Corporate

Burges Salmon

Burges Salmon Guide to private company sales and acquisitions

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Introduction

This Guide provides an overview of what to expect of the legal process when buying or selling a private company or business. It covers issues of interest to both buyers and sellers, including the structure of the deal, the process and the key documents involved.

For many of the individuals involved, a sale or acquisition is likely to be a one-off or rare event. A glossary of common terms used in the context of private company sales and acquisitions can be found at the back of this Guide.

Structuring the sale and purchase

Should we buy/sell the shares or the assets of the company?

A company's business can be acquired in one of two ways:

- By buying the shares in the company that owns the business (a share sale). Here, the sellers are the shareholders of the company and they will sell their shares in the company to the buyer.
- By buying the assets of the company which comprise the business (a business or asset sale). Here, the company is the seller and it will sell some or all of its assets to the buyer.

The majority of acquisitions are structured as share sales but a number of factors may impact on which structure is used, the most common are looked at briefly below.

Sometimes it will be necessary to restructure the business or company before it is sold to allow it to be acquired in the most appropriate way. See **Pre or post-completion restructuring** on page 15.

Tax

The structure of a transaction is often driven by the tax implications for the buyer and sellers. Their interests may well be at odds when it comes to achieving the most beneficial tax outcome.

As this is a complex area, dependent on the specific circumstances of the parties (including the availability of exemptions, reliefs and allowances), this Guide does not cover the various tax consequences of a deal. As a general rule of thumb, however, where sellers are individuals they are likely to favour a share sale in order to avoid a potential double tax charge – an initial tax charge on the company at the time of the sale of assets to the buyer and a further tax charge on the company's shareholders when they withdraw the sale proceeds from the company.

As tax is likely to be a key determining factor to the structure of a deal, both buyers and sellers should obtain specialist tax advice at the outset. Please contact us if you would like to discuss this further.

Assets and liabilities

On a **share sale** the buyer acquires the company "warts and all" with all its assets, liabilities and obligations. Generally this route offers sellers a cleaner break as after the sale takes place they will have no direct responsibility for the company - any continuing liability will be that owed to the buyer under the terms of the warranties and indemnities agreed in the sale and purchase agreement (see page 8 for further details).

On a **business sale** only the assets and liabilities which the buyer specifically agrees to purchase are acquired and everything else stays with the company. If the buyer suspects there are unknown liabilities in the company or is troubled by any particular aspect of the business, it may prefer to structure the deal as a business sale - allowing it to "cherry-pick" from the company's assets and liabilities and take on only those risks which it understands and finds acceptable. One asset/liability which the buyer cannot leave behind so easily however is the target's workforce - see **Employees and pensions** below.

Practicalities - consents and continuity

Generally speaking there are more practical and commercial issues to contend with on a business sale than on a share sale.

On a **share sale** only the ownership of the shares in the company is transferred. Whilst the shareholders of the company will change, its assets (including its business contracts, agreements and licences) remain with the company. From the outside, very little will appear to have changed and customers and suppliers will usually be happy to continue dealing with the company as before. Certain contracts (for example, financing contracts and other long-term agreements) may however require the other party's consent when a change of ownership of the company is planned. It is important to identify any such contracts early in the process.

On a **business sale** the assets and contracts of the business being sold will all need to move across to the buyer and the consent of customers, suppliers, landlords, licensors and others is more likely to be required. Contracts, agreements, land and property and certain intellectual property rights will all need to be formally transferred. There is likely to be more disruption to the business than on a share sale and the buyer may need to build confidence with the customers and suppliers of the business to maintain existing trading relationships.

Employees and pensions

On a **business sale** the TUPE regulations are likely to apply. If so, the employees will automatically transfer to the buyer on their current terms of employment and the buyer becomes their employer. Buyers and sellers should be aware that they will have specific obligations to inform employees about their plans and may need to consult with employees prior to completion of the sale. Certain pensions rights may also transfer to the buyer by virtue of the TUPE regulations.

On a **share sale** there is no change of employer and the employees simply remain employed by the target company.

Buyers and sellers should ensure they are aware of the pensions implications when

buying or selling a target company or business. This is a complex area and the potential liabilities and obligations, particularly in the context of final salary schemes, can be significant.

This Guide does not look at these areas in any detail and specialist employment and pensions advice should always be obtained. Please contact us if you would like further information.

