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Maximising Buyer Confidence

Enabling Buyers to purchase businesses with confidence

HADEF & PARTNERS

Buying or investing in a business in the GCC

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At Hadef & Partners, our 'Maximising Buyer Confidence' initiative is aimed at steering Buyers of businesses in the GCC through a number of key transactional stages where they might better mitigate potential exposure and risk.

There are different potential reasons for contemplating the purchase of shares or assets in an existing company or business. We have worked with many Buyers, from a variety of international jurisdictions, with each having their own motive.

Whatever the commercial intent, for any investment or purchase, preparedness is always key, and the principle of '*caveat emptor*' (let the buyer beware) always applies.

Purchasing a business – Four common types of business purchase

There are a number of different transaction areas in which a Buyer might forcibly exert some influence, for example, during due diligence and its effect on a target's valuation, in the negotiation of conditions precedent to completion, by way of a company restructuring, or through the negotiation of warranties in the transaction agreements.

We have considered just a few points to note in the context of the following four types of business purchase below:

1. Third party target company;
2. Buy-out of existing franchisee/ distributor/ agent/ joint venture partner/investment;
3. Private equity/Investor seller; and
4. Existing management team/new management team (MBO or MBI) buy-out of target company.

Although other types of transactions do of course exist, and some Buyers may be a hybrid of these four common types, we find that the above categories generally apply to most private business sale transactions in the GCC.

How we can help you and add value

We believe that the following key factors clearly distinguish us in the market:

- Our transaction lawyers all come from leading international law firms and have the required strategic, structuring and drafting skill set to prepare and negotiate all types of transactional documents to international standards.
- One key difference is that our transaction lawyers are integrated with experienced lawyers from the region who possess specific local law and bilingual skills and expertise to ensure our advice is efficient, accurate and pragmatic.
- We are able to identify the key risks that are likely to affect a successful completion early in the transaction using our experience and knowledge of the market, leading to a very high percentage of successful completions.
- We use our knowledge and experience to properly assess those risks which require special focus in any particular transaction, and our extensive network of contacts to resolve these (where necessary).
- Our significant experience in negotiating transactional documentation allows us to protect a Buyer from the key risks by always having a partner leading on negotiations (supported by a team of more junior lawyers appropriate to the deal requirements).

Please do review our further thoughts and details of our particular experience in working with each type of Buyer by reviewing the corresponding references to each in our 'Structuring for Exit' section. We trust that you will appreciate our approach and contact us further.

Case studies

We have set out a few case studies of transactions we have worked on which address different types of Sellers. These illustrate the type of transactional work that we undertake for Sellers, and many of the points we detail would also be covered for a Buyer, albeit from a different perspective.

Next steps – please feel free to get in touch with us

We are here to build trusted relationships with Buyers. We appreciate that an explanatory call or meeting should not be charged, and we are happy to accommodate this in all instances.

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Main points to consider for each type of Seller

We have significant experience in negotiating the transactional documentation that will ensure a Buyer is protected from key risks that might arise, by knowing how to deploy our skills and experience to ensure that the risks are properly identified, assessed and mitigated.

There are a range of general points which are relevant for all Buyers which we would normally consider. However, we have highlighted below some key points that tend to be either solely or more applicable to each type of Seller, in addition to the general points outlined above. As you will no doubt note, a number of these points overlap.

Third-party Target Company

- How can you properly assess your target?
- How can you obtain maximum confidence in the valuation from due diligence?
- What types of creative consideration structures and mechanisms enable adjustments to the purchase price?
- How should the sale/purchase process be run?
- What are the typical problems that can arise with this type of Seller and how can these be prevented?
- What is a realistic timeline for completing a purchase?

Buy-out of existing Franchisee Distributor/ Agent/Joint Venture Partner/Investment

- How do you approach these potential Sellers to raise the terms of such a buy-out from a position of legal strength?
- What is the main motivation for such a buyout and how can the objective be achieved and protected?
- Are registered commercial agencies involved and how can these be addressed to ensure maximum protection for a Buyer?
- How can you ensure that a strong working relationship continues if the buy-out negotiations fail?

Private Equity/Investor Seller

- What shareholding interest will be required for some of the Sellers to retain in order to feel comfortable that they are incentivised to grow the business to the next level and help the Buyer achieve its exit?
- How can/should any valuation gaps be sensibly bridged using deferred consideration structures (earnout or otherwise), IRR guarantees, etc?
- Who can provide business warranties and how much reliance can be placed on these?
- What measures can be taken to ensure that a Buyer holds sufficient management and shareholder control whilst also not unduly restricting the management team?

Main points to consider for each type of Seller

Buy-out by existing Management or new Management Team (MBO or MBI) Buy-out of Target Company

- Which types of funding sources are available for the purchase price and what difficulties generally need to be overcome with each type?
- Which types of purchase price payment plans and structures can be used that work for the management team?
- What flexibility can be negotiated in terms of delayed payments of the purchase price (if applicable)?
- How will control of the business work and who will control and sustain key relationships if payment is staged over a period of time?

Due Diligence on Corporate Structure

In parallel with identifying which of the four transaction types is most appropriate, the starting point for any Buyer is to review the current corporate structure through appropriate due diligence.

The various types of due diligence enquiry that can be conducted (commercial, operational, financial and legal) all provide opportunities for a Buyer to maximize its confidence going into a potential share or business purchase.

The parameters and nature of the proposed acquisition may initially help guide the scope, focus, and ultimately the objectives, including as regards any materiality thresholds, of the due diligence exercise. From a practical perspective there should be a collaborative effort between the Buyer's own commercial team, and its lawyers, to agree the scope of the due diligence, the areas of particular interest or relevance, and to contextualise the findings in light of the particular transaction.

Since no two companies are the same, it follows that no two due diligence exercises should necessarily be conducted in an identical way. However, whilst the type of Seller can often dictate which approach and structure would be most appropriate; there are various points that apply to all corporate structures which should be considered. Please refer to our section Corporate Structures to review our comments on these.

Price Adjustments, Indemnities and Warranties

Price adjustments, indemnities and warranties are the key tools used by any Buyer to ensure that the actual price paid reflects the real value of the business. We have developed extensive experience of different price adjustment mechanisms and are able to assess which is most appropriate to any particular transaction.

Following a consideration of price adjustment mechanisms and any relevant indemnities, it is the quality, breadth and protection provided by the Seller's warranties in the purchase agreement which provide the main default protection against potential exposure to risk.

As lawyers who possess many years of professional transactional experience in the local and regional market to an international standard, we believe that we are atuned to the type and range of warranties that Buyers should seek, in the context of each particular share or business acquisition.

We are also best placed to identify bespoke areas of risk in each given transaction for which careful drafting and negotiation of warranties will be particularly necessary. Our experience has been developed in a wide variety of industry sectors for which the risks and warranty protections that a Buyer may seek would vary.

The extent to which a particular Seller would be prepared to give the warranties that the Buyer may seek can depend on the nature of the Seller's own historic involvement in the target company (and, of course, whether the Seller is to retain any stake in the target company going forward).