

Sale and purchase process for asset deals in care

Pre-acquisition agreements

Seller: Once you have accepted an offer, it is sensible to agree a short "Heads Of Terms" document with the buyer. This will help set expectations for the sale and will cover price, financial structure, timescales, confidentiality of your information and whether you are willing to offer an exclusivity period.

Buyer: You may wish to seek protection from rival buyers by seeking an exclusivity commitment from the seller. We advise that this is dealt with in the "Heads Of Terms" for the reasons described opposite and that your tax advisor is engaged in this process.

CQC Applications

Seller: You will need to submit either an application to cancel your registration, if you are exiting care altogether, or cancel a particular location, if you are just selling one home.

Buyer: If you are an existing operator, you will need to decide whether you will:
a. Set up a newco which will require a brand new registered provider application; or b. Add the home as a "location" to your existing registration requiring an application to add a location. If you are a new entrant, you will need to make a brand new registered provider application. If the existing manager is remaining in their post then you will need to submit a fast-track application to transfer their registration to you. If you have a new manager then a brand new manager application needs to be submitted. This has to be submitted with your CQC application. Whichever option you take, we can assist you with preparing the application together with the supporting documents.

Due diligence

Seller: To keep the completion timescale on track, it is vital that you are well-prepared with responses to questions the buyer will ask and with compliant and complete documentation. Our experience has seen that very often the same issues crop up, causing delays, additional costs and opportunities for buyers to re-negotiate prices and request retentions.

Documenting the transaction

Seller: The Asset Purchase Agreement is prepared by the buyer's solicitor. If the property is not owned by the selling entity then a separate property contract will need to be entered into.

Buyer: It is vital that your advisors ask the right questions, particularly in relation to areas of likely risk such as staff liability. If you have third party funding we will need to report to your lender's solicitor and answer any queries they have. If issues arise during due diligence or there are concerns about a seller's financial standing to compensate a buyer in the event of a claim, it is common to ask for a retention of part of the purchase price.

Negotiate and agree the share purchase agreement

Seller: The Asset Purchase Agreement and, if required, the property contract will need to be reviewed and negotiated. We will help you limit the scope of the warranties you provide and negotiate limitation of your liability.

Buyer: The Asset Purchase Agreement is a lengthy document prepared by the buyer's solicitor. It would include warranties to cover all aspects of the care business. Typically, the agreement would be exchanged with completion, conditional on receiving CQC approval. If the property is not owned by the selling entity then a separate property contract will need to be entered into.

Disclosure letter

Seller: We need to prepare the disclosure letter. A disclosure letter is prepared by the seller to identify and make known to the buyer any exceptions to the warranties that are given by the seller in the Asset Purchase Agreement.

Buyer: Our job will be to review and negotiate the disclosure letter prepared by the seller. The seller will give certain warranties in the Asset Purchase Agreement to you. The disclosure letter "discloses" information to you where a warranty is untrue or misleading, or where the warranty requests further information or documentation to be provided. You will be deemed to buy the business on the basis that you are aware of the disclosure and will not be able to make a claim if you subsequently suffer loss.

Ancillary documents

Seller: A number of ancillary documents will usually be required in addition to the Asset Purchase Agreement and the disclosure letter, such as board minutes, resignation letters and Companies House documents.

Buyer: A number of ancillary documents will usually be required in addition to the Asset Purchase Agreement and the disclosure letter, such as board minutes, resignation letters and Companies House documents.

Exchange of contracts

Seller: Agree the final form of the Asset Purchase Agreement and other transaction documents.

Seller: Typically, the agreement would be conditional on the buyer receiving CQC approval.

Buyer: Typically, the agreement would be conditional on you receiving CQC approval. You should ensure that your CQC application and funding is in place in order to complete the transaction.

Funding

Seller: Check the buyer has its funding ready to complete. Agree the completion funds flow.

Buyer: Agree the completion funds flow and make sure any third party funds are ready for drawdown.

TUPE

Seller: TUPE is likely to apply so that the staff automatically transfer over. We can assist you with the TUPE process and provide the documents for the statutory information and consultation exercise.

Buyer: You will need to consider whether you want to change any of the terms of employment. If so, we can assist you with the TUPE Measures documentation.

Completion

Seller: Check the buyer has received CQC approval in order to complete.

Buyer: On receipt of your CQC approval you can notify the seller and complete the sale. You should ensure that all resident, local authority and clinical commissioning group contracts have been assigned to you or consent is provided to assign those contracts to you.

Post-completion commercial considerations

Buyer: A number of post-completion matters need to be attended to e.g. dealing with the apportionments and prepayments, book debts, dealing with TUPE matters etc.

Post-completion CQC matters

Seller: Inform CQC of completion has taken place.