

Snapshot: to debt or not to debt? BVI structures for private equity funds and debt providers

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The British Virgin Islands has long been a favourable jurisdiction to structure investment deals, either through the SPV (special purpose vehicle) asset holding company (for example real estate acquisition/holding) or further up the equity chain, due to its robust regulatory framework, creditor friendly company and insolvency legislation, ease and efficiency of company formation and being a tax neutral jurisdiction.

These key jurisdictional characteristics mean that the BVI is excellently placed to play nicely to the needs of private equity funds and debt providers when structuring their deals and deploying their considerable cash reserves.

During any period of economic volatility, recent history has seen private equity capitalise on the opportunities that such instability in the market may bring. PE funds swooped in to take advantage of UK companies with depressed values in the midst of Brexit negotiations, for instance, and, even during the height of the pandemic, we saw huge domestic activity with TDR Capital and the Issa brothers' recent £6.8 billion acquisition of ASDA.

The pandemic has also fuelled excessive corporate demand for debt, in part to shore up coffers to ride out and survive the coronavirus storm. With interest rates around the world at record lows, PE funds are taking advantage of this to gear up their companies to de-risk their investments to take cash (dividends) out of their businesses. However, it's not all a debt grab. PizzaExpress' recent landmark restructuring involved the opposite, with Hony Capital agreeing to a debt-for-equity swap with a reduction of its total indebtedness by some £1 billion in order to rescue the ailing restaurant group.

Ramping up debt levels (or even debt-for-equity swaps) during such an uncertain economic time has legal horizon scanners sitting up on both sides of the fence. A flurry of new PE deals, de-risking investments by new financing and debt restructuring transactions await for the

finance and non-contentious restructuring teams; and the probability that a large percentage of companies racking up cheap loans will fold under the crippling weight of that debt, will have the corporate recovery lawyers waiting with baited breath.

So: To debt, or not to debt? PE groups may pounce on the dividend recapitalisation opportunity cheap debt affords now, but investors will be looking on with concerned focus to make sure loan documentation and covenant obligations are tight enough to safeguard the longer term efficacy of the companies shouldering the burden of the leverage.

Record levels of PE activity have been reported already this year, despite the economic backdrop. As this trend is unlikely to ease anytime soon we will continue to see increased use of the BVI vehicle by PE groups throughout their investment structure make up.

For more information on how we can support you throughout the life cycle of your deals, please get in touch with a member of our team.

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