

# Getting your head around Heads of Agreement

Selling your business can be a complex process. It's a big decision and it can be tough on a number of levels. We find the more informed a client is in the processes involved, the easier and smoother the process becomes.



To help with this, Noel Ruddy, Head of our Corporate team, looks at Heads of Agreement and when they are necessary.

# Getting your head around Heads of Agreement



This is the second guide in our series on the key aspects of selling your company. In our previous guide we discussed how you should first prepare your company for sale and now we will look at Heads of Agreement and when they are necessary.

## What are Heads of Agreement?

Also referred to as Heads of Terms, Letter of Intent or Memorandum of Understanding, the purpose of this document is to set out the principal terms agreed between the parties; to record what the parties have “shaken hands” on.

## Are Heads of Agreement binding?

Generally speaking, unless an obligation is expressed to be binding, the terms set out in Heads of Agreement will not be legally binding. They are the precursor to a detailed sale and purchase agreement in which the rights and obligations of the parties are intended to be legally binding. However, whilst Heads of Agreement do not legally compel either party to conclude a deal on the terms set out in the document (or in any capacity at all), it does evidence a serious intent to enact the deal on those terms. From a moral perspective, it is sometimes difficult to reverse from a position set out in the Heads.

## Why use Heads of Agreement?

Commercial transactions are often complex, time-consuming, at times stressful and usually always costly for both the seller and the buyer. Therefore, before fully committing to a transaction, each party will want assurances that the other party shares the same intentions.

Despite not being legally enforceable in its entirety, a well-drawn set of Heads of Agreement should give the parties the desired assurance that the other party ultimately wishes to complete on the key terms set out in the Heads.

Heads of Agreement can also be useful as the transaction progresses, by acting as a frame of reference to be adhered to by the parties and their advisors. Moreover, as it is not “written in stone”, the Heads allow for a degree of flexibility when practical factors impact the original timeline and structure of the transaction.

## What to include in Heads of Agreement?

Where a business is being sold, key terms you would expect to find addressed in a set of Heads include:

- the purchase price for the business and how it will be satisfied;
- if the business trades from a property which it owns, whether it will be included as part of the transaction or kept by the sellers;
- if the purchase price is to be paid in full at completion or whether a portion of it is to be held back for a period and, if so, the period for which it will be withheld and the conditions for its release;
- if the current owners are to leave or remain in the business to assist with a handover;
- if the buyer wants to include warranty and indemnity protections in the sale and purchase agreement; and
- if the buyer will be given a period of exclusivity when the business will be taken off the market.

## Are they worth it?

Heads of Agreement are often advisable in the preliminary stages of a commercial transaction, particularly more complex transactions. After a period of negotiation, a well-drawn set of Heads of Agreement will document the principal terms of the transaction agreed by the parties and which are intended to guide their lawyers and other professional advisors as to what the parties want from the deal. This will hopefully avoid delays and help the parties manage the professional costs and expenses.

## What terms are typically expressed to be legally binding?

There are some components of the Heads of Agreement that are commonly expressed as binding on the parties. These include:

- an obligation on the parties to keep the content of the Heads of Agreement confidential; and
- an obligation on the sellers to discontinue discussions with third parties and to stop marketing the business for sale for an agreed period (exclusivity).

## Contact PDT

Here at PDT we have a vast experience of drafting Heads of Agreements. We know what to include and what not to include.

If you are thinking of selling your business and would like to learn more about Heads of Agreement, then please contact Noel Ruddy, Rebecca Glazebrook, Sian Webber or Victoria Jackson.





# Key Contacts

The PDT corporate team has broad experience advising on M&A, private equity and other corporate transactional matters. In the past twelve months, the team worked on over 30 exciting transactions with an enterprise value in excess of £250m, with an average deal enterprise value in excess of £10m. Our approach is friendly, collaborative and practical. We have skill in dealing with inward investment/purchases into the UK from North American and other international businesses.



