

What happens when overseas parties acquire a UK business

The UK is an increasingly attractive destination for overseas investors seeking lucrative business opportunities. This is largely thanks to the UK's welcoming business climate and well-established legal precedents for foreign mergers and acquisitions. While there are various routes by which foreign investors can do business in the UK, this article discusses the acquisition of UK companies by overseas buyers through share purchase agreements.

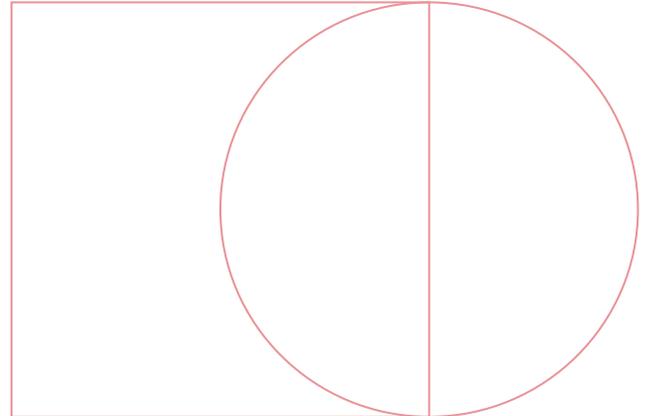
The first steps for foreign investors

There are no restrictions preventing foreign ownership of UK businesses. However, if the acquiring company already has a UK or EU presence, competition and merger-control rules may require the company to notify the Office of Fair Trading or the European Commission of the impending acquisition.

Importantly, if the target company is a listed company, its shareholders must approve of the sale prior to completion. This is a requirement under the Financial Conduct Authority (FCA) Listing Rules.

Tax considerations

Generally speaking, the UK offers a favourable tax climate in terms of corporation tax. That being said, any UK company (including those owned by overseas parties) must pay annual corporation tax on any profits made internationally, regardless of whether or not they are received in the UK. UK companies with foreign owners may also be subject to double tax



treaties, depending on the law of the buyer's jurisdiction. In addition, the foreign acquirer will have to pay stamp duty at 0.5% of the purchase price paid for the shares of the target company.

These and other tax considerations will likely determine whether the buyer will acquire the target company directly or through an intermediate holding company situated in another jurisdiction.

Due diligence

The acquirer may finance the purchase through debt funding or private equity stake, which is likely to affect the acquisition structure. Whatever the structure, however, due diligence will remain a priority in the acquisition process. As with any share purchase, the overseas buyer must conduct thorough due diligence investigations into the business's accounts, assets, operations, contracts, licences, staff, disputes, health and safety procedures, and all other areas that may affect the target company's value.

Since a share purchase entails the acquisition of all of a company's liabilities in addition to its assets, foreign buyers must prioritise extensive legal and financial due diligence in order to include appropriate warranties and indemnities in the agreement. As due diligence proceedings can therefore be time-consuming, both parties may wish to enter into a confidentiality and exclusivity agreement early on in the negotiation process.

The share purchase agreement

Typically, the foreign acquirer's solicitors draft the

share purchase agreement, following the usual process of negotiating warranties and indemnities after conducting due diligence. Under UK law, either party has the right to change any non-binding heads of terms in a preliminary agreement because of due diligence findings.

Before drafting the agreement, both parties must decide on which law will be applied to the agreement. The applicable law selected will then determine how certain provisions are drafted, such as indemnities, for example. As a result, it is strongly recommended that this decision only be made following careful consultation with an experienced, suitably qualified solicitor.

Completion

Once the foreign party takes ownership of the target company, business operations should continue as normal for the most part, as is usually the case in a share purchase. Importantly, the overseas buyer must have a proper understanding of the UK regulations that apply to the target company, as these may vary from those in their jurisdiction. Being aware of the relevant legislation and regulations is essential in order for the company to continue operating successfully, without exposing itself to unnecessary liabilities.

Proper guidance

While purchasing a UK business is fairly straightforward, there are still inherent legal complexities and challenges when doing so as a foreign investor.

The right legal and financial guidance is consequently key to a successful, mutually satisfactory share purchase agreement.

For more information, or for expert advice on business or personal legal issues, call us on 020 3475 6751 or via email at info@carterbond.co.uk

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