

# Share purchases: overview (The Netherlands)

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## Scope of this note

There are two principal methods of acquiring a business in the Netherlands:

- **Asset purchase.** This involves the buyer acquiring certain assets and rights, and sometimes assuming responsibility for certain liabilities, which together comprise all or part of the target business.
- **Share purchase.** This involves the buyer acquiring the shares of the target company which carries on the target business.

For a comparison of the two methods, see *Practice note: overview, Acquisition structures: comparing share purchases and asset purchases (The Netherlands)*. This note provides an overview of the typical transaction process which will be relevant when acquiring or selling a Dutch business via a share purchase.

It focuses on transactions involving a bilateral sale where the buyer and the seller negotiate and enter into a share purchase agreement (SPA) to record and implement the transaction.

The transaction process will differ in some key respects where, instead of a bilateral sale, the seller runs a competitive sale process whereby several prospective buyers are invited to submit bids for the target company, in a competitive tender process. Where relevant, divergences between these two processes are highlighted in this note.

In this note, unless otherwise stated, a reference to the DCC means the *Dutch Civil Code (Burgerlijk Wetboek)*.

## Planning a share acquisition or disposal

### Reasons for making an acquisition or disposal

The nature of the parties will determine their motivation for making an acquisition or disposal. Institutional investors will be driven to make acquisitions and disposals by virtue of the focus, rules and timescales of their funds and underlying investors and on making a return on investment within a limited time. Where non-institutional investors (primarily trade buyers) are involved in acquisitions or disposals, this tends to be driven by a variety of factors, including synergies.

#### Buyer's objectives

- The target company's business may complement the buyer's business because it manufactures and supplies a critical part of the buyer's product.
- The buyer may be able to benefit from economies of scale and other efficiencies where it acquires a competitor business.
- The target company might have available tax losses that would benefit the buyer's overall group tax position.

#### Seller's objectives

- The seller may want to realise a profit on its investment and re-allocate its capital to other higher growth investment opportunities.
- The seller may want to move out of a particular sector or industry because it no longer fits with its wider corporate group strategy.
- The target business may be struggling to achieve profitability targets, therefore prompting the seller to re-focus on other more profitable areas.
- The target business could be in financial difficulty with no reasonable prospect of remaining solvent. In this situation, the directors will need to consider all options including whether an involuntary sale is required.
- The target business could be owner-managed, and the owner-managers are seeking to retire.

## Valuing the target company

While the valuation process will be carried out by relevant corporate finance advisers, it is helpful to understand the most common approaches to valuation on Dutch share purchases. These include:

- **Market multiple.** The target company's value is calculated by taking a key financial indicator, such as EBITDA (earnings before interest, tax, depreciation and amortisation), and multiplying it by an agreed number based on the valuation of comparable companies.
- **Discounted cash flows.** The target company's value is calculated by using an estimate of its future cash flows.
- **Net asset valuations.** The target company's value is measured as the total of all its current assets less all of its current liabilities.
- **Dividend yields.** The target company's value is calculated by reference to the annual dividend per share divided by the price per share.
- **Cash free, debt free basis.** Valuation is carried out as if the target company had no cash reserves or outstanding debt (except as required for normal working capital purposes). This can provide a more comparable basis for comparing different offers for the target company because the impact of fluctuating cash and debt levels is eliminated.

## Completion accounts and locked-box mechanisms

In a share sale, one will usually agree on a mechanism to further determine the final acquisition price that the buyer has to pay. The two most commonly used mechanisms for adjusting the purchase price on Dutch share acquisitions are completion accounts and locked-box mechanisms. Locked-box mechanisms are increasingly seen, especially on seller-led competitive sale processes.

In economic terms, locked-box deals are very similar to a traditional completion accounts deal insofar as they are often done on a debt-free, cash-free basis, subject to normalised working capital. The crucial divergence is that with a locked-box deal, the purchase price is fixed up front by reference to a historical net debt and working capital position as per a certain date, with no post-completion price adjustment, as occurs with completion accounts.

### Completion accounts

In a completion accounts mechanism, the final acquisition price is determined on the basis of the target's actual balance sheet (calculated as at completion), in the period (usually between 30 and 60 days) following completion.

As a minimum, the completion accounts will set out the target company's net assets, at completion. Often, the completion accounts will also include a completion balance sheet and a profit and loss account showing the target's results for the period from the last set of financial accounts up to the completion date.

