but also strategically prepares you for the future, ensuring every aspect of your business rests on solid legal foundations."

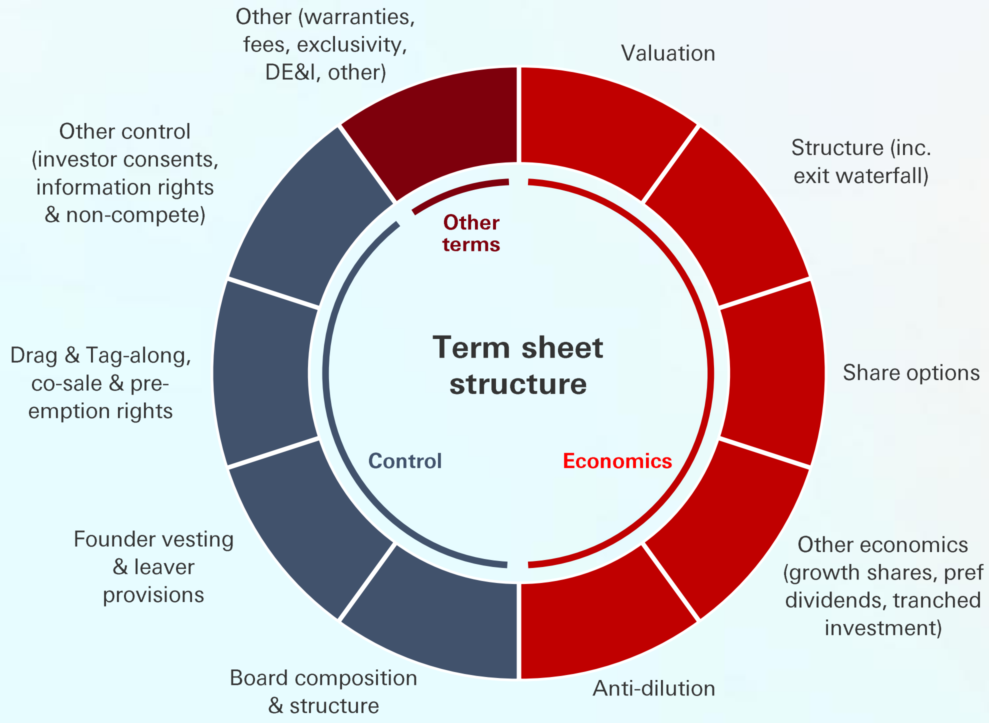
Vanessa Vasquez, Head of Legal, Seedcamp

Entrepreneur's perspective

- The timeframe and complexity of raising funds depend on the stage and sector of the business and the team running it. As a general rule of thumb, a typical raise takes 6 months from 1st meeting through due diligence ('DD') to money in the bank. A very quick raise may take 3 months and a long raise may take 9-12 months.
- Once the decision to invest is made at the investment committee stage ('IC'), the lead investor (the VC providing the largest quantum of funding) will usually issue a term sheet.
- **A term sheet is a deal blueprint**. While not legally binding, once signed, the term sheet serves as the basis for the long-form investment documentation of the fundraise. There are some clauses that are legally binding on signing the term sheet, such as an exclusivity period (i.e., where you are not permitted for a period to speak to other investors while the investor is doing their due diligence), confidentiality and sometimes the associated due diligence ('DD') costs.
- That's why, in addition to having **a good lawyer** who understands the VC process to represent you, it is crucial that you have a working understanding of the key concepts and terminology used, as it will help you to negotiate effectively.

Term sheet overview: Term sheets usually consist of 1) economics of the deal (the economic rights of shareholders 2) control (who is involved in key decisions and to what extent) and 3) other items for consideration, such as deal fees and period of exclusivity

Term sheet structure



"Spend the time getting the term sheet right & fleshing out all the big points early on – the economics & the emotive control points (leaver provisions, consent matters). It makes the investment process much smoother, easier, & cheaper for all involved and ensures everyone gets off on the right foot rather than immediately after what could otherwise be long and painful negotiations!"
Ashley Abrahams, Head of Origination, Guinness Ventures

The BVCA (British Private Equity and Venture Capital Association), has revised and relaunched its standard model long-form documents (Subscription Agreement, Shareholders' Agreement and Articles of Association) for early-stage investments.

Although specifically designed for Series A financings, the model long-form documents are widely used throughout the UK venture ecosystem.

A new model term sheet and ancillary documents are expected to be provided in Q2 2024.

Entrepreneur's perspective

- Term sheets typically range from 1 to 10+ pages which try to define the terms of the proposed deal as accurately as possible. While not legally binding, it will be difficult to renegotiate terms at a later date, so spend time focusing on terms that are most important to you (deal killers) and ensure your position is considered and reasonable. This helps to avoid misunderstandings and confusion later in the deal process and sets out how the investor relationship will operate post-deal.
- A fair term sheet is good for everyone. By negotiating well i.e. being flexible and not taking every initial point but also not arguing every single point without good reason – you build credibility with the VC. If you have lots of leverage (e.g. multiple term sheets and VCs interested) you will have more negotiating power. Utilise experts, partners/advisors and lawyers to help.

Term sheets – survey results summary (by year)

426 term sheets surveyed. % that responded Yes, to the following terms

Economic

	2021	2022	2023	YoY %Δ
Investment Structure				
Preference share	84%	77%	83%	+6%
Where liquidation preference:				
Non-participating	93%	86%	89%	+3%
Participating	7%	12%	10%	(2%)
Participation cap	0%	2%	1%	(1%)
Share options	62%	68%	72%	+4%
Anti-dilution	65%	60%	57%	(3%)
Tranched Investment	22%	19%	17%	(2%)
Syndication	49%	35%	42%	+7%
Preference dividend	12%	20%	9%	(11%)
Growth shares	5%	9%	3%	(6%)

Control

	2021	2022	2023	YoY %Δ
Board Representation[1]	94%	91%	86%	(5%)
Founder Vesting	56%	53%	61%	+8%
Founder Leaver provision	47%	55%	50%	(5%)
Drag along	92%	92%	82%	(10%)
Tag along	83%	75%	66%	(9%)
Co-sale	67%	67%	63%	(4%)
Investor consents	80%	78%	78%	0%
Restrictive Covenant	49%	39%	32%	(7%)

Other Terms

	2021	2022	2023	YoY %Δ
Founder Warranties	75%	69%	44%	(25%)
Company Warranties	93%	90%	81%	(9%)
Monitoring Fee	10%	20%	11%	(9%)
Arrangement Fees	8%	14%	9%	(5%)
Exclusivity Period	83%	75%	66%	(9%)
Diversity Rider	1%	8%	11%	+3%
ESG / Sustainability	16%	16%	22%	+6%
D&O Insurance	Not surveyed	Not surveyed	30%	-
Key Person Insurance	Not surveyed	Not surveyed	18%	-
Personal Guarantee	8%	1%	3%	+2%

Note: As noted elsewhere in this report, several terms are found in long-form document rather than the term sheet.
1 Board representation excluding observer.

Term sheets – survey results summary (by quarter)

426 term sheets surveyed. % that responded Yes, to the following terms

Economic

2023	Q1	Q2	Q3	Q4
Investment Structure				
Preference share	89%	81%	80%	81%
Where liquidation preference:				
Non-participating	86%	92%	87%	91%
Participating	13%	8%	12%	8%
Participation cap	1%	0%	1%	1%
Share options	72%	69%	69%	79%
Anti-dilution	65%	54%	55%	49%
Tranched Investment	16%	17%	14%	21%
Syndication	42%	46%	41%	40%
Preference dividend	13%	7%	6%	11%
Growth shares	2%	3%	6%	3%

Control

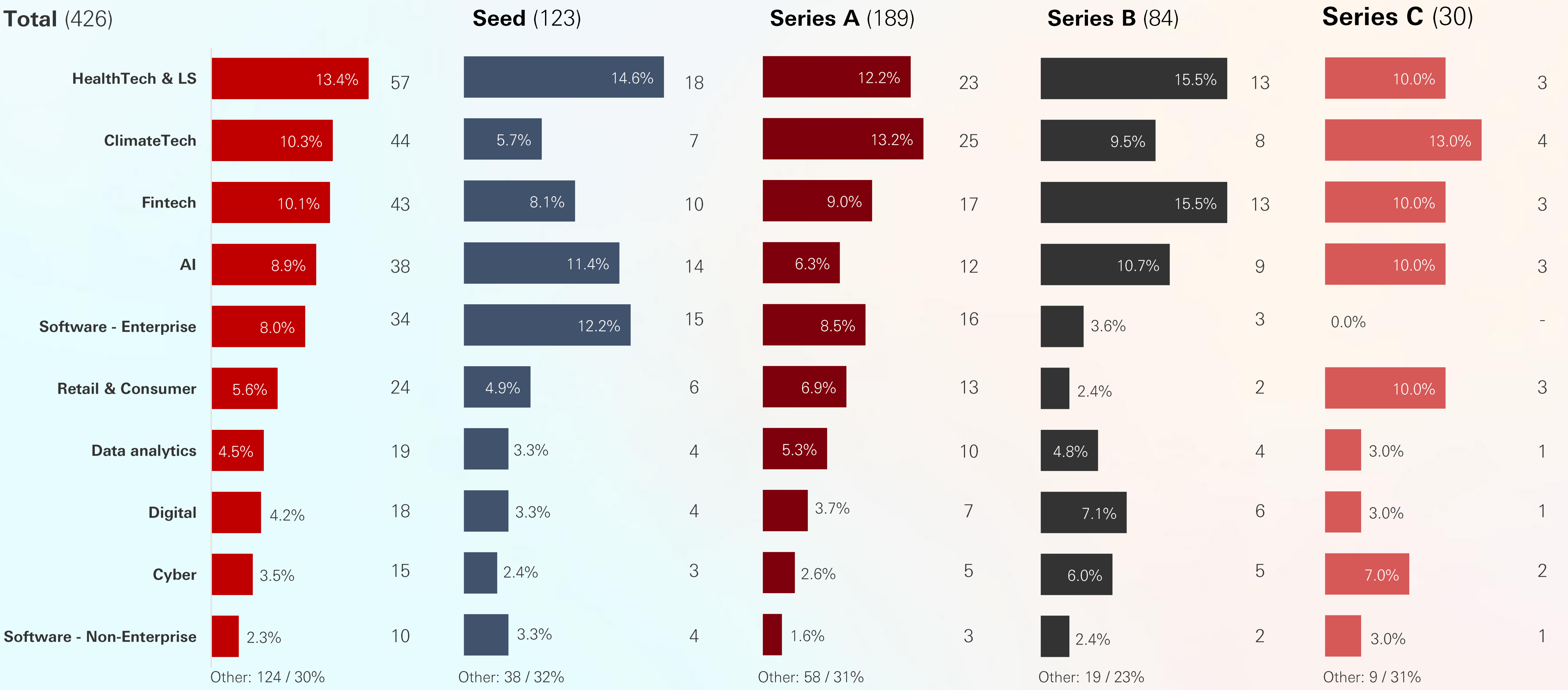
2023	Q1	Q2	Q3	Q4
Board Representation[1]	87%	86%	86%	86%
Founder Vesting	63%	58%	63%	59%
Founder Leaver provision	48%	45%	60%	49%
Drag along	82%	81%	79%	88%
Tag along	68%	64%	67%	66%
Co-sale	60%	65%	63%	63%
Investor consents	79%	74%	79%	82%
Restrictive Covenant	36%	28%	31%	35%

Other Terms

2023	Q1	Q2	Q3	Q4
Founder Warranties	50%	40%	49%	36%
Company Warranties	86%	78%	79%	79%
Monitoring Fee	9%	9%	15%	10%
Arrangement Fees	10%	8%	12%	7%
Exclusivity Period	65%	68%	69%	61%
Diversity Rider	8%	12%	13%	9%
ESG / Sustainability	1%	22%	24%	20%
D&O Insurance	33%	23%	30%	33%
Key Person Insurance	14%	15%	20%	24%
Personal Guarantee	1%	1%	4%	5%

Note: As noted elsewhere in this report, several terms are found in long-form document rather than the term sheet.
1 Board representation excluding observer.

Term sheets – Top 10 industry split by total and by investment stage



Note: ClimateTech includes Energy and HealthTech includes Life Sciences.
Survey industry classification defined as the primary end market or consumer.
Series stage breakdown by investment size: Seed (<£2m), Series A (£2-10m), Series B (£10-30m), Series C+ (>£30m).

1 "Other" refers total level industry sectors that are individually less than 2.0% of total: AdTech (0.2%), AgTech (0.7%) Blockchain (0.9%), Crypto (0.5%), EdTech (1.9%), Esports/Gaming (2.1%), FoodTech (2.1%), Government (0.0%), Hardware (1.9%), IoT (1.9%), Marketplace (0.7%), Media (1.9%), NanoTech (2.1%), Real Estate (2.3%), Robotics (2.1%), Social Impact (2.1%), SpaceTech (2.1%), Telecoms (0.0%)., Transportation (2.1%) and WearableTech (2.1%).

Economics of VC Term Sheets

HSBC Innovation Banking

Pre-money valuation

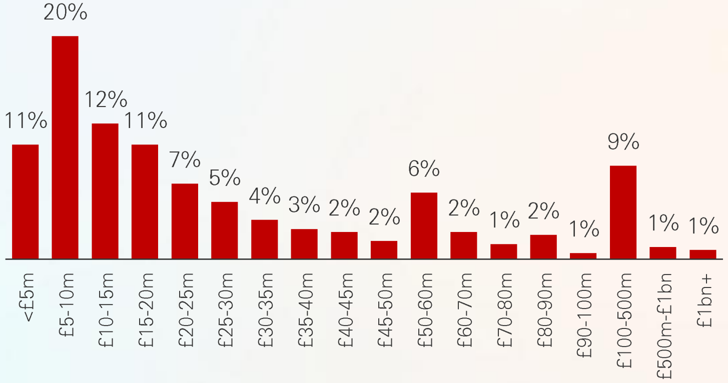
- Valuation and associated dilution is probably the most important and heavily negotiated commercial term in a term sheet. It determines the % ownership of the company the investors are buying with their investment. This will directly impact how much money the founders, employees with equity and investors will get on an exit.
- The term sheet will include an **investment/valuation section**, which states what an investor believes the company is worth. The term sheet will include both a **pre-money** (how much the company is worth before this funding round) and **post-money** (how much the company is worth including the latest proposed current funding investment) valuation.

Extract from a typical Series A term sheet– Investment/valuation:

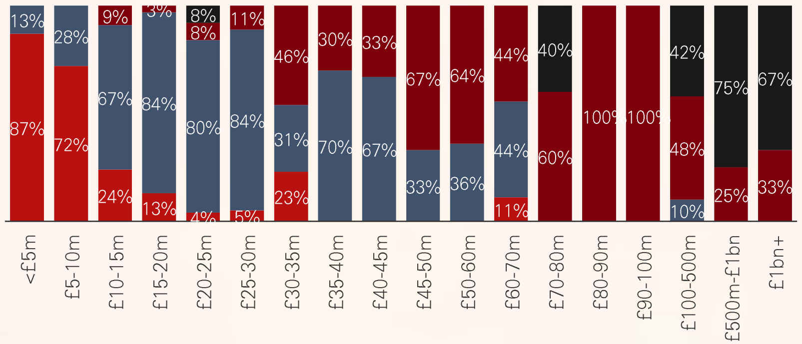
"The per share issue price of the Preferred Shares will be £• per Preferred Share, based upon a pre-money valuation of £• on a Fully Diluted basis. "Fully Diluted" includes the current employee share option pool (including granted and allocated/promised options) [(and the increase to the employee share option pool contemplated by this Term Sheet)], any other outstanding options or warrants, and any outstanding convertible loan notes, ASAs, SAFEs or similar instruments."

VC (LP fund structure) and CVCs offered pre-money valuations ranging from <£5m to >£1bn in the survey

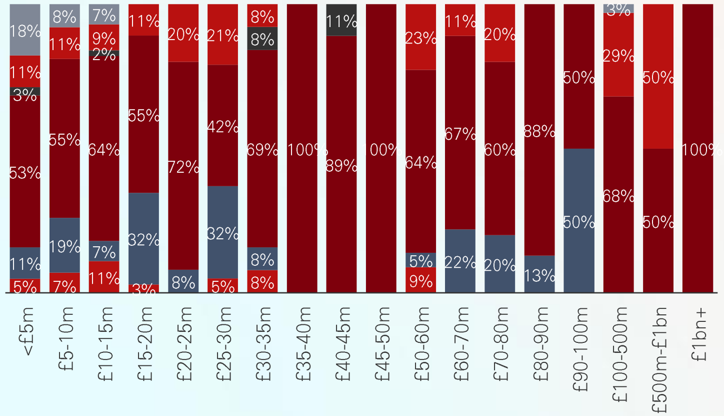
Pre-money valuation indicated in term sheet



Pre-money valuation indicated in term sheet by stage



Pre-money valuation indicated in term sheet by investor type



"Founders can fixate on achieving the highest valuation when it comes to term sheet negotiation, and it's easy to understand why. However, you should pay just as much attention to other terms. The valuation also needs to be sustainable. As you scale, our company's valuation will be increasingly based on a revenue multiple; you should look ahead to what your next round might reasonably look like and work backwards to arrive at a reasonable valuation today"

Taos Edmondson, Principal, DMG Ventures

Entrepreneur's perspective

- Valuation is a commercial term, not a legal one. Sometimes, a lower valuation with a better structure (see overleaf) and terms can lead to better outcomes for entrepreneurs.
- A lower valuation from a respected investor who can really help scale the business may also be a better deal than one from a less-respected investor.

