



Guidance on the Sale and Purchase Agreements (SPA)

ONE to ONE
CORPORATE FINANCE

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INTRODUCTION

The final phase of an M&A process is known as the Sale and Purchase Agreement. A Sale and Purchase Agreement (SPA) is a legally-binding contract outlining the agreed-upon conditions of the buyer, and seller of a Company. It is the most important legal document in the M&A Process.

After the due diligence procedure, when the buyer has analyzed the true state of the Company for sale, constructing the sale agreement is the next step. This document includes the sale's terms and conditions, which will be presented before a notary and ultimately be formalized into a public deed.





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1. GUIDANCE ON THE SALES AND PURCHASE AGREEMENT (SPA)

Most commonly, **the buyer, along with their legal advisors, is in charge of preparing the first version of the SPA contract.** However, there are exceptions, such as the process associated with auctions. In this case, a draft is delivered to the contestants, who will ultimately return the document with their modifications and offers.

A great level of detail and care is required when drafting the contract of sale. A **single paragraph in the contract can be the difference between a successful or failed agreement.** The ideal scenario, at this stage, is to obtain assistance from an experienced advisor. One who has a proven track record in successfully drafting contracts for the sale of companies.

With this in mind, the SPA is not a simple agreement. It is, in fact, enormously complex.



The most frequent question is:
What should be included in the contract?

The SPA integrates an array of assets and liabilities, relationships, existing contracts, etc.



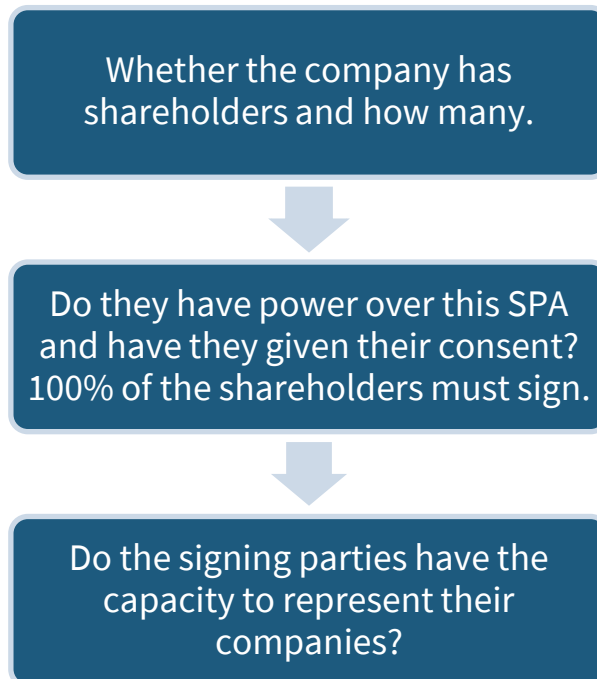


2. THE CONTENT OF AN SPA

2.1. PREAMBLE

Identify Parties to Contract: Purchaser and Seller

BE MINDFUL OF:



PREMISES TO BE STATED IN THE EXPOSITORY

1. Description of the general activities of Buyer and Seller.
2. Intentions of each party to buy and sell the object of the sale.
3. Description of the object of the sale and the sale price to be paid by the Buyer.
4. Any steps taken by either party in preparation for the SPA (e.g. due diligence).
5. Brief summary of the transaction.



3. THE CLAUSES OF AN SPA

3.1. SUBJECT OF SALE

Here you should include a detailed description of the company. It is advisable to provide as much detail as possible, as this reduces the likelihood of doubts or issues arising.



Be mindful to:

- Induce any rights attached to the object of the sale
- Include any encumbrances or contingencies linked to the object of the sale.

3.2. PRICE & PAYMENT

- Price
- Method of payment
- Payment deadlines
- Date of transfer
- Any payment terms
- Any loan, credit or financing received by the buyer to make the payment.

3.3. PRECEDING CONDITIONS

You should include any conditions agreed between the parties, to which the Closing will be subject. This could include points such as:

- Any documents pending signature.
- Any outstanding payments to be made.
- Any permit or authorisation required by the authorities.
- Any representations and warranties which are proved to be true.

