For adviser use only

# GUIDE 8: OFFER DOCUMENTS

As the negotiating process draws to a close, the buyer needs to set out their intentions in a formal document and the seller (provided they are happy with the contents), needs to confirm their acceptance. Here are a few pointers to consider:

## Valuations vs Offers

- The valuation of a business is an academic exercise designed to find the market value of a business.
- The International Valuation Standards Council (IVSC) define market value as the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.
- An offer is distinct from a valuation as it includes both the amount to be paid and the terms of said payment. This includes the balance between initial and deferred, the frequency and schedule of deferred and any conditions attaching to the deferred portion.
- The price offered may fluctuate based on the terms. In this way a valuation is different from an offer.
- There may be a number of offers and rounds of negotiations before acceptance.

## The contents of an offer

- The assets (and/or liabilities) to be acquired, the price to be paid and the terms associated with payment.
- The deadline for acceptance of the offer. It’s entirely sensible for a prospective buyer to limit the amount of time an offer is valid for, as this focuses attention.
- Confidentiality- a reinforcement of the confidential nature of the offer and linking it to any non-disclosure or confidentiality agreement that proceeds it.
- A no shop clause- many buyers place restrictions on the distribution of an offer to avoid getting drawn into a competitive process.

## Heads of Terms

- A summary of the final offer usually in the form of a letter, signed by the prospective buyer and requiring the seller's signature to indicate acceptance.
- In general, these documents are legally binding in terms of exclusivity only.
- Exclusivity means the seller will not negotiate with any other third party, while the prospective buyer undertakes the necessary investigations (due diligence) and prepares legal documentation in order to reach the completion of the deal.
- Exclusivity can usually be terminated by the seller by providing notice in an agreed form. Exclusivity does not mean a sale has to proceed.



**M226 Version (2) December 2021**

"Transact" is operated by Integrated Financial Arrangements Ltd, 29 Clement's Lane, London EC4N 7AE.
Tel: (020) 7608 4900 Fax: (020) 7608 5300 email: info@transact-online.co.uk web: www.transact-online.co.uk (Registered office: as above; Registered in England and Wales under number: 3727592) Authorised and regulated by the Financial Conduct Authority (entered on the Financial Services Register under number: 190856)