Note: Series stage breakdown by investment size: Seed (<£2m), Series A (£2-10m), Series B (£10-30m), Series C+ (>£30m).

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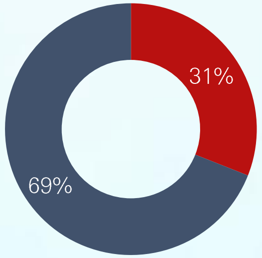
Convertibles, Secondaries and Syndicate deals

Convertibles

Included in term sheet 2023

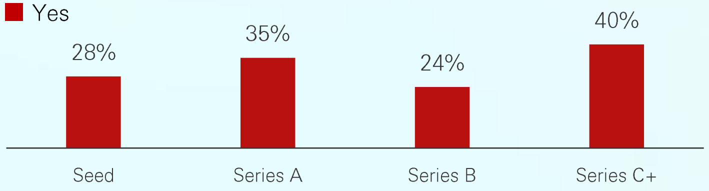
Yes No



Convertibles triggered as part of the round (i.e. existing investors alongside new equity investors)

Included in term sheet 2023 – split by stage

Yes

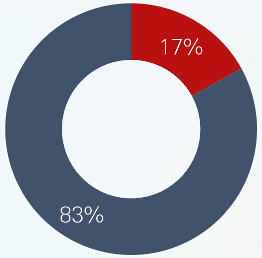


- **Convertible debt/note** is a debt instrument that an investor issues to a company with the intent it will convert later to equity (and not be paid back as a standard bank loan would be). When founders issue a convertible note, all parties typically assume the startup will be raising additional funding rounds. Typical features of a convertible note include:
- **Delayed valuation**: Convertible debt provides a method to raise money without putting a valuation on the company at the time the convertible note is issued;
- **Interest** typically accrues over the term of the note, at a negotiated rate, and gets added to note when it converts to the new class of shares negotiated at the next investment round;
- **Conversion** typically happens on a 'trigger event', usually when the company raises its next round, meaning a pre-money valuation for the company is established or at a predefined date (maturity date) with an agreed upon valuation at this date; and
- **Discount rate:** The convertible note typically carries a 15%-25% discount rate, entitling the note holder to buy newly valued equity at the discount rate.

Secondaries

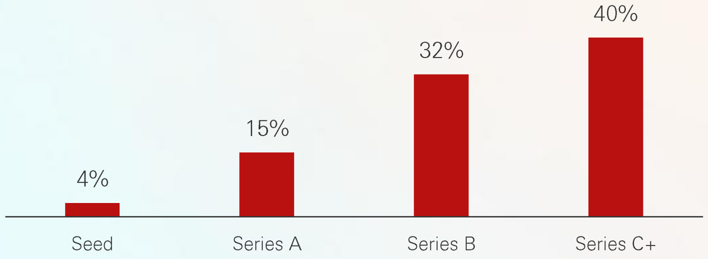
Included in term sheet 2023

Yes No



Included in term sheet 2023 – split by stage

Yes

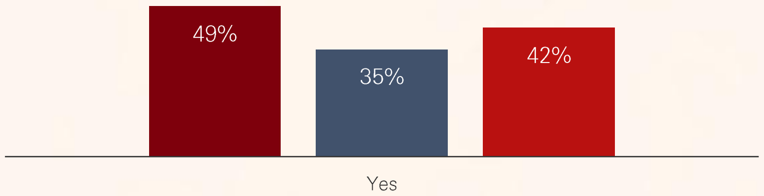


- A "secondary" sale is when a shareholder (typically one of the founders or an early employee or an early investor) of a private company sells his or her shares to another buyer (instead of primary capital/shares being raised/issued).
- A secondary usually (though not always) happens at later-stage (Series B and C+) investments, when the startup has achieved significant revenue or traction, on the way to an IPO or a major sale. A secondary allows a founder, who has put 'blood, sweat and tears into the business' to de-risk slightly and 'take some money off the table'.

Syndication

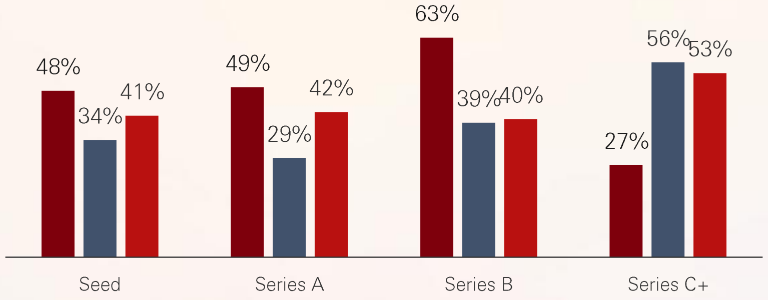
Included in term sheet last 3 years (2021-2023)

2021 2022 2023



Split by investment stage

2021 2022 2023



- While some VCs invest individually, many invest with other VCs as part of a "syndicate". The syndicate includes any investor purchasing equity in the company.
- Most syndicates have a lead investor, who will typically take the role of negotiating the term sheet clause for the entire syndicate.
- A syndicate allows VCs to share risks, particularly in a volatile market, and can also provide an opportunity for greater success by increased deal flow / number of investments.

Note: Series stage breakdown by investment size: Seed (<£2m), Series A (£2-10m), Series B (£10-30m), Series C+ (>£30m).

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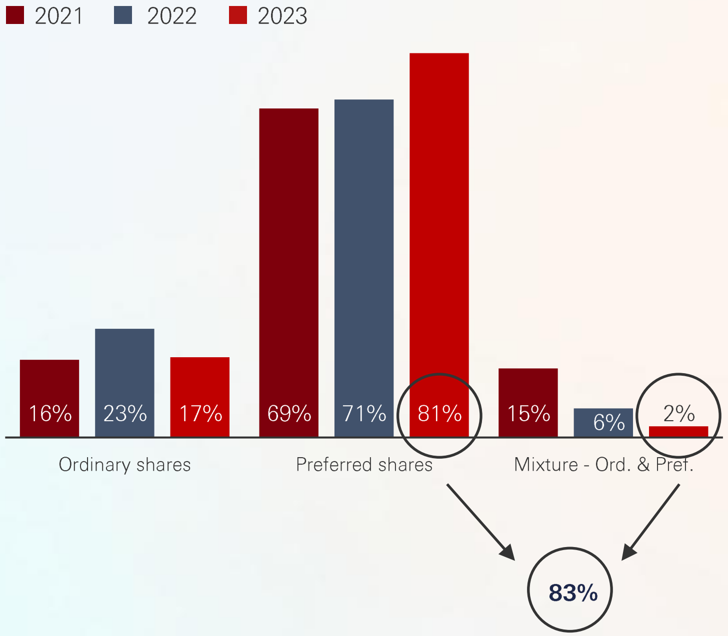
Investment structure: ordinary vs preference shares

- **Ordinary shares**, which typically have equal voting and distribution rights on an exit, are the share class most companies start out with, and which founders often own.
- VC investors often receive **preference shares** in the companies they invest in. These typically rank ahead of ordinary shares in both economic and control rights.
- Private market preferred shares are different from those issued in public markets. VC investors are typically minority shareholders, but with preference shares they can assert a level of control over the company, and limit their financial exposure.
- The rights attaching to preference shares will be set out in the term sheet. For investors some of the key benefits of preferred shares include:
  - **Liquidation preferences:** See overleaf;
  - **Anti-dilution rights:** These protect the investors' investment value in the event of a down round (see later); and
  - **Voting rights:** Preferred shareholders in public companies tend not to have voting rights, while private investors can negotiate for similar voting rights to ordinary shareholders, and elect members to the Board.

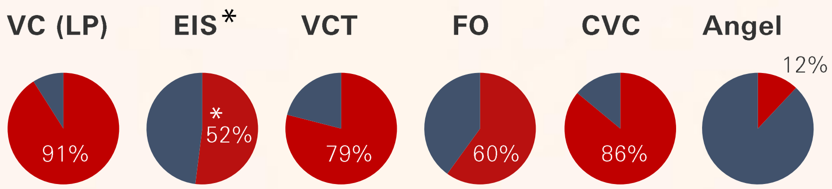
"Founders should be wary of accepting deal structure in return for a higher valuation. If things don't go to plan, you can find yourself in a tricky situation and you may regret your prior decision to take the higher valuation. It's sad when founders don't do well from a sizable exit and this is often the cause."
Hector Mason, General Partner, Episode 1 Ventures

83% (81% straight preference shares) of term sheets issued in 2023 included preference shares, up from 2022 (71%)

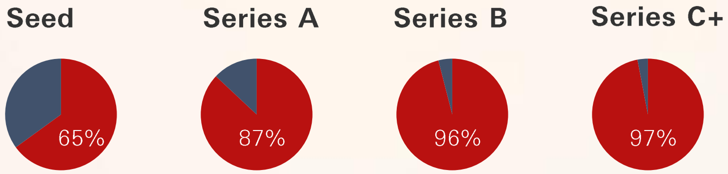
Ordinary vs preference shares: 2023 - 2021



Preferred shares by investor type: 2023



Preferred Shares by Stage: 2023



Entrepreneur's perspective

- Private investors will typically expect to be issued a preference share, especially from Series A onwards. 81% of term sheets assessed included a straight preference and a further 2% had preference shares included alongside ordinary shares.
- Not all preferred shares are created equal. Investors at different funding rounds may have preferred shares with different rights, while investors in later rounds may look to renegotiate the privileges of earlier investors.

* Technically, EIS funds do not issue preference shares, however from a commercial perspective (due to HMRC rules) EIS investors typically receive ordinary shares, although ordinary shares (e.g. 'A ordinary', 'B ordinary') that have some characteristics of preference shares (i.e. liquidation priority) can be issued. This is often a route taken by more sophisticated EIS fund investors.

1 Preferred shares highlighted in the pie charts above represents the combination of both straight preferred shares and also where the preferred shares where also included in the investment structure alongside ordinary shares (i.e. 'mixture – ord & pref').

Liquidation preferences (1 of 3)

- After agreeing on the company's valuation, the liquidation preference attaching to the preference shares is the next most important economic term in the term sheet.
- The **liquidation preference** determines the order in which proceeds are paid out on a liquidity event e.g. sale or winding up. This provides downside protection as it allows the holders of the preferred share (typically investors) to be paid first when proceeds are being distributed.
- There are two components to the liquidation preference: 1) the **participation** and 2) the **multiple.**

1. Participation

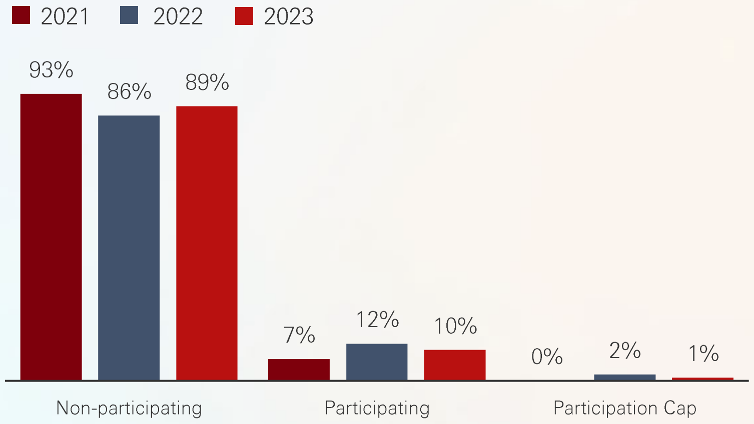
- **Non-participating:** On a liquidity event the investor has the option of i) the amount invested multiplied by the liquidation multiple (plus any unpaid dividends) or ii) to convert the preference shares into ordinary shares and participate as an ordinary shareholder.
- **Participating preferred** (i.e. the 'double dip'): On a liquidity event the investor i) receives the amount they invested multiplied by the liquidation multiple before anything is available for distribution to the ordinary shareholders and ii) the investor then receives their pro-rata distribution of the remaining proceeds alongside the ordinary shareholders.
- **Participation cap:** This option places a cap on the total amount of exit proceeds the investor can receive under the liquidation preference. Under this scenario the investor has an option to convert their preferred shares to ordinary shares without a cap, if the exit is large enough to give a better return.

Entrepreneur's perspective

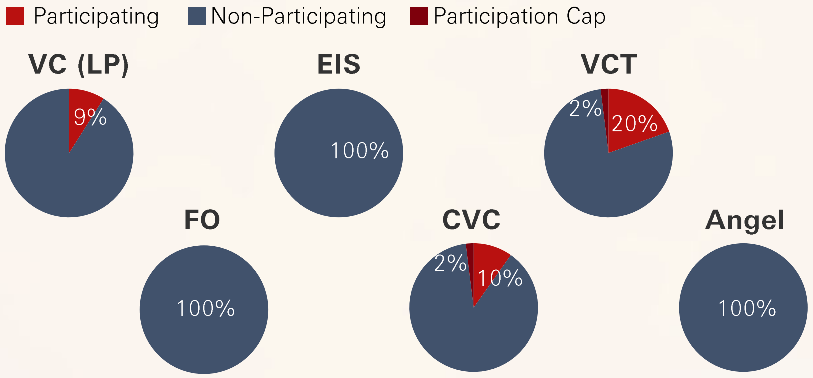
- Due to HMRC rules EIS investors will typically receive ordinary shares, although ordinary shares (e.g. 'A ordinary', 'B ordinary') that have some characteristics of preference shares (i.e. priority) can be issued. This is often a route taken by more sophisticated EIS fund investors.

89% (2022: 86%) of preference shares were non-participating. 1.0x liquidation multiple was the most common multiple for both non-participating and participating structures

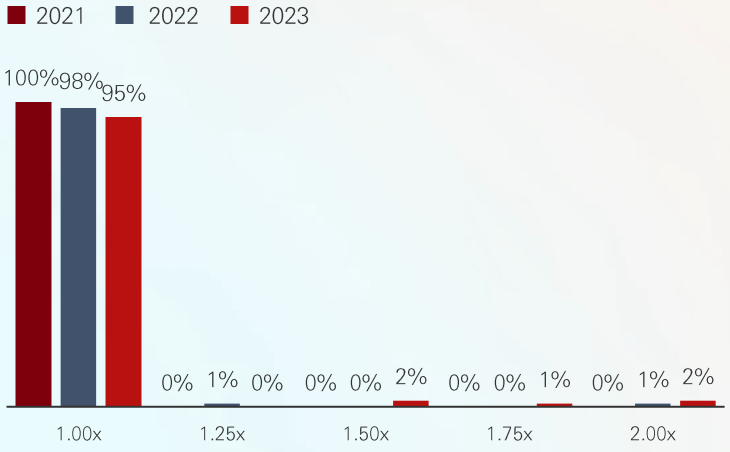
Preference shares – type



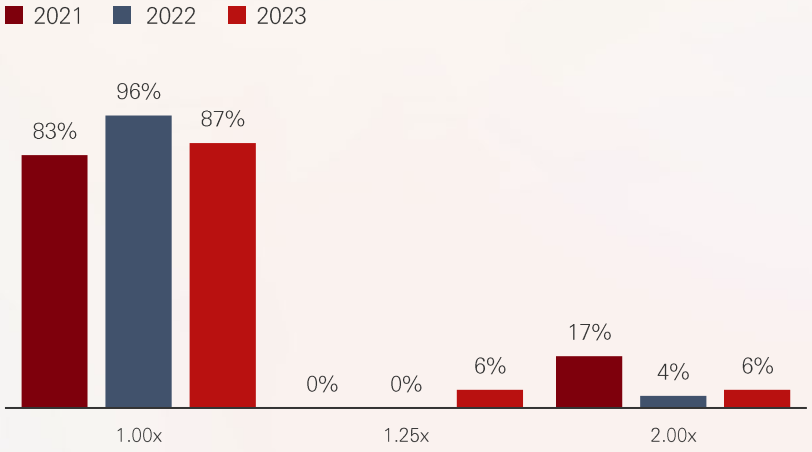
Non-participating and participating by type of investor



Liquidation multiple on non-participating preference shares



Liquidation multiple on participating preference shares



Liquidation preferences (2 of 3)

2. Multiple

- Liquidation preferences have a multiple attached (e.g. 1x, 2x). This means the preferred shareholder gets one (1x) or two times (2x) (and so on) their original investment amount back before the shareholders below them in the priority stack.

The liquidation preference **priority stack** in the term sheet sets out the order in which the preferred shareholders get paid out on exit. As a company raises a new round, later investors may want their own rights and benefits, which could be superior to the earlier investors.

- **Standard:** Liquidation preferences are ranked in order from the latest to the earliest round. This may mean earlier investors are more at risk of receiving a small return or nothing at all; and
- **Pari passu:** Investors from all funding rounds are considered equal and receive proceeds in proportion to their investment amount.

Extract from a typical Series A term sheet – Participating preference:

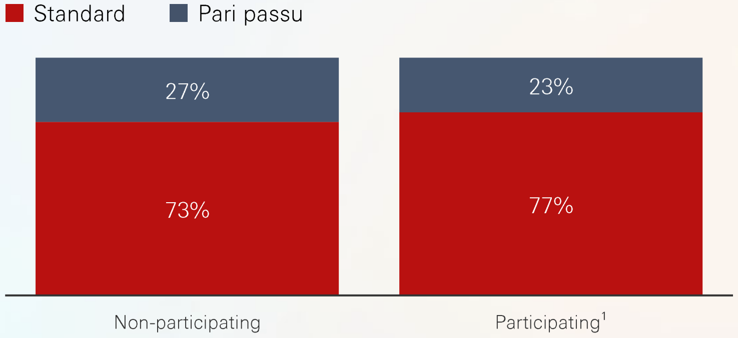
"Upon liquidation of the Company, the Preferred Shareholders will receive in preference to all other shareholders an amount in respect of each Preferred Share equal to [• times] the Issue Price (the "Liquidation Preference"), plus all accrued but unpaid dividends. To the extent that the Company has assets remaining after the distribution of that amount, the Preferred Shareholders will participate with the holders of Ordinary Shares pro rata to the number of shares held on an as converted basis".