While either party may draft the completion accounts, on Dutch share acquisitions it is most common for the buyer to prepare them, as it is the owner of the business at the time of preparation, to be then further agreed with the seller. The completion accounts process and the accompanying adjustment to the purchase price frequently lead to delays

in the final figure being confirmed and time-intensive discussions between the parties. This results in a degree of uncertainty which is why, in some scenarios, a locked-box mechanism is preferred.

### **Locked box**

Unlike with completion accounts, in a locked-box mechanism, the final equity value adjustments are applied to a balance sheet prepared at a date before completion (the Locked Box Date).

The key feature of the locked-box mechanism is that no value is permitted to leave the business between the Locked Box Date and completion. To the extent that there is any extraction of value by the seller (typically referred to as leakage) between the Locked Box Date and completion (for example, dividends or transaction related costs), then this leakage can be claimed against the seller by the buyer since such extractions diminish the balance sheet value and, if left unadjusted, would mean the buyer would receive a lower value than what parties had agreed buyer would get.

The buyer and seller may agree that certain, documented, forms of leakage may be allowed under the SPA. Such permitted leakage normally captures leakage which both parties are aware of before completion (for example, salary or management fees payable to the seller).

## **Overview of the transaction process**

The transaction process involves the following steps:

- Dealing with pre-contract documents, such as confidentiality agreements, letters of intent and exclusivity agreements. For further information on this phase, see [Preliminary agreements](#).
- Carrying out due diligence on the target company and any subsidiaries. For further information, see [Due diligence](#).
- Preparing and agreeing the documents required to implement the transaction. The primary transaction document will be a SPA which records the terms on which the seller agrees to sell and the buyer agrees to purchase the target shares. For further information, see [Employee consultation](#).
- Obtaining any third-party consents and approvals that are required before the transaction can proceed. For further information, see [Statutory and regulatory approvals](#).
- Signing the transaction documents and completion the transfer of the target shares to the buyer. For further information, see [Completing the transaction](#).
- Dealing with any applicable post-completion formalities. For further information, see [Post-completion steps](#).

For further information, see [Practice note, Key documents for acquiring a private company \(The Netherlands\)](#).

## **Preliminary agreements**

### **Letter of intent, term sheet, memorandum of understanding, heads of terms**

In a bilateral sole process, before engaging in due diligence and preparing the SPA and related acquisition documents, the parties may want to record the main agreed terms in a written document, commonly referred to as a

letter of intent, term sheet, heads of terms or memorandum of understanding. The names of such written documents have no fixed legal meaning per se and are used interchangeably. Such documents must be interpreted to establish if they qualify as contracts, and if they hold binding obligations for the parties, just like any other agreement must be construed. Throughout this note these will be referred to as "letters of intent".

The letter of intent entered into will generally be a non-binding statement of an in-principle agreement on the main terms of the transaction. It will commonly also hold binding provisions such as to confidentiality, exclusivity, non-solicitation, choice of law and dispute resolution forum.

Letters of intent will typically include details of the key terms of the transaction, such as the price, the basis of valuation, form of transactional documents to be entered into, a timeline and any other important issues that have been agreed between the parties, such as any conditions to completion and which type of completion adjustment mechanism is used (if applicable).

### **Confidentiality agreement**

A seller will typically insist that any potential buyer enters into confidentiality obligations as a prerequisite to the disclosure of any confidential information about the target company. To assist the seller in ensuring the non-disclosure of the confidential information by the recipient and its advisers (save for in certain specified scenarios), the confidentiality agreement (or non-disclosure agreement) will usually also set out the disclosing party's rights to demand the return or destruction of confidential information either on request or if the buyer does not proceed with the transaction. Next to duration and the inclusion of non-solicit obligations, a frequent point of negotiation is the extent of the buyer's liability in respect of its advisers.

On seller-led competitive processes in the Netherlands, it is common for the seller to insist that, as a first step and before interested parties are given access to information in respect of the target company, such interested parties first enter into a binding confidentiality agreement (also referred to as a non-disclosure agreement) with the seller.

See also *Letter of intent, term sheet, memorandum of understanding, heads of terms*.

### **Exclusivity agreements**

Exclusivity agreements (commonly referred to as lockout agreements in the UK and no-shop agreements in the US) are typically put in place to prevent the seller from actively seeking or negotiating with any other potential buyers for a specified period. This gives the buyer (or preferred bidder(s) in a competitive process) a set period of time to conduct due diligence and negotiate the transaction documents with the comfort that the seller cannot negotiate with any other party during this period. On seller-led competitive processes in the Netherlands, it is only once a preferred bidder is selected that exclusivity will be granted to give the preferred bidder a period of time to complete the acquisition.

