

# A Checklist Guide to Company Transfers by Sale of Shares

## Financial Assistance

If the purchaser is funding the purchase via a bank which is to take security over the assets of the Target company then this is known as financial assistance.

Items required for dealing with financial assistance are:

- Board Minutes of Target;
- Financial projections;
- Management Accounts;
- Declaration of Directors as to solvency;
- Security documentation of bank such as debenture, legal charge, guarantees, debt purchase agreement, deed of priorities etc.

## Due Diligence

In a share purchase, the purchaser takes the Target “warts and all”. i.e. all the assets owned or leased by the Company together with all the liabilities (even if they are hidden) pass to the new owner at completion. Therefore, the following information will almost certainly be asked for by the buyer before the transaction completes. Sellers should check that they will be in a position to provide the information (along with copy documents).

<b>Subject Matter</b>	<b>Checks and Actions To Be Completed</b>
<b>Restrictions on Share Sale</b>	<ul style="list-style-type: none"> <li>• Ensure no restrictions on proposed transfer of shares – check articles of association and shareholder and option agreements</li> <li>• If restrictions apply, consent to the share transfers required</li> </ul>
<b>Searches</b>	<ul style="list-style-type: none"> <li>• Conduct full searches against Company and its assets at Companies House, Land Registry and Patents Office to check matters up to date</li> </ul>
<b>Leasehold Property</b>	<ul style="list-style-type: none"> <li>• Details of all leasehold property and sub-leases</li> <li>• Ensure proposed change in ownership of Company will not constitute an act of default – check lease - if it does, landlord's consent or new lease required (can be costly and time consuming)</li> </ul>

<b>Subject Matter</b>	<b>Checks and Actions To Be Completed</b>
<b>Statutory Books, Certificates, Records &amp; Permits</b>	<ul style="list-style-type: none"> <li>• The Company's statutory books, records and customer lists to be up to date and complete</li> <li>• Ensure share certificates available (or declarations of lost certificates), bank paying-in books and unissued cheques</li> <li>• Details of all licenses, consents and permits of the business and compliance issues</li> <li>• If developed by contractors provide evidence of transfer of title/ownership to the Company)</li> <li>• Ensure relevant intellectual property registered at HM Patents Office (internet search costs nothing)</li> <li>• Ensure domain names registered with Nominet</li> <li>• Details of all licenses granted to third parties in relation to use of the Company's intellectual property</li> </ul>
<b>Licensed Intellectual Property</b>	<ul style="list-style-type: none"> <li>• Details of all licenses relating to use of other parties' intellectual property</li> <li>• Ensure proposed change in ownership of Company will not constitute an act of default under any license agreement – check license agreement - if it does licensor's consent or new agreement required</li> <li>• Details of all licenses, consents and permits of the business and compliance issues</li> </ul>
<b>Plant, Equipment &amp; Stock</b>	<ul style="list-style-type: none"> <li>• Details of all such assets including nature and extent of ownership and/or use (check terms of supply and purchase)</li> </ul>
<b>Contracts and Commitments</b>	<ul style="list-style-type: none"> <li>• Details of all terms and conditions of business, trading, customer and supplier contracts (and of all ongoing negotiations)</li> <li>• Details of all sales, agency, distributorship, joint venture, franchise, licence and know-how agreements</li> <li>• Details of all agreements under which there exists outstanding warranties, indemnities or other obligations owed to or by Company</li> <li>• Ensure proposed change in ownership of Company will not constitute an act of default under any contract - if it does third party's consent or new agreement required</li> </ul>