Non-Participating preference (most common form of liquidation preference):

"The Preferred Shares will carry a one times (1x) non-participating liquidation preference on a liquidation, distribution of assets or share / asset sale of the Company, whereby the holders of Preferred Shares will be entitled to receive, in priority to other share classes, an amount per Preferred Share equal to the greater of (i) the Preference Amount (together with any arrears and subject to customary adjustments) and (ii) the amount that would be received if the Preferred Shares were converted into Ordinary Shares immediately prior to such distribution and such distribution made pro-rata among the holders of the shares in the capital of the Company (excluding deferred and treasury shares."

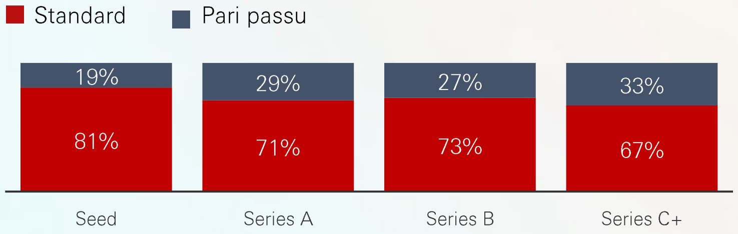
Standard priority stack prevalent in both non-participating (73%) & participating (77%) preferred shares. For early investors this may mean they are at risk of receiving a small return or nothing at all

Split by participating / non-participating

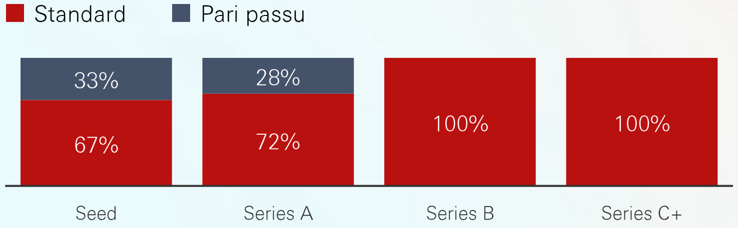


Split by investor

Non-participating



Participating[1]



Entrepreneur's perspective

- A 1.0x, non-participating liquidation preference is the most founder/shareholder friendly. It gives the investor protection against lower exits and is fairer for all shareholders at higher exit valuations.
- When founders insist on a valuation that is too high for an investor, one way an investor can still do the deal and ensure their anticipated fund returns at exit are acceptable, is by utilising a participating structure. Founders should carefully consider whether a lower valuation with a simpler structure today may lead to better long-term returns.
- When negotiating a term sheet ensure the investor includes a **cap table** in the term sheet itself. Be sure you (or ask your lawyer or advisor) create an **exit waterfall** that takes the cap table and evaluates the distribution of proceeds to the different shareholder classes, different liquidation preferences and priority stake.

Note: Series stage breakdown by investment size: Seed (<£2m), Series A (£2-10m), Series B (£10-30m), Series C+ (>£30m).
1 Participating (incl. Participation Cap).

Liquidation preferences – Examples (3 of 3)

Non-participating

- On a liquidity event the investor has the option of i) the amount invested multiplied by the liquidation multiple (plus any unpaid dividends) or ii) to convert the preference shares into ordinary shares & participate as an ordinary shareholder.

Example 1: Investor has invested £2m for 50% of the company & has a 1x non-participating preference

- Investment amount: **£2m**
- Preferred equity: **50%**
- Ordinary equity: **50%**
- Liquidation preference: **1x**
- Participation: **No**
- **Exit proceeds: £10m**

Total exit proceeds: £10m

Pro rata – convert preferred to ordinary equity £5m	Ordinary (Founders) equity at 50% - £5m
1x liquidation preference would result in only £2m return so investor would convert to ordinary shares and the investor gets a portion of the proceeds based on their pro-rate % ownership (50%) i.e. £5m	Founders also gets 50% of the exit proceeds i.e. £5m

Example 2: Investor has invested £2m for 50% of the company & has a 1x non-participating preference

- Investment amount: **£2m**
- Preferred equity: **50%**
- Ordinary equity: **50%**
- Liquidation preference: **1x**
- Participation: **No**
- **Exit proceeds: £3m**

Total exit proceeds: £3m

1x liquidation preference: £2m	Ordinary (Founders) equity at 50% - £1m
Exercising the 1x liquidation preference would result in £2m of the exit proceeds v converting into ordinary equity which would result in only £1.5m of the exit proceeds – therefore the investor would not convert and take the liquidation preference	Exit proceeds for the founder reduced to £1m (the residual amount) because of investor exercising their liquidation preference

Participating preferred (i.e. the 'double dip')

- On a liquidity event the investor:
  1) receives the amount they invested multiplied by the liquidation multiple before anything is available for distribution to the ordinary shareholders; and
  2) the investor then receives their pro-rata distribution of the remaining proceeds alongside the ordinary shareholders.

Example 3: Investor has invested £2m for 50% of the company & has a 1x participating preference

- Investment amount: **£2m**
- Preferred equity: **50%**
- Ordinary equity: **50%**
- Liquidation preference: **1x**
- **Participation: Yes**
- Exit proceeds: **£10m**

Total exit proceeds: £10m

1x participation liquidation preference: £2m	Participation as ordinary shareholder at 50%: £4m	Ordinary (Founders) equity: £4m
Investor exercises participation liquidation preference	Investor 'double dips' and receives proportion (50%) of remaining exit proceeds (£8m) therefore £4m	Ordinary shareholders receive remainder (in this case 40%, albeit own 50%)

Share options
(1 of 2)

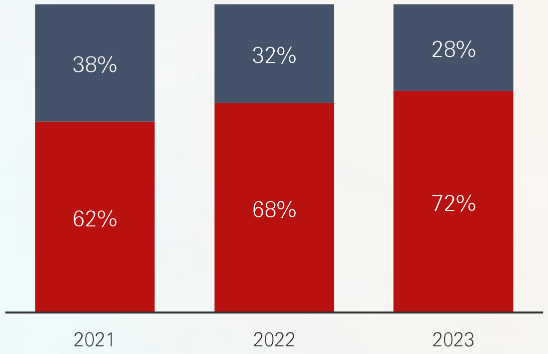
- The share option pool is shares of the company that have been specifically allocated as incentives to attract or retain and/or hire talent.
- Often, potential investors want to see that a sufficient option pool is available, but the option pool does not usually come into focus until the end of the negotiation.
- Creating an option pool results in dilution for the shareholders and directly impacts the price per share (i.e. valuation). When an investor calculates valuation, they act as if the options have been issued (i.e. 'fully diluted' basis) – even though the new option pool shares have not actually been issued.
- There are two ways to calculate the option pool:
- **1) Pre-money:** When an investor calculates the pre-money valuation, they assume the pool has been created before the assumed investment round occurs. This way the new investors avoid any dilution and only the existing shareholders get diluted (i.e. it lowers the effective pre-money valuation). This is known as the **'option pool shuffle'**; and
- **2) Post-money:** The option pool is calculated in the post-money valuation, meaning both the existing shareholders and the incoming investor get diluted (i.e. no impact on the pre-money valuation).

"When negotiating a term sheet, founders should not view share options as a cost but as an investment in incentivising their team to drive the company's vision. Thoughtfully structured options can attract and retain top talent, aligning interests towards long-term value creation."
Toyosi Ogedengbe, Principal, Ascension

A new option pool/top up to the existing pool was seen in 72% of term sheets and 50% of these were calculated in the post-money

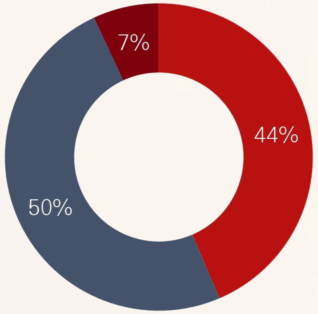
New option pool created / top-up

Yes · No



Where option pool calculated: pre or post money

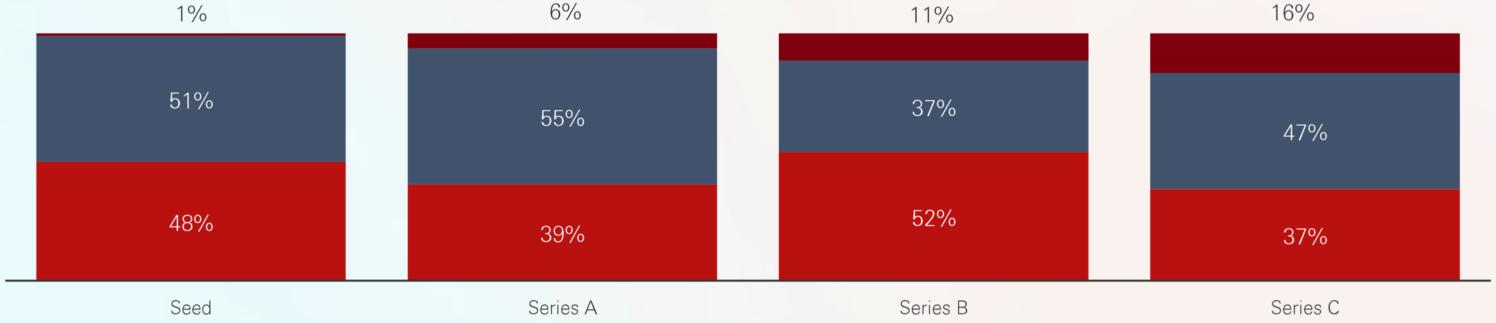
Pre-money · Post-money · Mixture (option pool created in both the pre and post-money)



Option pool by investor type: The creation of the option pool (both pre and post money) split was relatively similar when comparing term sheets across the different types of investors

Where option pool calculated: Pre or post money by stage

Pre-money · Post-money · Mixture (option pool created in both the pre and post-money)



Note: Series stage breakdown by investment size: Seed (<£2m), Series A (£2-10m), Series B (£10-30m), Series C+ (>£30m).

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Share options
(2 of 2)

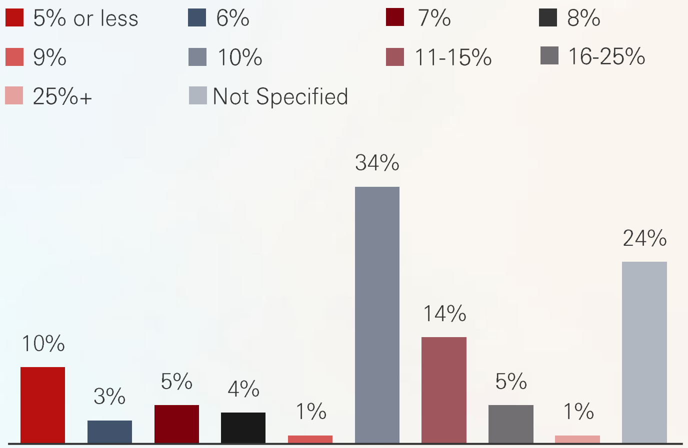
Extract from a typical Series A term sheet – option pool:

"The Company currently maintains an employee share option pool comprising ● ordinary shares of £●, of which: ● have been granted, ● have been allocated and/or promised to employees, directors and consultants and ● remain unallocated and available for grant.

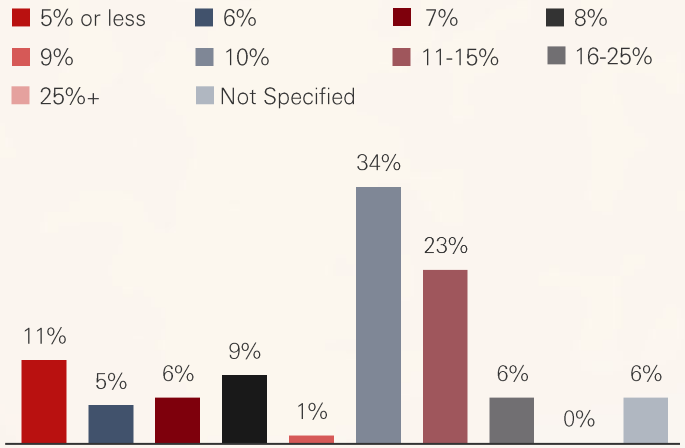
On Completion, the share option will be increased by an additional ● ordinary shares [such that post-Completion the total share option pool will represent ●% of the Fully Diluted share capital] [such that post-Completion the total unallocated portion of the share option pool will represent ●% of the Fully Diluted share capital]."

A 10% option pool was the most common size pool irrespective whether the pool was calculated in the pre or post-money

Size of new option pool: pre-money (%)



Size of new option pool: post-money (%)



Entrepreneur's perspective

- An option pool dilutes both the founders and investors and is therefore a negotiation point. If a company already has a sizeable option pool in advance of a funding round, these share options should be considered in the investors' view of valuation.
- Founders need to be aware of the 'option pool shuffle' and its impact on dilution. If the option pool is calculated in the pre-money valuation, founders get diluted twice: firstly by the option pool shuffle and again when the newly-issued shares become part of the actual funding round.
- In the US the option pool is typically calculated in the pre-money valuation, meaning dilution comes from the founders. In the UK, it is much more varied, and both calculation methodologies are often used. The key for both investors and founders is to reach common ground on how the pool should be treated and calculated. Founders need to have well thought out plans (e.g. a comprehensive hiring plan).
- They should also understand what happens to unvested share options when an employee leaves the company: does it get reallocated, or does it get reabsorbed by all existing shareholders or certain shareholders?

Anti-dilution

Anti-dilution provisions protect the investors' investment value in the event of a **future down round**, where new shares are issued to new investors at a lower price, the incumbent investors have the right to receive additional shares at no or a minimal cost to compensate them for their dilution.

Types of anti-dilution ratchets

Weighted average anti-dilution

- A "weighted average" ratchet anti-dilution provision can be "narrow based" (only the actual number of shares in issue are taken into account) or "broad based" (both the shares in issue and any outstanding options are taken into account).
- A broad based weighted average is the most common form of anti-dilution right agreed to and most favourable to the other shareholders as it results in the least dilution on a down round.
- It takes into account the lower-priced issuance, not just the actual valuation.

Full ratchet based anti-dilution ('investor friendly')

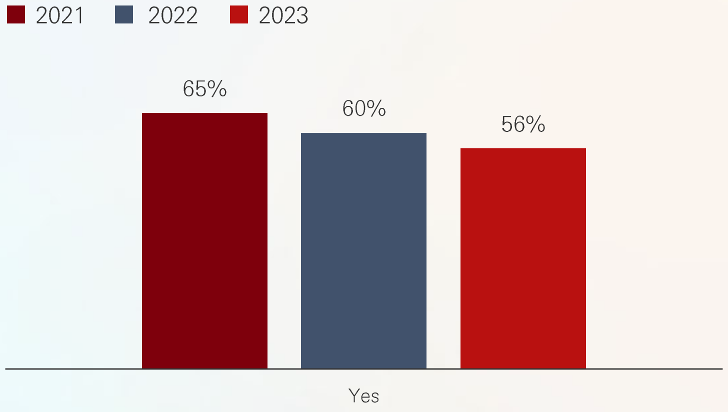
- "Full ratchet" anti-dilution provision means that if the company issues shares at a price lower than the price for the series with the full ratchet provision, then the earlier round price is effectively reduced to the price of the new issuance.
- A Full ratchet adjustment is the most aggressive form of anti-dilution provision. It provides the greatest protection to the Investor and has the greatest negative impact on the founders, employees and ordinary shareholders.

Extract from a typical Series A term sheet:

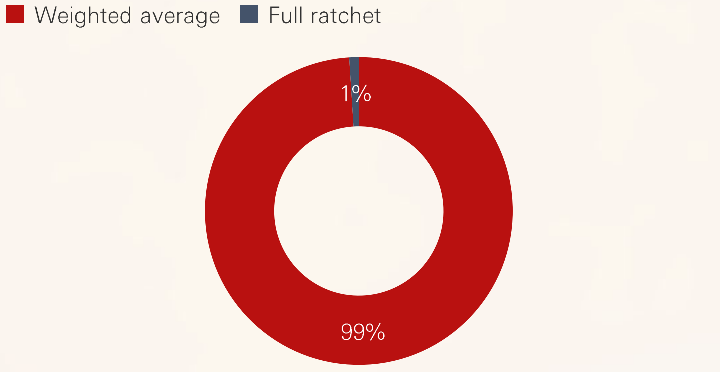
1. Anti-dilution ratchet
The Series A Shares will have a [full ratchet]/[broad-based weighted-average]/ [narrow-based weighted-average] anti-dilution protection in the case of any new issue of shares at a price below the Original Issue Price (after adjusting for any recapitalisation events) other than share issues which are not subject to pre-emption rights. This anti-dilution protection will operate by the issue of [Series A] [Ordinary] Shares at par through a capitalisation of share premium account.

