Key differences between UK and US venture capital transactions

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US venture capital (VC) funds have become an increasingly important source of capital for UK based high growth businesses and, coronavirus aside, this trend is set to continue.

2021 was another record year for US VC investment into UK businesses with UK Government data showing that over £10.8 billion had been raised from US investors. This number was 8% larger than the amount invested by UK-based investors, showing that the US remains a key source of finance for UK companies. The UK's increasing volume of innovative scale-up companies and its status as a hub for world class talent should mean that US VCs continue to look across the pond for investment opportunities.

While both US and UK VCs are both typically structured as limited partnerships investing in early stage companies alongside other investors in the form of preferred equity or convertible instruments, there are some notable differences between the jurisdictions in terms of both the legal process and customs.

Early stage companies looking to raise capital in the US should be aware of the key differences in US venture capital investments. With that in mind, we set out at the link below a high-level comparison of the terminology and documentation typically used in UK VC transactions and those used in the US.

	UK	US	Comment
Industry bodies	- British Venture Capital Association (BVCA)	- National Venture Capital Association (NVCA)	- Both the BVCA and NVCA have produced template documents designed to standardise the documentation of transactions.
Principal legal documents	- Subscription and Shareholders' Agreement* - Disclosure Letter - Articles of Association - Management service agreements **Also referred to as an Investment Agreement*	- Stock Purchase Agreement and Schedule of Exceptions - Amended and restated Certificates of Incorporation - Stockholders' Agreements (comprising investor rights agreement, right of first refusal and co-sale agreement and voting agreement) - Registration Rights Agreement - Management service agreements - Certificate of Incorporation - By-laws	- In the UK, the Subscription and Shareholders' Agreement, would typically include the provisions included in the Stock Purchase Agreement, Right of 1st Refusal and Co-Sale Agreement, Voting Agreement and Investor Rights Agreement. - Sometimes a separate subscription agreement would be entered into in a UK transaction in order to avoid littering the Investment Agreement with provisions that are not relevant to the ongoing operation of the company. - The Articles of Association are the UK equivalent to the Certificate of Incorporation and By-laws combined.

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Typical investment periods	- VC funds invest money raised in 3 to 5 years and realise before the end of the life of the fund, usually 10 years.	- More dependent on the industry in which it is investing but the typical fund life is 8 to 12 years.	
Warranties	- Usually given by companies and sometimes founders.	- Representations as well as warranties are usually given. These are given by the company. - Founders do not usually give representations or warranties.	- In the UK a misrepresentation claim can give rise to a right of rescission and claims in tort rather than for pure contractual damages. - Founder liability for warranty claims often capped at a multiple of salary.
Disclosure	- Disclosures are made against the warranties, often in a separate Disclosure Letter. - General disclosures (matters deemed to be in the investors' knowledge) are also given.	- Disclosures are made against the warranties (and representations) in the Schedule of Exceptions. - General disclosures are generally not accepted by investors and not given.	- General disclosures are items of which investors are deemed to have knowledge and which serve to qualify the warranties (e.g. information contained on the Company's public record at Companies House).
Veto rights	- Investors usually require a relatively significant list of "Reserved Matters".	- Shorter list of fundamental veto rights.	
Tax	- The Enterprise Investment Scheme ("**EIS**") and Seed Enterprise Investment Scheme ("**SEIS**") offer income relief and capital gains relief to qualifying investors subject to certain conditions on the type of and duration of holding of shares in qualifying companies. - Venture Capital Trusts offer an investment vehicle that gives individuals income tax relief on the VCT investments.	- Varies by state with some states offering venture capital tax credits (as of August 2017, 22 states had active programmes). - At a national level, the qualified small business stock permits investors to exclude a percentage of the gains made on the sale of qualifying stocks after five years.	- The EIS and SEIS regimes are very important in the UK market and underpin the investments of a large number of angel investors and EIS / SEIS qualifying funds. - In order to qualify for EIS and SEIS tax regimes in the UK, the relevant shares must be full risk ordinary shares (i.e., they cannot be redeemable or carry any special or preferential rights (save for limited preferential rights to dividends).
Management incentives / vesting	- Vesting schedules are common place. - If a manager leaves they are deemed a	- Vesting schedules are common place.	

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	"good" or a "bad" leaver which dictates what happens to their shares on leaving.	- Leaver provisions are less common.	
Registration rights	- A listing on AIM or the LSE would involve the listing of the entire issued share capital and so registration rights for investors are less relevant. Investor rights in respect of a listing are usually included under exit provisions of a shareholders' agreement.	- Investors can have demand rights or piggy back rights compelling the company to extend the registration statement to cover the investor stocks. These are important as a registration statement only registers the stocks identified and unregistered stocks are difficult to sell.	
Anti-dilution	- The most common anti-dilution mechanic is the bonus issue of shares to compensate an investor's dilution suffered in a down round.	- The most common anti-dilution mechanic is the adjustment (by an increase) to the conversion ratio of an investor's preference stock to compensate an investor's dilution suffered in a down round.	- Weighted average basis is common to both jurisdictions.
Restrictive covenants	- Non-compete and non-solicitation obligations commonly imposed on Founders in the transaction documentation and service agreements.	- Restrictive covenants less commonly requested.	- There are greater issues with the enforceability of restrictive covenants in the US.
Terminology	- "Subscribe" - "Shares" / "Ordinary Shares" / "Preference Shares" - "Tag along right"	- "Purchase" - "Stock" / "Common Stock" / "Preferred Stock" - "Co-sale right"	

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