

# Closing the Deal

In association with

**GI** Growth  
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This month in our regular Business Funding section, **CHRIS REES**, a partner at Nelsons Solicitors, explains how to manage the completion process, following an offer of business investment.

So, after much pitching and selling to prospective investors and painful hours of honing your business plan and forecasts, you've done it. You have an offer of investment and are looking to close the deal. Hard work done? Unfortunately not.

The following will give you an insight into what needs to happen in order to close the deal.

## UNDERSTAND THE DEAL TERMS AND STRUCTURE

It is important to fully understand the key terms and the basic deal structure. Is there one or multiple investors? Are all the investors angels, or funds, or a mix? Is there a lead investor? Will the investment be all equity, all debt, or a mix? Will the investment all go in on day one or will it be staged? Are tax considerations fundamental to the deal? And so on.

It is sensible to set those terms out in a 'terms sheet' or 'heads of agreement' (Heads). This is generally a non binding document setting out the intention of the parties, albeit it will often contain some binding obligations such as who picks up the costs if the deal aborts, exclusivity and confidentiality.

If you have not managed to get the investors to sign up to a formal confidentiality agreement or non disclosure agreement (a two way confidentiality agreement), then try to do so at this stage.

## INSTRUCTING THE RIGHT ADVISERS

You are entitled to take advice and should do so. If the investors and their advisers prepare the first drafts of the main documents, remember these will

be investor friendly documents! However, it is important to note that the investors will expect a level of minority protection relating to control, possibly priority, right to information and so on. If tax considerations, such as Enterprise Investment Scheme (EIS) reliefs, are a key driver, you need to structure matters to deliver the tax benefits.

Accordingly, you should look to instruct corporate legal advisers and possibly accountants, with corporate and investment tax expertise, as soon as possible.

It is highly likely that you will have to pick up the tab for the advisers' costs, including the investors' advisers, so this needs to be built into your costings. For all advisers, it is advisable to try to agree the scope of the work they will undertake and a price upfront.

## DUE DILIGENCE

The investors will raise enquiries about the business, the assets, the company, the management team etc. It is essential that you and your advisers deal with this efficiently, in writing, and in full and clear detail. If your house is in order, this process should be relatively painless. You will also need to keep your business plan and forecasts up to date.

## THE KEY DOCUMENTS

**INVESTMENT AGREEMENT (OR SHAREHOLDERS' AGREEMENT)** - this will contain, for example, warranties about the business to be given by you; control issues, namely things which cannot be done without the investors' consent; board meeting formalities and structure; restrictive covenants; access to information provisions; and exit related provisions.

## NEW ARTICLES FOR YOUR COMPANY

- this deals with share rights, what happens on a transfer of shares (pre-emption rights, 'bring /drag along' provisions, deemed transfers, permitted transfers, possibly good leaver/bad leaver provisions) etc and should otherwise dovetail with the Investment Agreement.

**SERVICE AGREEMENTS** - for all executive directors and key management.

**DISCLOSURE LETTER** - your ability to qualify the warranties.

## BATTING ORDER

If there are tax considerations such as EIS, then it is essential things are done in the correct order or the investor may not qualify for EIS relief.

## TIMING

Set a realistic timescale for the process and completion. Once the documents and batting order are agreed you can complete the investment and then concentrate on delivering the growth. ■



## Fund Spotlight Octopus Ventures



Alex Macpherson, Chief Executive of Octopus Ventures

### THE FACTS

Octopus Ventures, a division of Octopus Investments, was formed in 2000 by a group of successful entrepreneurs in order to provide both capital and business expertise to small, fast-growing companies. The team shares a passion for business and an enduring commitment to its companies. It manages circa £250 million in VCT and EIS funds as well as the £30 million Octopus Capital for Enterprise (OCfE) Fund. Octopus typically invests from £500,000 to £5 million per investment and is a leading player in the UK venture capital industry. Octopus has £125 million to invest in the next three years.

### THE PROCESS

Octopus is a generalist investor, preferring to back exceptional entrepreneurial teams rather than specific sectors. Octopus looks for businesses which can create, transform or dominate an industry and is focused on the UK. The investment process will always include rigorous commercial, financial, management and legal due diligence.

This will involve several meetings with management and at least one site visit. We would expect to complete the whole process in three to four months. Businesses can apply online via the website and simply submit a business proposal to include a profile of the management team, description of the company's business model, details of current and previous rounds of financing, historical and forecast financials.

### THE COMMENT

Alex Macpherson, chief executive of Octopus Ventures, said: "We've been in the business of helping small companies since 2000, but it's not just about giving much needed capital.