Due diligence

What is due diligence?

When goods or services are bought by a consumer certain conditions are implied by law, for example, that the goods will be of satisfactory quality and fit for purpose. When a buyer acquires the shares or business of a company no such conditions are implied and the general principle “buyer beware” applies. A buyer will want to gather as much information about the company or business as possible to understand what it is taking on – as a process this is known as “carrying out due diligence”.

Due diligence is typically a thorough appraisal of the condition of the company or business being acquired. This gathering and evaluation of information is carried out by the buyer’s advisers and relevant people from within its own organisation.

The information obtained will help the buyer:

- evaluate what it is buying and where the weaknesses lie;
- decide whether to go ahead with the purchase;
- establish the right price and the strength of its bargaining position;
- identify any liabilities or risk areas which may affect how the deal is structured;
- identify areas where it requires protection in the contractual documents through warranties and indemnities;
- identify any third party consents which may be required, for example, consents from customers, suppliers or landlords;
- identify areas which may need action following the acquisition, for example, to streamline operational matters with the systems and processes of the buyer’s group.

Legal due diligence

Traditionally the buyer’s lawyers send a detailed information request to the sellers or their lawyers, designed to flush out as much useful information as possible. These enquiries usually cover all aspects of the target company or business being acquired.

Where a company is being acquired this will include everything from its constitution to its employees, contracts, licences, property, financing arrangements, intellectual property rights and IT systems. The degree of focus on any particular area will depend on the nature of the target business or company, where the buyer perceives the risks lie or what it considers the target's "crown jewels" to be.

The sellers and their team gather the information requested and make it available to the buyer's lawyers. The use of electronic data rooms as a means of housing and accessing this information is increasingly prevalent. The buyer's lawyers will evaluate the information provided and usually produce a due diligence report for the buyer which will highlight issues of concern and suggest protective measures where appropriate. The focus and degree of detail in this report will vary from deal to deal depending on the buyer's particular needs (or, where bank or other external funding is involved, the funder's requirements).

Legal due diligence can be a lengthy and sometimes frustrating process, particularly for sellers who will invariably need to commit significant time and resources responding to the buyer's enquiries. Whilst it is started early on in negotiations, it can often continue well into the deal process and overlap with the disclosure process (see page 12 for further details).

Financial due diligence

The buyer's accountants will analyse the financial books of the target company or business and back up this paper review by talking to its accountants and management. Financial due diligence will focus on assessing the historic trading performance of the company or business to check that the assumptions the buyer is making about its future are supported. The buyer's tax accountants will review the tax history of the target and focus on identifying any issues which could be disputed by HMRC.

Commercial and other due diligence

Both the financial and legal due diligence may identify issues of a commercial or strategic nature which the buyer may want to investigate further. Typically this type of due diligence will be carried out in-house or in conjunction with the financial due diligence. Sometimes a specialist consultancy may be involved to carry out a more detailed analysis of the company or business being acquired, looking at its reputation in the marketplace, unique selling points and market opportunities in the context of the buyer's plans for the future.

Other specialist reports may also be required as part of the wider due diligence process, for example, property surveys, environmental audits, health and safety investigations or actuarial valuations.

Warranties, indemnities and disclosure

What are warranties?

Warranties are assurances about the target company or business. To protect the buyer against liabilities which may exist in the company or business, the sellers will typically be required to give a large number of warranties covering all aspects of the company or business being acquired. If any of these assurances are untrue and as a result the value of the company/business is less than the buyer paid for it, the sellers may be liable to pay damages to the buyer under a breach of warranty claim.

Warranties also perform the dual function of encouraging the sellers to provide further information about the company or business in the form of disclosures (see below), over and above the information extracted during the due diligence process.

The sale and purchase agreement will contain a schedule of warranties which can be up to 40 pages in length and is often one of the most negotiated aspects of the transaction documents. Whilst claims are relatively rare, both parties will want to be prepared for this possibility. The buyer will be keen to ensure that the warranties are as wide as possible whilst the sellers will try to limit their scope. Fundamentally this is a question of risk allocation between the two sides to a deal.

Certain types of sellers who have a more detached role in a company may refuse to give the usual broad range of warranties, for example, venture capitalists, receivers or trustees. In these situations a buyer will want to be even more confident in the quality of its due diligence.

What is the purpose of disclosure?

