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Yorkshire's Legal People

Buying and selling shares: an introduction

This month, the Corporate and Commercial department have outlined the usual legal process of buying or selling shares in a private limited company incorporated in England and Wales. The company in which shares are being bought or sold is usually referred to throughout the transaction as the target company, or more concisely the "Target". As a department we are experienced in understanding the concerns of a buyer or seller in a Target and are often asked to guide our client through the expected stages.

In terms of timeline, the following would be typical for consideration:

1. Assembling a Team
2. Heads of Terms
3. Due Diligence
4. Transactional Documents
5. Ancillary Documents
6. Stamp Duty
7. Post-Completion Matters

A key first step for any client is to make sure that they have on board the right Team. The Team will include an experienced legal representative and accounting representative who will be able to advise the client as to the best structure for the sale or purchase and who will be in their corner during negotiations, drafting and hopefully concluding the deal. The Team may also include internal support within the Target. Other professionals may need to be involved depending on the nature of the sale or acquisition. Getting the Team right is essential for a successful transaction to make it over the line.

It is typical and indeed advisable, certainly in transactions of any complexity, for the buyer and seller with their supporting advisors to consider and ultimately record written Heads of Terms. Heads of Terms are the skeleton of any deal and record common intentions. The Heads of Terms are mostly non-binding but should contain core terms and the understanding of the parties (such as the price for the shares, how and when this is to be paid, whether price is fixed or linked to Target's financial status at the time of Completion or in the period thereafter, warranties to be given by the seller and other matters). Heads of Terms very simply ensure that both sides are on the same page. Heads of Terms will contain some legally binding clauses such as costs, confidentiality and very possibly an exclusivity period.

Once Heads of Terms are agreed and signed, the buyer's legal representation may look to raise formal, written legal and financial due diligence regarding the business of the Target. The purpose of this exercise is to expose and identify any matters which may impact on the buyer's decision to acquire the Target on the agreed terms. A seller should expect to answer questions around issues



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such as material contracts, outstanding liabilities, the Target's finances, employment matters and various other important aspects of the Target. Due Diligence is often a lengthy and extensive and often all-encompassing process for a seller, however the onus remains on the seller to respond and cooperate with reasonable enquiries put to him by the buyer. For the buyer, it is a critical exercise to establish that what he is buying is what he thinks he is buying – and that the provisionally agreed price is the right one.

Thereafter follows negotiation of the Transactional Documents. The most important Transactional Documents will include the Share Purchase Agreement (SPA), which should be reflective of the Heads of Terms but will also expand on certain matters included only in outline in the Heads of Terms. The Seller will also under the guidance of his legal advisors prepare a Disclosure Letter – his “get out of jail” card to disclose formally against any of the legally binding warranties (promises) that he is giving to the buyer under the SPA about the Target. It would be typical to see other core Transactional Documents, for example Settlement Agreements and potentially Service Contracts for an outgoing Seller.

Completing the jigsaw of Transactional Documents are a suite of ancillary documents that will sit alongside the core documents. These will include waivers, stock transfer forms, director and secretary resignations and appointments (where applicable) plus other things.

Following successful completion of any share sale, the buyer will attend to payment of Stamp Duty and stamping of the relevant stock transfer form. It is important for that cost to be factored into the buyer's cost considerations at the outset - stamp duty is payable by the buyer at 0.5% of the entire consideration for the shares unless the transaction is exempt from stamp duty. Share transfers may be exempt from stamp duty if they are a gift, inherited under a will, transferred between spouses or civil partners, or where consideration for shares is less than £1,000.00.

Share sales and purchases take many guises – some are for the whole of a Target, some for only part, some are to an external buyer, some may involve internal individuals (such as an employee acquiring a share in a Target). Some will involve external finance to support the deal, others are structured, financially, differently. We are experienced in all types of transactions and can advise, as part of your core Team, from the outset to ensure that the right deal is secured and then implemented. We understand that for many clients, this is a once in a lifetime experience and we aim to make the process as seamless as possible for them whilst delivering an excellent quality legal service.

If you are considering buying or selling shares in a private company, or are seeking legal representation or further advice, please contact NewEnquiries-CoCo@chadlaw.co.uk.