

Buying or Selling a Business



Buying or selling a business is a significant step that requires effective planning. Practical advice can make the difference between success and failure. Here, we look at the way in which transactions may be structured and offer you some practical tips.

Transaction structure

Heads of Agreement

The purpose of this document is to focus on the principal financial commercial and legal issues. It is not normally intended to be a legally binding agreement, although it is possible to have certain provisions (for example, dealing with confidentiality) to be expressed as legally binding. Advice should be taken prior to negotiation of the Heads of Agreement.

Due Diligence

This relates to the buyer's investigations and enquiries and enables the buyer to assess the potential legal, contractual and financial risks. Full disclosure at this stage is important for the seller since it will reduce the risk of significant issues arising late in the transaction at a time when considerable amounts of time and cost may have been spent.

Sale and Purchase Agreements

This is the main legal document that records the parties' legal obligations. An important part of the agreement will be the warranties to be provided by the seller. These are statements made by the seller and relied on by the buyer. They may relate to a wide range of areas affecting the business, for example, its profitability, condition and ownership of the assets, employees, accounts and tax.

Disclosure Letter

A buyer will normally rely on the warranties given by the seller in the Sale and Purchase Agreement. Where any of these statements need to be qualified

in any way (for example, the business has been involved in disputes, may lose key contracts as a result of the deal, has problems with employees), the seller will normally want to make disclosures by way of a Disclosure Letter in order to protect itself from being sued by the buyer for breach of warranty.

Given the potentially wide-ranging nature of warranties, disclosure may be an important part of the transaction for the seller.

Practical issues

Property

Property issues may be important, even where the company's premises are not significant. Property advisers should be instructed early to avoid delays later.

Time

Both parties will need to devote a considerable amount of their own time in a sale.

Confidentiality

Depending on the nature of the business, the parties may wish to have a binding Confidentiality Agreement in place at the start of negotiations.

Clearly, a seller will be disclosing commercially sensitive information to the buyer. Similarly, a buyer may be required to reveal confidential finance details to prove its ability to proceed with the acquisition.

Exclusivity

The buyer will be committing a significant amount of time and cost to the transaction and may well require a “lock out” agreement which will prevent the seller from talking to other interested parties for an agreed period.

If you would like to find out more about any of the issues raised above or any other Business Law matter, Frank Scott-Ashe can be contacted on 01225 462871. Alternatively, you can email him at: frank.scott-ashe@blbsolicitors.co.uk.