56% of term sheets included an anti-dilution provision for preferred shares and the weighted average methodology was typical

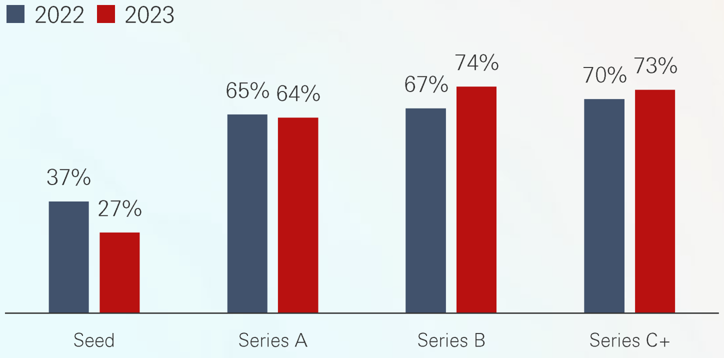
Anti-dilution clause in term sheet



Type of anti-dilution ratchet in term sheet (where specified) 2023



Anti-dilution clause in term sheet by investment stage



"Recently, VC late-stage portfolios have experienced a significant downturn, sparking renewed interest in Anti-dilution. However, it's important to note that only 56% of VC investors actually include this term, as reported. Personally, I am not a fan of Anti-dilution because it can create a misalignment between investors who have it and those who don't. Ultimately, it can be negotiated away, especially considering that the high % of funds do not utilize it and it is primarily common at the late stage. For founders, it is a great sense check to determine if a fund is founder-friendly right from the start of their negotiation".
Reece Chowdhry, Founding Partner, Concept Ventures

Note: Series stage breakdown by investment size: Seed (<£2m), Series A (£2-10m), Series B (£10-30m), Series C+ (>£30m).

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Other economic terms

Extract from a typical Series A term sheet:

Tranched investment:

"The investment will be staged with £● being invested at initial completion ("Completion") and £● being invested at second completion ("Second Completion"). Second Completion will be subject to customary conditions, including (without limitation) (i) achievement and/or waiver of the milestones detailed in schedule ● to the satisfaction of [the Investors]/[the holders of ●% of the Preferred Shares], (ii) there having been (in the [reasonable] opinion of [the Investors]/[the holders of ●% of the Preferred Shares]) no material adverse change in the financial position or prospects of the Company and no material breach of the definitive investment documents or the Founder service agreements by the Company and/or a Founder, and (iii) the Founders continuing to be employed or engaged by the Company".

Preference dividend

"Each Preferred Share will have a fixed cumulative cash preferential dividend of ●% per annum [starting on ● 20●●] (the "Preference Dividend") to be paid [on a Exit or conversion of the Preferred Shares]/[in [four] equal instalments on ●, ●, and ● in each year]/[on ● in every year], [on the winding up of the Company] or [on redemption of the Preferred Shares]. Any other dividends or distributions will be payable to all shareholders on a pro rata basis."

17%
Tranched investment

17% of transactions (19% in 2022) involved tranched investment, typically where the tranched funding is based on agreed milestones.

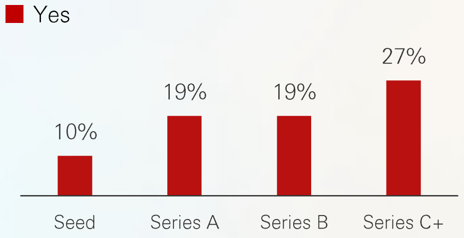
9%
Preference dividend

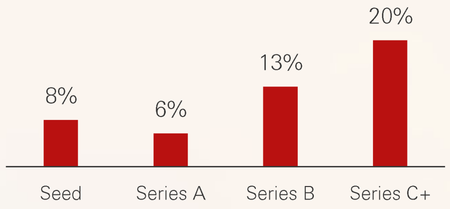
Of the 9% (39) term sheets where there was a preference dividend – the % coupon rate, where specified in the term sheet, ranged between 2%-10%.

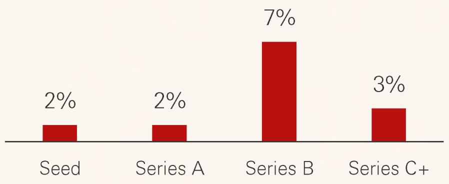
3%
Growth shares

3% of term sheets included growth shares. Growth shares are a special class of share that have a 'hurdle': they only have value if the price per share is above the hurdle. They can be Issued to key management, employees etc.

Other economic term included in term sheet 2023 – split by stage







Entrepreneur's perspective

- Tranched investment is more typical in sectors such as life sciences, where milestone payments are received for passing a hurdle (e.g. clinical stage of a new drug development).
- In other types of business, milestone investment can lead to goal misalignment, particularly at the early stage, as the originally milestones that were thought to be important, may no longer be relevant as the market evolves.
- Disputes can arise whether a company has achieved its milestones, especially if the terms are complex.
- If the investment is tranched, negotiate that future tranches are at a higher valuation to reflect growth in the business.
- Early stage venture businesses are usually not in the financial position to pay out a dividend; growing a business requires a reinvestment of cash.
- On an exit, any unpaid dividends owed to the investor will be included in the exit proceeds paid out to the investor, providing an additional benefit. This should be calculated as part of the **exit waterfall analysis.**
- There are two types of dividend, **non-cumulative** and **cumulative.** Non-cumulative dividends are more founder friendly, as they do not carry forward to the next year if they are not paid out, whereas cumulative dividends roll-up.
- Growth shares can be used to incentivise founders/key management on a 'big exit'. Founders/ management should look to negotiate to have growth shares included, especially if there is a participating preference included as part of the deal terms and calculate them as part of the exit waterfall analysis.

Note: Series stage breakdown by investment size: Seed (<£2m), Series A (£2-10m), Series B (£10-30m), Series C+ (>£30m).

Control Terms

HSBC Innovation Banking

The Board

- Representation at the level and the procedures for electing the Board of Directors ('BoD') is one of the key control mechanisms included on term sheets. Entrepreneurs should carefully consider the appropriate balance of Board composition.
- VCs will typically require an investor director Board seat from Series A. If there are several investors in a round, they may agree that the lead investor takes the Board seat between themselves, or they may each require a Board seat. Investors may also require a Board observer seat: these are non-voting, but entitle the member to attend Board meetings and can also cover for the investor director (e.g. holidays).
- At the early stage founders / management typically retain control of the Board, while investors usually have investor consent rights (discussed later).
- VCs may also want some form of **'swamping rights'**, which means that they can take control of the Board in the event of a material breach by the founders or material underperformance of the company. This term is deemed 'aggressive' and founders should seek to avoid this where possible.
- VCs will often insist that founders remain on the Board if there is a service requirement.

Extract from a typical Series A term sheet – Board seats

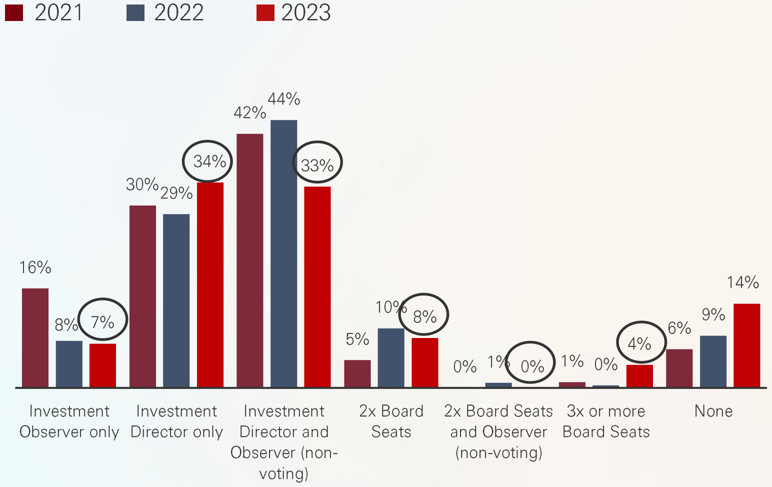
"The board of directors of the Company (the "Board") will have a maximum of ● directors. For so long as [insert name of investor] holds at least ●% of the issued share capital of the Company it will have the right to appoint one director (the "Investor Director") [and/or] [a non-voting observer to the Board]].

[The Founders], for so long as they remain employed by and/or engaged as a consultant to the Company or a member of the Company's group [and continue to hold not less than ●% of the issued share capital] shall have the right to appoint themselves as a Director

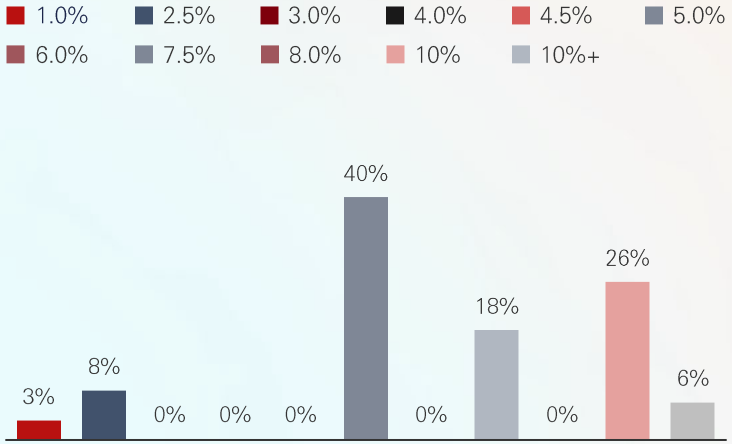
The composition of the Board on completion will be ●. There will be a minimum of ● board meetings each year."

79% (86% if including observer-only seat) of term sheets had an investor representation on the Board

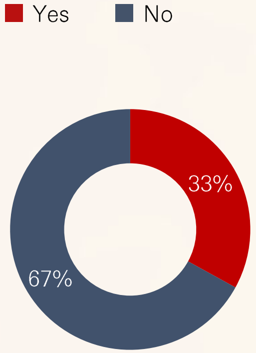
Board appointment of investors



Minimum shareholding required to have an investor board seat (where specified)



Minimum shareholding (issued voting share capital) specified for board appointment



"Board composition is an often-overlooked element of the term sheet. By giving board seats away profligately today, you could end up with too many people on your board in a few years' time."

Taos Edmondson, Principal, DMG Ventures

Entrepreneur's perspective

- From Series A onwards it is standard for investors to want a Board seat. Ensure that you can work with whoever is elected to the Board, as they play a crucial role the direction of the company.
- Remember to carefully consider the role of Board observers. Although observers don't have voting rights, they are at meetings and can influence the discussion.
- As the company scales, anticipate later funding rounds and consider what the Board may look like. You want to avoid smaller investors in later rounds having greater control than their economic interest. The Board composition is likely to be renegotiated at each round but including a minimum threshold % to qualify for Board representation in the term sheet is helpful (the guide suggests the market is **5% of the issued voting share capital).**
- Consider the wording and rationale for swamping rights carefully and make sure you understand the situations in which this may occur.

Founder vesting

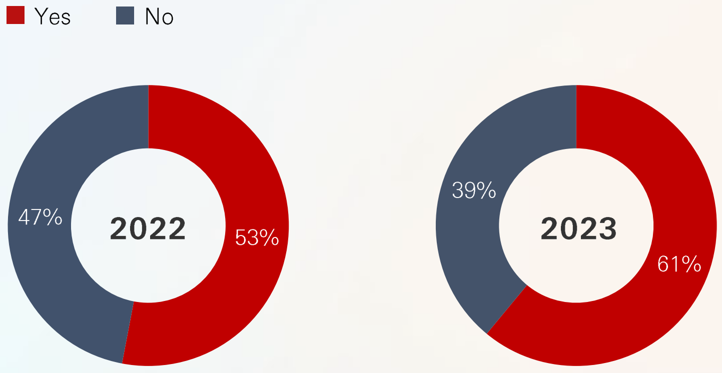
- Founder (or key management) vesting is the process by which founder shares are earned back over a period of time following a fundraise.
- Founders will often have a different vesting provision from other employees.
- If the founder leaves the company before the end of the vesting period, then the vesting formula applies and they only receive a % of the shares (i.e. the ‘unvested’ shares have not been ‘earned’ and are lost). The VC can use ‘unvested’ shares to attract replacement hires.
- Many entrepreneurs view vesting as a way for VCs to control them and as a backward step – especially if they have been working in the business for some time at below-market salary. From the VCs point of view, they are investing in the founder/ management team (especially in earlier rounds) and they want to ensure the team’s long-term is commitment to the business. VCs see vesting as a way of creating value alignment because it encourages the founder/ management team to stay with the company for a significant period of time or to exit, where most of the shares, if not all, will be vested.
- The key points to consider on vesting include:
- 1) The % of **founder shares vested on day 1** and what the remaining % is to vest;
- 2) **Vesting methodology and period:** Typically calculated straight line, monthly (or quarterly or annually), or ‘cliff’, where shares are partially (or fully) vested on a specified date, and then usually with monthly straight-line vesting thereafter; and
- **Good/bad leaver provision** (see overleaf).

Extract from a typical Series A term sheet – vesting:

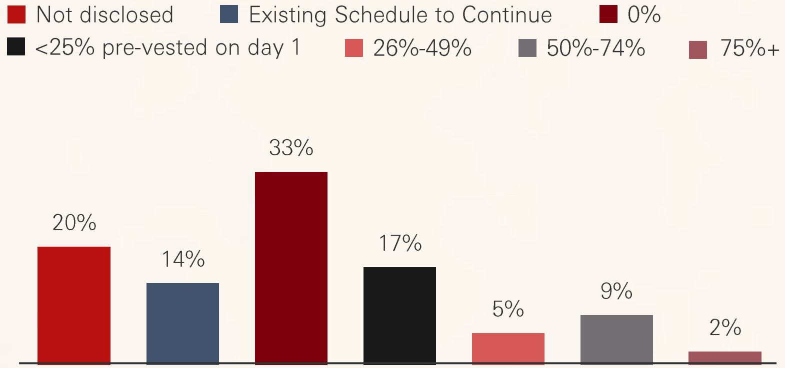
“…the Ordinary Shares held by the [Founders] [and/or Service Providers] will vest equally on a monthly basis over a [48] month period (“Relevant Period”) save that if a Founder [and/or Service Providers] ceases to be employed or engaged by the Company within 12 months no Ordinary Shares shall vest. "

61% of term sheets included founder vesting up from 53% in 2022

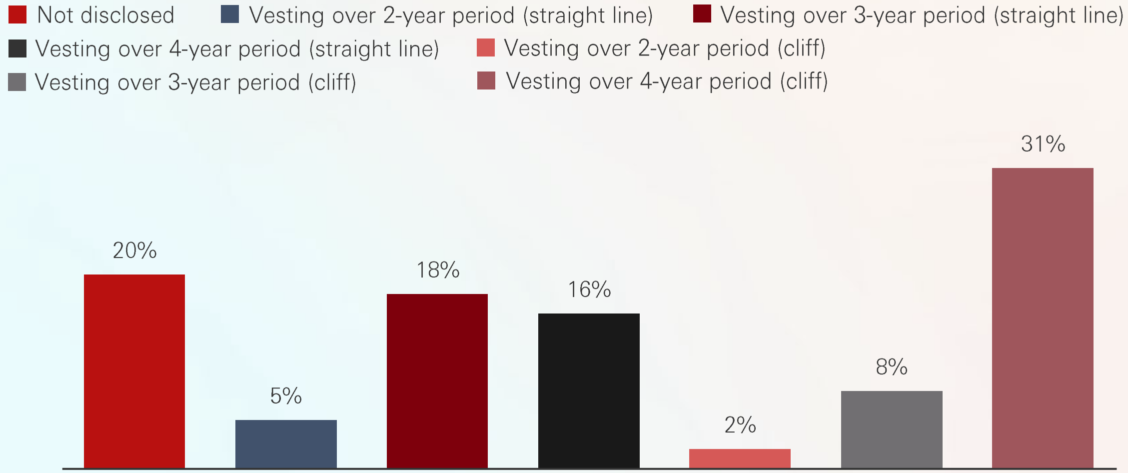
Founder vesting specified in the term sheet



Founder shares vested on day 1 (where specified)



Vesting time period and method for founder shares not pre-vested (where specified)



Entrepreneur’s perspective

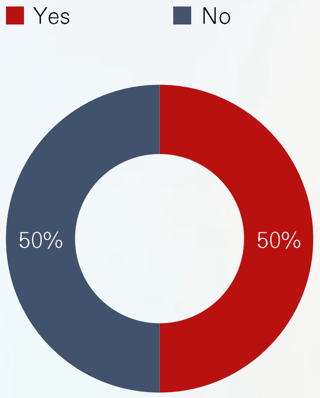
- 39% of term sheets were silent on the emotive clause of founder vesting. You should negotiate founder vesting in the term sheet: do not wait until the long-form documents.
- The % of the shares to be vested on day 1, particularly if the founder can demonstrate that they have built real value, is a key negotiation point.

Leaver provision

- Companies use leaver provisions to define what happens to founders' and employees' equity when they leave the business.
- **'Good leaver'** and **'bad leaver'** clauses should be used as part of robust equity planning. There is a wide variety of ways that leaver provisions can be constructed.
- Typically, leavers are classified as:
  - **Good leavers:** Examples include ill-health, death, unfair dismal, retirement, voluntarily resigning after a certain period of time.
  - **Bad leavers:** Voluntary resigning**,** dismissal for 'cause'; examples include gross misconduct, criminal activity, fraud, breach of their restrictive covenants etc.
    Bad leavers typically lose all their vested stock and get nothing.
  - **Intermediate leavers:** In some deals there is a further definition of an intermediate leaver, which may look something like:
    - Good leavers keep all their shares;
    - Intermediate leavers keep their vested shares; and
    - Bad leavers get nothing.
- **So what happens to each type of leaver?** This is up for negotiation but typically one of the following applies:
  - The leaver keeps all their vested shares (unvested portion of shares may become vested);
  - Some (typically where a good or intermediate leaver) or all of the leaver's shares (typically a bad leaver) convert into worthless, deferred shares; and
  - The leaver's shares are purchased by the company, with the price dependent on the category of leaver (e.g. fair market value (good leaver) v nominal value (bad leaver)).