"We provide invaluable advice and guidance to help steer and grow businesses. We are delighted to have helped a great number of companies over the years, and are as excited by new company propositions today as we were ten years ago."

### THE CONTACTS

W: [www.octopusventures.com](http://www.octopusventures.com)

## Angel Spotlight Cavendish Management Resources

### THE FACTS

Cavendish Management Resources (CMR) is a specialist in business management with strong links to investors, business angels and venture capital funds; also to banks and other funders. Established in 1984 initially as a group of private investors, providing a forum to review and syndicate investments, CMR now covers all UK regions with executive members that bring an extensive range of sector and management expertise.

### THE PROCESS

CMR provides its registered investors with a free service notifying them whenever a new proposition is received that meets their stated preferences. They also receive regular e-newsletters covering all new propositions.

### THE COMMENT

CMR structure their activities to the ambition of the business owners and help to create businesses that are

attractive to investors. They have developed a new approach to meet the needs of many SMEs who have been affected by the change in the economic climate. Often they cannot get more funding and they need a catalyst to get them out of their present situation. They need to increase sales, cut costs and change their way of working but they cannot do it on their own, so CMR identify businesses that have potential to achieve this by working together. CMR recognise the need for independence and the potential competitive nature of their activities, so they have an early stage approach that retains the owner's independence with the option to leave at any time. CMR bring new skills to the management team and overall leadership and co-ordination with an eye to the commercial success of the business. A second stage formalises the group arrangement and enables more of the benefits to be achieved.

This co-operative way of working is the only way out for many businesses.

It creates options for the owners to grow or sell their business. Many of these companies benefit from the expertise and experience brought by an incoming investor

### THE CONTACTS

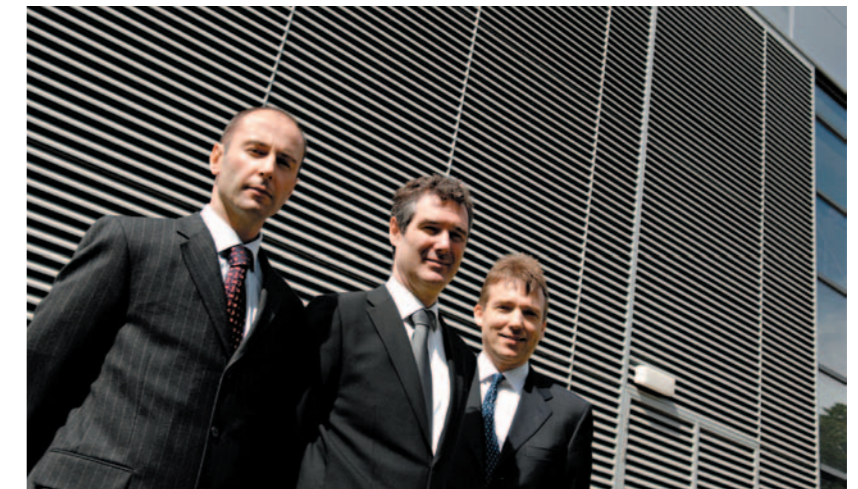
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Steve Blount (far left) at the launch of the GINEM Angel Insight programme

## Funding Provides Clear Vision For Business Growth

Phase Vision was formed in 2002 as a consultancy spinout from Loughborough University, using technology developed by the world-renowned Optical Engineering Research Group at Loughborough University's School of Manufacturing and Mechanical Engineering. It was in 2008, when the company had started development of a breakthrough fringe projection shape measurement system, that the need for funding was key. The company needed to convert from a consultancy to a business. For Phase Vision, organic growth was not really an option as the product is used in high-volume production lines where it is relied on for product quality. It is not possible for a fledgling company to credibly offer a product that can operate 24/7 in what can be harsh environments. As a result, Phase Vision needed to raise funds to enable the transition.



