

ASK GSC

CLIVE HALPERIN, A PARTNER WHO SPECIALISES IN COMPANY LAW, AND HATEEM ALI, SENIOR ASSOCIATE SOLICITOR, AN IMMIGRATION SPECIALIST, ANSWER YOUR QUESTIONS...

Q *I'm thinking of taking up a distribution agreement for a new product that I want to sell in the UK. What are the things I should consider?*

A A distribution agreement is used to appoint a distributor for products. The distributor typically will buy the products from a manufacturer or other owner of rights to distribute the goods. Sometimes this may be someone who has rights in a region such as Europe and then wishes to appoint sub-distributors.

A distributor usually has to buy the goods and then resell them to its own customers. This may mean that a distributor is left holding stock that it cannot

sell because the goods become obsolete or there is a lower market than is anticipated. Some key things to consider are:

- Will you be an exclusive or non-exclusive distributor? In a properly drafted exclusive distribution agreement this should mean that you have the sole rights to market and sell the products in that particular territory. If

the agreement is non-exclusive, it means other distributors (or the owner itself) may sell the goods.

- How long does it last? You want to make sure that you have a reasonable period in which to benefit from the effort you put into developing the market for the products. You may also want an option to extend this period.
- Will you have to make a minimum commitment? There may be a minimum amount of product you need to purchase each year or maybe an increasing figure year-on-year.
- Will you have a right to sell off unsold goods at the end of the agreement and for how long? In some cases, you may be able to negotiate that you're able to sell back any unsold goods on termination.



Q *How is Brexit likely to impact business travel to the UK?*

A With the UK's impending exit from the EU, relationships with non-EU trade partners will become ever more important in the post-Brexit era.

The UK will be looking to strengthen its trading ties, so new trade agreements will also need to be concluded. These trade negotiations will offer an opportunity for trade partners to demand that the UK ease visa restrictions as part of any deal to be negotiated.

Recently both Australia and India have indicated that they expect visa rules and restrictions to be part of the discussion in exchange for any post-Brexit free trade deal.

During a recent British trade visit to India, a senior Indian official said: "Mobility issues are of importance to us; we cannot separate free movement of people from the free flow of goods, services and investments".

It is clear that if the UK wants greater trade, it is likely that it will have to either relax the current restrictive visa regime or look to create sector specific visa categories. Perhaps the UK will also have to create a list of nations where visa applications are treated on an expedited or more favourable basis, based on the reciprocal agreements it has in place with its trade partners.

So, Britain's exit from the EU may in fact mean that business people looking to travel and work in the UK may find it easier than under the existing regime. However, no one can be sure. The UK government has still not offered any clear guidance, both in relation to the UK's future relationship with the EU or with those countries outside the EU.



Q *I've been asked by some founders to invest in a start-up tech company and take a minority shareholding. What are some of the legal things that I should consider?*

A In some ways taking a minority shareholding in a start-up company is no different than for any other company. However, many start-ups have little value and there can often be little disincentive to the founders giving up and moving on. This might mean that the company may not be able to continue and the investment becomes worthless. So, some key points to think about are:

- giving the founders a vesting schedule so that they don't get all their shares immediately (with English companies

this needs to be structured in a particular way)

- a lock-in period during which shares cannot be transferred
- appropriate restrictive covenants preventing the founders from setting up in competition
- ensuring that all the intellectual property is owned by the company and not the founders
- thinking about what other ways the founders can be incentivised to make the company a success
- appropriate investor control by way

of a list of reserved matters and possibly the appointment of an investor director

- what should happen in the event of an urgent need for additional finance to keep the company going
- the next round of funding and how you might be diluted
- obtaining warranties from the founders.

Well drafted shareholders' agreements, investment agreements, articles of association and employment contracts should help protect investors against some of these risks.

● If you have any questions on any of the legal topics on this page contact us at info@gscsolicitors.com or call 020 7822 2222; gscsolicitors.com

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