The potential remedies for breach of an exclusivity agreement are one or more of:

- Damages or penalties (or both). Courts have wide discretion in assessing damages and awarding compensation. Claiming damages may therefore not bring satisfactory compensation. Therefore, penalty provisions are commonly used in exclusivity agreements. To be enforceable, the compensation amount or penalty must be reasonable, and a court can reduce the amount if it is manifestly excessive or insufficient. If the damages suffered exceed the penalty amount, additional compensation may be claimed.
- Specific performance. This is a general remedy which can be obtained unless it is impossible to remedy, or the cost is manifestly disproportionate. Once an exclusivity obligation has been breached, specific performance will usually be difficult if not impossible to have. However, a court injunction against further

breaches of the exclusivity obligation together with an order to continue negotiating in good faith, all under pain of penalties, can be issued and effective. A court-imposed obligation to continue negotiating in good faith does not, however, mean that a deal must be entered into.

- Termination or rescission of the exclusivity agreement.

Exclusivity agreements will often specify the remedies available to the buyer for a breach by the seller.

See also *Letter of intent, term sheet, memorandum of understanding, heads of terms*.

## Due diligence

Due diligence enables a buyer to check the health of the target business and identify relevant risks, assess the likelihood of such risks materialising and consider any appropriate protections or adjustments to the price, if necessary. The diligence process is also fundamental in identifying any third-party consents or approvals that need to be obtained to complete the acquisition.

In the light of the increasing use of warranty and indemnity insurance in the Netherlands, buyer due diligence is a crucial exercise since an underwriter will want comfort that the target has been properly diligenced by the buyer and any material risks identified. A failure on the part of a buyer to undertake a satisfactory due diligence exercise will elongate the process of putting warranty and indemnity insurance in place and could result in more than just market practice exclusions and a higher premium attaching to the policy.

See *Practice note, Due diligence on private acquisitions in the Netherlands*.

### Objectives of due diligence

- Identifying any issues or risks that could affect the buyer's decision to proceed with the transaction at all, or at the agreed price.
- Identifying any third-party consents or other third-party process points that will need to be addressed before the transaction can proceed (see *Transaction consents and approvals*).
- Informing negotiations around the extent of the warranty (and, if appropriate, indemnity) package required from the seller. The due diligence findings can be used to identify areas that require contractual protection and to flush out any risks that the buyer should avoid completely.
- Providing key information to assist in planning the integration of the target company with the buyer's operations or group following completion.
- Where risks and liabilities are identified this may serve as grounds for further negotiations on the purchase price, either through a reduction in the overall purchase price or the inclusion of deferred consideration or earn-out mechanisms.

### Financial and legal due diligence

In a competitive sale process, well-advised sellers will have aggregated together the relevant documents that will be relevant to bidders in a (virtual) data room and this will then be made available at the relevant point to bidders in the sale process, traditionally after non-disclosure commitments and a non-binding expression of interest have

been provided by the bidders. Sellers may also prepare a vendor due diligence report to be shared with bidders with a view to speeding up the sale process and avoiding extensive queries being raised by bidders.

In a bilateral process, following agreement on the letter of intent, the buyer will traditionally provide the seller with a due diligence questionnaire to be completed by the seller who is also expected to make the underlying documents requested in the questionnaire available. The underlying documents are almost always made available through a virtual data room. Competitively sensitive information is sometimes shared at a later stage in the transaction process (with a selected bidder), when there is more deal certainty.

A vendor due diligence exercise and the use of a well-structured virtual data room is of value to the buyer by increasing the speed of its review and it will also facilitate an underwriter if warranty and indemnity insurance is being put in place.

Following review of the information contained in the data room, buyers will often raise additional requests for information and may be given the opportunity to discuss with the relevant members of the board of directors, key personnel and managers and advisers of the target (as relevant and applicable).

While the scope and scale of due diligence exercises vary from transaction to transaction, most buy-side diligence exercises in the Netherlands are carried out on "red flags" or "exceptions-only" bases and so are focused on identifying material issues with the target company or business, rather than providing narrative detail. At the same time, there may be specific aspects (for example, key customer contracts or key employee arrangements) where a buyer may seek to impose narrative detail. To streamline the due diligence process, advisers will often agree materiality thresholds with the buyer to enable them to avoid having to report on immaterial findings.