Only 50% of term sheets included a leaver provision clause. Where they were not included, these were typically negotiated post term sheet, in the shareholders agreement

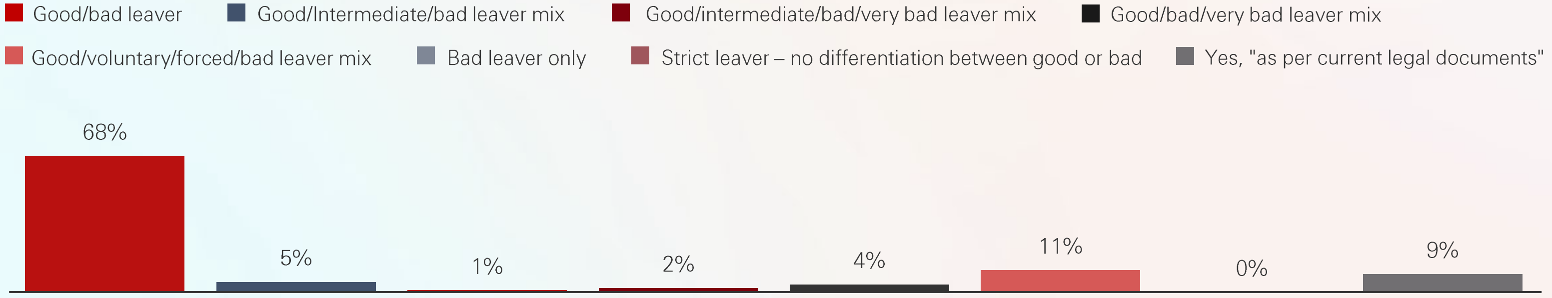
Founder Leaver Provisions



Entrepreneur's perspective

- Often, the leaver provision is not specified in the term sheet (only mentioned in 50% of term sheets analysed) and are rather dealt with in the long form documents. However, given how emotive leaver provisions can be, we recommend these should be negotiated at the term sheet stage.
- Every deal is unique. Good/bad leaver clauses should reflect the founder's business/personal circumstances. This ensures that if the founder does leave the business an appropriate retention/allocation of shares is received.
- The new BVCA model long-form documents are generally more investor friendly than previous documents and the standard approach is where founders who are *good leavers* will lose their unvested shares but not their vested shares but founders who are *bad leavers* will lose all their shares.
- Typically, as the term sheet and the associated long form documents are put forward by the investor's lawyers, they are likely to include the standard investor friendly wording and they will also usually want to define a bad leaver as anyone who is not a good leaver. Founders should look to negotiate on these points and put forward the specific circumstances and definition of a bad leaver: by definition, anyone else then becomes a good leaver (or intermediate if applicable) as well as the approach to vesting.

Founder leaver provisions definitions – where specified in the term sheet



PUBLIC

Drag, tag-along and co-sale

- **Drag-along rights** give the majority shareholder(s) the ability to force the minority shareholders to sell the business on equal terms if an acceptable acquisition offer is received.
- Drag-along exists because in many cases the acquiring company wants to own 100% of the target company. It also comes into play if the investors have a deadline to complete the sale.
- Defining 'majority shareholders' and class of shareholders is key in triggering the drag provision. Investors may require a simple majority of the preferred shareholders that includes the ordinary shareholders (whereby the trigger threshold is determined by treating preferred shareholders as if they converted to ordinary shares). It is common for the % of shareholder consent to be negotiated.
- **Tag-along rights** give minority shareholders protection by giving them the right to tag-along with the larger shareholders in a sale of their shares on the same terms (subject to liquidation preferences).
- **Co-sales rights** require a shareholder (usually ordinary shareholders) to allow the investor the opportunity to participate in the sale of shares in proportion to the number of shares held by them before selling any ordinary shares to a third party (but after going through the ROFR – see overleaf).

Extract from a typical Series A term sheet – drag-along:

"If [the Board and] the holders of at least •% of the equity shares (including an Investor Majority) agree to sell their shares, there will be drag-along rights so that all remaining shareholders will be required to sell on the same terms, provided that the dragged shareholders will not be required to provide to the purchaser any representations or warranties except as to title or to agree to any other terms. The drag-along shall provide that dragged shareholders (including any Investors) may be required to participate in certain contribution obligations, including (without limitation) any price adjustment mechanisms or liabilities in respect of warranties and undertakings in the sale agreement, provided such provisions apply to all selling shareholders on a pari passu basis."

82% and 66% of terms sheets respectively had a drag-along and tag-along provision

Drag-along

82%

82% (351) of term sheets included a drag-along clause.

In the 82% of term sheets where there was a drag-along right, there was a minimum shareholder requirement to enforce the drag-along specified in **48% (170) term sheets.** This ranged from 50% to 80%+, with **75%** the most common (42% where specified), followed by 51% (22% where specified).

Tag-along

66%

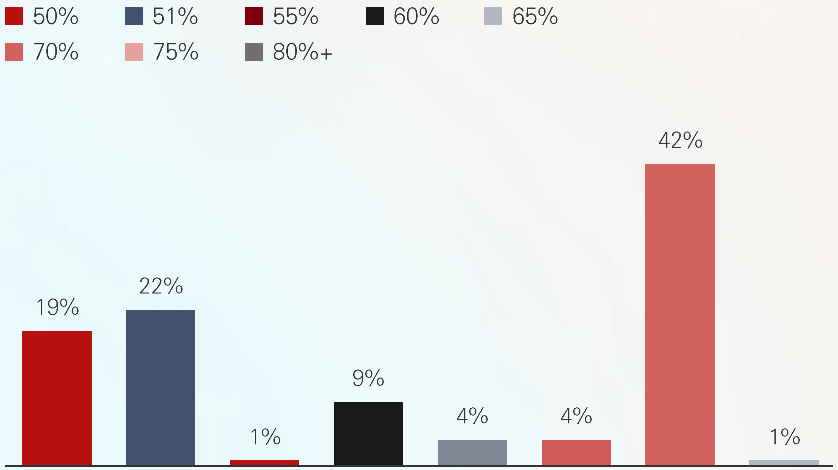
66% (283) of term sheets included a tag-along clause.

Co-sale

63%

63% (267) of term sheets included a co-sale clause.

Drag-along provision min shareholder requirements where specified, and excluding other (not straight forward % vote)



Entrepreneur's perspective

- Drag-along provisions increase the likelihood of a successful exit but entrepreneurs should be aware they increase investors' control rights over their business.
- Not all drag-along rights are equal – there are a number of key terms that should be negotiated including:
  - **Minimum shareholder threshold:** Consider the shareholder base and assess what is a sensible block of shareholders required to exercise the drag;
  - **Minimum price:** Consider if you want to set a minimum exit price, potentially with the preferred shareholders' liquidation preference as a basis; and
  - **Time period:** Consider including a time period from which the drag-along period can be exercised from.

Pre-emption rights – ROFO and ROFR

- Pre-emption rights give existing shareholders the obligation-free right to buy more shares on a future fundraising or event before they are offered to third parties.
- There are 2 main types of pre-emption rights:
- **Right of First Offer ('ROFO')** relates to the issue of new shares created as part of a new funding round. ROFO (aka pre-emption rights on issue) holders have the right to make an offer for new shares being issued, usually on a pro-rata basis and on no less favourable terms before they are offered to third parties; and
- **Right of First Refusal ('ROFR')** relate to the sale of existing shares. ROFR shareholders are free to seek offers from third parties but they must first be offered to the investor (or other shareholders) on a pro-rata basis, typically on no less favourable terms, before any shares are sold.

Extract from a typical Series A term sheet – ROFR

"Each [equity shareholder]/[Investor] will have a right of first refusal ("RoFR") to acquire any shares which are proposed to be transferred, subject to the following priority rights:

- If the shares to be sold are Preferred Shares, the Company shall offer them to the other holders of Preferred Shares; and
- If the shares to be sold are Ordinary Shares, the Company shall offer them to [the holders of Preferred Shares]/[the other equity shareholders].

The RoFR will not apply to a category of customary permitted transfers"

ROFO and ROFR pre-emption rights were specified in 76% and 66% of term sheets respectively

Right of first offer ('ROFO')

Not specified in the term sheet	24%
Investor Only	23%
All Shareholders	47%
Shareholders with a shareholding of at least 5%	2%
Other	4%

76% (324) term sheets had a ROFO, and where there was a ROFO it typically applied to all shareholders (47%; 200 of all terms sheets) or just the investors (23%; 98 term sheets).

Right of first refusal ('ROFR')

Not specified in the term sheet	34%
Investor Only	23%
All Shareholders	35%
Shareholders with a shareholding of at least 5%	3%
Other	5%

66% (281) term sheets had a ROFO, and where there was a ROFR it typically applied to all shareholders (35%; 149 of all terms sheets) or just the investors (23%; 98 of all term sheets).

Entrepreneur's perspective

- ROFO and ROFR terms are a standard part of most VC deals but terms can differ greatly from deal to deal. In practice, investors may waive their pre-emption rights in order for a new financing round to complete.
- Be aware that a ROFR may limit the common shareholders flexibility and liquidity, as a potential investor/acquirer may be less interested in negotiating a deal knowing that the stake may be offered to the ROFR holders first.

Other control terms

Extract from a typical Series A term sheet – Investor consents

"The consent of the Investor Majority will be required (among other things) to:

- Change the share capital; Issue securities (other than pursuant to the share option plan); Amend Articles of Association; Adopt or amend a share option plan or increase the number of options grantable under it; Pay any dividends; Permit encumbrances over the shares of the Company; Acquire any new business, shares or other securities; Permit a sale or IPO of the Company; Wind up the Company or enter into an insolvency process; Sell or deal with assets other than in ordinary course of business.

The consent of the Investor Director shall be required (among other things) for various operational matters, including:

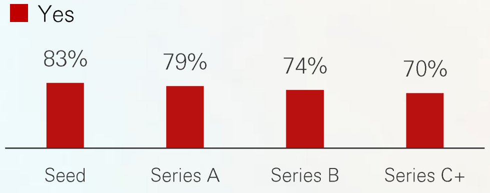
- Varying the vesting schedule of options or permitting the acceleration of options on a sale or IPO; Increase the maximum number of directors; make a material change to the nature of the business; Approval of, and amend, the budget and/or business plan; Incur capital expenditure or dispose of capital assets above certain thresholds; Vary employment terms above certain thresholds; Make loans; Encumber assets; Borrow monies; Conduct material litigation and Contract with related parties."

Investor consents

78%

78% of transactions (78% in 2022. 80% in 2021) included investor consent rights. These are effectively veto rights that investors have on certain actions by the company to protect their economic interests as minority investors/ preferred shareholders. While these are heavily negotiated, the items included have become largely standardised.

Investor consents term included in term sheet 2023 – split by stage



Entrepreneur's perspective

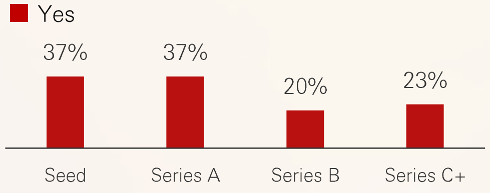
- Ensure the **investor consents** are fair and that the limits are practical. Veto rights should not impact day-to-day operational business activities (e.g. requiring approval for a junior hires, or small capex).
- Establish what consents require Board approval versus investor director (usually on the Board) approval versus those which require the investor company approval.
- Ensure the duration of the **restrictive covenants** is not too onerous and that the clause(s) are drafted in a way that is not overly restrictive, exhaustive, or ambiguous.

Restrictive covenants

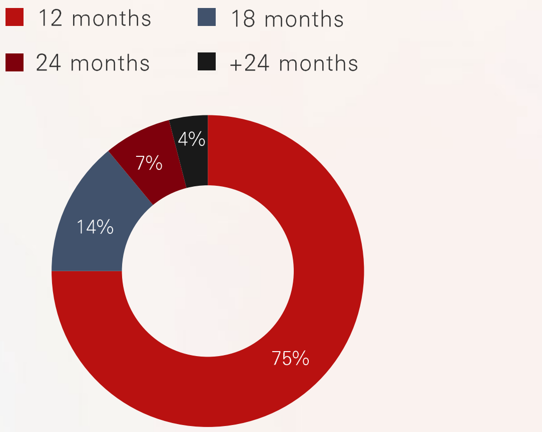
32%

32% of term sheets (39% in 2022, 49% in 2021) included restrictive covenants (non-compete). Non-compete clauses were instead typically negotiated post term sheet as part of the long form documents. These covenants prevent founders/key management from poaching key employees, customers, suppliers or from general competition against the company for a period of time or as long as shares are held.

Restrictive covenants term included in term sheet 2023 – split by stage



Duration of restrictive covenants



Note: Series stage breakdown by investment size: Seed (<£2m), Series A (£2-10m), Series B (£10-30m), Series C+ (>£30m).

Other Terms

HSBC Innovation Banking

Warranties – founder/ key management

- Warranties are basically promises made to the investor by the founder and/or the company about the state of the business.
- The warranties will typically consist of a series of boiler plate representations that are made specific by the founders/key management for each deal. If the representation turns out to be wrong, then the warrantors could potentially be subject to a breach of warranties claim to compensate the investor for their loss (usually subject to agreed financial limits e.g. multiple of salary, amount invested if company warranty and time periods).
- In 2023, the BVCA introduced new model long form documents which are founder friendly featuring company only warranties, as opposed to both founder and company warranties.

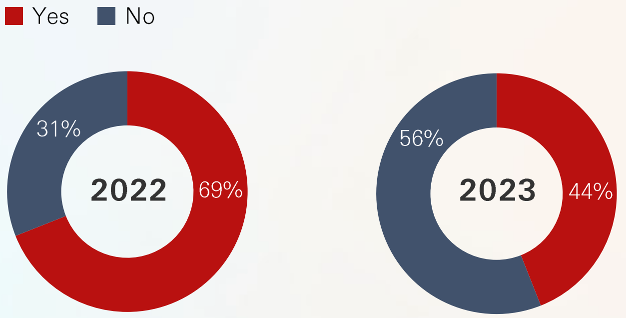
Extract from a typical Series A term sheet – Founder obligations

"Each Founder shall be subject to customary restrictive covenants (non-competition, non-solicitation of personnel, non-solicitation of customers, suppliers and other counterparties, and non-disparagement) for a period of ● months starting on the date they cease to be a Service Provider.

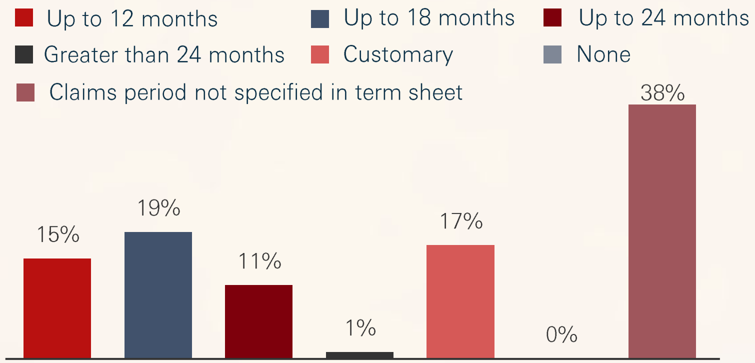
In addition, each Founder shall provide standard intellectual property undertakings in respect of any intellectual property developed by them whilst they are a Service Provider."

Founders were required to stand behind warranties in 44% of term sheets, down from 69% in 2022, as the new BVCA model long form documents include company-only warranties

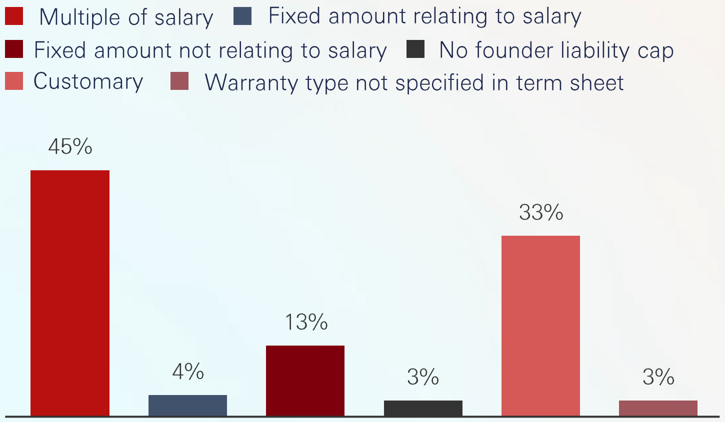
A) Founder/management warranties



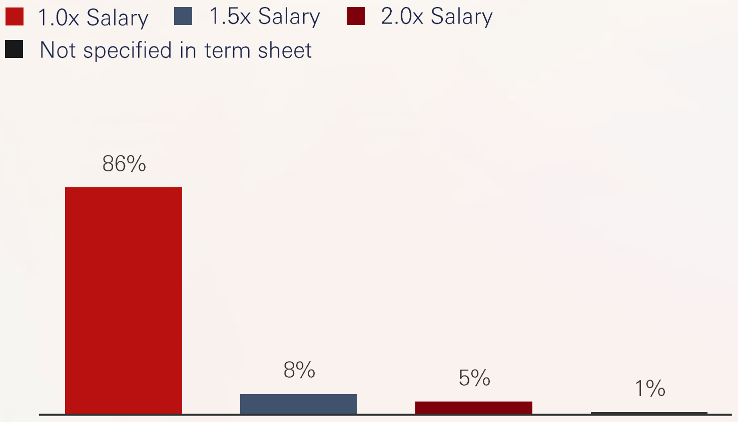
B) Warranty claims period



C) Warranty type



D) Warranty amount where multiple of salary



Warranties – company

Extract from a typical Series A term sheet – Founder and Company Warranties

"The Company will provide the Investors with customary warranties, subject to any additions required as a result of the Lead Investor's due diligence.

