myerson

Myerson **Business**

Management Buy-Outs and Buy-Ins

0161 941 4000 | myerson.co.uk | lawyers@myerson.co.uk

Welcome

We understand the complexities of modern life and the importance of taking care of your business interests. So it's a deep source of satisfaction that so many businesses choose Myerson as their trusted adviser, from assisting with day to day commercial issues, to advising on growth strategies, investment and business sales.

Why Myerson?

At Myerson, we put our clients and their business at the heart of everything we do, establishing long term relationships, acting as trusted advisers.

We are proud to be ranked as **'Top Tier'** in the prestigious international directory **The Legal 500**, and commended by The Times **'Best Law Firms 2024'**. Therefore, you can rest assured you will receive a high quality and truly personal service.

Our corporate clients include those with local, national and international business interests across a wide range of sectors including: technology, creative and media, private healthcare, professional services, charities, manufacturing, retail and leisure, fashion and textiles and agriculture.

Management Buy-Outs and Buy-Ins

What is a buy out?

A buy out, in general, can take a number of forms which we will explore below, however, it is usually when an existing management team acquires all, or a large part of, a business/company from the business owner. It is a form of succession planning.

A business owner will usually have invested a significant amount of time planning their succession with an existing management team before a buy out occurs.

Buy out structure and funding

A buy out is usually funded by a private equity investor who receives shares in return for its investment, a bank or financial institution which funds the acquisition of the existing owner's shares by the management team, or a combination of both.

The funding of a buy out necessitates the creation of a group structure.

Usually, at least one (and often multiple) companies are created to acquire the company and also take on the funding (either as debt, equity or both).

Upon completion, the new company will become a holding company of the existing trading company (with any additional new companies also sitting within the newly created group structure).

Forms of buy out (or buy in)

The forms a buy out may take include:

Management Buy Out (MBO)

An MBO is the acquisition of a business/company by its existing management team, often funded via a lender, third party or a private equity investor (or a mixture). Following the acquisition, the management team own the business/company and remain in their existing roles.

Management Buy In (MBI)

An MBI is similar to an MBO, but the acquisition of the business/company is by a management team from outside the business. This is often carried out when the existing management team do not wish to purchase the business/company.

Leveraged Buy Out (LBO)

An LBO may take the form of either an MBI or an MBO but is financed by debt, rather than equity, from an investor.

Buy in Management Buy Out (BIMBO)

A BIMBO is similar to an MBO but some individuals are installed by the private equity investor to work alongside the existing management team.

Vendor Initiated Management Buy Out (VIMBO)

A VIMBO is an MBO initiated by the existing owner of the business/company to the management team (it is usually the management team who initiate an MBO) and the existing owner usually remains in the business/company with a minority stake.

Institutional Buy Out (IBO)

An IBO is an acquisition funded by investors who then install a management team after the acquisition and grant the new management team a minority stake. This is often reserved for large or very high value buy outs.

Transaction Documentation

The key transaction document for any buy out is a share purchase agreement (SPA).

The form of SPA will differ slightly from a traditional share acquisition by an unconnected third party, with more limited warranties provided by the business owner and a simpler tax indemnity.

Beyond the initial buy out, the management team will enter into an agreement, along with the investor, to regulate their actions and those of the company following completion. This will take the form of bespoke articles of association for each company within the new group structure, along with a shareholders' agreement if the acquisition is funded via debt, or an investment agreement if funded via equity.

A shareholders'/investment agreement is likely to include several restrictions, including specific actions that cannot be carried out without consent from either the funder or investor (or both). The agreement will also include obligations relating to information sharing, board representation, payments of dividends, future share issues or transfers and exit provisions (including good and bad leaver provisions).

The management team will also enter into service agreements with the company.

If the acquisition is wholly or partly funded via debt, loan documentation will be required. This will include a loan facility agreement, security (such as a debenture, corporate guarantee or personal guarantee) and a deed of priority regulating the order of repayments if multiple lenders are involved.

Our approach

Buy outs can be complex, both in terms of structure and negotiation. The complexity arises from the arrangements required to fund the buy out, be it private equity, debt or a combination of both, coupled with the number of parties often involved and their competing interests. Often, the management team, the seller and the funder/finance provider will all be involved in each stage of negotiations, along with their own legal team, accountants, tax advisers and financial advisers.

A key issue in buy outs is warranty negotiation. Such negotiations are usually complex in buy outs due to the division of responsibilities between the management team and the split of knowledge between trading, management and finance. We can guide you through this process using our extensive experience of buy outs and buy ins.

Our experience

We have acted on behalf of both the management team and business owners, along with investors for both buy outs and buy ins. Some recent buy outs our corporate team have advised upon include:

• Acting for the sellers in a VIMBO of a high value PR/marketing company. The seller remained in part of the business following completion with a reduced minority stake, requiring intensive negotiations of the post-completion constitutional arrangements.

• Acting for the management team in an MBO of a UK solicitors' firm incorporated as a limited company. The seller was a founder of the business and their removal required detailed consideration of the warranties due to the split of knowledge between the seller and management team.

• Acting for the seller in an MBO of a North West based accountancy partnership at law. The negotiations were protracted, focusing particularly on the calculation of the purchase price and ongoing payments to the seller following their exit for recurring client fees and instructions.

• Acting for the seller in an MBI of a chemical company based in the North funded via an investor. One of the management team was an existing member of the team, with the additional members of the management team coming from outside the business. The transaction required intensive negotiations of the purchase price calculation and post completion purchase price adjustment mechanism.

You're in safe hands!

If you would like further information about how we can help you, or if you have any questions, please don't hesitate to contact a member of our **Corporate Team** today.

Call: **0161 941 4000**

Click: **myerson.co.uk**

Email: **lawyers@myerson.co.uk**

Myerson Solicitors
Grosvenor House, 20 Barrington Road,
Altrincham, Cheshire, WA14 1HB
Tel: 0161 941 4000 | lawyers@myerson.co.uk
www.myerson.co.uk