Sellers' perspective. Due to the generally comprehensive nature of warranty cover requested by the buyer, sellers will often be required to give warranties which, if left unqualified, will not be correct. To address the risk of a warranty being untrue and leading to a potential warranty claim, the sellers prepare a "disclosure letter" for the buyer. This letter acts to qualify the warranties with factual information setting out the true state of affairs. To the extent that the sellers properly qualify a warranty by a disclosure they cannot be sued for a breach of that warranty.

Buyer's perspective. A buyer will gain comfort from the warranties on two fronts, knowing that:

- the sellers will want to ensure they have provided all relevant information to the buyer via the disclosure process in order to avoid any claims for breach of warranty; and
- potentially, in a worst case scenario, it may have a right to sue the sellers for a breach of warranty.

Practically speaking, warranty claims are rarely brought before the courts and much effort is put into the disclosure process to ensure that the buyer is fully informed and disputes avoided. If a major issue is identified through the disclosures it will generally be dealt with through a price adjustment or an indemnity in the sale and purchase agreement. See also **Additional protection** on page 15.

How do indemnities differ from warranties?

As well as the schedule of warranties, it is normal practice for the sellers to be required to give certain indemnities (promises to reimburse) to the buyer. For example:

- on a share sale, the tax deed contains a series of indemnities (see page 10 for further details); and
- the buyer may look for indemnities to cover itself against problematic issues identified during the due diligence or disclosure processes.

Indemnities will be more specific in nature than warranties as they are generally used to protect the buyer against particular risks or identified liabilities. The main distinction is the basis of any claim by the buyer for breach.

Breach of warranty. The rules about claiming and calculating damages on a warranty claim are complicated but in essence, damages on a warranty claim are usually based on the buyer's loss of bargain – is the company/business acquired worth less than the buyer paid for it because the warranty was untrue?

Breach of indemnity. Where an indemnity has been triggered the sellers will be required to reimburse the buyer for the particular liability that has arisen on a pound for pound basis regardless of whether it has affected the value of the company/business. Unlike warranties, indemnities are generally not qualified by the sellers' disclosure letter.

How can sellers protect themselves from claims?

Primarily by ensuring that they have properly disclosed all relevant information to the buyer during the disclosure process. Particular areas of risk tend to be the warranties relating to accounts and financial performance.

The warranty schedule will be carefully negotiated to try and ensure that the sellers are not being asked to give unreasonable assurances to the buyer.

It is common for sellers to build certain protections into the sale and purchase agreement which limit their potential liability under the warranties (and sometimes certain indemnities). These include:

- a time limit on when claims can be brought by the buyer;
- a minimum (or de minimis) – "insignificant" claims below an agreed sum are completely excluded;
- a threshold (or basket) – claims must exceed a certain threshold before any

claim can be brought. Once this threshold is reached (either by a single claim or a number of claims in aggregate) the agreement will state whether the sellers are liable for the aggregate amount of the claims or just the excess above the threshold; and
- a cap – the maximum amount the sellers can be liable for (often the total amount received on the sale).

Where there are multiple sellers they will usually be jointly and severally liable for any claims made by the buyer. This means that the buyer can claim against all or any one or more of them. To protect themselves the sellers may:

- require a cap in the sale and purchase agreement which limits their individual liability to the amount of consideration each individual receives; and/or
- sign up to a separate (private) agreement called a contribution agreement which regulates how liability under the sale and purchase agreement will be shared between them.

Is insurance cover available?

There is a growing market for warranty and indemnity insurance (W&I insurance). Policies provide cover in respect of claims under the warranties (and sometimes indemnities), either generally or in respect of discrete areas of risk.

Policies can be taken out by either the buyer or sellers. The buyer may have concerns about any financial caps on liability negotiated by the sellers or have doubts about the sellers' future financial position and their ability to pay out for warranty claims. The sellers may be concerned about the potential risk of losing their sale proceeds if the buyer makes a warranty claim, despite a thorough disclosure exercise. Or a policy may be seen as a viable alternative to tying-up money for long periods in an escrow account.

Documents

What are the key documents involved?

Heads of terms. This document sets out the key commercial terms of the proposed transaction. Although not generally legally binding, it will set the tone for the transaction. Once agreed it may be harder from a negotiation perspective for either party to go back on a point contained in the heads of terms, without good reason. Specific clauses relating to confidentiality and exclusivity may be included and, if so, these will be contractually binding.

