Considering investing in the UK? Top legal tips for investors

According to the office of national statistics, in 2016 the UK attracted 1,144 foreign direct investment (FDI) projects, an increase of 7% on the previous year.

Investing in a UK business can be daunting; there are so many factors to consider. The vital part of any investment transaction is good project management, investing time in the early stages and monitoring progress throughout, will help mitigate unforeseen difficulties that may arise.

In this guidance note, we highlight some top legal points to consider.

Preliminary issues

1. Consider whether your investment will be for debt or equity.
2. Think about the heads of terms of the investment, putting in place a detailed heads of terms early on in the investment process can often help to not only establish whether the parties believe that they can work together but also in the drafting and negotiation of the relevant legal documentation.
3. Will the investment be conditional? i.e. FCA approval, passing of key milestones, registration of trademarks etc.

Sources of finance

4. How many rounds of investment will you be making? Will you be entitled to make a second round of investment on the same terms as the current investment? Does the target company require interim funding while the terms of the investment are being finalised? If so, on what basis?

Due diligence

5. You should conduct a comprehensive due diligence exercise to understand and evaluate the risks associated with the target. The due diligence often falls into three categories:
   - financial due diligence
   - legal due diligence
   - technical due diligence.

You should seek to obtain a complete legal structure chart of the target group showing each member of the target group. All information including the financial information should be requested on a consolidated target group basis and on an individual basis for each company in the target group.

Documentation

6. The documentation should define the legal relationship between the investor, the target company, other shareholders and directors. The agreement should set out the basic terms of the transaction, including the amount being invested, whether you will receive shares (equity investment) or security (debt investment).

7. Typically the agreement would govern the ongoing contractual relationship between the investor, management and some or all of the other shareholders of the company. The main points to consider are:
   - issues reserved for the investor to approve or determine
   - the level of control an investor can exercise
   - the investor's ability to control the board
   - remuneration and pay structures
   - what happens if the investment fails, exit provisions
   - warranties.

8. Should you be given a right of first refusal to buy the shares if the other shareholders seeks to exit? What happens if the majority shareholders seeks to sell the whole company? Will you be "dragged" into a sale?

Warranties

9. The agreement should contain warranties, the warranties are representations made by the warrantors, who are usually the founders and the company, that certain statements relating to the company are true and accurate at the completion date.

Whether you are looking to invest in a UK business via debt or equity, our Corporate team have the legal expertise and professional contacts to help you. For more information on investing in a UK business, please contact members of our Corporate team in London.

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