3.4. REPRESENTATIONS & WARRANTIES

Here, you should include statements about the company's past or present state. This can include things like the assets, liabilities, conditions, prospects, and operations of the company.

IMPORTANT POINTS TO INCLUDE

- **Legal authority and capacity** of Seller to sell the subject of sale.
- **Precise description** of Seller's ownership of subject of sale.
- Declaration by the seller on the **condition of the subject of sale**.
- The seller must provide access to items such as assets, financial statements, accounts, books and records, major contracts, litigation, employees and their employment information, property, insolvency, intellectual property debt, etc.
- The Buyer must **ensure their ability to complete the transaction** both financially and by virtue of the powers granted to them.
- The Buyer must **ensure its ability to successfully complete** the transaction both financially and by virtue of the powers granted to it.
- Guarantee by the Buyer of the absence of any regulatory prohibition and ownership of any licences that may be relevant.
- Compliance with applicable data protection regulations.

Be mindful of:



- Any other association, relationship or beneficiary that may affect the property that is the subject of the transaction.
- Any dispute of claim from third parties.
- Any loan or credit on the subject matter of the sale.
- If a security is of particular importance, it may be necessary to ask all other shareholders to assume ownership of it as well.
- Any present or future conflicts of interest that may arise.
- Failure to comply with the representations made in this section will result in a breach of contract and liability for the party responsible for such a breach.

3.5. CLOSING

Here you should include any information regarding the closing of the deal.

- Date, manner, and place of the Closing.
- Conditions of the Closing.
- Conditions for the closing in case there is a long period of time between the closing and the signing of the SPA. For example, a price freeze or what will happen to the company in the meantime.



Be mindful that:

If a long time has elapsed between closing and signing, it should be checked whether the shareholding structure has changed and whether there have been any relevant changes in assets or liabilities.

3.6. PACTS AND MANIFESTATIONS

During the period of time between signing and closing, the Seller and Purchaser might make each other promises. These should be covered in this clause.

Pacts can include the promise to continue operating the company in the same ordinary manner as previous to the Closing.



Be mindful that:

Breach of the promise will give rise to a possible claim for liability for damages.

3.7. INDEMNITIES

Here you should include the compensation to be granted to the non-breaching party in the event of a breach of the representations or covenants by the other party:

- Damages for false representations or warranties.
- Damages for breach of preconditions, as agreed.



Be mindful that:

If risks are identified in due diligence process, these should be covered by an Indemnity.

3.8. CONFIDENTIALITY

For both parties, lasting up to 2 years.



Be mindful that:

Confidentiality lasting longer than 2 years is unreasonable and should not be agreed to.

3.9. NON-COMPETE AGREEMENT

The Seller may not use information obtained during the process to directly or indirectly promote an equivalent activity that could be in conflict with the company being sold.

3.10. MARKET COMMUNICATION

Public ratification of the agreement and publicity in the media if appropriate.

