**Completion formalities**

This section explains the formalities that take place at completion of a transaction

**Introduction**

So far you have learnt that completion can occur at the same time as signing of contracts. However, where  a condition precedent needs to be satisfied then signing and completion will need to be separated with a time gap in between.

Where there is a split signing and completion, a lot of the practical steps to effect completion will take place at signing (for example, board meetings, signing most documents) however there will often still be a lot to do at completion including for example, confirming that everything that should have happened between signing and completion has indeed happened and to transfer funds.

The acquisition agreement will detail what issues need to be dealt with at completion, such as completion board meetings of the buyer and seller and the target company (as appropriate) and the agreements that need to be executed – this section can act as a good checklist for lawyers attending completion meetings of what needs to happen.

**Completion**

In order to conclude the transaction, the following events need to happen:

* Each party will provide their signed **completion documents** and **completion deliverables**
* The buyer will pay the **purchase price**
* The directors of the target will hold a board meeting to **approve the transfer of the shares** to the buyer

At the outset of the transaction, the parties will decide how, when and where signing and completion will take place. Historically, the parties and their legal advisors attended a completion meeting in order to sign the completion documents and conclude the transaction.  Whilst physical in person meetings still take place, it is more common now for these meetings to happen virtually. This leads to a quicker and more efficient process especially where there are multiple parties who are often based overseas.

**Completion documents**

In most acquisitions a large volume of documents will need to signed and delivered at completion. The documents will depend on the structure of the deal but usually the following signed documents will be required:

* **Stock transfer forms**: to transfer the target shares to the buyer.  It is not a requirement that the stock transfer form be executed as a deed.

The target cannot update the register of members to record the share transfer unless stamp duty has been paid on the transfer. Any stamp duty due must reach HMRC no later than 30 days after the date on which the STFs are signed and dated.  The buyer will provide confirmation of payment from HMRC together with the STFs and the old share certificate to the target to be registered as a member and issued a new share certificate. Legal title to the shares only transfers once the register of members is updated.

* **Letters of resignation**: often the buyer will require the target's directors to resign from office on completion.
* **Power of attorney**: the buyer will not become the legal owner of the target shares until the transfer of shares has been registered in the register of members. There is often a delay between completion and registration as stamp duty must be paid. The buyer will therefore require a power of attorney in the interim to control the rights attaching to the shares. (Note that the power of attorney may be included in the acquisition agreement if the acquisition agreement is being executed as a deed).
* **Transitional service agreement:** this may be required if the target needs access to certain services from the seller following completion or vice versa.
* **Escrow account letter:** if part of the consideration will be held in escrow.
* **Deeds of release/letter of non-crystallisation**: the shares or assets of target may be subject to fixed and floating charges to secure loans to the seller. The loans will have to be repaid on completion and the charges released.

**Documents to be delivered at completion**

In addition to the signed transaction documents, other items that are typically delivered by the parties at completion include:

* **Statutory books of target company and any subsidiaries.** The seller hands over the target's statutory books (including its registers of members, registers of directors, registers of allotments and register of persons with significant control (PSC) registers).
* **Share certificate(s) for target shares.** If any of the certificates are lost or destroyed, the buyer usually accepts an indemnity for lost share certificates instead.
* **Minutes of target company's completion board meeting.** The seller delivers signed minutes of the board meeting held by the target company at completion to approve the registration of the transfer of the target shares.
* **Copy shareholder resolution(s).** This may be relevant when some aspect of the transaction requires approval by one party's shareholders and, in the case of a split signing and completion, the requisite resolution was not passed at (or before) signing.

**Target completion board minutes**

As noted on the prior slide at completion the target will hold a board meeting. The buyer will normally require a number of changes to be made to the target at completion such as:

* Appointing new directors;
* Removing existing directors;
* Change of registered office;
* Change of accounting reference date;
* Approve the registration of the transfer shares (subject to stamping);
* Change of auditors;
* Any new financing arrangements(e.g. granting security to the buyer’s lender); and
* Approval of any other steps to be undertaken at completion.

As noted in previous Topics the completion clause (or schedule), or the completion agenda (discussed on the next page) will provide the details of the changes to be made. It is a common trainee responsibility to draft the completion board minutes.

**Completion agenda**

The buyer’s solicitors will often prepare the **completion agenda** at the outset of the transaction. This is a very important document for ensuring signing and completion proceed smoothly. Some firms will use a **documents list** in place of, or in conjunction with a completion agenda but the process is very similar.

The completion agenda will generally cover the following matters:

* All the steps that need to take place before completion happens, for example satisfaction of the conditions precedent.
* All the documents that need to be signed and delivered at signing and completion including details of who is required to produce and sign them.
* Other items that must be delivered by the parties at completion, such as the target’s statutory books and the share certificates.
* Key **post-completion steps** such as Companies House filings including updating PSC registers.