### **The use of warranties to obtain further information on the target**

Warranties are contractual obligations, usually contained in a separate schedule to the SPA, as to, for example, the seller's ownership of the shares of the target, their capacity to sell the target and the condition of the target's assets and the operation of its business. The warranties fulfil two key objectives for a buyer:

- Apportionment of risk and liability by providing a contractual remedy of damages for any breach of warranty.
- Gathering information on the target by pushing the seller to disclose against any warranties which are not true and accurate.

Notwithstanding the information-gathering capability that warranties offer, they should be seen as complimentary to, and not a substitute for, proper due diligence.

While much depends on the nature of the target, and the relative negotiating position of the parties as a result of the due diligence completed, warranties in a SPA will traditionally cover:

- Incorporation, existence, share capital and articles of association.
- Accounts.
- Financing.
- Real property, licenses and permits.

- Trading.
- Material contracts.
- Employees.
- Pensions.
- Insurance.
- Intellectual property.
- Data privacy.
- Information technology.
- Litigation and compliance with law (including corporate governance and anti-corruption).
- Tax.
- Environmental matters.
- Disclosed information.

As such, a buyer can use warranties at any early stage, in tandem with due diligence queries, as a secondary means to push the seller into providing additional information in respect of the target since the seller will be mindful that it will ultimately have to disclose against such warranties at a later stage in the process leading up to the transaction.

### **Due diligence findings**

While much depends on the nature of the target, the sector(s) in which it is engaged in and the terms of the transaction, common material issues arising from due diligence in the Netherlands include:

- Title, planning and building control in respect of real estate assets.
- The need to obtain the prior consent of the target's customers or suppliers for any change in control of the target.
- The existing arrangements of key employees being deficient in terms of non-compete or non-solicit requirements and obligations around the creation and ownership of intellectual property rights.
- Breach of environmental or regulatory compliance obligations by the target.
- The timely obtaining of the required regulatory approvals.

Where, in the course of due diligence, the buyer identifies an existing failing or liability of the target which may result in loss at a future date, the buyer may seek specific indemnities from the seller in respect of such risk to be included in the SPA rather than a warranty. This will be necessary because a warranty claim will not be available as a source of recourse for a buyer because the seller will have disclosed the failing or liability in the (virtual) data room and/or its disclosure letter. Consequently, the buyer will not be able to bring any claims under the warranties for such failing or liability.

On Dutch share acquisitions the following are the most common areas where buyers seek indemnity protection:

- Tax covenants.
- Environmental liabilities.
- Product liability claims.
- Ongoing or threatened litigation.
- Non-adherence to data privacy laws.

The duration and liability cap attaching to such indemnity claims will often turn on the specific facts of the identified risk.

## Documenting the transaction

The key documents involved in a share purchase are:

- Exclusivity agreements (otherwise known as lock-out or shut-out agreements) provide that the seller will not negotiate or solicit offers from parties other than one prospective buyer for a fixed period of time.
- Non-disclosure agreements to protect the confidentiality of information shared during negotiations and due diligence.
- Letter of intent to set out the main terms of the deal. Often only certain provisions of the letter of intent will be legally binding and the terms of the deal would not usually be legally binding, however, the confidentiality section of the heads of agreement would be binding.
- In an auction scenario, there will be a bid process letter issued by the seller setting out how the process will be conducted. For example, a vendor due diligence report might be provided and a bid might be submitted together with a mark-up of the first draft of the share purchase agreement.
- The SPA to document the provisions of the sale of the shares. It will include warranties and an apportionment of risk between the seller and buyer.
- Notarial transfer deed through which the ownership of the shares is transferred from the seller to the buyer. The civil law notary executing the notarial transfer deed will commonly also update the target's register of shareholders and do the relevant filings with the Trade Register.
- A buyer might also consider putting in place new service agreements with the directors and ensuring there is appropriate protection within key employees' contracts.
- On private-equity-style buy-outs where some or all of the management sellers may remain as minority shareholders post-completion, a shareholders' agreement will normally be negotiated.
- Target shareholder, supervisory board and board of directors' resolutions (for example, a resolution approving the transaction, if required by the target's articles of association, and appointing new directors). For further information, see [Transaction consents and approvals](#).
- Proof or confirmation of payment of purchase price and receipt thereof.
- Guarantee or escrow agreement documents.

- Consents, authorisations and regulatory approvals that enable the target company to continue carrying out its business (for example, change of control consents, merger control clearance, and other regulatory approvals). For further information, see *Statutory and regulatory approvals*.

