

After a couple of weeks of intense negotiations, drafting and finalising the necessary sale documentation, completion day has finally arrived for Cleaver Fulton Rankin's fictitious US technology client who are setting up shop in Northern Ireland.



Scott Kennedy, corporate partner at Cleaver Fulton Rankin.

Lead partner on the deal, Scott Kennedy, who has been talking us through the legal aspects of the deal from the outset, describes what goes on during the final day of negotiations via his blog diary:

Closing the Deal

Fri 25th:

Completion day is here. It's been hard work getting to this point in a relatively short period of time but the effort is about to pay off and the much-talked about inward investment set to become a reality.

All parties to the deal, including their advisers, arrived at our offices at 8am to tie up the loose ends, thrash out a couple of outstanding issues and, of course, transfer the purchase monies. Completion day ideally should be about sorting out the practicalities and mechanics of signing the documents and completing the deal rather than settling outstanding points but sometimes it takes a face to face meeting to get such issues resolved and it is obviously a forum where all the key people are present so direct discussions can be had and decisions made more easily.

With this in mind our client sent over its senior in-house lawyer and a couple of directors for the meeting. Also because it's our client's first European venture, they are keen to have a couple of representatives on the ground to demonstrate a high level commitment to their new investment and also show a human face to their new employees.

As well prepared as you can be, rarely does completion day pass off

without a last minute glitch or two. One point which did need resolving today was the warranty to be given by the vendors confirming the level of net assets in the business on the date of completion. This was always a key condition of the deal so there was no dispute regarding actually giving a warranty of this nature.

Rather, the issue was which accounting policies should be applied in calculating the net assets as, depending on the policies used, the level of net assets could change significantly. In particular, our client didn't feel the vendors had made sufficient provision for bad debts given the current economic climate. Obviously a larger debt provision would result in a lower net asset valuation and therefore a greater chance that the warranty could be breached. The deal had been approved at board level in the US on the basis of a certain level of net assets being present so reducing the targeted net assets figure was not an option.

The vendors insisted their debt provisioning was adequate so it was agreed that if their existing debt provision policy be used they should then stand behind it and buy any debts which weren't collected within 120 days from the company. The company's net asset valuation

would be protected and they could then collect the debts themselves. A small portion of the purchase price would be retained by our client as security for this eventuality arising.

There's always a high volume of paperwork to get ready for completion day. It's not unusual, as in this case, to have numerous different documents on the table. There are the key documents such as the sale purchase agreement, disclosure letter and new employment contracts and also a large number of ancillary documents such as the stock transfer forms, board minutes, directors' and accountants' resignation letters, bank security releases and consents, all of which, though pretty standard, are nonetheless important and the deal won't go through without them.

After a quick spot of number crunching to ensure existing directors' loans and some bank debt was repaid and agreement reached on the balance to be paid to the vendors, the deal was finally signed off by 2pm at which point our clients were formally introduced to their new workforce. It's easy to forget that whilst our work is now largely done, for the client this is just the beginning of an exciting new venture. For them the 'boring' wait is over and they can now get on with doing what they do best, running their business.