



## Template series A investment term sheet

### User notes

This is a term sheet for use when a company based in Southeast Asia is raising capital from *series A* investors. It sets out the terms agreed between the company and the investors prior to preparing the formal agreements. Generally in this type of capital raising the formal agreements will be a subscription agreement, a shareholders' agreement and an updated constitution. The term sheet is not legally binding (other than the confidentiality and exclusivity obligations in part B); it simply sets out the terms agreed in relation to an investment.

There are no standard terms that apply to investment from series A investors in Southeast Asia. We recommend that you read our guides to *raising series A capital in Southeast Asia*.

#### applicable law

This document is intended for use by companies domiciled in Southeast Asia. Because the laws in each Southeast Asian country are different, you should have the document reviewed by a local lawyer. We have suggested (as a placeholder) that the document be subject to Singapore law as this is the most common domicile of tech companies raising capital in Southeast Asia, and Singapore is well respected as a legal jurisdiction.

#### using this template

The **User Notes** and the statements in the footer below (all marked in red) are included to assist in the preparation of this document. They are for reference only – you should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- ▲ the requested details need to be inserted
- ▲ there are different options for you to consider within a clause
- ▲ the whole clause is optional and you need to consider whether to include it, based on the company's circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and ensure that all square brackets have been deleted.

If you delete any clauses or schedules, remember to cross reference check the document.

# SERIES A INVESTMENT TERM SHEET

FOR THE ISSUE OF CONVERTIBLE PREFERENCE SHARES

BY **[INSERT NAME OF COMPANY]**

(Company)

This document (**Term Sheet**) summarises the principal terms of a proposed series A investment in the Company (**Investment**). This Term Sheet is not legally binding except for the terms stated in part B of this Term Sheet and there will be no obligation to issue or subscribe for shares in the Company until binding investment documentation is signed by the parties.

## PART A: INVESTMENT TERMS (NON-BINDING)

**Business:** The business of the Company is *[insert a description of the Company's business]*.

**Investors:** *[Insert names of Investors]* (**Investors**).

**Founders:** *[Insert names of Founders]* (**Founders**).

**Amount of investment:** ***[User note: The pre-money valuation is the agreed valuation of the company prior to the receipt of the investment.]***

The Investors propose to invest an aggregate amount of \$*[insert aggregate amount to be invested]* (**Investment Amount**) by way of a subscription for convertible preference shares in the Company (**Preference Shares**), at a pre-money valuation of \$*[insert pre-money valuation]* and for an aggregate equity share of *[to insert]*%, on a fully diluted basis.

*[Insert name of Investor]* proposes to invest \$*[insert]*.

*[Insert name of Investor]* proposes to invest \$*[insert]*.

*[Insert name of Investor]* proposes to invest \$*[insert]*.

**Capital structure:** The capitalisation of the Company immediately prior to, and then immediately after, the issue of the Preference Shares to the Investors will be as set out in the capitalisation table attached as the appendix to this Term Sheet.

**Use of Investment Amount:** The Investment Amount will be used for general working capital purposes.

**[ESOP:** *An ESOP pool of [10]% will be included in the pre-money valuation. This pool will be for directors, contractors and employees, and will be granted at the discretion of the Board.]*

**Board:** **[User note: Series A investors will usually want the right to appoint at least one director in order to represent them on the board. This is normally reasonable as long as the appointment rights are linked to maintaining a minimum shareholding percentage (e.g. 20%), and provided that the investor director is in the minority at the board table.]**

While the Investors in aggregate hold at least *[insert]*% of the shares in the Company (on an *as if converted* basis), the Board will consist of up to *[insert]* directors, consisting of:

- ▲ *[insert]* directors appointed by the ordinary shareholders; and
- ▲ one director appointed by Investors holding *[a majority]* *[[insert]*% of the Preference Shares (**Investor Director**).

**Voting:** Each Preference Share will vote on an *as if converted* basis with the ordinary shares as a single class.

**Dividends:** The board will set the Company's dividend policy. The holders of the Preference Shares will be entitled to participate pro rata in any dividends paid on the ordinary shares of the Company on an *as if converted* basis.