## Transaction consents and approvals

### Board approval

Under the DCC the board of directors as a whole of a company is in principle authorised to enter into the SPA on behalf of that company (*articles 2:240 and 2:130, DCC*). Articles of association may contain other regulations for legal representation, for example, that a sole member of the board of directors or two members acting jointly are authorised to legally represent the company. The articles of association should be carefully checked to verify who is authorised to execute the SPA on behalf of buyer and seller, and if board approval is required or if the whole board should execute the SPA.

### Shareholder and supervisory board approval

While the board of directors is in principle authorised to legally represent a company, the articles of association may hold that the entering into of any important agreement, sale or purchase, or (strategic) cooperation demands shareholder and/or supervisory board approval. This will especially be the case where such transaction would change the character of a company or surpass monetary thresholds, as will typically hold true when a SPA is entered into.

The withholding of such approval does, however, not affect the authority of the board of directors or any of its authorised members (if the articles so provide) to execute the SPA on behalf of the company and so bind the company to it. The approval requirement in principle only works internally between the (board of) directors and the supervisory board and/or shareholders (as the case may be) and not the third party with whom the SPA is negotiated. The articles of association should nonetheless be carefully checked for such approval requirements as unwilling parties may use the absence thereof to stop or delay completion of the transaction or renegotiate its terms.

Where there are multiple sellers it should be ascertained at the outset if any shareholders' agreement is in place. If so, this should be reviewed to confirm any additional shareholder approvals which may be required under such shareholder agreement. Where the sellers are exiting altogether, the SPA should provide that any shareholders agreement is terminated at completion.

Where shares are to be issued as part of the transaction (either in the buyer or target company or another Dutch entity) shareholder approval is required to approve the share issue.

## Statutory and regulatory approvals

Under the *Competition Act (Mededingingswet)*, it is necessary to notify a merger and obtain clearance from the Authority for Consumer and Market (*Autoriteit Consument en Markt (ACM)*) where certain financial thresholds are met. The financial thresholds are met where, in the previous calendar year:

- The aggregate worldwide turnover of the undertakings involved is not less than EUR150 million.

- The turnover in the Netherlands of at least or two of the undertakings involved is not less than EUR30 million.

Where the relevant transaction gives rise to a "Community dimension", it may fall within the European Merger Regulation with the result that the merger control clearance process would be run exclusively by the European Commission and without any further involvement of the ACM.

For certain sectors, specific consents are required from regulatory bodies. For example, for companies in the health sector, deviant turnover thresholds apply under the Competition Act, and one may need to retrieve consent from the Dutch Healthcare Authority (*Nederlandse Zorgautoriteit*). For banks and financial institutions, certain consents are required from the central bank of the Netherlands, the Dutch Bank (*De Nederlandse Bank*).

See [Practice note, Competition: private acquisitions \(The Netherlands\)](#).

## Contractual consents

Careful consideration should be given to contracts requiring approval of the contractual counterparty such as:

- Agreements with lenders should be reviewed to confirm either the process for redemption of any target company debt; or the relevant consent requirements if the target company debt is to remain in place.
- Key customer and supplier contracts should be reviewed to ensure that notification and consent requirements are complied with in relation to any applicable change of control provisions. This is particularly important in relation to the contracts of most value and importance and ensuring there is no impact to the business generally post-completion.
- If there is to be an assignment of a lease or another contract, it is helpful to engage with the respective counterparty as early as possible in the acquisition process to make sure such assignment will happen timely.

## Pledges and security

While the buyer may be content for the target company's existing debt to remain in place, both the buyer and the seller will want to ensure that any debt owing to or from the seller from or to the target company is discharged or waived; and any security given by the seller in respect of the target company is released. It is advisable for the seller to engage with all banks or lenders as early as possible and confirm the requirements for completion to discharge the monies owed and to release the security. Filings to release pledges should be made promptly on completion with the Tax Authority and any notarial pledge deed must be released or amended.

## Employee consultation

Any company that normally employs 50 employees or more must have a works council (*ondernemingsraad*). The works councils of the target company, the buyer and the seller must be given opportunity to give their advice on an intended acquisition of a target located in the Netherlands. The advice should be requested at such time that it can be of real consequence for the intended acquisition. The advice does not have to be complied with, but if it is not (entirely), the reasons for this must be stated. If the works council does not give its advice within a reasonable timeframe, the acquisition may proceed. If the advice is not requested (in time) or the formalities for doing so are not complied with the works council may petition the Enterprise Chamber (*Ondernemingskamer*) of the Court of Appeal in Amsterdam. The petition can only be lodged on the grounds that the decision on the acquisition could

not reasonably have come by when weighing up all the interests involved. If the appeal is successful, the acquisition can be halted or reversed. In practice that hardly ever happens. Failure to comply with the Enterprise Chamber's decision constitutes an economic offense.

