**Signing of contracts**

This section examines the process and the documents required for signing of contracts

**Introduction**

So far, you have learnt that signing is the point of the transaction where the parties make a legal commitment to proceed with the sale and purchase by signing the acquisition agreement and delivering it to the other party.

Sometimes, signing and completion take place simultaneously, in which case the process of signing is straightforward. However, where there is an interval between signing and completion, then different documents will be required at each stage.

It is important to understand what documents will have to be produced on signing of contracts where there is a split signing and completion.

**Documents required for signing**

On a share sale transaction, the main documents that are signed and delivered at signing are:

1. **The acquisition agreement (or share purchase agreement)**

This is the principal document and sets out the terms of the transaction.

1. **The disclosure letter**

As you will recall from previous Topics, the disclosure letter sets out both general and specific disclosures against the seller’s warranties. The disclosure letter is delivered to the buyer at signing together with the disclosure bundle.

1. **The tax deed**

As you have learnt the tax warranties and indemnities are usually contained in a schedule to the acquisition agreement. However, these can also be dealt be with in a separate tax deed, in which case it should be executed and delivered at signing.

**Ancillary documents**

Certain other documents may be required at signing depending on the transaction in question. These commonly include:

* **Board minutes**

You will recall from Business Law & Practice that any corporate party to a transaction will need to hold a board meeting to approve the transaction and to authorise a signatory, usually a director to sign the contractual documents on behalf of the company.

* **Shareholder resolution**

Sometimes shareholder approval of the transaction will be required. The resolution is often passed by the shareholders prior to signing and a copy of the resolution delivered at signing.

* **Legal opinion**

If there are cross border issues because the transaction involves a buyer or seller domiciled or incorporated outside the UK, then a legal opinion will also be required at signing. This will confirm, for example in relation to an overseas seller, that it can sell the shares and give the warranties and indemnities.

**Agreed form documents**

The parties are legally committed to the transaction once the acquisition agreement has been signed and provided the completion conditions are satisfied, they are obliged to complete the transaction.

Sometimes there are ancillary documents that cannot be agreed in advance (e.g. a transitional services agreement). This leaves risk for both the buyer and seller if there are points of principle or value that still need to be agreed.

It is important then that, before signing, both parties are satisfied that they can comply with their obligations under the acquisition agreement at completion. In practice this means ensuring that the completion documents are in agreed form when signing happens.

**Execution of documents**

At both signing and completion a large number of documents will be executed by the parties.

The execution of documents on a large private acquisition structure traditionally took place in person at one of the parties’ solicitor’s offices, with the relevant signatories attending and signing all the documents in hard copy.

It has become increasingly common for signatories to execute documents using an online signature platform. Many law firms use Docusign for digital signatures. More information on virtual signings is covered on the next slide.

However parties are signing, it is important to ensure that the appropriate signatory will be available to sign at the relevant time and that all authorisations are in place. This may mean that **powers of attorney** need to be prepared in advance to allow a different person to sign.

**Virtual signing and completion**

Virtual signings, where documents are circulated for signature by electronic means and executed remotely without the parties meeting in one place, are common.

* Each party is sent a copy of the final document to sign in counterpart, usually by email.
* Once a party has signed the circulated document, it then sends a copy of the signed document as an email attachment to their lawyers to manage and co-ordinate signing and completion on their behalf.

Care should be taken when using signature pages only rather than the final document in counterpart. In this situation it is best practice to follow the guidelines on executing documents by virtual means issued by a joint working party of the Law Society Company Law Committee and the City of London Law Society (CLLS) Company Law and Financial Law Committees.

**Summary**

* In transactions involving simultaneous signing and completion, the parties will enter into all the acquisition documents at the same time.
* Where there is an interval between signing and completion, only the main documents such as the acquisition agreement and disclosure letter are signed and delivered at signing.
* Other ancillary documents, such as copies of board resolutions or shareholder resolutions may also be required at signing.
* At the point of signing the parties are legally bound to proceed with the transaction provided the completion conditions are satisfied. Often, the parties will ensure that all the completion documents are in agreed form at signing to ensure that they can comply with their obligations under the acquisition agreement.