<b>Subject Matter</b>	<b>Checks and Actions To Be Completed</b>
<b>Leasing and Hire Agreements</b>	<ul style="list-style-type: none"> <li>• Details of all leasing and hire agreements</li> <li>• Ensure proposed change in ownership of Company will not constitute an act of default under any leasing or hire agreement – check leasing and hire agreements - if it does licensor's consent or new agreement required</li> </ul>
<b>Banking and Finance Agreements</b>	<ul style="list-style-type: none"> <li>• Consider whether bank and third party borrowings, finance arrangements, charges and guarantees are to remain in place following company disposal - if so, provide details and ensure change in ownership of Company will not constitute an act of default - if not, appropriate releases and filings at Companies House (and Land Registry) required</li> </ul>
<b>Vehicles</b>	<ul style="list-style-type: none"> <li>• Details of all vehicles and extent and nature of ownership (including insurances, MOT certificates and log books)</li> <li>• Ensure that all vehicles are properly taxed and insured</li> </ul>
<b>Book Debts</b>	<ul style="list-style-type: none"> <li>• Details of all book debts, likely recoverability and age of debt</li> </ul>
<b>Insurance Policies</b>	<ul style="list-style-type: none"> <li>• Details of all insurance policies and nature and extent of cover and claims</li> <li>• Ensure proposed change in ownership of Company will not constitute an act of default under any insurance policy</li> <li>• Ensure all insurance premiums are up to date</li> </ul>
<b>Subsidiaries and Associated Companies</b>	<ul style="list-style-type: none"> <li>• Details of all subsidiaries and associated companies (same information as set out above in relation to Company)</li> </ul>
<b>Freehold Property</b>	<ul style="list-style-type: none"> <li>• Details of all freehold property</li> <li>• Ensure Company's interests have been properly registered at HM Land Registry</li> <li>• Details of all planning permissions, fire certificates, mortgages, charges and debentures</li> </ul>

<b><i>Subject Matter</i></b>	<b><i>Checks and Actions To Be Completed</i></b>
<b>Employees &amp; Consultants</b>	<ul style="list-style-type: none"> <li>• Details of all employees and consultants (together with service agreements or particulars of employment or service and employee policies) and all pension schemes and similar obligations or payments</li> <li>• Provide list showing age, start date, job title, remuneration and benefits of all employees and consultants</li> <li>• Details of all agreements relating to trade unions, staff associations or other employee organisations</li> </ul>
<b>Pension Schemes</b>	<ul style="list-style-type: none"> <li>• Consider whether pension scheme included</li> <li>• Details of all pension schemes and similar payment obligations of the Company, including details of trustees and actuaries</li> <li>• Consider change to pension scheme trustees and change to principal employer</li> </ul>
<b>Owned Intellectual Property</b>	<ul style="list-style-type: none"> <li>• Details of all intellectual property (including nature and extent of ownership)</li> <li>• Provide evidence of title and ownership of intellectual property (specify if developed by employees or contractors – if developed by contractors provide evidence of transfer of title/ownership to the Company)</li> <li>• Ensure relevant intellectual property registered at HM Patents Office (internet search costs nothing)</li> <li>• Ensure domain names registered with Nominet</li> <li>• Details of all licenses granted to third parties in relation to use of the Company's intellectual property</li> </ul>
<b>Liabilities</b>	<ul style="list-style-type: none"> <li>• Details of all liabilities (actual and contingent, trade, tax, environmental and otherwise)</li> <li>• Consider whether personal guarantees to be released</li> </ul>