## Legal issues affecting share purchases

If the seller is a public company (*Naamloze Vennootschap* (NV)) the parties may need to consider the implications of the prohibition on financial assistance under article 2:98(c) of the DCC. Broadly, subject to certain limited exceptions, article 2:98(c) of the DCC prohibits an NV from giving financial assistance for the purpose of acquiring shares in the company itself or a subsidiary. A breach of this prohibition carries civil sanctions and could result in the transaction being void and unenforceable. Therefore, if the target group includes an NV, both parties must carefully examine the structure of the transaction (and any related transactions), including the buyer's plans for funding of the purchase price and any associated security arrangements, to ensure they do not fall foul of the financial assistance regime.

Under the *Social Economic Counsel Merger Regulations* (SER) any merger involving one of the below must be notified:

- At least one business in the Netherlands with on average 50 employees.
- A business that is a part of a combination of businesses where the businesses in the Netherlands have on average 50 employees qualifies.

A merger under the SER is defined as the transfer of control, direct or indirect, of a company or part of a business, as well as the merger of businesses. The notification must be sent to the trade unions and the SER authority who should be allowed to express their views insofar as the merger may affect employees' interests. The notification must be sent before the transaction is made public. Any disputes over (notifications on) mergers may be brought before the Adjudication Committee. The Adjudication Committee may rule a party involved in the merger has failed to comply with the SER merger code. The SER merger code is no formal law but is generally adhered to.

Where there are shareholders dissenting to a sale of shares there can be a compulsory squeeze-out under article 2:92a DCC (NV) or 201 DCC (private company (BV)). Any shareholder holding at least 95% of the issued share capital can start such proceedings. Commonly shareholders' agreements will hold drag along provisions under which (minority) dissenting shareholders may be forced to sell their shares along with the majority of shareholders who favour such a sale.

## Completing the transaction

If signing and completion is not simultaneous, the parties should ensure that there are protections in place for their respective positions to cover the period between signing and completion. For example, a transaction that requires regulatory approval will sign, but seller will want comfort that approval is than swiftly applied for and expeditiously dealt with. In the intervening period it is standard for the seller to be subject to conduct of business covenants in respect of the target company and buyers will traditionally insist on the repetition of the warranties at completion. The use of material adverse change clauses is frequent on Dutch share acquisitions where there is a split between signing and completion, particularly on bilateral processes where a buyer is in a stronger negotiation position.

## Post-completion steps

Post-completion, various steps will be carried out such as:

- The buyer will want to control the announcement of the transaction and rules around announcements are commonly included in the SPA. Most often the buyer will agree the announcement with the seller before completion.
- Making certain filings with the Trade Register (for example, to notify any changes in the board of directors and the sole shareholder of the target). Filings should be made promptly on completion of the transaction. Commonly the civil law notary, who passes the notarial transfer deed pertaining to the transfer of the sale shares, will make the relevant filings with the Trade Register.
- Updating the target company's shareholders' register.
- Updating the Ultimate Beneficiary Owner (UBO) register. As of 27 September 2020, anyone holding more than 25% of the shares or voting rights in a company or factually controlling the company must be registered as a UBO with the Trade Register of the Chamber of Commerce.
- Dealing with certain administrative matters, such as insurance, payroll, VAT and pensions. Completion deliverables should be included in the SPA to cover all aspects of administration required for the buyer to run the business in the ordinary course from completion. The buyer should have a post-completion checklist to ensure that they can easily step into the shoes of the seller and takeover the administrative matters of the business. There is often a clause in the SPA to ensure that the seller cooperates fully with anything that they might need to assist with post-completion (usually at the buyer's expense).
- Producing a bible of the transaction documents for each of the parties and their lawyers. The lawyer of the buyer will typically prepare a bible of transaction documents so that there is a record to easily access any information required post-completion. This information is particularly helpful in case of a breach of a warranty or non-compete or where there is an earn-out mechanism.

## Share purchases and COVID-19

For details on how the 2019 novel coronavirus disease (COVID-19) pandemic affects share purchases, see [Practice note, COVID-19: corporate FAQs \(the Netherlands\)](#).

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