

Cult Beauty Shareholder Agreement – Investor Majority Rights Summation

In addition to typical inclusions such as pre-emption rights, the agreement includes specific Investor Majority controls (negative controls if you will) – the investor majority being the holder of the majority of the preference shares (B and C Class Shares) which in this case was Mark Quinn-Newall.

Highlights of that consent requirement included:

- When entering into any service or consultancy agreement with any person under which the Company is obliged to pay an aggregate remuneration of greater than £40,000 per annum or the appointment of any individual above manager level. For this purpose, person includes individuals, companies and unincorporated associations.
- When issuing any further options, warrants or other instruments capably of being converted into shares
- When increasing the remuneration of the Founders other than by RPI once in every 12 months

*Consent needed to be obtained in advance and the company cannot rely retrospective consent for these matters.

And it also impacted the Board composition:

- For as long as C shareholders (preference shareholders) held 10% or more (as a class) of the issued voting share capital of the Company, there was an entitlement to one board seat. This appointment right was only exercisable by the holders of 75% or more of the issued C shares.
- The agreement specifically stipulated that Mark Quinn Newall shall be appointed as chairman of the board and shall remain in such position until he resigns voluntarily or his shareholding fell below 12.5% or if a third party had acquired more than 50% of the shares in the Company.

In addition, separate letters of agreement between the Investor Majority (Mark Quinn-Newall) and the founders were in place which effectively superseded various clauses of the SHA and entitles Quinn-Newall to remain as chairman of the board, but more notably an entitlement to a second board seat (being in addition to the C shareholder board seat noted above), in effect providing for two (2) C Class board seats.

Shareholder Consents

Beyond the Investor Majority rights, both Preferential Shareholder Classes (B & C) enjoyed additional rights, highlights of which included:

Consent of the B shareholders in respect of B share rights

- Issue any B shares
- Change the rights attached to the B shares

Consent of the C shareholders in respect of the C share rights

- Issue any C shares
- Change the rights attached to the C shares

The agreement also set out a number of consent levels, based on the bound shareholders (which included all Preference Shareholders); based on a threshold of 70% of the bound shareholders;

- Giving of guarantees by the company
- Conducting business outside the company or a wholly owned subsidiary
- Disposing of a material part of the undertaking, property or assets of the company outside the ordinary course of business
- Declaring or paying dividends
- Transferring shares
- Issue new shares other than under a share option scheme approved by the board **and the Investor Majority**
- Issue renounceable letters of allotment
- Enter into an insolvency process save where failing to do so would amount to wrongful trading
- Issues shares or securities other than pursuant to a share option scheme
- Contract outside the ordinary course of business
- Acquire shares in any other company
- Alter the rights attaching to any shares
- Change to the articles of association