**Liquidation preference:** **[User note: Liquidation preferences provide that, if the company is either sold or wound up, the investors are entitled to receive an agreed amount of the proceeds before any amount is paid to any of the other shareholders. There are a number of different ways to structure a liquidation preference but it is most common in series A deals in Southeast Asia to provide for a 1x non-participating liquidation preference.]**

The terms of issue of the Preference Shares will include a *[1x non-participating liquidation preference]*.

**Conversion:** The Preference Shares will have the following conversion rights:

- ▲ the Preference Shares will convert to ordinary shares at the election of the holders of a majority of the Preference Shares;
- ▲ the Preference Shares will automatically convert to ordinary shares on the completion of an IPO; and
- ▲ the initial conversion rate of the Preference Shares will be 1:1, subject to adjustment for any anti-dilution protection or any capital reorganisation (e.g. subdivision or consolidation of shares, bonus issues, etc).

**Anti-dilution:** **[User note: Anti-dilution clauses are intended to protect investors**

*from the dilutive effect of subsequent share issues undertaken at a lower price per share than that paid by the investors. Anti-dilution provisions are common in series A transactions and are almost always provided on a broad-based weighted average basis (as opposed to a full ratchet basis which should be avoided).]*

Subject to customary exceptions (including carve-outs for new equity securities issued pursuant to an approved ESOP, or as part of a pro rata rights offer), the Investors will be entitled to anti-dilution protection on a broad-based weighted average basis.

**Pre-emptive rights on share issues:**

*[User note: Pre-emptive rights require the company to offer any new equity securities to the investors and/or the existing shareholders of the company pro rata before issuing them to any third party. The parties should discuss whether it is appropriate for these pre-emptive rights to be provided to all shareholders or to the investors only.]*

Subject to customary exceptions, the Company will offer any new equity securities (including any new shares, options, convertible notes or similar) to the [existing shareholders/Investors] (**Pre-Emptive Rights Holders**) pro rata to their existing shareholding in the Company. To the extent that one or more of the Pre-Emptive Rights Holders do not wish to participate, the shortfall will be offered to the accepting Pre-Emptive Rights Holders on a proportional basis.

**Right of first refusal on share transfers (ROFR):**

*[User note: Rights of first refusal (ROFR) require all shareholders to offer their shares to the investors and/or the existing shareholders before selling them to a third party). The parties should discuss whether it is appropriate for a ROFR to be provided to all shareholders or to the investors only.]*

Subject to customary exceptions, if a shareholder wishes to sell any shares, the [Investors/existing shareholders] (**ROFR Holders**) will have a pro rata right of first refusal to buy those transferring shares. To the extent that one or more of the ROFR Holders do not wish to buy their proportion of the transferring shares, those shares not purchased will be offered to the accepting ROFR Holders on a proportional basis. If the ROFR Holders do not elect to buy all of the transferring shares, the selling shareholder will have the right, for a limited period, to sell the remaining shares to a third party buyer on terms and conditions that are no more favourable than those offered to the ROFR Holders. These rights of first refusal are subject to any applicable drag along rights.

**Co-sale:**

For a period of [2] years following the completion of the investment, the Investors will have the right to participate pro rata in any sale, transfer, or

other disposal of more than [20]% of the shares held by a Founder to a third party[, *provided that if the Founders' aggregate shareholding would fall below [20]%, the Investors may sell up to their entire shareholding*]. These co-sale rights are subject to any applicable pre-emptive and/or drag along rights.

**Drag along:**

***[User note: Drag along rights entitle a specified majority of selling shareholders to force the remaining (minority) shareholders to sell their shares on the same terms. The existing shareholders will benefit from having drag along rights (as minority shareholders will not be able to prevent a sale of the company).]***

Drag along rights will apply where shareholders [(including the holders of a majority of the Preference Shares)] wish to sell [75]% or more of the shares in the Company to a third party (so that the selling shareholders may require the other shareholders to sell all of their shares on the same terms).