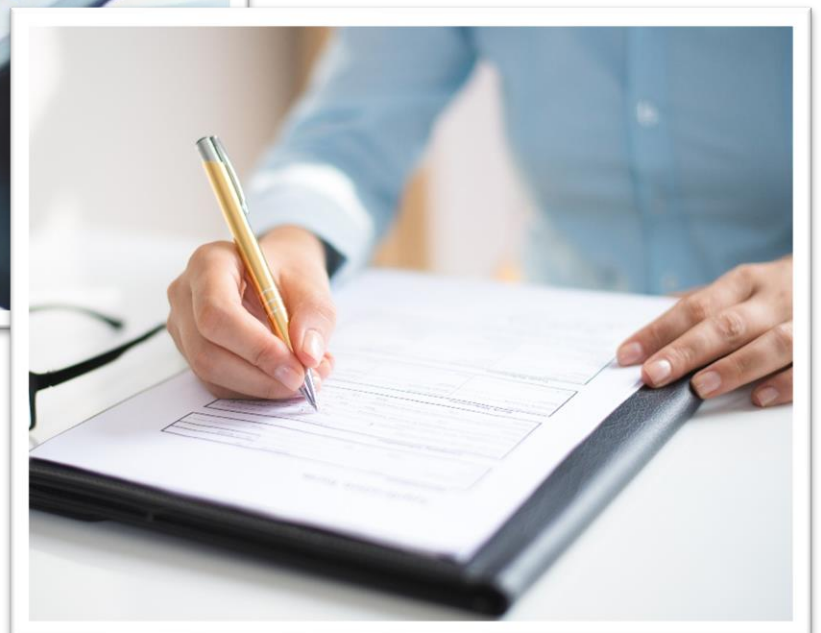
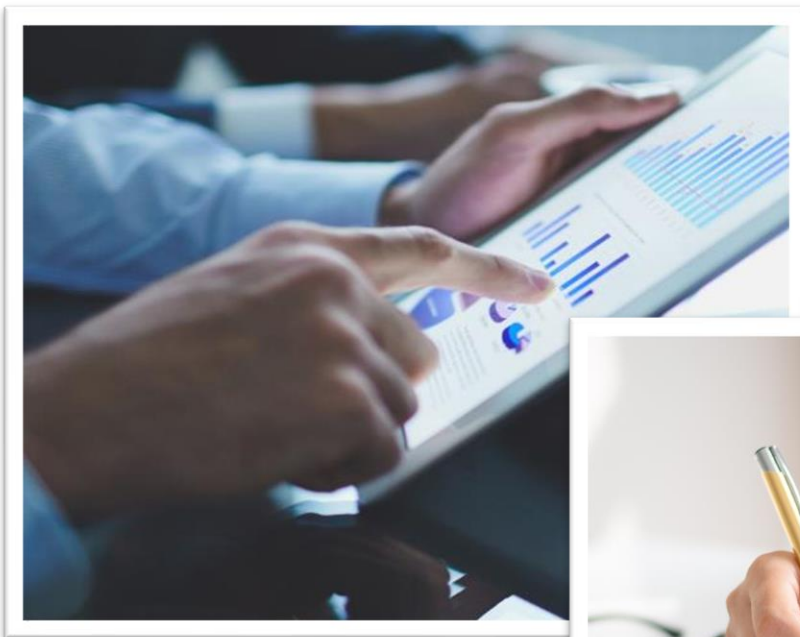
3.11. MISCELLANEOUS

If any part of the agreement is void, the rest is valid.

- How modifications and amendments are to be made.
- This agreement supersedes any oral or written representations, covenants or agreements to the contrary made prior to this agreement.

3.12. GOVERNING LAW & DISPUTE RESOLUTION.

- Which jurisdiction will govern the SPA.
- The site of arbitration, the place of arbitration and the law governing the arbitration.





4. ANNEXES

Finally, the annexes attached to the SPA are also very important.

The following are some examples:



Ownership of shares and titles of ownership.



Definitions and interpretations.



Proof of the deposit/filing with the Commercial Registry of the company's annual accounts for the financial year ended on the selected date.



Certificate of the compliance with the legal, statutory and extra-statutory requirements for the transfer of the Shares.



Certificate regarding the approval of the transaction by the General Meeting of Shareholders of the Company.



Representation and warranties.



Letters of resignation from the directors and the non-director secretary of the Company.



Assignment of the consideration.



Minutes of the Board of Directors of the Company regarding the formulation and signing of the annual accounts of the Company for the financial year ended on the selected date.



Certificate of approval of the transaction by the General Meeting of Shareholders of the Company of the annual accounts of the Company for the financial year ended on the selected date.

ONETOONE, A SAFE ALTERNATIVE FOR FINDING THE IDEAL BUYER FOR YOUR COMPANY

ONEtoONE Corporate Finance has offices in Europe, the United States, Latin America and Asia, making us the largest global group specialising in advising on the valuation and sale and purchase of companies like yours.

At ONEtoONE we know that at least seventy percent of the result in the sale of a company will depend on finding potential buyers and talking to the key people, always within a confidential management of the entire process.

At ONEtoONE we work exclusively in the sale and purchase of companies, so all our human and technological resources, databases, experience and processes are focused on helping you to value and sell your company to the investor who can pay the most, wherever you are.

If you still have doubts about how you can find the best buyer for your company, in ONEtoONE we offer you a team of professionals who will be dedicated, with absolute transparency and confidentiality, to advise you during this process. Do not hesitate to contact our team.

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