The Company's liability under the warranties will be limited as follows:

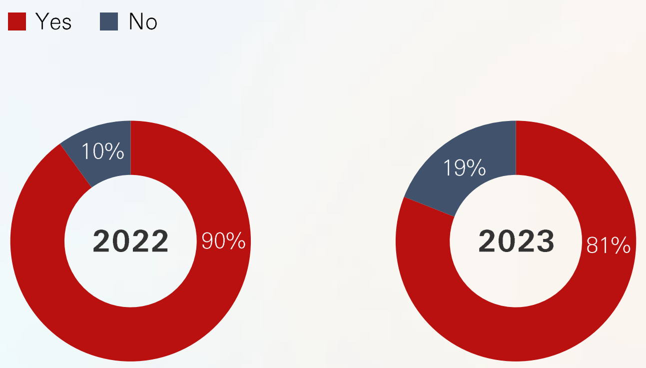
- Aggregate Liability Cap: an amount equal to the investment amount;
- Claim Period: [18] months following the execution of documents; and
- Disclosure: there will be no general disclosure of any data room prepared by the Company in connection with the investment."

Entrepreneur's perspective

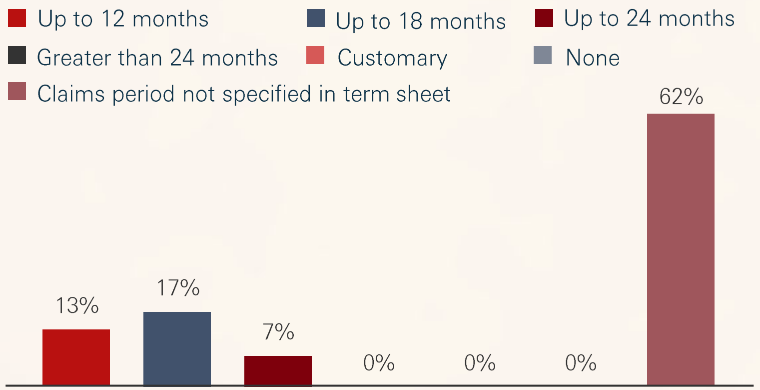
- The disclosure burden for Seed/Series A companies (and their founders/management team if there is a founder warranty included) should be relatively limited given the short history of most companies at this stage of maturity, while it is likely to be more material for later stage companies.

81% of term sheets had a company warranties clause, down from 90% in 2022

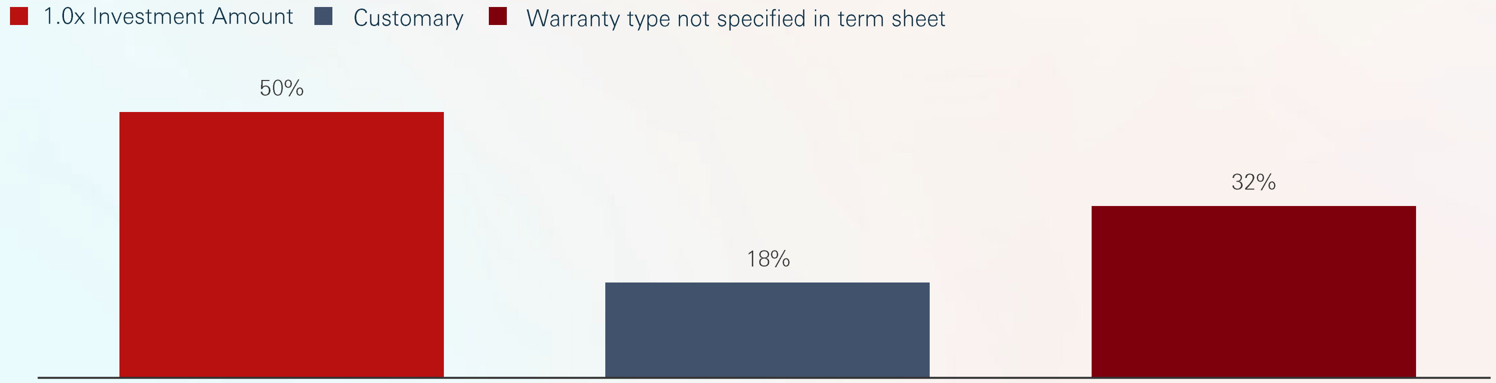
A) Company warranties



B) Warranty claims period



C) Company liability – warranty type



Arrangement fees and deal fees

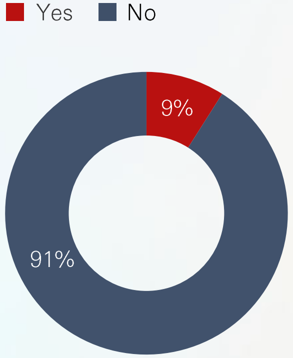
There are 2 main types of fees associated with raising VC money:

1. **Arrangement fees:** This is a one-off fee typically charged by a VC to cover the general costs of setting up the investment including deal fees. Arrangement fees can vary depending on the VC firm and the specific type of investment, but it is typically a % of the amount invested and is paid by the investee company from the proceeds received.
2. **Specific deal fees:** In addition to any arrangement fee, the term sheet may also specify deal fees such as legal costs, due diligence costs, etc. These costs are typically charged based on the third party costs incurred by the investor, and are paid by the investee company from the proceeds received.

“Arrangement fees continue to be relatively uncommon, even amongst EIS and VCT funds. I think this is partly due to the proliferation of emerging managers choosing not to charge fees in an effort to be viewed as founder friendly, removing a barrier to securing a competitive opportunity. Founders should always consider whether the level of fees being charged is appropriate, are being capped, and ideally represent no more than 5% of the total round. Founders should also not lose sight of the fact that arrangement and deal fees are one off rather than recurring in nature like monitoring fees.”
Rodney Appiah, Managing Partner, Cornerstone VC

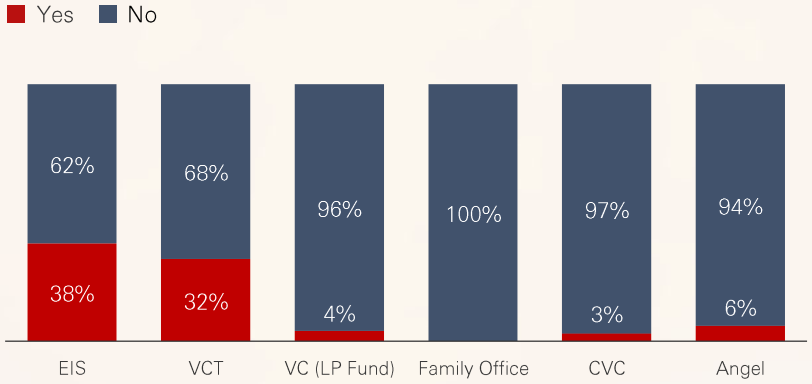
Arrangement fees are typically only seen in deals from EIS (38%) and VCT investors (32%), due to their fund structures and where there was an arrangement fee 2.5-3.0% was most common

A) Arrangement fee included in term sheet

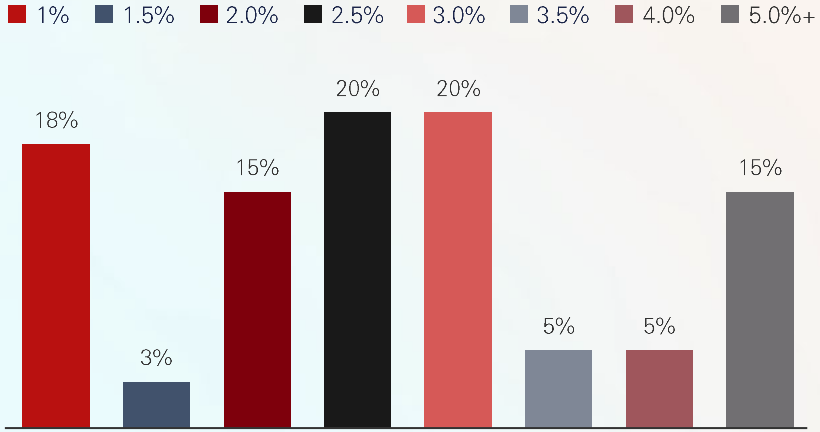


Only 9% only of total term sheets sampled included an arrangement fee.

B) Arrangement fee included in term sheet by investor type



C) Arrangement fee (% of sum invested)



Entrepreneur's perspective

- It is important to carefully review the term sheet and understand all of the proposed fees. A success-based ‘arrangement fee’ is not common in VC investment. Consider this in your deal negotiations.
- If a term sheet has specific deal fees, try to put a cap on these fees so that you are protected if the deal does not happen.
- If fees are being charged and these are non-negotiable by the investor, negotiate for the investment amount to be grossed up for the fees so the full proceeds before deal fees are received.

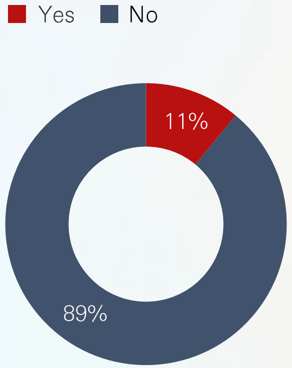
Monitoring fees

- **Monitoring fees (or 'Board fees')** are charges the VC makes on the portfolio company to cover the costs of monitoring and managing the investment over time.
- The fees are typically based on an annual salary for the Board representatives or as a % of the total amount invested.

"As highlighted in the report, the most common fees that investors charge to companies are either those at the point of investment or are ongoing fees (sometimes even both!). Founders should think about the associated value of these fees: investment fees often include external legal fees for advice on the investment docs which benefits all shareholders from a rights and governance perspective, but fees that simply line the pockets of the fund manager should be scrutinised more carefully in terms of the value gained in return."
Nick Sharp, Partner, Hambro Perks

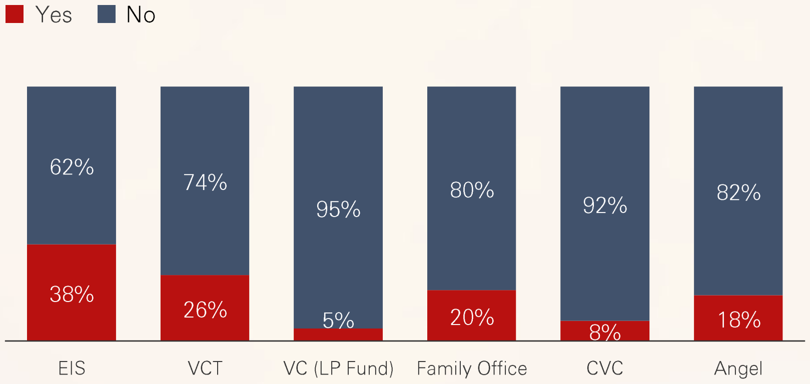
11% (46) of term sheets included a monitoring fee and these are most prevalent in EIS (38%) and VCT (26%) deals due to nature of their fund structures

A) Monitoring fee included in the Term sheet

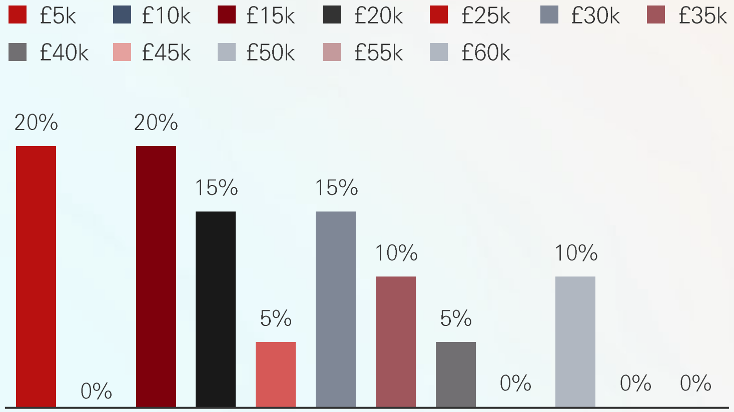


Only **11%** (46) of total term sheets sampled included a monitoring fee. Of the 46 term term sheets, 70% (32) the fee was based on an annual salary and 30% (14) was based on a % of the total amount invested.

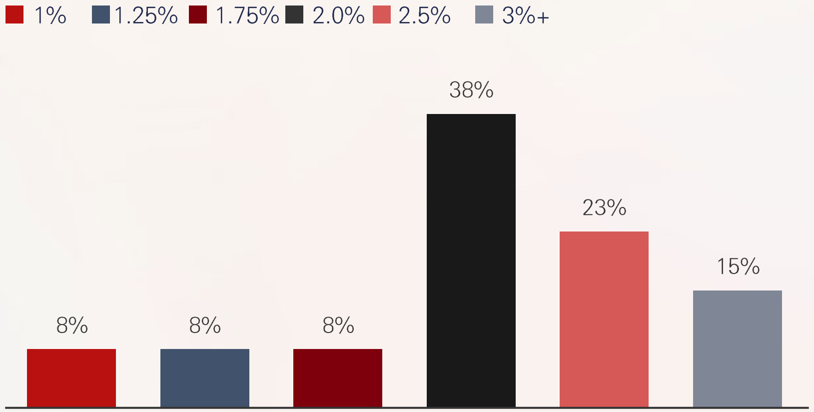
B) Monitoring fee included in the Term sheet by investor type



C) Monitoring fee – where based on annual salary



D) Monitoring fee – where based on % of total amount invested



PUBLIC

Exclusivity period

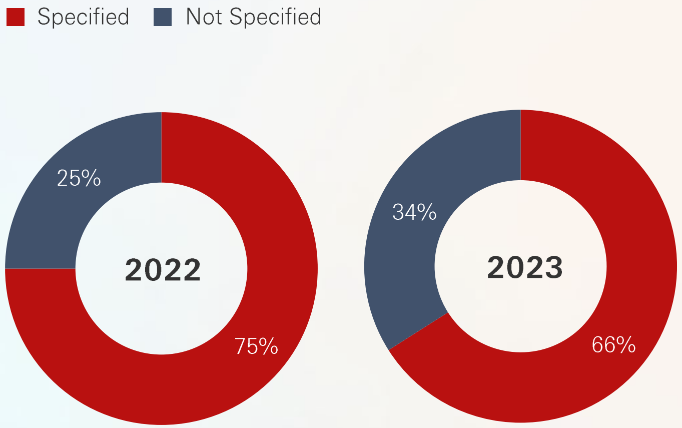
- The exclusivity period is a standard condition in VC term sheets that is usually legally binding and requires that you do not talk to other investors for a specific period while the investor is doing their due diligence. The exclusivity period is typically between a few weeks and 90 days.

Extract from a typical Series A term sheet – exclusivity

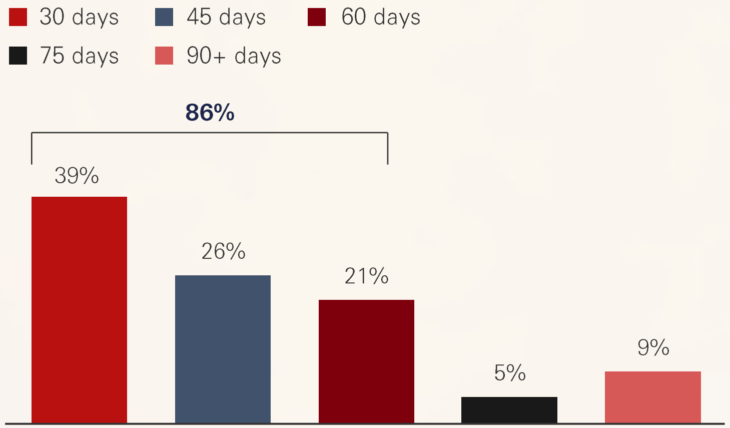
"The Founders and the Company undertake to the [Lead] Investor[s] that they will not directly or indirectly until the earlier of ● or the date that the Lead Investor notifies the Company of its intention not to proceed with this proposal (the "Period") solicit, directly or indirectly, further offers for the purchase and/or subscription of shares in the Company (or any part thereof) or any material part of the business, assets or undertakings of the Company or enter into or continue to seek negotiations with any party other than the Investors in connection with such matters provided that the Founder[s] and the Company may, during the Period, solicit offers for the subscription or purchase of shares in the Company solely for the purpose of securing participation from additional Investors."

Exclusivity was specified in 66% of term sheets typically ranging from a few weeks to 90+ days. Where the exclusivity period was specified, 86% of the periods were 60 days or less

Exclusivity period specified in 66% (281) of term sheets



Duration of exclusivity period where specified



Entrepreneur's perspective

- Every company is unique and different, and the exclusivity period should be specific to the deal – ensure the exclusivity period length is not too long.
- Understand the conditions that could result in the investor no longer continuing with the transaction. Ensure you understand why there are any penalties, and make sure that the exclusivity period doesn't continue if the investor terminates.

DE&I

- In an effort to further advance DE&I efforts and increase the representation of underrepresented minority groups, term sheets are now starting to include a diversity rider clause that expects the investee company to integrate inclusive DE&I practices and policies.
- Similarly, for sustainability, term sheets are starting to include clauses where the investor expects companies to include ESG as part of their core purpose and to measure their impact.

