SESAME BANKHALL GROUP

# What are my options if I'm self-employed and wish to sell my business?

ExitPathway

Selling your business is a significant decision, and it's crucial to get it right. That's where Bankhall comes in. Unlike traditional mergers and acquisition (M&A) brokers, we work closely with you to help prepare your business for sale.

We thoroughly examine everything from data quality to regulatory and compliance standards. By identifying and fixing potential issues before a buyer sees them, we help protect and often increase your sale value. Our expertise in risk and regulation also streamlines the due diligence process, reducing the chance of delays or last-minute deal breakers. If there's untapped growth potential in your business, we'll highlight it, giving you the chance to boost your valuation before going to market.

We don't stop there. We use our extensive Sesame Bankhall Group network to help find the right buyer who aligns with your goals, values, and culture. When it's time to negotiate, we're with you every step of the way, from initial discussions to exchange and completion.

With trusted consultancy, practical tools, and end-to-end support, we're your proactive partner for life, whether you're ready to sell now or preparing for the future.

# What are my options if I'm self-employed and wish to sell my business?

If you operate your business as a self-employed financial advice 'business' you may still be able to plan your exit strategy with careful planning.

As there is no limited company structure, the option to sell shares in the business is removed as there are no shares to sell. However, there may still be value in the assets and trade activities of the business.

A trade and asset purchase is a common method used in mergers and acquisitions, particularly for financial advice firms. This method is most frequently used for smaller financial advice firms or those wishing to selling as quickly as possible. The purchase would normally be of the client bank and staff (if applicable), but would NOT include any the legacy advice

Acquiring the client bank and staff is an alternative to acquiring ownership of the selling company through acquisition of its shares.

A key benefit of a trade and asset purchase is that, unlike a share sale, the liabilities of the company are generally not part of the purchase. Because of this, it is usual for the seller to acquire run off insurance cover in this scenario.

## How it works

1. Identification of Assets: The buyer and seller agree on which clients will be included in the transaction the buyer will then work through a valuation for the business which will be validated during due diligence. It is normal for a Non-Disclosure Agreement (NDA) to be signed at this stage;
2. An offer will be made and, if all parties agree, they would like to move to due diligence. Heads of Terms or a Terms Sheet is issued detailing the offer and a high-level overview of the deal structure.  A period of exclusivity is then agreed which coincides with the expected deal completion date;
3. Due Diligence: The buyer conducts thorough due diligence to assess the value and condition of the assets, ensuring there are no hidden liabilities or issues. This step is crucial to mitigate risks and confirm the assets' worth;
4. Asset Purchase Agreement (APA): This legal document outlines the terms and conditions of the sale, specifying the assets being acquired and any liabilities being assumed. It also details the purchase price and payment terms;
5. Transfer of Assets: Once the APA is signed, the assets are transferred to the buyer. This may involve updating ownership records, transferring contracts, and notifying clients of the change.
6. Integration: The buyer integrates the acquired assets & staff into their existing operations. In financial services, this will likely involve merging client accounts, aligning service offerings, and ensuring compliance with regulatory requirements.
7. Buyers vary but most will want the seller to stay involved in their business until the client handover is complete. This may be a condition of the APA.

## Common Structures

A transaction can be completed in many ways. Perhaps the most commonly used structures are a two or three year earn out: For example,

- 50% to be paid on completion of the APA
- 25% to be paid after 12 or 18 months
- 25% to be paid on month 24 or 36

### Advantages of Trade and Asset Purchases for the buyer

- Selective Acquisition: Buyers can choose which assets to acquire, avoiding unwanted liabilities
- Tax Benefits: Buyers can often "step up" the basis of the acquired assets (i.e. revalue them to their current market value). The buyer can then claim tax deductions on the depreciation (for tangible assets) and amortisation (for intangible assets) based on this new, higher value. This can reduce the buyer's taxable income, leading to potential tax savings
- Reduced Risk: By not acquiring the entire entity, buyers limit their exposure to any unidentified or unknown liabilities
- No requirement to send a change in control notification to the FCA

### Advantages of Trade and Asset Purchases for the seller

- Normally a quick transaction, sometimes completed in 8 – 12 weeks
- Due diligence is lighter as the buyer is not acquiring historic liabilities attached to the company
- Typically, a more-straight forward transaction compared to other ways to sell a business
- Production of agreements like APAs will be considerably cheaper than Share Purchase Agreements

## Considerations

Whilst this transaction is not normally as tax efficient as a share sale, quite often, for smaller companies, this is the only option buyers are willing to consider. If a buyer is taking on the seller's staff, TUPE may apply.

**TUPE** stands for **Transfer of Undertakings (Protection of Employment)**. The TUPE Regulations are UK employment law retained from the EU after Brexit. They are designed to protect employees' rights when the business they work for changes hands.

Here are the key points from the perspective of a trade and asset purchase:

### What is TUPE?

TUPE ensures that employees' terms and conditions of employment are preserved when a business or part of a business is transferred to a new employer. From the regulations:

*"A transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity" (regulation 3(1)(a), TUPE)."*

TUPE will apply when these elements are applicable:

- **Transfer of business/part**: Moving a business or part of it to a new owner
- **Located in the UK**: The business must be in the UK before the move
- **To another person**: The business is changing hands
- **Economic entity**: A group of resources (like employees and assets) working together
- **Retains identity**: The business keeps doing the same kind of work after the move

### Who is in scope for a TUPE transfer?

- Generally speaking, any employee that is formally assigned to the business (or part of the business) that is being sold, or is otherwise working most of their time for the business (or part of the business) being sold, will be in scope for a TUPE transfer.
- Moving employees prior to a TUPE transfer to try and ensure that they either are or are not in scope for TUPE, is legally problematic and could be challenged.

### Employee Rights:

- Employees automatically transfer to the new employer with their existing terms and conditions. This happens by operation of law and does not need to be confirmed or ratified in any way.
- Continuity of employment is maintained, meaning their length of service is preserved.
- Employees cannot be dismissed solely because of the transfer. Any dismissal related to the transfer is automatically considered unfair in most circumstances.
- If employees were represented by a union before the transfer, the new employer must continue to recognise the union.
- Any changes to employment terms that are solely due to the transfer are generally invalid.

### Employer Obligations

- Both the outgoing employer (transferor) and the incoming employer (transferee) must inform and consult with employees or their representatives about the transfer.
- They must provide specific information about the transfer, including the reasons for it, the implications for employees, and any measures that will be taken in relation to employees.

### Potential Risks

- Failure to comply with TUPE regulations can result in legal claims and financial penalties.

### Practical Example

- Imagine the ‘business’ (or part of the business) is being sold to another company or person (**Buyer**).
- Under TUPE, the employees of the financial advice firm that are either formally assigned to the business being sold, or otherwise spending most of their time working for the business being sold, would transfer to the new company with their existing employment contracts intact (**Transferring Employees**).

- While there are some limited exceptions, the Buyer is generally prohibited from changing the terms and conditions of employment of the Transferring Employees. The Buyer would have to show that the change was not related to the transfer or fell under one of the other limited exceptions from this prohibition.
- The Buyer would need to honour the Transferring Employees' exiting terms and conditions including salary, holiday entitlement, pension rights etc.
- If the Buyer wanted to terminate any of the Transferring Employees, they would need to carry out a standard redundancy exercise which could be expensive.