WINPE EDGE
MASTERCLASS SERIES | DEAL PROCESSES

Scenario 1

ABC Pvt. Ltd (**ABC**) is a SaaS company based in Bangalore, India. ABC is founded by Mr. X and Mr. Y, who are both directors on the board of ABC, and hold 30% each, of the (fully diluted) share capital of ABC. The remaining 40% of the share capital is held as follows: (a) 20% is held by a VC Fund (in the form of preference shares); (b) 10% is held by angel investors; and (c) 10% is reserved for ESOPs. Mr. Z is the CTO of ABC and has been granted ESOPs representing 5% of the share capital of ABC which will vest fully over the next 4 years. Of the remaining 5% of the ESOPs, 3% has been granted to other employees of ABC. There is an existing shareholders agreement among the shareholders of ABC and the VC Fund executed a subscription agreement when making its investment in ABC a year ago.

PQR Capital (**PQR Cap**), a private equity fund proposes to make a capital primary investment in ABC. Following this investment, PQR Cap will hold 22% of the (fully diluted) share capital of ABC. *Note: For the purposes of this scenario we will evaluate the differences when PQR Cap is a foreign entity vs an Indian entity.*

Parties are at the term-sheet stage and PQR Cap has not yet conducted a due diligence on ABC or its founders. Some of PQR Cap's key focus areas for the term-sheet are as follows:

- Should PQR Cap's investment be structured through equity shares or preference shares?
- What are the key governance rights (such as board seats, consent rights, reporting, etc.) that PQR Cap should negotiate at the term-sheet stage?

- What are the key protective rights (such as the Pre-Emption, Founder lock-in, ROFR, Tag, Liquidation Preference, Exit, etc.) that PQR should negotiate at the term-sheet stage?
- What should PQR Cap seek as part of its indemnity package at the term-sheet stage?
- PQR Cap has not yet undertaken a due diligence on ABC - how is this addressed at the term-sheet stage?
- How are questions around confidentiality dealt with at the term-sheet stage?
- Term-sheets are typically non-binding documents, and therefore why have a term-sheet?
- Are there any particular formalities around signing/ executing a term-sheet?

Scenario 2

Same facts as Scenario 1, except with the following modifications:

(a) ABC is a large business with a number of investors. ABC is at the Series D round of funding. Following the Series D round, PQR Cap together with other investors investing in the Series D round will hold a total of 15% of the (fully diluted) share capital of ABC. PQR Cap will have a resulting stake of 4% in ABC.

(b) ABC is not just a SaaS business. ABC has set up a subsidiary that is an insurance broker and another subsidiary that is registered as an NBFC.

(c) ABC has provided all the investors in the Series D round with a vendor due diligence report from a top-tier law firm and that report does not highlight any red-flag issues.

In addition to reconsidering the above questions (from scenario 1) in this context, some additional questions are as follows:

- How do the logistics of drafting a term-sheet at this stage differ from Scenario 1?
- What sort of provisions do investors at this stage get comfortable with which they may not have accepted in Scenario 1?
- What is the role of the 'lead investor' in the round versus the other investors in the round?
- How do the changes introduced in a round impact past-round investors' rights and obligations?
- One of the existing investors is a large fund (having a significant presence in the Indian SaaS space and holding a large position in ABC), what role does this fund play at the term-sheet stage?