

Good Leaver / Bad Leaver Presentation

Why me?

- Lawyer – Sorry!
- Buy and Sell companies
- Act for Investors
- Act for Companies talking investment
- Start up businesses



Sector Expertise

Our Clients:-



British Biocell International Limited

Alere Inc.



EKF Diagnostics Holdings Plc

What is a Good Leaver/ Bad Leaver?

- Shareholder who is also an employee
- Leaves employment
- What happens to his/her shares
- What price
- Different price if a Good Leaver or Bad Leaver



Who wants these provisions?



- Shareholders starting a company
- Investors:-
 - Individuals – Business Angels
 - Private Equity Groups
- Joint Venture Parties

Do you want these provisions?

- Ground Rules
- Can change if agreed
- Offer shares in a certain order
- Apply voluntary transfers
- Apply deemed transfers (e.g. death and bankruptcy)



Deemed Transfer Notices

- Only active shareholders
- Must Offer
- Leave / Die / Bankruptcy
- No one is obliged to buy



Relevant Documents

- Articles of Association of the Company
- Shareholder Agreement
- Investment Agreement
- Employment Contracts
- Share Options



Consider Company and Individual shareholder viewpoint



- What is best for your company?
- What is best for you as the individual?
- Applies if you decide to leave or if employment terminated
- Not always your choice

What price do you get?

- Higher price if good Leaver
- Lower price if bad Leaver



What is a Good Leaver?

There is no set list but usually :-

- Death
- Retirement at full age
- Retirement of ill health
- Redundancy
- Wrongful dismissal



What is a Bad Leaver?

There is no set list but usually :-

- Gross misconduct
- Employee resigns
- Often any circumstances where not good Leaver



Good Leaver Price



- Not set method but usually
- Market Value Shares
- Agreed parties or auditor/ independent expert
- No uplift or reduction for shareholding size



Bad Leaver Price

- Amount put in
- Nominal Value
- Careful with share premium
- Nominal value – very harsh



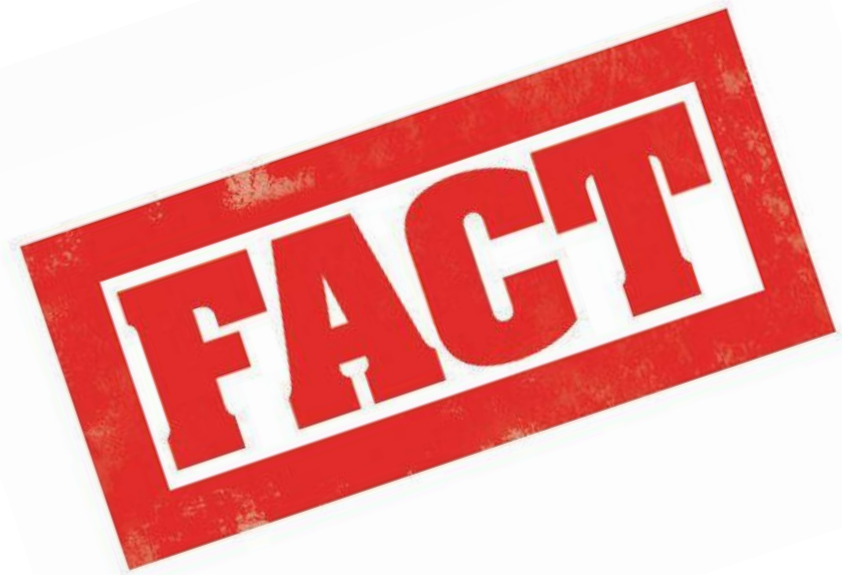
Neutral Leaver

- Optional third category
- Pastures New
- Non competitive time period
- Price – middle ground

Share Options & Long Term Incentive Plan

- Agreement now – shares in future – set price
- Exercise while an employee
- What if they leave
- Ability to exercise post leaving
 - Good - maybe
 - Bad - no
- Definitions Good and Bad vary

Michael Story – The Facts



- Was he good or bad
- Unclear facts
- Lack of knowledge
- No copies of documents

- Employment Agreement
- Terminate if gross misconduct
- Deemed transfer
- Articles
- Good market value
- Bad – Money put in

Michael Story - The Consequence

- Bad Leaver - £32,000
- Good Leaver £1,250,000



Key Issues

- Technical but important
- Pound note issue for shareholders
- Clarity needed for the Company
- Does everyone understand
- Employee shareholders - need advice
- Investors – Need that comfort



Guidance



Think about these

- Get Advice
- Be aware of terms
- Will need one day
- Mistakes can be very costly

Contact

ANDREW BOUND

Partner

Head of Corporate Finance Group

029 2034 5511

abound@berrysmith.com

WWW.BERRYSMITH.COM