Confidentiality agreement. The buyer will be under a duty not to disclose any confidential information it receives concerning the target company or business during the negotiation process. This duty may be reciprocal if information is also flowing from the buyer to the sellers or to ensure that the parties keep the proposed transaction itself confidential. Sometimes these confidentiality obligations will be combined with the exclusivity agreement or found in the heads of terms.

Exclusivity agreement. This gives the buyer a specified period of time to negotiate and complete the deal during which the sellers may not look for, provide information to, or negotiate with other possible buyers. Again, exclusivity arrangements are sometimes found in the heads of terms or combined with the confidentiality obligations.

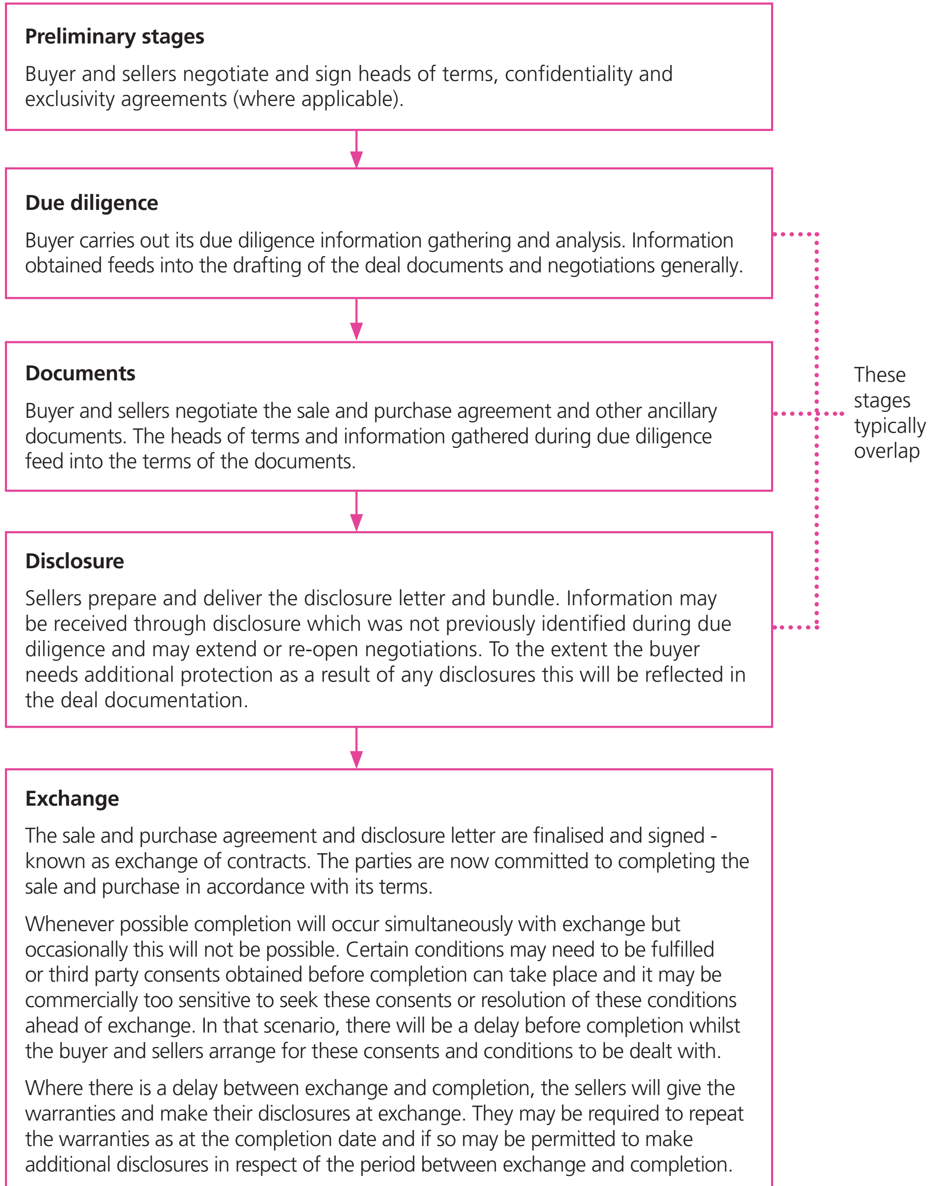
Sale and purchase agreement. This is the main contractual document and contains the detailed terms of the sale and purchase. As a rule it is drafted by the buyer's lawyers (but see **Glossary** – Auction sale). It is usually a very lengthy document and prescribes:

- how the purchase price is to be met and the mechanics of payment (for example, completion accounts);
- (on a business sale) the assets to be transferred;
- any consents or conditions which must be obtained or satisfied before the deal can be completed;
- any restrictive covenants imposed on the sellers;
- completion mechanics;
- warranties and indemnities;
- detail relating to specialist areas such as real estate, pensions, employment and intellectual property;
- other matters such as limitations on the sellers' liability, additional buyer protections or provisions dealing with how the business is to be run during any gap between exchange of contracts and completion.

Disclosure letter. This letter, prepared on behalf of the sellers and addressed to the buyer, acts to qualify the warranties and is one of the most important deal documents. It is supported by a disclosure bundle which contains any documents referred to in the disclosure letter. See page 8 for further detail.

Tax deed. In almost all share sales there will be a deed of tax indemnity (also known as a tax covenant). This may be a separate document or contained in a schedule to the sale and purchase agreement. It will require the sellers to indemnify the buyer for any pre-completion tax liabilities in the target company not arising in the ordinary course of business, or otherwise disclosed in its accounts. Indemnities impose a pound for pound payment obligation as distinct from a claim for damages under the warranties (see page 9 for further detail). There will be no tax deed on a business sale as the buyer will not be taking on the target company's tax position.

Process



Completion

At completion, ownership of the company or business being acquired is transferred to the buyer.

Completion, particularly of larger and more complex deals, traditionally involves a formal completion meeting attended by the buyer, sellers, their lawyers and other advisers. It can often be a lengthy meeting as the lawyers check that all the formalities are in place, the purchase monies are available and all the ancillary documents needed to finalise the sale and purchase are ready for signature. It is not unusual for negotiations between the buyer and sellers to be ongoing at the start of this meeting. Where exchange and completion are not simultaneous there may be a lengthy meeting at each stage.

Practicalities will include:

- board meetings and sometimes shareholder meetings;
- payment of the purchase price;
- release of charges connected with the sellers' funding arrangements and implementation of any buyer's funding;
- resignations and appointments of directors and auditors;
- execution of any additional transfers required on a business sale (for example, transfers of real property or intellectual property assignments).

Post completion

There will be a certain amount of housekeeping to deal with following completion, including:

- announcements and notifications (for example, on a share sale, Companies House forms and filings);
- payment of stamp duty on a share sale and possibly a business sale (if the assets being purchased include shares) and stamp duty land tax on a business sale if the assets include real property;
- preparation of completion accounts where relevant;
- on a business sale, assignments/novations of supplier and customer contracts;
- other administrative or practical matters needed to integrate the target company or business into the buyer's group or organisation.

Issues which may affect fees

By comparison with the sale of a residential property where the process (and the cost) is likely to be reasonably predictable, a company or business sale has a great many variables. The nature of the company or business being sold, as well as the complexity of the deal structure, may affect the level of legal fees. Examples of issues which are likely to increase the complexity of the paperwork, the extent of negotiations, and thus have a consequential knock-on effect on the level of fees include:

Timing

- Regulatory or other third party consents or clearances (for example, from the competition, tax, industry or pensions authorities or regulators).
- A gap between exchange and completion to deal with consents or conditions which must be obtained or satisfied before completion. It is important to legislate in the sale and purchase agreement for what should take place during that period, for example, restrictions on what the target or sellers can do and who bears the risk of something material happening to the target before completion. This materially impacts the complexity of the documentation and the number of issues to be considered.
- Complex specialist matters (for example, problematic environmental, pensions or TUPE issues).

Consideration

- Consideration based on completion accounts - accounts of the target company or business which are drawn up shortly after completion and used to determine the final amount of consideration to be paid by the buyer. The detail of what is included in these accounts, how they will work to adjust the price and when and by who they will be prepared must all be agreed and set out in the sale and purchase agreement.
- An earn-out arrangement where a future payment is linked to a formula, typically based on the underlying results of the acquired company or business following the sale. An earn-out may be used for a number of reasons, for example to obtain a more accurate valuation and/or to tie-in and motivate sellers where they are continuing with the business following completion.
- Any other element of deferred consideration (payable in the future) and the basis on which it is left outstanding (for example, secured or unsecured).

