



# CESP

## CERN Entrepreneurship Student Programme

Clarifying the issues

B. Denis

# Negotiating

AEROSPACE INVESTMENT

Balancing Venture & Relationship Capital

Role play

(Program On Negotiation at Harvard Law School)



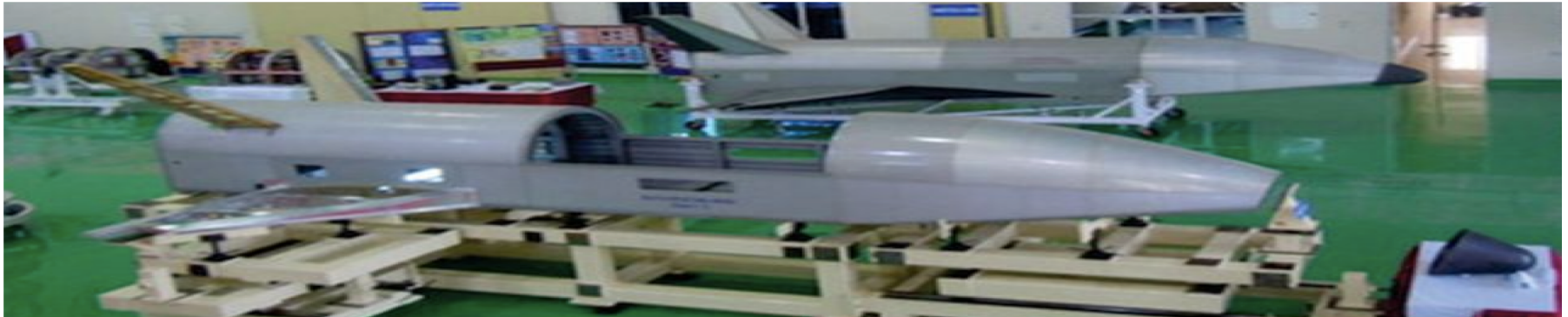
# OVERVIEW

- Two-person scored negotiation simulation involving a venture capital investment
- Objectives:
  - 1) attain favorable investment terms
  - 2) develop a quality relationship



# Investment terms: substantive points

- VC equity percentage
- Type of stock
- Dividends
- CEO replacement provision
- Number of VC-appointed board members
- Vesting of the funder's shares
- Antidilution rights
- “no shop” provision



Bernard DENIS

# Substantive terms

## **Equity percentage**

Depend on the post-investment value

e.g.

Investment = \$100

Post investment value = \$150

Equity percentage  $100/150 = 67\%$

# Substantive terms

## Type of stock

- Common stock
- Convertible preferred stock  
Recoup your investment before holders of common stock in case of liquidation. Option of converting the shares into common stock (when the value exceed the investment)
- Redeemable preferred stock  
Recoup your investment before holders of common stock in case of liquidation. Option to fully redeem your initial investment and in case the company is worth more than the initial investment split the remaining with common shareholder pro rata.

# Substantive terms

## **Exemple: Common stocks**

10 000 shares (Common Stock) worth 1€ each

1) The company liquidates for 1 500€

Each shareholder get 15 cents

2) The company liquidates for 100 000€

Each shareholder get 10€

Thanks to Ian Tracy to help me clarify this

# Substantive terms

## Example: Convertible Preferred

9 000 Common stock, 1 000 Convertible Preferred, all share cost 1 €

1) The company liquidates for 1 500€

The preferred stock receive 1€

The common stock receive  $(500 / 9\ 000) = 5.5$  cents

2) The company liquidates for 100 000€

The preferred stock receive 1€

The common receive  $(99\ 000 / 9\ 000) = 11$  €

3) The company liquidates for 100 000€, Preferred convert

All receive  $100\ 000€ / 10\ 000 = 10€$



# Substantive terms

## Example: Redeemable Preferred

9 000 Common stock, 1 000 Redeemable Preferred, all share cost 1€

1) The company liquidates for 1 500€

The redeemable preferred stock receive 1€

The common receive  $(500 / 9\ 000) = 5.5$  cents

2) The company liquidates for 100 000€

The preferred stock receive 1€

Then all shares receive  $(99\ 000 / 10\ 000) = 9.9$  €

Redeemable preferred receive  $1 + 9.9 = 10.9$  €

Common receive 9.9 €

# Substantive terms

## **Dividends**

- Right to receive dividends on equity share. Paid in equity.

## **Antidilution Rights**

- Right of First Refusal in future round of financing

## **VC Appointed Board Members**

## **Vesting of Founder's Shares**

- Founder's share are blocked, each year the founder stays a portion of the equity is given back to the founder

# Substantive terms

## **CEO Replacement Provision**

- The CEO is evaluated against 3 possible scenarios: conservative, moderate or aggressive projections

## **No shop Provision**

- No possibility to negotiate better terms before the formally binding Stock Purchase Agreement is signed

# Notes

- Your BATNA are described and quantified on your personnel notes
- You should **NOT** accept deal less favorable to any of your BATNA!
- Investment terms not accounted for in the score sheets are allowed but do NOT factor in the substantive score
- Though most of the issues are distributive, several contain integrative opportunities



# Preparation

- Try to understand your counter partner's real needs and objectives
- For each substantive point what is your goal, walk away?
- For each substantive point what could be your counter partner's position?
- What are the possible trade-offs?
- Can you create multi-issue packages?
- Do not forget the "relationship" issue

# During the negotiation

- Use your score sheet
- Do not disclose your score sheet!
- When an agreement has been reached, circle the option and record the results
- Notes zero points does not equal to *No Deal*, unless *No Deal* is specifically noted.

## Confidential Score Sheet for Founder

**Instructions:** When an agreement has been reached, circle the agreed upon options and record the results in the *Points Awarded* column. You may negotiate the VC Equity Percentage and Dividends in terms of any whole percentage. Note that receiving zero points for an item does not equal *No Deal*, unless *No Deal* is specifically noted.

Substantive Terms	Options	Point Allocation	Points Awarded
#1: VC Equity Percentage	XXX	X	_____
	XXX	X	
	XXX	X	
	XXX	X	
	XXX	X	
#2: Type of stock	XXX	X	_____
	XXX	X	
	XXX	X	
#3: Dividends	XXX	X	_____
	XXX	X	
	XXX	X	
	XXX	X	
	XXX	X	
#4: Antidilution Rights	XXX	X	_____
	XXX	X	
#5: VC Appointed Board Member	XXX	X	_____
	XXX	X	
	XXX	X	
#6: Vesting of Founder's Shares	XXX	X	_____
	XXX	X	
	XXX	X	
#7: CEO Replacement Provision	XXX	X	_____
	XXX	X	
	XXX	X	
#8: No shop Provision	XXX	X	_____



BATNA: 45 Substantive Points

(Possible Substantive Point: 100)

Total Substantive Point Awarded \_\_\_\_\_

# Notes

- When you have reached the agreement on the investment terms **DO NOT disclose confidential information ... yet!**