**Founder vesting and lock-in:**

***[User note: Series A investors will often request that a percentage of each founder's shares are subject to founder vesting. The effect of founder vesting is that a founder must remain employed by the company for the full vesting period (often 2-3 years) if they are to retain ownership of all of their shares.]***

[50]% of each Founder's shares will be subject to monthly vesting over the [2] year period following the completion of the investment.

If a Founder ceases to be employed by, or contracted to, the Company, the Company will have a right to repurchase the Founder's unvested shares at the higher of fair market value (FMV) and cost (in the case of a good leaver) or at the lower of FMV and cost (in the case of a bad leaver). In the case of a bad leaver the Company will also have the right to repurchase the Founder's vested shares at the higher of FMV and cost.

**Founder lock-in:**

***[User note: Any founder lock-in period will usually match the founder vesting period.]***

Subject to customary exceptions, the Founders may not sell, transfer, or otherwise dispose of any shares for a period of [2] years from the completion of the investment, with the exception of any sale, transfer, or other disposal that is approved in writing by the Investor Director.

**Affirmative rights:**

***[User note: It is preferable for consent to be given by the investors' appointed director (so that these matters can be approved at the board level), or at least by a limited number of investors (e.g. a majority), rather than by all investors, which can be administratively***

***burdensome for the company and gives any individual shareholder an effective veto, no matter how small his or its shareholding.]***

While the Investors hold in aggregate at least [*insert*] % of the shares in the Company (on an *as if converted* basis), the prior approval of the [*Investor Director/holders of a majority of the Preference Shares/Investors*] is required for any of the following in relation to the Company:

***[User note: Most series A investors will want veto rights over some material actions of the company. Minority veto rights do potentially limit the commercial freedom of a company and, in a worst case scenario, give a minority shareholder a level of negative control over the company. We therefore recommend that the investors' veto rights are limited in scope as much as possible.]***

- ▲ [*any issue of new equity securities (including any new shares, options, convertible notes or similar), subject to customary exceptions (including for any conversion of the Preference Shares, any issue in accordance with an approved ESOP or similar, or any pro rata rights issue;]*
- ▲ any transaction or arrangement in which the Company is to acquire or dispose of assets, rights, or interests, or is to incur obligations or liabilities, not specifically identified in the Company's business plan, the value of which is greater than \$[*insert amount*];
- ▲ the material variation of any budget or business plan of the Company, such approval not to be unreasonably withheld;
- ▲ the borrowing of any money, the provision of any guarantee, indemnity or other contingent commitment, or the grant of any security over the business or assets of the Company, other than in the ordinary course of the Company's business, the value of which is greater than \$[*insert amount*];
- ▲ any change of the auditor of the Company;
- ▲ any change to the director appointment rights;
- ▲ any transactions with a related party of the Company, with any director or shareholder of the Company, or with any related party of any director or shareholder of the Company;
- ▲ any significant change in the nature of the Company's business;

- ▲ any change to the constitution of the Company which materially affects the Investors' rights; or
- ▲ any liquidation or winding up of the Company.

**Financial and other reporting:**

The Investors will have standard information rights, including the right to receive quarterly unaudited management accounts and annual [audited] financial statements.

**Restraint/non-compete:**

Each of the [Founders/existing shareholders][and the Investors] will undertake not to compete with the Company or to solicit any customers or employees of the Company while they are a shareholder, and for a period of 12 months after they stop being a shareholder.

**Warranties:**

**[User note: Investors expect to include founders as warrantors in addition to the company on series A transactions. This provides greater comfort that relevant issues have been fully disclosed as investors will also be able to bring claims against founders. Note this is personal risk and liability to the individual founders.]**

The Company [and the Founders] will give customary representations and warranties to the Investors subject to the following:

- ▲ the liability of the Company for any breach of the representations and warranties will be limited to the Investment Amount;
- ▲ if applicable, the liability of the Founders for any breach of the representations and warranties will be limited to, in aggregate, \$[insert];
- ▲ if applicable, any representations and warranties provided by a Founder will be limited to the knowledge and belief of that Founder; and
- ▲ no warranty claims will be permitted in respect of any matter that is fairly disclosed in any disclosure letter or schedule, provided for or contemplated by the binding investment documentation, or that arise because of an action taken with the written consent of the holders of a majority of the Preference Shares.