Financing

- External financing arrangements are likely to have implications in terms of both the documentation required and potential timing issues connected with third party involvement.

- Banks may specify the nature and extent of due diligence required which may be at a higher level than the buyer would otherwise carry out.

Management continuity

- Resignations or negotiations in respect of the employment arrangements of key individuals.
- Share option arrangements.

Additional protection

- Any additional "security" underlying the warranties and indemnities. Where a company is selling a subsidiary, the buyer may seek guarantees of the warranty liability from its holding company or its shareholders.
- An escrow account used to set aside a portion of the consideration to ensure there are funds to meet warranty claims or to satisfy a post completion price adjustment. This can be a fiercely negotiated issue.
- W&I inurance. Significant work can be involved in matching the policy terms and the terms of the sale and purchase agreement to avoid gaps in cover.

Pre or post-completion restructuring

- The seller may need to restructure the target company or business before it is sold. For example, where:
  - the seller is only selling particular assets or part of the business; or
  - the buyer is not prepared to take on certain liabilities or aspects of the business,

  a business sale would seem appropriate. There may however be other reasons (often tax) which make it more desirable to arrange the deal as a share sale. Where this is the case, the seller may transfer (or "hive-off") the business to a separate new company under its control, allowing the buyer to acquire that new company (minus the aspects not for sale or not wanted) by means of a share sale.
- Similarly, a buyer may wish to carry out a post-acquisition reorganisation either for tax reasons or to integrate the target company or business into its group.

See **Structuring the sale and purchase** on page 4. In particular, the tax consequences of any restructuring should always be considered.

Glossary

Anti-embarrassment provision – a provision which adjusts the **consideration** in circumstances where the buyer on-sells at an uplift within a specified period. Aims to protect the sellers from the embarrassment of missing out on a higher sale price.

Assets – in the general sense, any property or rights owned by a company, including land, buildings, equipment, stock, cash, monies owed, investments, the benefit of business contracts and licences, intellectual property rights and goodwill.

Auction sale – method of sale where the sellers invite competing offers from bidders for the target company or business. Can have advantages to the sellers in terms of control of the process, bargaining power in contractual negotiations, audience of potential buyers reached and the price achieved through competitive bidding, with the corresponding disadvantages for the buyer. The process itself will vary from deal to deal (and from the standard process set out on pages 12 and 13) but generally:

- potential buyers indicate their interest in response to an **information memorandum**;
- shortlisted bidders are given access to the **data room** and/or seller prepared due diligence reports;
- a second round of bidding takes place with bidders responding to a draft sale and purchase agreement prepared by the sellers' lawyers;
- a preferred bidder is chosen and the deal proceeds.

Basket – also known as a threshold. A form of limitation on the sellers' liability where claims must exceed in aggregate a certain agreed threshold before a buyer can claim against the sellers for a breach of warranty (or certain indemnities). See further page 9.

Bible – a copy of the signed documentation relating to a sale and purchase retained for future reference. Traditionally produced in a paper format but more common today in CD form.

Completion – the closing of a sale when ownership of the company or business transfers to the buyer. It may occur simultaneously with **exchange** or, where completion is conditional on the satisfaction of certain matters, there will be a period between exchange and completion during which those matters are resolved.

Completion accounts – accounts (typically a balance sheet and often a profit and loss account) prepared as at the completion date as evidence of the financial position at completion. Used to adjust the **consideration** in accordance with a mechanism set out in the sale and purchase agreement

Confidentiality agreement – requires the recipient of information to keep it confidential. Also commonly referred to as a non-disclosure agreement or NDA.

Consideration – payment for the purchase. May take various forms including cash, **consideration shares** or **loan notes**. An element may be **deferred consideration**.

Consideration shares – payment for the purchase in the form of shares in the buyer.

Contribution agreement – an agreement which regulates how liability will be divided between multiple sellers in the event of a claim by the buyer under the sale and purchase agreement. See further page 10.

Data room – a way of making due diligence information available to a buyer and its team of advisers. The sellers will collate information on the company or business and display it either in paper form in a physical data room or electronically by way of a secure online facility. Used both in conjunction with traditional due diligence enquiries made by the buyer's team and the **auction sale** process.

De minimis – a form of limitation on the sellers' liability where claims for breach of warranty (or certain indemnities) below an agreed sum are excluded.