<b>Subject Matter</b>	<b>Checks and Actions To Be Completed</b>
<b>Litigation &amp; Disputes</b>	<ul style="list-style-type: none"> <li>• Details of all current, expected and possible litigation and disputes and regulatory or official investigations and any judgments or arrangements affecting Company</li> <li>• Details of all late and non-payments to and penalties and notices issued by and ongoing negotiations with Inland Revenue and Customs &amp; Excise</li> </ul>
<b>Taxation</b>	<ul style="list-style-type: none"> <li>• Details of all tax owed by the Company</li> <li>• Details of all late and non-payments to and penalties and notices issued by and ongoing negotiations with Inland Revenue and Customs &amp; Excise</li> <li>• Details of any Group VAT scheme</li> </ul>
<b>Related Party Transactions</b>	<ul style="list-style-type: none"> <li>• Details of all agreements and contracts between the company and any of its directors, shareholders or associated companies</li> </ul>
<b>Directors &amp; Restrictive Covenants</b>	<ul style="list-style-type: none"> <li>• Consider whether directors to resign – resignations and (if cease to be employees) compromise agreements</li> <li>• Consider restrictive covenants on seller post completion</li> <li>• If seller retained by Company, consider terms of engagement</li> </ul>
<b>Accounts</b>	<ul style="list-style-type: none"> <li>• At least last financial year's audited accounts and management accounts for any subsequent period</li> </ul>
<b>Data Protection</b>	<ul style="list-style-type: none"> <li>• Details of all notifications under the Data Protection Act 1998</li> <li>• Details of any Information Notice, Enforcement Notice, draft Enforcement Notice, or letter, alleging breach of any data protection principle or other complaint received from the office of the Information Commissioner</li> </ul>
<b>Subsidiaries and Associated Companies</b>	<ul style="list-style-type: none"> <li>• Details of all subsidiaries and associated companies (same information as set out above in relation to Company)</li> </ul>

## **Warranties**

The buyer will be keen to protect themselves and apportion the risk of the purchase between themselves and the sellers. There will usually be a comprehensive set of warranties in the first draft of the sale agreement.

The seller's solicitors will then look to limit the effect of those warranties by:

- Deleting certain warranties which by their nature are objectionable to the seller;
- Limiting certain of the warranties to the awareness of the seller;
- Adding into the sale agreement a section dealing with limitations to the warranties, such as:
  - A cap on liability;
  - A minimum threshold before a claim can be made;
  - A time limit within which a claim must be brought;
  - The manner in which a claim can be made;
  - Notice requirements for a claim;
- Disclosing fact/circumstances which may mean that a warranty statement is untrue in a disclosure letter; and
- Disclosing all documents that have been made available to the buyer in a disclosure bundle.

## **Restrictive Covenants**

A buyer is going to want to protect the Target against the possibility that the seller may set up around the corner in competition with the Target. The sale agreement will contain certain restrictive covenants to be given by the seller to limit this risk. Any restrictions can only go as far as protecting the legitimate business interests of the Target and such restrictions must be reasonable in all the circumstances.

## **Tax Deed**

As the buyer will take all taxation liabilities over at Completion they will need the protection of a tax covenant from the seller. In essence this is an indemnity to pay any tax liability of the Target that arises after completion that is attributable to any period prior to completion.

## ***List of Possible Documentation Required***

- Sale & Purchase Agreement;
- Tax Deed;
- Disclosure Letter;
- Disclosure Bundle;
- Escrow Agreement;
- Stock Transfer Forms;
- Completion Board Minutes of Target;
- Completion Board Minutes of Buyer;
- Financial Assistance documentation (as listed at 1 above);
- Auditor's Resignation Letter;
- Auditor's S519 CA 2006 (what was S394(1) CA 1985) Statement;
- Resignation letters and forms TM01/02 (what were 288b's) of officers of Target;
- Appointment forms AP01/03 (what were 288a's) for new officers of Target;
- Compromise Agreements for Key Employees (Sellers);
- Form AD01 (what was a 287) – Change to registered office of Target;
- New Share Certificates;
- Old Share Certificates together with Statutory Books of Target;
- Leases;
- Key Trading Contracts;
- Irrevocable Powers of Attorney of sellers pending registration of transfers;

***If you would like to discuss this in more detail as it relates to your situation, please give CALL NOW and ask to speak to one of our legal advisors.***

***Or REQUEST A CALL BACK at a time convenient to you.***

### ***Disclaimer***

These notes have been prepared by **Curwens Solicitors** as general guidance only and cannot be taken as legal advice.

**Curwens Solicitors** will not be liable for any loss, direct or consequential, suffered by anyone acting or omitting to act as a result of the contents of these notes.