

Briefing note

Legal Documentation

Selling a business is often the most significant financial event of the owner's life, so getting the documentation right is critical.

- Regardless of the size of a transaction, lawyers should be appointed to provide appropriate legal advice.
- It is generally the responsibility of the purchaser to draft the legal documentation.
- The legal documentation for the purchase of a business will typically include the heads of terms (HOT) and the share purchase agreement (SPA) for a share purchase, or business purchase agreement (BPA) for an asset purchase.
- It could also include employment/self-employment contracts (if the seller is working with the purchaser after completion), shareholder agreements (if you are receiving equity as part of the transaction) and potentially loan agreements for the purchaser if they are going to fund part or all of the transaction.
- The HOT will often contain a wording that, once signed, will mean the seller cannot negotiate with any other party for a period, or until the deal is concluded.
- Depending on the deal structure, the SPA or BPA is the main legal agreement and it is essential that both parties fully understand the responsibilities placed on them, and the consequences of a breach.

Do

- Appoint a lawyer to advise and represent you.
- Clarify the legal documents the purchaser expects to use as early as possible.
- Negotiate the exclusivity period in the heads of terms, as a way of managing the timeline to completion.
- Set the principles for review and edit carefully. If a purchaser drafts agreements and the sellers lawyer re-drafts them unnecessarily, it can damage goodwill and waste resources.

Don't

- Assume that the heads of terms means the deal is done.
- Gloss over detail or agree important legal matters over email. If in doubt, always favour a face to face meeting followed by a written record.
- Read each document in isolation. The breach of a clause in one document may seem innocuous, but it could have serious implications for the terms of a related agreement.

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