L-r: Russell Coggrave, Ralph Weir and Jon Huntley of Phase Vision

Deciding on how to raise the money and who with was an exciting moment for the company. Ralph Weir, Chief Executive Officer, Phase Vision, says "We approached several companies for funding and in fact, we had five competing term sheets when we agreed terms with Octopus Ventures. This was a fantastic place for Phase Vision to be, we had several high-quality investors chasing us. It was not an easy decision as there were some very good investors in the frame, but I think given the experience of working with Octopus, we would all make the same choice again"

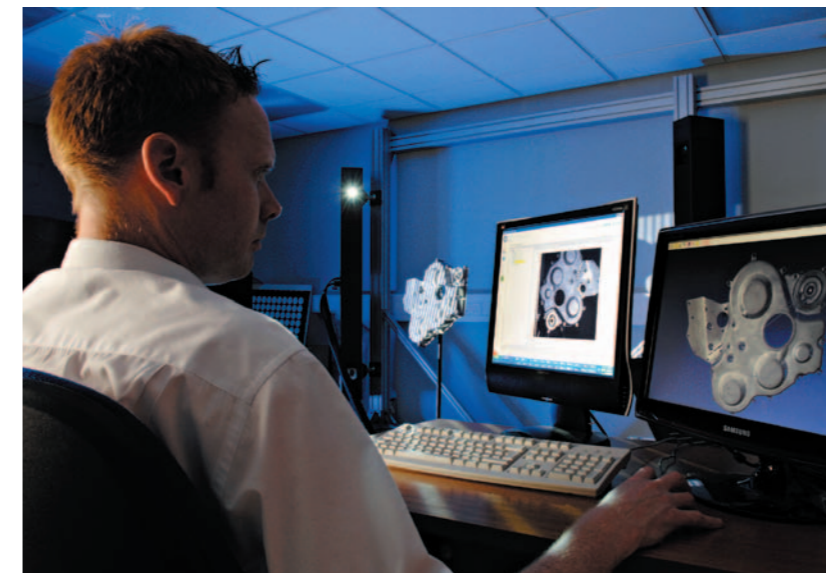
The decision to partner with Octopus for funding was that of a growing, mutual respect when both companies worked through the investment process. Octopus understood the needs of Phase Vision, and had a good track record of building successful businesses. It was soon clear to Phase Vision that the partnership was not simply a financial transaction for Octopus, but something which would bring additional value to the business, and help support the management team. And, according to Weir "of course, there was great chemistry between the Phase Vision and

Octopus teams, which also helped" The investment process took in the region of five to six months, from the first point of contact with Octopus. However, from the point of having a term sheet in place the process seemed to speed up and was more like ten weeks, with the due diligence process taking only four weeks, which is very quick.

Following investment from Octopus in mid 2009, Phase Vision has transformed from a niche consultancy into a company with a well-respected product, listing all the major UK aerospace manufacturers as customers.

Weir continued "The investment was a turning point for us. We had fantastic technology, but we did not have the wherewithal to exploit it through a robust, easy to use product. Today, we're seeing strong demand from across the manufacturing industry. Selling into manufacturing isn't easy with the current economic climate, but we're clearly at the top of many manufacturers' shopping lists - as a result of this investment.

"This investment allowed us to move from consultancy to a very capable UK-centric supplier. Our next move has to be to spread our wings internationally. There is massive demand for this product, and the UK represents a very small part of the global market. That's absolutely where we must go next!"



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*l-r:* Dr Richard Hyde of Atlantic Link, David Smith of Cooper Parry, Sam Morgan of Atlantic Link, Jonathan Earl of Catapult, Mike Alcock of Atlantic Link, Hugh Strickland of Geldards, Brian Sholly of Kaplan IT, David Browne of Cooper Parry, Tony Reddington of Atlantic Link and Rhian Owen of Geldards.

# Kaplan IT acquires Atlantic Link

e-learning business Atlantic Link Ltd has been bought by Kaplan IT Learning, with an aim to enhance the US training giant's suite of award winning products.

Based in Nottingham, Atlantic Link was established by a group of entrepreneurs seven years ago and is now the world's leading providers of collaborative rapid e-learning authoring software, enabling users to design and deliver professional online training to thousands of employees.

Mike Alcock, managing director of Atlantic Link said: "We are delighted to become part of Kaplan IT Learning. With Kaplan's financial strength and credibility in the training and academic world, our customers and prospects will gain access to a broader range of current and future products and services.

Nottingham-based law firm Geldards advised the shareholders of Atlantic Link on the deal. Partner Hugh Strick-

land said: "We've acted for the company since it was set up in 2002 and it's great to see the team harvesting the fruits of their labour in this dynamic and forward thinking company, a real Nottingham success story."

Jonathan Earl, investment director at Catapult Venture Managers continued: "Catapult invested in Atlantic Link in 2008 as it was a business which we recognised had not only the ideas but the passion to deliver revolutionary products into a market used to seeing innovation, and we are delighted to see this realised through this successful sale."

Cooper Parry Corporate Finance acted as lead advisers to the shareholders of Atlantic Link. David Browne said: "It is fantastic to see a local business become recognised as a world leader in its field and we are delighted to have contributed to its success and ultimate sale."