Claims by Investors must first be made against the Company and, only in the case of non-recovery, against the Founders.

- Conditions:** Completion of the investment will be conditional upon:
- ▲ due diligence being completed to the satisfaction of the Investors;
  - ▲ the Company obtaining all necessary director and shareholder approvals for the investment, including all necessary consents for the amendment of the Company's constitution or articles of association (as applicable) to incorporate the preferential rights of the Preference Shares;
  - ▲ the existing shareholders of the Company waiving any rights of pre-emption or similar in respect of the issue of the Preference Shares; and
  - ▲ *[execution of employment or contractor agreements with [the Founders/named key persons] on terms that are reasonably acceptable to the Investors (and which include reasonable confidentiality, intellectual property, and non-compete covenants);]*
  - ▲ *[insert any other conditions to the investment].*
- Transaction documents:** The binding investment documentation will include:
- ▲ a subscription agreement;
  - ▲ a shareholders' agreement between the Company, the existing shareholders of the Company and the Investors; and
  - ▲ a new constitution of the Company setting out, amongst other things, the preferential rights attaching to the Preference Shares.
- [Legal costs:** ***[User note: It is not uncommon for investors to require the company to pay for their legal and other professional costs. If agreed, the company should ensure that these costs are limited to a maximum amount – around \$20,000 to \$30,000 (plus GST) is relatively common – and are payable only if the investment is completed.]***
- Conditional on completion of the investment, the Company will pay all legal and professional costs incurred by the Investors relating to the binding investment documentation, up to a maximum of \$[insert] plus GST.]*
- Governing law and dispute resolution:** This Term Sheet and the binding investment documentation will be governed by the laws of *[Singapore]*.



**PART B: INVESTMENT TERMS (BINDING)**

**Confidentiality:** The contents of this Term Sheet, and the fact that one has been issued, may only be disclosed by the Company to its shareholders, directors and advisers or other person(s) approved by the Investors (on a need to know basis).

**Exclusivity:** For a period of 30 days from the date of signing this Term Sheet, none of the Company, its shareholders, directors, or officers, will conduct or solicit any discussions or negotiations with any third party regarding any investment in the Company, except as may be approved by the Investors.

To confirm your acceptance of this Term Sheet, please sign, date and return the duplicate of this Term Sheet.

**SIGNED** for and on behalf of **[INSERT )**  
**NAME OF THE COMPANY]** by: **)**

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Signature of director

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Print full name of director

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Date

**[User note: Use the following signature block if an investor is an individual.]**

**SIGNED** by **[INSERT NAME OF )**  
**INDIVIDUAL]:** **)**

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Signature

---

Date

**[User note: Use the following signature block if an investor is a company.]**

**SIGNED** for and on behalf of **[INSERT ]**  
**NAME OF COMPANY]** by: **)**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Print full name of director

\_\_\_\_\_  
Date

**[User note: Use the following signature block if an investor is a limited partnership.]**

**SIGNED** for and on behalf of **[INSERT ]**  
**NAME OF LIMITED PARTNERSHIP]** by **)**  
its general partner **[INSERT NAME OF ]**  
**GENERAL PARTNER]:** **)**

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Print full name of authorised signatory

\_\_\_\_\_  
Date

**APPENDIX****Capitalisation Table**

**[User note: Insert a capitalisation table showing the names of the investors and the existing shareholders, along with the number and percentage of shares held by each of them immediately prior to and after the issue of the Preference Shares, OR fill out the table below.]**

<b>Shareholder Name</b>	<b>Number of ordinary shares on a fully diluted basis*</b>	<b>Number of Preference Shares on a fully diluted basis*</b>	<b>Percentage shareholding on a fully diluted basis*</b>
<b>Immediately prior to the issue of the Preference Shares to the Investors:</b>			
<b>Immediately after the issue of the Preference Shares to the Investors:</b>			

\* Include details of any warrants or options over shares in the Company, any convertible loans and any other obligations to issue shares in the Company.