**Noel Ruddy**  
**Partner**  
**Head of Corporate**  
01403 831 206  
nruddy@pdt.co.uk



**Rebecca Glazebrook**  
**Partner**  
**Corporate**  
01403 831 231  
rglazebrook@pdt.co.uk



**Ian Lindley**  
**Partner**  
**Commercial**  
01403 831 233  
ahoad@pdt.co.uk



**William Angas**  
**Partner, Commercial**  
**Dispute Resolution**  
01403 831 266  
wangas@pdt.co.uk



**Sian Webber**  
**Partner**  
**Corporate**  
01403 831 278  
swebber@pdt.co.uk



**Victoria Jackson**  
**Solicitor**  
**Corporate**  
01403 831 247  
vjackson@pdt.co.uk

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As always, PDT stepped up to the plate for what was without any doubt our most complex transaction in the 10 years we have worked together. With 10 different sets of lawyers based in various different parts of the world working on this transaction, PDT worked in their normal professional & energetic manner to ensure a speedy conclusion whilst always looking after our interests. They did an outstanding job. Russell Maddock, Creative Foods

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“

PDT were able to guide us through the process professionally with a ‘can do’ attitude which put us at our ease to ensure that we understood the transaction which was complex at times and had a number of moving parts. Maurice Craft, Regency Factors

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# PDT Corporate Services

## Corporate transactions

- Buy-ins, Buy-outs
- Acquisitions & disposals
- Mergers & joint ventures
- Corporate restructuring
- International business
- Strategic advisory work
- Corporate & Commercial transactional matters
- Private equity
- Partnerships and LLPs
- Shareholder arrangements
- Healthcare

## Corporate finance

- Debt refinancing
- Banking and asset based finance
- Factoring documentation
- Security documentation
- Financing of MBO/MBI's
- Development of new finance products
- Advising on credit issues/client reviews
- Security documentation
- Debt advisory

## General commercial law

- General terms and conditions
- Bespoke or proforma contracts
- Distribution agreements
- Framework agreements
- Confidentiality and non-disclosure agreements
- Maintenance and support agreements
- Software licensing and development agreements
- Hosted service and software-as-a-service agreements

## Intellectual property rights

- Licensing registered & unregistered IPR
- Assignments of IPR
- Taking security over IPR
- Franchise agreements
- Competition law implications of IPR assignments
- Registration of IPR including trade marks, design rights and overseas copyright registrations
- IPR issues in corporate transactions

## Data protection

- Data protection policies and record keeping
- Data processing and data sharing agreements
- Privacy notices
- Outsourcing and insourcing transactions
- Data breaches, security and reporting
- Extent and enforceability of data subjects' rights
- Dealings with the ICO
- Non-EEA data transfers

## Commercial disputes

- Pre-litigation advice
- Contractual obligations in written and oral contracts and contracts
- Conflicting obligations and "battle of the terms" scenarios
- Rejection and acceptance of goods and services
- Contract termination, breach and repudiation
- Exclusivity obligations, exclusivity breaks and non-compete obligations
- Client or counterparty insolvency
- Debt recovery

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**I was blown away by the service that we received from Rebecca and her team at PDT. They guided us calmly through a myriad of complicated issues, working very long hours and were always ready to take our calls, answer our questions and reassure us when needed. We felt completely confident that they always had our back.** Parry Jones, COO, The Specialist Works

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# Recent Work



## The Management Buyout of Forbes & Lomax Limited

"When the opportunity arose to buy Forbes & Lomax Limited - a company which we have worked at for many years - we knew this would be unfamiliar territory for us so we needed lawyers who could carefully guide us through the process and offer pragmatic advice. Thank you to Rebecca and Victoria for all their help and hard work in our successful acquisition and their support in getting it across the line.."

**David Hopwood, Gemma Mouton and Claire Maddalena, Forbes & Lomax Holdings Ltd**



## Advised HIT Training Limited, on its transition to employee ownership

"This was a challenging journey for us and needed steady hands. Noel has been a sounding board for many years and originally suggested the EOT to us. Noel and his team expertly guided us through the company law aspects of the transition to an EOT and I would recommend PDT to any business wanting advice on how EOTs can be used. Thank you to the team for all your hard work and support."

**Jill Whittaker, Managing Director, HIT Training Limited**



## The sale of Forza Doors Ltd to Novastone Capital Advisers

"It has been a joy to work with the PDT team. They all remained positive throughout and navigated their way past numerous curve balls and surprises. A sterling effort - absolutely 100% all the way through.."

**Nick and Jeneen Hare, Shareholders of Forza Doors Limited**



## Etal (UK) Limited on its acquisition of Avon Magnetics and its acquisition of AGW Electronics

"It has been great to work with PDT on another one of our acquisitions. PDT are familiar with how we work having worked with them on a number of acquisitions. As always, we could rely on the PDT team to guide us through the process and provide pragmatic advice. We look forward to working with PDT on our next acquisition"

**Dan Phelan, Head of Business Area Magnetics, Kamic Group**



## The sale of Chillibyte to Broadlight Group Limited

"PDT have supported our business for many years and seemed the obvious choice for advisers when we were looking to sell. This was an unfamiliar process for us, but we felt supported and guided through the process. Thank you to Sian and the PDT team for all their hard work and support in getting this sale over the line"