## Does your business need investment? Do you have high-growth potential?

Connect Midlands are the provider of Understanding Finance for Business across the East Midlands.

Your company could benefit from the expertise and assistance of our network of investment professionals.

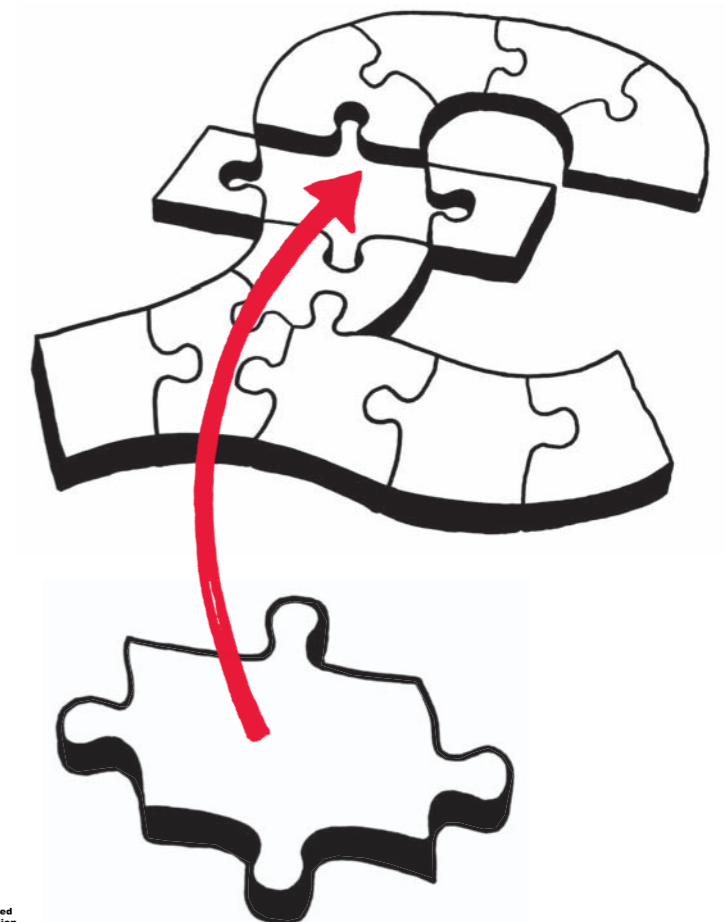
Since 2001 we have assisted around 250 companies in the region to raise over £160m in investment. Get in touch now to find out how we can help you.

**01509 228702**  
**invoredeast@connectmidlands.org**  
**www.connectmidlands.org**

### Coming Events

5th May,  
Right Funds for You, Nottingham  
9th - 10th June,  
Amber Workshop, Nottingham

To find out more call **01509 228702**  
or visit **www.connectmidlands.org**



# Doff Portland Limited Secures Funding Package

Nottinghamshire-based company, Doff Portland Limited, has secured a substantial investment package from a group of Midlands-based funding providers to support its ongoing development and working capital requirements.

The company, which is based in Hucknall, is an independent, family-owned business which was founded in 1946 by the father of the current chairman, Graham Whyatt. It is the UK's largest independent manufacturer of insecticides, slug pellets, weed-killers and garden products for use in both the domestic and agricultural markets, as well as a supplier of own brand products to a number of major UK retailers.

The financial support along with the enhanced management team provides stability as well as enabling the company to take advantage of opportunities for significant growth.

Equity funding was provided by EV

via the Coalfields Enterprise Fund and Turning Point Investments LLP with banking facilities provided by Yorkshire Bank.

Chairman of Doff, Graham Whyatt said "This is great news not just for Doff but, as one of Hucknall's largest employers, for the whole community. We have in place a superb management team, a loyal and dedicated workforce and now the financial backing to develop our ideas to write the next successful chapter in the history of Doff Portland."

Legal advice for the deal was provided to EV by Laytons LLP; financial due diligence was provided by Cooper Parry LLP; commercial due diligence was provided by Innovation Management. Legal advice was provided to Doff Portland Limited by Gavin White at Fraser Brown Solicitors and to Yorkshire Bank by Browne Jacobson LLP.



*Back row left to right:* Neil Wilkinson of Doff, Tom Mawhood of Turning Point Investments LLP, Simon Ward of EV, Ashley Cooper, Turning Point Investments LLP, John Hancock of Doff Portland and Paul Elliot of Yorkshire Bank  
*Front row left to right:* Graham Whyatt, Lorna Page and Matt Jones all of Doff and Gavin White of Fraser Brown

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