

Is an entire agreement clause the most important clause in a share purchase agreement?



Ok, so from a seller's perspective probably the most important clause in a share purchase agreement (**SPA**) is how much they are being paid, but without an effective entire agreement clause there can be no certainty that the seller will be able to keep hold of this consideration and at the very least it increases the risk of a dispute arising post-completion. I would therefore argue that this often glanced over (boilerplate) clause at the back of the agreement demands greater recognition.

Like any commercial transaction, it is important that the terms of a share sale are clear and this is typically recorded in a carefully drafted SPA. This normally starts with agreed heads of terms, before due diligence enquiries and a detailed agreement being prepared to document the deal and cover off the various risks. However, without an entire agreement clause, it is open for a party to argue that other terms were agreed, in addition to those recorded in the SPA, such that a prior agreement or understanding could be binding (e.g. as recorded in the heads of terms or as part of the negotiations / due diligence). This will then need to be considered in addition, or instead of the terms of the SPA, adding considerable uncertainty over the terms agreed and leaving the transaction ripe for litigation.

Additionally, without a properly drafted entire agreement / non-reliance clause it is open for a buyer to argue that representations made during the sale process are binding on the seller, in addition to any warranties or indemnities that are included in the SPA. This opens up a whole new level of risk to the seller, especially as any claim that falls outside of the SPA bypasses any exclusions / limitations that are contained within it (and any insurance cover). Further, as one of the remedies for a misrepresentation claim is to seek restitution, the whole transaction could be unwound if the buyers claim is made out.



Of course there are statutory limits to what can reasonably be excluded and a clause that seeks to exclude liability for fraudulent misrepresentations will be unenforceable. Carving this risk out should not be of too much concern, however, provided the seller or its representatives haven't intentionally misled the buyer.

While most parties to a SPA will focus on the consideration being paid, the mantra of a good dispute resolution lawyer is often 'skip to the end' to make sure the fundamentals of the contract are in place, before focusing on the commercially attractive points. Get this wrong, and at best there is uncertainty over the terms agreed and at worst the entire agreement can be unwound, so while it may sound boring forgive me if I take the time to check there is a well drafted entire agreement clause before turning to how much consideration is to be paid.

Cripps specialises in contract law and commercial disputes resolution. [Get in touch](#) if you need advice on entire agreement clauses or have any questions on the above.



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