

BAD LEAVER AND GOOD LEAVER CLAUSES

CAPPELLI RIOLO
CALDERARO CRISOSTOMO
DEL DIN & PARTNERS



Studio Legale

DOT FLASH NEWS

INTRODUCTION

In the context of venture capital investments in startups, contractual clauses aimed at ensuring the stability and continuity of the founders' team play a key role. Since the venture capitalist's investment is largely based on the assessment of the founders' technical and managerial skills (and, more generally, on the expertise of the so-called key people of the company), it is essential that these individuals lead the company's growth and development.

In this regard, particular importance is given to the so-called **bad leaver and good leaver clauses**, which govern the conditions and consequences of a potential exit of key figures from the company.

STABILITY COMMITMENTS

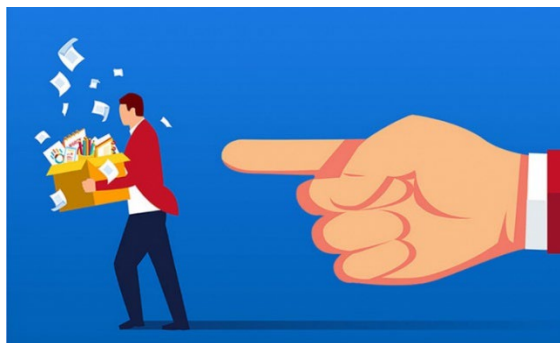
Venture capitalists place great emphasis on the tangible contribution that key figures – whether shareholders or employees – can provide to the growth of the entrepreneurial project. For this reason, the contractual documentation typically includes specific “**stability commitments**”, along with specific **bad leaver and good leaver clauses**.



Depending on the nature of the legal relationship governing the activities carried out by the key people within the company, the formal structure of these commitments may vary. In any case, regardless of the type of legal relationship, these clauses generally bind each key figure to provide their services to the company for a predetermined period.

BAD LEAVER CLAUSES

These clauses govern the termination of the relationship between the strategic shareholder or co-worker and the company in cases where the termination is attributable to **actions or circumstances directly related to the individual** (for example, dismissal for just cause or removal from office for just cause).



In such cases, the other shareholders are usually granted the right to purchase the leaving key figure's stake, which the latter will be obliged to sell at a pre-agreed price with punitive features (typically ranging from a minimum amount equal to the nominal value up to a significantly reduced market value).

GOOD LEAVER CLAUSES

Good leaver scenarios refer to circumstances that determine a **“physiological” termination** of the relationship, such as, for example, the expiry of a mandate without renewal, resignation for just cause, retirement or removal from office without just cause.



In these circumstances, the leaving shareholder, director, or employee retains the right to sell their shares at a fair and reasonable price, which may correspond to the market value or to a value agreed upon by the parties, or determined by an independent, qualified professional.

CONCLUSIONS

Bad leaver and good leaver clauses, along with other protective contractual provisions – such as lock-up and non-compete clauses – are designed to ensure the stability of key personnel within the company and safeguard the venture capitalist's investment in the event of early departure of shareholders or strategic employees/consultants.

When extended to key figures who are employees or consultants, these clauses typically apply to equity assigned to them as part of specific incentive schemes, such as stock option plans or work-for-equity arrangements.

Flash news by **Avv. Nicolò Piccaluga** - nicolo.piccaluga@crccdlex.com

In collaboration with **focus team Venture Capital**: crccd_venture@crccdlex.com