Deferred consideration – consideration payable sometime in the future in accordance with provisions set out in the sale and purchase agreement. Payment can take various forms including cash, **consideration shares** or **loan notes.** Can be structured in various ways including the use of **completion accounts**, an **earn-out** or an **escrow account.**

Disclosure letter and bundle – a letter which sets out the sellers' disclosures against the **warranties** being given in the sale and purchase agreement and the accompanying bundle of documents supporting those disclosures. See further page 8.

Earn-out – where part of the **consideration** is deferred and paid over a period of time, calculated by reference to criteria set out in the sale and purchase agreement and linked to the future performance of the company or business acquired. Often used to motivate the sellers where they are continuing with the business going forward.

Escrow account – an account holding a sum of money to be released at a future date. Most typically used as a form of security for payment of any warranty claims which come to light or in connection with completion account adjustments. Typically operated jointly by the buyer and sellers' lawyers or, increasingly, by a third party service provider. Also known as a retention account.

Exchange – the signing of contracts to buy/sell a company or business, representing a commitment to complete the deal. It may occur simultaneously with **completion** of the sale or, where **completion** is conditional on the satisfaction of certain matters, it will be followed by a delay during which those matters are resolved.

Exclusivity agreement – gives the buyer a specified period of time to negotiate and complete the deal during which the sellers may not look for, provide information to, or negotiate with other possible buyers. Also known as a lock-out agreement.

Goodwill – in its everyday sense, the value ascribed to a business' reputation and custom. In the context of a business sale, the difference between the price paid by the buyer and the value of its identifiable net assets.

Heads of terms – sets out the principal terms of the proposed transaction. Also commonly known as heads of agreement, letter of intent or memorandum of understanding. See further page 10.

Hive off/down/up – where the business or assets are transferred to another group company. Typically 'down' to a subsidiary or 'up' to a parent. Often tax driven. See further page 15.

Indemnities – promises to reimburse in respect of specified risks or liabilities. See further page 9.

Information memorandum – a document prepared by the sellers and their advisors and circulated to prospective buyers giving details about the company or business being sold. Often used in conjunction with an **auction sale** where there may be a number of potential bidders.

Letter of intent – see **heads of terms.**

Loan notes – a debt instrument which may be provided by a buyer as part of the consideration in place of cash. May be secured by a charge over the buyer's assets, unsecured, or backed by a parent company or bank guarantee. Can have beneficial capital gains tax implications for the sellers in certain circumstances.

Lock-out agreement – see **exclusivity agreement**.

Locked box – a method of fixing the **consideration** by reference to accounts prepared at an agreed date prior to **exchange**. Trading risk/benefit from the agreed date to completion is borne by the buyer and the sellers undertake not to take cash or assets (known as **leakage**) from the **target** unless agreed. Unlike a **completion accounts** deal there is no post-completion price adjustment thereby giving sellers certainty over pricing.

MOU – a memorandum of understanding. See **heads of terms**.

NDA – non-disclosure agreement. See **confidentiality agreement**.

Restrictive covenants – restrictions imposed on the sellers for a period of time following a sale to prevent them from entering into competitive activities to the detriment of the company or business they have sold. Typically used to prevent the solicitation of the employees, customers or suppliers of the target company or business.

Retention account – see **escrow account.**

Set off – where competing rights to payment or reimbursement may be offset against each other to produce a single one-way payment. In the context of sales and acquisitions,

sometimes seen as an express set off clause in the sale and purchase agreement allowing the buyer to set off the amount of any claim it has against the sellers (for example, for breach of warranty) against any **deferred consideration** which remains outstanding.

Stamp duty – a tax paid on the sale of shares (and certain other forms of debt or equity instrument). Currently payable at a rate of 0.5 pence per £1 of consideration.

Stamp duty land tax – a variable rate tax paid on the acquisition of land or real property.

Target – the company or business being acquired.

TUPE – the Transfer of Undertakings (Protection of Employment) Regulations. On a business sale TUPE may operate to transfer the employees of the business to the buyer who will inherit all rights, liabilities and obligations in relation to them. See also page 5.

Warranties – assurances about the target company or business given by the sellers to the buyer in the sale and purchase agreement. See further page 8.

W&I insurance – insurance cover for losses arising from breach of warranties (and sometimes indemnities). See further page 10.

Key contacts

If you would like any further information on this subject please speak to your usual contact at Burges Salmon or:

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