Extract from a typical Series A term sheet – DE&I & sustainability

ESG

Within [six] months from Completion, the Company shall:

a) adopt a climate policy in a form approved by the Investor Majority, as defined by measuring the Company's emissions footprint, and setting clear actions and steps to achieve climate neutral operations by [2030] at the latest through reductions where reasonably possible and offsetting what is not reduced;

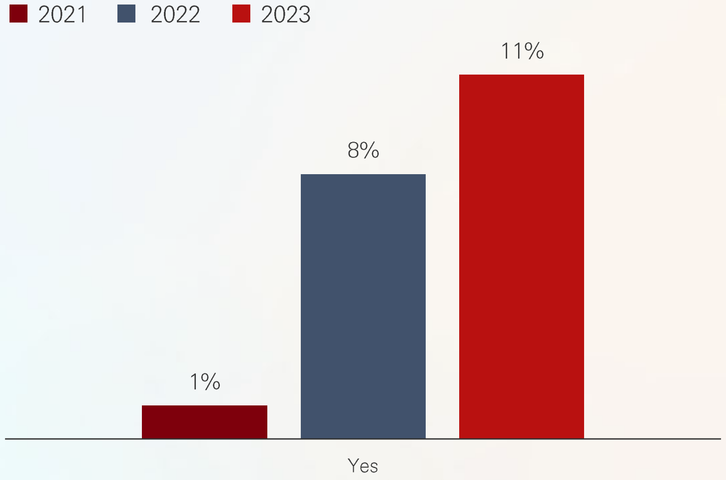
b) adopt a diversity and inclusion policy in a form approved by the Investor Majority, which means ensuring that the Company is totally inclusive across gender, ethnicity, age, sexual orientation, disabilities, socio-economic background and national origins;

c) evaluate and implement best practices (for a company at this stage and level of resources) of its business activities with respect to Environment, Social and Governance (ESG) aspects. This includes the Company's internal practices including but not limited to sustainability and climate risk reporting, external impact of the business model, services / products including but not limited to carbon equivalent emissions.

Such policy and practices will be discussed with and reported to the Board, including the Investor Director to an extent which allows for the Investors to be compliant with applicable regulations and its reporting obligations towards its investors. The Company shall disclose results and progress on (a), (b) and (c) annually. The Investors will support the management with the above-mentioned commitments ".

11% (45 term sheets) of 2023 term sheets included a diversity rider clause, up from 8% in in 2022

Diversity rider clause included in term sheet



Diversity, Equity & Inclusion

- **E.g. 1:** [Name of investor] expects investee companies to integrate inclusive DEI policies and practices. [Name of investor] supports its investee companies in this approach.
- **E.g. 2:** [Name of investor] is committed to diversity and inclusion across our team & our portfolio. We therefore expect you to demonstrate an equally strong commitment in/among your workplace and workforce. This entails tracking and promoting D&I, in a meaningful way, particularly as part of recruitment, retention and promotion practices.

"With diversity in tech, I encourage Venture Capitalists to think 10x not 10%. The data on the lack of funding to diverse founding teams is not something the UK economy can be proud of. However, these incremental changes in terms are a great start in redefining shareholder value to build shared awareness that great founders can come from anywhere and generate great returns."
Andy Ayim MBE, Angel Investing School

Sustainability

Extract from a typical Series A term sheet – DE&I & sustainability (continued)

ESG

2. Sustainability Impact Plan

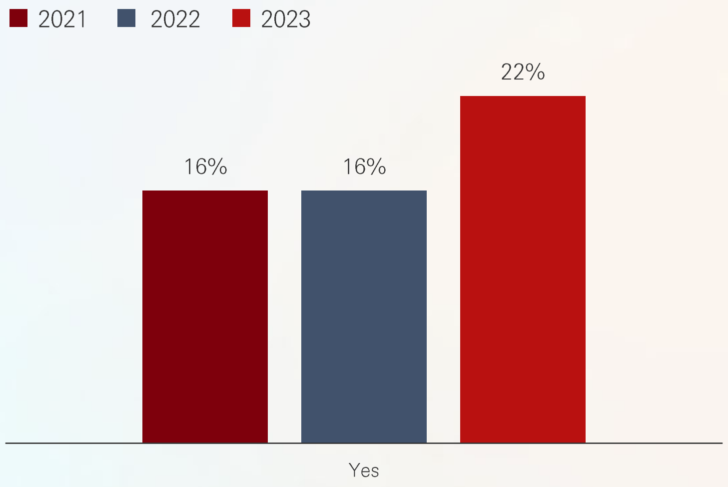
a) Within six months from Completion, the Company shall in collaboration with the Investors prepare and thereafter maintain in effect a policy and plan on how to define, measure and report on the sustainability impact of the Company's technology ("Sustainability Impact Plan") in a form approved by the Investor Majority.

b) Management of the Company shall hereinafter and on a regular basis evaluate the Sustainability Impact Plan and suggest to the Board reasonable actions to be taken to ensure the Sustainability Impact Plan is sufficiently implemented and followed by the Company. Management of the Company shall report to the Board bi-annually on any measures taken by the Company and on the actual sustainability impact of its technology as measured pursuant to the Sustainability Impact Plan. Management of the Company shall include the defined impact metrics in the Company's KPI reports. The Company will share the bi-annual reports with the Investors before the end of February and end of August, respectively.

c) The Board shall discuss the Sustainability Impact Plan at least once a year, and management shall hereinafter update the Company's Sustainability Impact, Plan where necessary.

22% (92 term sheets) of 2023 term sheets included a sustainability/impact clause up from 16% in 2022

Sustainability clause included in term sheet



Example of term sheet clauses:

Impact / ESG

- **E.g. 1:** [Name of investor] expects investee companies to integrate social and environmental impact deeply into their core purpose and business model, and to measure that impact. [Name of investor] supports its investee companies in this approach.
- **E.g. 2:** After Closing, supported by [name of investor] wherever possible, the Company shall:
  - within 6 months, adopt a professional ESG reporting tool,
  - establish ESG best practices with respect to its business activities, and
  - mutually agree with [name of investor] a set of ESG targets that it intends to reach until the Series [ ] round.

Insurance

The VC funding landscape is evolving, and a renewed focus on risk management has catalysed growing levels of investor due diligence. Part of this is an increased focus on insurance, with VCs making sure existing cover within their portfolio and new investments is robust, fit for purpose, and optimised to support runway conservation.

“We believe its fundamental for all our investments to be properly protected by insurance and that having the right cover in place increases our portfolio’s chance to be successful. At Praetura, we consider a good insurance programme to be a green flag when we're doing due diligence on a business - it shows that they have good risk management in place and makes it much easier to make an investment offer“
Colin Greene – Partner at Praetura Ventures

Based on analysis in this report, specific insurance requirements are now appearing in almost a third of all terms sheets. However, VCs consistently include insurance requirements in nearly all final long-form deal agreements for Series A+ investments, and increasingly also for Seed stage agreements. Existing policies are always requested as part of investment due diligence.

The most common covers required by investors are Directors' and Officers’ Liability (D&O) and Key Person & Critical Illness Cover (Key Person). These are firmly entrenched in the industry and appear in the BVCA model shareholder agreements. Alongside this, investors typically require Professional Indemnity and legally required covers, like Employee Liability.

One growing area of focus for investors is cyber risk, and cyber insurance to mitigate this risk. This is no longer just reserved for scale-ups processing large amounts of customer data, but a standard requirement for any business providing their services or technology online. Since securing Cyber Liability insurance also requires a baseline level of governance, investors are beginning to see this cover as the mark of a serious business that has the right foundations to scale.

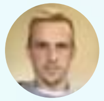
Investors increasing focus on insurance - making sure your business is ‘raise ready’

Capsule

Three-point checklist

To consider when working to make sure that your cover is ‘raise ready’:

- ✓ **Maximise shareholder protection** - To what extent are the risks you face insurable? Does the insurance you have in place protect you against the core risks you face as a business? Do you have the covers required by investors?
- ✓ **Has your insurance kept pace with growth?** - It’s important that the limits you have in place are appropriate and fit to scale with you. See opposite Capsule’s limit benchmarks to provide guidance on appropriate cover for key covers investors review.
- ✓ **Managing cost of risk** - Insurance spend as proportion of turnover should reduce as you scale. Are you paying the right amount for your cover? Has this been effectively.



“Insurance is an important part of our deal diligence, typically covering D&O, Key Person, Professional Indemnity, Public Liability, Employers Liability and, increasingly, Cyber. Capsule's cover benchmarking has been incredibly valuable to inform our thinking about what levels of cover are appropriate for new investments and our portfolio, at different stages of growth. It helps that Capsule's benchmarking is trusted by investors and companies alike“
Ben Johnson – Operations Partner at Chalfen Ventures

Capsule’s recommended cover benchmarks – understanding the right level of cover at different stages of growth.

Directors’ & Officers’ Liability

Cover for founders and some of the leadership team for company mismanagement.

Industry	£0-5m raised	£6-20m	£21-60m	£61-100m	£101-250m
Non-regulated	£1m	£2m	£3m	£5m	£10m
Regulated	£1m	£3m	£5m	£5m+	£10m+

Required by **Investors**

Key Person and Critical Illness Protection

Cover for the financial hit when an essential team member can’t work.

Industry	£0-1m revenue	£1-5m	£5-25m	£25-50m	£50m+
Life insurance	£200k	£200k	£300k	£500k	£1m+
Life insurance + critical illness	£200k	£200k	£300k	£500k	£1m+

Required by **Investors**

Cyber Liability and Professional Indemnity

Cover for ransomware, financial injury due to errors & omissions and network security.

Industry	£0-1m revenue	£1-5m	£5-25m	£25-50m	£50m+
B2B	£1m	£2m	£3m	£5m	£10m
B2C	£1m	£2m	£5m	£5m	£10m+

Required by **Customers and Investors**

Venture Debt

Section 4

Venture debt overview

Structural Terms

- **Size/Commitment:** £1M-£75+ Dependent upon a variety of key factors including total equity raised, scale, and financial profile (growth, KPIs, etc.), among others.
- **Total Maturity:** 36-48 months.
- **Interest Only Period:** Period in which a borrower is only subject to paying interest on any drawn Commitment, not principal. This can range from 6-18 months for early/growth stage companies. Well performing growth/later stage business are able to access more flexible structures, including extended interest periods in the range of 24-36+ months.
- **Amortization/Repayment:** Period following Interest Only in which an Drawn Commitment is repaid. This can range from 30-36 months for early/growth stage venture debt where Interest Only is 6-18 months. For well performing growth/later stage companies with longer Interest only periods (24-36+ months), there is typically a shorter Amortization period or bullet repayment at Maturity.

Economic Terms

- **Loan Fee:** 1.00%-2.00% of Commitment.
- **Interest Rate:** 8.00%-14.00%.
- **Final Payment:** 1.00%-4.00%+ of Drawn Commitment.
- **Warrant:** This is the option for the lender to purchase equity at a future date (typically upon exit). Warrants can be outlined based on Fully Diluted Ownership or Warrant Coverage (defined as the value of the warrant relative to the Commitment). Warrants can range based on Commitment, Structure, industry and business stage.

Venture debt can be a meaningful component of a company's overall capital strategy – driving value for founders, employees, and investors

- **Venture debt** is commonly deployed to **extend runway** and drive **organic growth** typically for equity backed businesses. The idea being that the facilities can provide a growing company with months/quarters of runway between equity rounds, enabling a borrower to achieve material, EV-generating milestones that will attract equity at favourable terms/valuations. Venture debt can also be deployed for inorganic growth like M&A. However, it should **not be used as a last-resort funding source for an underperforming business or thought of as bridging loan**.
- Venture debt can be attractive due to having a **flexible structure** (i.e. no covenants) and a **low cost** – especially relative to equity financing. When used appropriately, **a venture debt facility minimizes dilution** for founders, employees, and investors, thereby enhancing exit potential of all players. However, more debt is not necessarily better. It is important for a company to avoid overleveraging a business as it has the potential to create hurdles for future fundraises (i.e. prospective investors can be hesitant to invest in a company in which a material amount of proceeds will be used for debt repayment).
- There are two primary providers, **venture debt banks** and **venture debt funds**:

Venture debt: Banks

- **Primary funding source:** balance sheet capital.
- **Cost:** Low.
- **Scalability:** Low-High; dependent upon the size of the institution. Banks can also scale other forms of financing through various life stages (ex: working capital and syndicated facilities).
- **Structural terms:** Low-Medium flexibility.
- **Other:**
  - Banks have the ability to leverage their balance sheet to provide multiple forms of financing to blend structure, cost, and use case from a single provider.

Venture debt: Venture debt funds

- **Primary Funding Source:** private fund (i.e., LP) or other vehicles like a Business Development Company ("BDC"). A BDC is a public, evergreen fund designed to invest in small- and medium-size companies.
- **Cost:** High; funds must meet investor hurdle rates.
- **Scalability:** low – High; depending upon size of the fund.
- **Structural Terms:** Medium – High flexibility.
- **Other:**
  - Funds may require board seat;
  - Funds cannot provide multiple different forms of financing e.g. working capital, which would require multiple lenders (i.e., bank).

HSBC Innovation Banking Biographies

Section 5

HSBC Innovation Banking biographies

Simon Bumfrey
Head of Technology & Life Sciences UK & Nordics
Mob: +44 (0) 7590 467080
simon.bumfrey@hsbc.com
London

Simon Bumfrey is Head of Technology and Life Sciences for HSBC Innovation Banking UK & Nordics. He is responsible for relationship management and debt structuring teams focused on fast growth innovation businesses, from early-stage, venture capital–backed companies, to those that are publicly listed and private equity–owned.

Simon has spent more than 35 years working in commercial banking, with the last 25 years focused on the technology, media and telecommunication sectors. Before joining HSBC Innovation Banking in 2017, he led teams at Barclays Bank, Bank of Ireland and Lloyds Banking Group. While at Barclays, he expanded his expertise into global markets by managing credit risk for clients in Africa, the Caribbean and Middle East.

Simon works out of London and frequently spends time with clients and investors across the ecosystem.

He sits on The Scale Up Institute and Gender Index Advisory Boards. He is also the executive sponsor of Innovation Banking's Gender Equality Employee Resource Group.

Glen Waters
Head of Early Stage Banking
Mob: +44 (0) 7950 324018
glen.waters@hsbc.com
London

Glen is Head of the Early Stage Banking team at HSBC Innovation Banking where he focuses on partnering with the most ambitious tech and life science entrepreneurs on their growth journey (Pre-Seed to Series A). This involves providing banking, tools and value add services (connections, knowledge and insights and networking events) to help entrepreneurs increase their chase of success.

Glen has 20+ years of experience, which includes working on 150+ transactions in the PE and VC space, mainly with private emerging tech businesses looking to acquire, exit or raise finance.

Prior to joining HSBC Innovation Banking, Glen founded and led for 5 years, the PwC Raise Ventures proposition, which helped high-growth startups raise Seed-Series B equity funding of between £1m-£30m. He also spent 10+ years at PwC, leading Financial Due Diligence teams in the mid-market TMT sectors.

Glen is a Chartered Accountant and has been a CFO and board advisor to a number of early-stage businesses.

Survey Participants Biographies

Section 6

Survey participants' biographies (1 of 4)

Bird & Bird

Mark Rundall
Partner

Mark Rundall is a partner at Bird & Bird, based in London. He specialises in venture capital, focusing on the financing of high-growth organisations. Acting for top-tier investors and high growth companies, his transactional experience includes advising in respect of companies at all stages of their life-cycle: from their incorporation and commercial set-up, to scale-up and all the way through to exit and beyond.

Struan Penwarden
Partner

Struan Penwarden is Head of Venture Capital at Bird & Bird, focusing on domestic and international corporate transactions for emerging and high-growth companies and the investors in and lenders to those companies. As well as venture equity Struan is recognised as one of the leading practitioners in the venture/growth debt arena in Europe.

CMS

Anthony Waller
Partner

Anthony Waller is a partner in the Corporate/M&A Team at CMS London. Anthony deals with all aspects of corporate work, including private company and business acquisitions and disposals, public takeovers, schemes of arrangement, fundraisings, venture capital investments and IPOs, joint ventures and reorganisations. Anthony works alongside the firm's international Corporate team.

Anthony has advised clients in the TMC sector for many years, advising established international companies on a variety of transactions and public company issues.

Sam Pout
Partner

Sam is a partner in the CMS Transactions team in London and a member of our Corporate Technology sector. With expertise in a wide range of corporate matters across the Technology, Media and Gambling sectors including investments, joint ventures and mergers and acquisitions, Sam advises a variety of clients (entrepreneurs/start-ups, established management teams, investment houses and large corporates) across all aspects of the corporate lifecycle; from initial investment rounds, through to more complex fundraising and, ultimately, company disposals/exits.

Cooley

Aaron Archer
Partner

Aaron is a partner in Cooley's London emerging companies and venture capital practice. Aaron provides a pragmatic, hands-on approach to helping high-growth – often disruptive – companies and investors navigate through a company's life cycle, from initial structuring through exit and beyond. He advises on all the various types and stages of financings, M&A, and general corporate governance and advisory issues.

DENTONS

Joseph Altendorff
Partner

Joseph is recognized by clients as being "outstanding and technically excellent"; "clearly marked out for the very top of the profession"; and having an "incredible dedication, superb attention to detail and, best of all, humanity and genuine care for our business and our people". Legal 500 ranks him as a "leading individual" for venture capital and a "name to note" for M&A.