**Tim Watney, Chillibyte**



#### **The sale of Advantedge Sunrise Software Limited to Volaris Group**

*"This was our first time working with PDT. We were impressed by the professionalism and advice given – particularly when issues arose – to find practical solutions which were acceptable to all parties. This is a once in a lifetime event for most sellers and the team delivered excellent guidance throughout"*

**Tom Weston, Managing Director of Sunrise Software Limited**



#### **The strategic investment in Seaspace International Forwarders Limited by Emerge Ecommerce Limited, part of Emerge Global**

*"We were pleased with the care and attention given to us by the PDT team to guide us through this transaction including working all hours to ensure the deal completed when we needed it to. We would definitely recommend the PDT team to others looking at undertaking a transaction."*

**Stuart Russell-Smith, Director of Seaspace International Forwarders**



#### **Mindelon AB on its acquisition of Astley Signs**

*"Noel and the team at PDT were very good to work with and I strongly recommend them. This was an important acquisition for us so we were helped by having a law firm that worked collaboratively with the other advisors on the transaction and provided pragmatic advice when we needed it. To the PDT team, thank you for all your hard work in helping us make this deal happen."*

**Ulrica Lindunger, Head of the Retail Solutions business area**



#### **The sale of Arden Grange Pet Foods to AlphaPet UK Venture Limited**

*"Rebecca and her team at PDT were just brilliant. They advised us on all aspects of the deal in a calm and professional manner. They understood our position and we were able to make decisions in full knowledge of the different routes available to us. Rebecca was able to guide us through the process which was new to us and we felt we were in safe hands."*

**Wendy Stephens, Arden Grange**



#### **The sale of Esoteric Limited to Mitie Security Limited**

*"The team at PDT have been nothing short of amazing, guiding me through the acquisition process and the challenges that go with any transaction of this nature. Like many business owners, I have a very busy schedule and PDT worked flexibly to fit in with my schedule which sometimes involved them working late into the evenings! I would highly recommend them. Thank you to Noel, Sian and the PDT team for all your hard work and support"*

**Emma Shaw, Esoteric Limited**



#### **The investment by Business Growth Fund in AD Williams**

"Noel, Sian and the team at PDT were just brilliant and I can't recommend them highly enough. We had been looking for the right law firm for our business for some time and I now appreciate how important it is to have the right legal team steering you through the process. It would have been a nightmare without the calm and assuring presence of PDT."

**Stuart Bacchus Chief Executive Officer, AD Williams**



#### **The sale of Regency Factors and Regency Trade Finance to Cubitt Trade Holdings LLC**

"The sale of a business which you have founded is a once in a lifetime event. We needed to ensure that this was right for us and our stakeholders. PDT were able to guide us through the process professionally with a 'can do' attitude which put us at our ease to ensure that we understood the transaction which was complex at times and had a number of moving parts."

**Maurice Craft, Regency Factors**



#### **The investment by Rubicon Partners in Bamboo Distribution Limited**

"It has been a pleasure working with the PDT team. Thank you to Noel, Rebecca, Sian and Laura for all their hard work and support in getting the deal over the line. The PDT team guided us through the transaction in a professional, approachable and calm manner making us feel informed and protected. This is our first time working with PDT, but we wouldn't hesitate in recommending them and look forward to working with them in the future as we continue our journey with Rubicon Partners."

**Juney Mistiki, Bamboo Distribution**



#### **The sale of Calverton Finance to Cubitt Trade Holdings**

"We were delighted with the sound advice we received from PDT. This was a significant deal for us which meant it was important to feel as if we were in safe hands. They negotiated the contract and warranties in an extremely professional manner, and gave the shareholders an excellent and friendly service. I would definitely recommend them to anyone looking to sell their business."

**Peter Cordrey Former Chairman, Calverton Finance**



#### **The sale of Advantagedge Commercial Finance to eCapital Corp**

"PDT advised us in relation to the purchase of the Factor 21 group in 2016 and the management team did not hesitate to use the Corporate team again for the sale. The deal was complex and PDT were able to give us clear advice on the terms to enable us to make decisions in full knowledge of the different options available. We would like to thank Noel, Rebecca and Sian for their diligence and good humour throughout"

**David Tilling, CEO, Advantagedge Commercial Finance**





Contact us to discuss how we can help your business.

01403 262 333 | [www.pdt.co.uk](http://www.pdt.co.uk) | [law@pdt.co.uk](mailto:law@pdt.co.uk)  
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