The parties will have regular meetings to keep track of the documents and update the agenda throughout the transaction. Often, the agenda will include details of the board and shareholder meetings that need to be held at or before signing and completion. If there is a large number of documents, then the agenda might set out the order in which the documents should be signed.

**Specific timing considerations**

The parties will agree the timing relating to payment of the consideration in advance. The buyer may transfer the consideration to its solicitors, who will **undertake** that on the delivery of the stock transfer forms and completion forms, they will authorise payment of the money to the seller. If giving an undertaking it is important that the buyer’s solicitors ensure that they have the monies in their client account **and irrevocable payment instructions** from the buyer before giving the undertaking. Increasingly in practice, firms are using payment agents to transfer the consideration rather than transferring monies through solicitors’ accounts.

If the target’s shares or assets are subject to security which will be released on completion, then the lender needs to be notified in advance to agree the form of release and the amount of the loan that needs to be paid off to release the security.

Sometimes the consideration is structured as part cash and part shares in the buyer. There are additional requirements and steps to be taken in this case which may affect the timing of completion. You will learn more about **consideration shares** in later Topics.

The buyer may not have cash reserves to fund the acquisition so it may obtain **debt finance** or raise funds through an **issue of shares**. In either case, there may be timing implications for completion.

**Stamp duty and VAT**

**Stamp Duty**

As noted previously the stock transfer form must be stamped before the buyer can be entered into the register of members.

The current rate of stamp duty is **0.5%** (rounded up to the nearest £5) i.e. **£5 for every £1,000 of consideration (or part thereof)**, except that a transfer of shares is exempt from stamp duty where the consideration for the transfer does not exceed £1,000.

It is important to note that the method of calculating the amount of consideration chargeable to stamp duty may not always be straightforward, for example if there is an element of deferred consideration. You will explore the different forms of consideration later in the knowledge stream.

**VAT**

A sale of shares is an **exempt supply** for VAT purposes.

**Persons with significant control (PSC)**

Share purchase transactions often result in the seller ceasing to be a registrable PSC. Part 21A CA 2006 sets out requirements for UK companies to collect and record information about shareholders who have significant control over that company. The purpose of this ‘PSC regime’ is to increase transparency over who controls companies by making the gathering of such information a legal requirement, and by making that information publicly available.

The PSC regime applies to all UK companies except those whose shares are traded on a regulated market in the UK (such as the main market of the London Stock Exchange) or on either a regulated market in the EU or a specified market in some other selected jurisdictions - and to all UK LLPs. (Similar rules also apply to limited partnerships registered in Scotland.)

Where the owner or controller of a UK company is a legal entity such as another company, that legal entity will need to be put on the PSC register if it is a **relevant legal entity.**

The CA 2006 imposes **criminal penalties** for non-compliance with the PSC obligations. A buyer will be keen to ensure that the target has maintained an accurate PSC register.

To be a PSC, an individual must meet one or more of the **five conditions** set out in CA 2006.

**Definition of PSC**

A person with significant control over a company is an individual who meets one or more of the following conditions:

1. The person holds, directly or indirectly, **more than 25% of the shares** in the company. This is calculated by reference to the **nominal value** of the shares;
2. The person holds, directly or indirectly, **more than 25% of the voting rights** in the company;
3. The person holds the right, directly or indirectly, **to appoint or remove a majority of the board** of directors of the company;
4. The person otherwise has the **right to exercise, or actually exercises, significant influence** or control over the company;
5. The person has the **right to exercise, or actually exercises, significant influence or control over an arrangement** such as a trust, which is not a legal entity but which meets any of the other specified conditions in relation to the company, or would do so if it were an individual.

**Post-completion matters**

There will be a number of matters that need to be dealt with post-completion including:

* Companies House filings;
* Updating the PSC register at Companies House;
* Submitting stock transfer forms;
* The buyer’s solicitors complying with their undertaking to transfer the consideration to the seller;
* Updating the target’s company books; and
* Preparing a transaction bible.

**Summary**

* Completion is when the transaction is concluded following payment of the consideration and delivery of the signed completion documents.
* The parties will use a completion agenda as a comprehensive checklist of the all documents that need to be produced and signed at signing and completion. The completion agenda will sometimes set out the company meetings that need to take place.
* Following completion of a corporate transaction, the parties’ solicitors will need to deal with post completion issues such as statutory filings, updating statutory books, payment of stamp duty.
* It is also customary for a “bible”(or closing binder/folder) of copies of the executed transaction documents to be put together by the lawyers for their respective client's records as well as their own (usually in electronic form), to remind them of the terms of the transaction as and when, necessary in the future.