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A guide to securing investment in your business

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1. Do I need investment?

For many businesses the only way to expand your business, whether that's employing more people, moving to bigger premises, or developing more products for home and overseas, is to receive a significant cash boost from an investor. This is however a significant step and carries legal implications for all involved. So, it's important to understand its impact on your business and your ownership of that business.

Finding the right investor can be tricky but talking to your bank and solicitors will help you choose the right way forward.

2. How do I bring an investor on board?

A prospective investor will want to review all aspects of your business through a process called due diligence. This provides them with detailed information on all aspects of the business.

It requires the business looking for investment to provide in-depth answers and supporting documents to any questions asked.

The information supplied should be carefully considered to ensure you and your fellow shareholders are not exposed to future claims by the investor.

Before providing any sensitive information, a non-disclosure agreement should be signed by the investor. As well as legal due diligence, a financial due diligence exercise will often be carried out simultaneously which can place large demands on your senior management, who will of course need to continue the day to day running of the business.

So being ready for the process should make it simpler. Know your business inside and out and have your records and systems up to date will help present a strong proposition to the investor. It is also important to keep your business plan under review and update it at regular intervals.

3. What is an investment agreement?

This sets out the terms of the investment and provides immediate and long-term protection for the investor. It typically includes the appointment of an investor director, including their remuneration, as well as the existing directors' obligation to enter into new service agreements.

For the investor a key part of the agreement will be warranties ensuring:

- information provided is accurate, including annual and management accounts
- accuracy of employee terms and conditions
- details of any ongoing threatened or potential litigation
- ownership and use of intellectual property rights

Any breach of these warranties can entitle the investor to start seeking recovery of some or all of their investment. To protect you, the investment agreement should include limitations on your liability under the warranties both as to time and value.

The agreement will likely include restrictions on actions that require the investor's consent such as the disposal or acquisition of material assets, alterations to the share capital, incurring expenditure over a certain level and taking on or amending terms of employees.

4. What is a disclosure letter?

This gives you as the business owner the opportunity to qualify the warranties contained in the investment agreement by disclosing any matters that contradict them. It's designed to ensure the investor has a full understanding of the business before their investment is made.

From the business owner's point of view, it restricts the investor's ability to bring a claim for breach of a warranty.

5. Will we need new articles of association?

Yes, these will be adopted on the completion of the deal, representing the company's new constitution. Most importantly, these will deal with the provisions and restrictions regarding the transfer and issue of shares, as well as meetings of the directors.

An investor may stipulate that a restrictive covenant is added to your contract, if not already in place protecting the investor and the business should you exit, limiting your ability to

work in competition with the business for a certain period of time after leaving and preventing the person from working with any former customers.

Undertakings will also be included to ensure the investor receives regular updates of the financial position of the business. If the financial performance of the business falls below agreed levels, "step in rights" may entitle the investor to enhanced decision making rights concerning the business.

Would you like to know more?

Please contact one of our expert lawyers in this sector:

Simon Hore