He has led cross-border investment and M&A teams in more than 100 jurisdictions. His broad experience of corporate growth helps clients capitalize on evolving trends in the marketplace – whether by raising finance, investing, acquiring or selling targets, or teaming with the right strategic partner.

fieldfisher

Tom Ward
Partner

Tom Ward is Co-head of Fieldfisher's Emerging Company and Venture Capital (ECVC) group. Fieldfisher's ECVC team advise high growth companies and investment funds predominantly in the technology and life sciences sectors on a range of domestic and cross border venture capital and growth equity transactions.

Thomas Colmer
Partner

Thomas Colmar is Co-head of Fieldfisher's Emerging Company and Venture Capital (ECVC) group. Fieldfisher's ECVC team advise high growth companies and investment funds predominantly in the technology and life sciences sectors on a range of domestic and cross border venture capital and growth equity transactions.

Survey participants’ biographies (2 of 4)

fladgate

Howard Watt
Partner

Howard Watt is a corporate transactional partner at London law firm Fladgate LLP.

He has a particular focus on UK and European venture capital. His practice is built on providing commercial, pragmatic advice and efficient deal execution to all players in the European venture capital ecosystem.

FORSTERS

Stuart Hatcher
Partner

Stuart is Head of the Forsters’ Corporate team and is able to advise across the full range of domestic and international corporate law issues, including M&A, venture capital, private equity and other shareholder investments, group reorganisations and the return of value to shareholders. Stuart's clients are wide-ranging but he is particularly known for his work with start-ups, scale-ups and fast-growth companies, with a focus on entrepreneurs, private business and mid-cap companies. Many of his clients are internationally based.

Founders Law

Tom Bohills
Founder

In 2019, Tom founded Founders Law which provides a full service, bespoke in-house legal resource to high growth companies across the UK and Europe.
In 2020, following the rapid growth of the firm, Tom was shortlisted by the Law Society as ‘Solicitor of the Year – Private Practice’ and ‘Sole Practitioner of the Year’.

In 2022, following a strategic investment, Founders Law became part of the wider Founders Forum group.

fox williams

Bryan Shaw
Partner

Bryan Shaw is a partner in Fox Williams' corporate team, specialising in venture capital, private equity and tech M&A. Bryan Shaw regularly advises entrepreneurs, scale-ups/fast growing companies (usually in the tech/digital or financial services sectors) and investors along the equity fundraising journey through to exit. Bryan also advises a range of corporate clients in various M&A, private equity and venture capital transactions.

GOODWIN

Adam Thatcher
Partner

Adam Thatcher is a partner in Goodwin’s Technology and Life Sciences groups, specializing in venture capital financings and M&A transactions. Adam advises clients on a broad range of corporate matters, with a particular focus on emerging growth companies and venture capital investors in the fintech, life sciences, healthcare, and technology sectors. Adam advises clients through every stage of the corporate life cycle.

Harbottle & Lewis

Tom Macleod
Partner

Tom Macleod is a Partner in the firm’s Venture Capital group, which sits within the broader Corporate team. He has a particular focus on advising founders and growing entrepreneurial businesses, venture capital funds and angel investors, often from the technology sector. Tom advises on a broad range of corporate matters, including acquisitions and disposals, financing rounds, joint ventures, corporate restructurings and share incentivisation schemes.

HAYNES BOONE

Andrew Pannell
Partner

Andrew Pannell is a Partner in the London office of Haynes Boone specialising in advising venture capital, private equity and corporate clients. He has deep experience representing venture capital managers, family offices, CVCs and HNWs on a broad range of matters, including venture and growth capital, private equity investments, M&A/exits, direct and indirect investments, secondary transactions and cross-border reorganisations.

HUMPHREYS LAW

Henry Humphreys
Managing Partner

Henry Humphreys is a corporate lawyer by training and Managing Partner at Humphreys Law, the law firm he founded in 2017. Henry has a wealth of experience advising on early to late stage venture capital fundraisings, on all the different formulations of management buy-outs (acting for funds and management teams) and on cross border mergers and acquisitions (buy and sell-side).

Survey participants’ biographies (3 of 4)

MARRIOTT HARRISON

David Strong
Partner

David Strong is a partner and head of VC at Marriott Harrison, recognised for his expertise in the venture capital and technology sectors. He works closely with institutional investors, corporates, founders and management teams, including a number of the leading technology focused VCs in the UK, on a wide range of corporate matters including financings and exits.

Frances Spooner
Partner

Having trained at Marriott Harrison and qualified into the Corporate department, over a decade ago, I have gained deep experience in a range of corporate work – including general corporate advisory, VC, M&A, debt finance – for different sized companies in a variety of sectors. Clients comment on my responsiveness, efficiency and organisational skills, which are critical for providing a top-quality service and, in particular, for meeting deal deadlines and delivering objectives for clients. I am very experienced in both VC and M&A transactions and am recognised as a Next Generation Partner for VC by Legal 500 UK. I have also spent time on secondment at VC funds; I understand what VC investor clients want from their legal advisers. I am now busy building my own practice with a focus on female founders, tech companies and companies with a focus on social impact/purpose.

Mishcon de Reya

Chris Keen
Partner

Chris Keen is the head of the Emerging Companies team at Mishcon. His expertise is in working with technology companies, entrepreneurs, and the people who invest in them, from the beginning of their journeys right the way through to exit. He advises his clients on a full range of corporate and commercial matters, specializing in venture capital and angel investments, technology transfer transactions including corporate and academic spin-outs, equity incentives, and more. Chris is one of the most active lawyers in the UK venture capital ecosystem and is described as having "a better knowledge of the sector than anyone else".

Erika McIntyre
Partner

Erika is head of the Venture Capital team at Mishcon de Reya. With nearly 20 years' experience in the venture capital ecosystem, she specialises in working with fast growing companies and their investors at all stages of the life cycle, from incorporation to exit, advising on investments, debt and equity finance, corporate reorganisations and M&A transactions.

MBM ENTREPRENEURIAL BUSINESS LAWYERS

Michael Arnott
Partner, Head of London Office

Michael Arnott is a Partner and Head of the London office of MBM Commercial – an entrepreneurial law firm with a focus on helping FOUNDERS to start-up, scale up, and go global, and INVESTORS to raise capital, make debt and equity investments and exit. Michael acts as a trusted adviser to early-stage companies, PE/VC investors and funds. He regularly helps early-stage businesses in their business journey, ensuring that they are primed for fundraising and business expansion.

Caroline Urban
Partner

Caroline Urban is a Partner in the London office of MBM Commercial – an entrepreneurial law firm with a focus on helping FOUNDERS to start-up, scale up, and go global, and INVESTORS to raise capital, make debt and equity investments and exit. Caroline brings broad corporate experience advising on buy and sell-side of M&A transactions, investments on company and investor side and capital markets transactions. She is often involved in e-commerce and industry aggregators on their acquisitions.

Osborne Clarke

Mathias Loertscher
Partner

Mathias is a Partner in Osborne Clarke's market-leading Corporate team and advises on M&A, venture and growth capital fundraisings, joint ventures, corporate reorganisations and corporate governance, primarily in the Technology sector. Mathias has advised on a large variety of corporate transactions and has worked with businesses operating in, amongst other areas, Fintech, Enterprise/B2B Software, Digital Media, E-Commerce and Consumer Internet, Video Games and Cybersecurity. Mathias is recognised as a "Leading Individual" in the Legal500 for venture capital.

Robert Wood
Partner

Rob is a Partner in Osborne Clarke's market-leading Corporate team and advises investors, management teams and companies on all aspects of the private investment market, focusing on, among others, venture capital and growth equity transactions and exits. Rob has particular expertise in advising on complex transactions involving investor syndicates and much of his work focuses on high-growth companies trying to bring the latest technology to market. Rob is recognised as a "Leading Individual" in the Legal500 for venture capital.

Survey participants' biographies (4 of 4)

orrick

Jamie Moore
Partner

Jamie is a partner in Orrick's powerhouse Tech practice – ranked No. 1 for venture capital in Europe for the past 8 years (PitchBook FY 2023). Jamie's practice specialises in venture capital with significant experience spanning over 14 years in advising start-ups through to unicorns, focussing particularly in disruptive technologies and innovation (he is best known for his experience in FinTech and Artificial Intelligence investments). Jamie acts for both early and late-stage companies in intellectual property rich sectors and those who invest in them, including some of the most active venture capital funds, corporate or individual investors.

Jamie also spearheads the report Orrick Deal Flow to review and opine on market standard terms and trends for European term sheets.

SHOOSMITHS

Alistair Hammerton
Partner

Alistair Hammerton's main focus is on venture and growth capital transactions and is one of the most active venture capital lawyers in the UK advising both investors and investee businesses at different stages of the investment cycle. Alastair works across various sectors including financial services, technology, energy and life sciences businesses.

Helen Burnell
Partner

Helen Burnell is a Partner in Shoosmiths corporate department specialising in venture capital, growth capital and infrastructure investments. Helen advises both institutions and companies/founders on start-up through funding rounds and M&A. Helen works with a variety of clients but increasingly specialises helping investors and companies on capital fund raisings.

TaylorWessing

Ian Moore
Partner

Ian Moore advises a range of high growth companies, investors and entrepreneurs and has a particular interest in the technology, consumer and life sciences sectors. He also advises US and European investors with their investments into exciting UK companies. Ian is recognised as particularly experienced in technology transactions and ranked in the legal directories for specialising in venture capital and is part of Taylor Wessing's 'tier 1' venture capital practice.

withersworldwide

Phil Robinson
Partner

Phil is a partner in the corporate team. He advises entrepreneurs, companies and investors in the technology and venture capital space. He has significant experience helping founders and companies scale, advising on both strategy and execution as they prepare for and undertake funding rounds from pre-seed to Series A and beyond all the way through to exit. Phil also acts for angel syndicates, family offices and VCs both in respect of direct investments and advising their portfolio companies.

Contributor's biographies

Capsule

Capsule is an API-driven commercial insurance broker that specialises in supporting venture-backed businesses and their investors with insurance.

Liam Green
COO & Cofounder

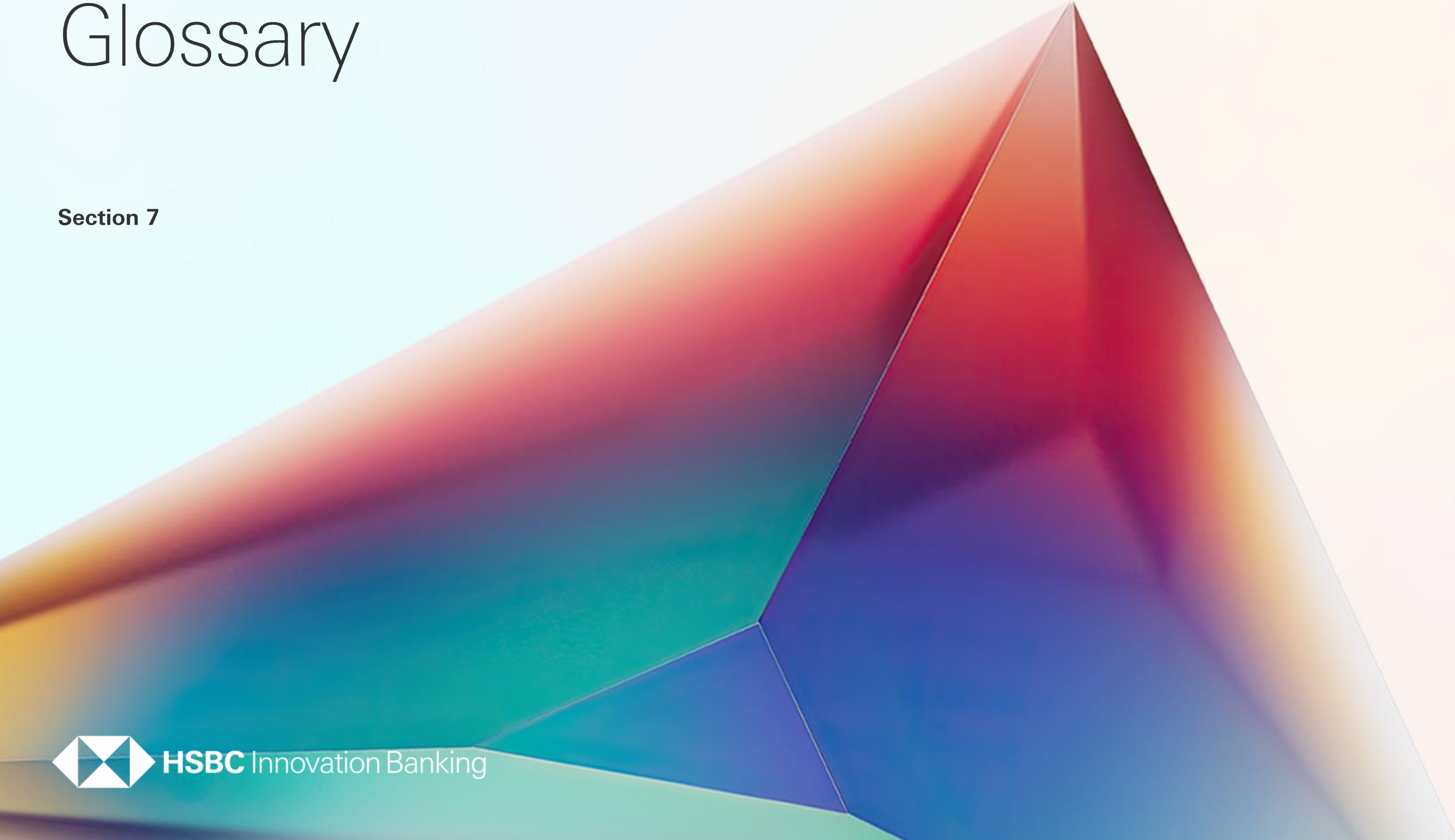
Liam's team are the proactive insurance partner to more than 500 clients from Seed to IPO. Liam was previously Underwriting Director at Kingsbridge where he managed 70K clients and £40M in GWP. Liam was voted BIBA Young Broker of the Year 2023 for his work supporting clients at Capsule.

Kit Lewin
Head of Partnerships

Kit leads Capsule’s relationships with investors and partners across the venture ecosystem.

Glossary

Section 7



Glossary: investors and terms

Investors

Angel	an individual who provides capital to a startup company, usually in exchange for ownership equity in the company
Corporate Venture Capital (CVCs):	are venture arms of corporates that invest corporate funds in external start-up firms
Enterprise Investment Scheme (EIS):	tax advantageous funds where the capital is sourced from private investors
Family Office	are funds that serve the needs of a family or multiple families
VC (LP Fund)	Venture Capital funds backed by limited partner investors (e.g. pension funds, university endowments)
Venture Capital Trust (VCT) funds	a publicly listed, closed-end fund that allows individual investors to gain access to venture capital markets via capital markets

Terms

Anti-dilution ratchet	a provision that applies the lowest sale price as the adjusted option price or conversion ratio for existing shareholders or any shares of common stock sold by a company after the issuing of an option (or convertible security)
Cap (Capitalisation) table	a table that outlines a company's percentages of ownership, equity dilution, and value of equity in each round of investment
Dilution	the reduction in the percentage of existing shareholders' ownership in a company when it issues new shares of stock
Drag-along	rights that give the majority shareholder(s) the ability to force the minority shareholders to sell the business on equal term
Down round	a scenario where the value of a business at a time of investment is below the value of the same business during a previous period or financing round
Due Diligence (abbreviated as DD)	the exercise of care taken before entering into an agreement or contract with another party
ESG:	abbreviation for Environment, Society and Governance; a key metric to assess companies beyond financial performance
Exclusivity period:	a restriction that limits engagement with other investors during due diligence
Founder vesting:	the process by which founder shares are earned back over a period of time following a fundraise
Full ratchet (of dilution)	an anti-dilution provision that requires early investors be compensated for any dilution in their ownership caused by future rounds of fundraising
Lead investor	the investor one who initiates the venture capital in a financial arrangement who usually has the highest share of the capital offered
Liquidation preference	a condition that determines the order in which proceeds are paid out on a liquidity event e.g. sale or winding up
Liquidity event	an action or process that allows owners and investors of a private company to cash out some or all of their illiquid shares or assets
Option pool	shares of a company that have been specifically allocated to attract or retain talent
Ordinary shares	the standard share class when a company starts out, which typically have equal voting and distribution rights on exit
Post-money valuation	a company's estimated worth after outside financing and/or capital injections are added to its balance sheet
Pre-money valuation	the equity value of a company before it receives the cash from a round of financing it is undertaking
Preference shares	a special class of share offering distinct advantages to those purchasing
Preference dividend	fixed dividends received from Preferred stocks
Priority stack	the rank or order in which the preferred shareholders get paid out on exit
Runway	projected amount of time a business can last without getting more external funding
Seed	the first stage of a new venture, where entrepreneurs seek financial support for their concept or product from investors such as friends, family, and angel investors
Series A	a privately-held start-up company that has shown progress in building its business model and demonstrates the potential to grow and generate revenue
Series B	a company with a substantial user base that has proven to investors that it warrants further investment to continue growing
Series C/C+	businesses looking for additional funding to help them develop new products, expand into new markets, or even to acquire other companies
Tag along	rights that protect minority shareholders by giving them the right to tag-along with the larger shareholders in a sale of their shares on the same terms
Tranched investment	segments of securities, usually debt instruments, that are divided by risk, maturity, or other characteristics to appeal to different investors
Venture debt:	a type of loan for startups that have raised venture capital, based on the company's growth potential, VC investors, and market

Thank you