



# serial acquirer service

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delivering high quality legal services from offices in wales and southern england



# introduction to the serial acquirer service (SAS)

The SAS is a premium quality legal service for companies whose growth strategy includes a substantial acquisition programme. We want to be part of your team and help to make your deals happen. Through the SAS, Morgan Cole will provide you with a clearly-defined service for an agreed fee which is delivered in accordance with written service standards.

We know how difficult it can be to integrate an acquired business and to derive the maximum value from the acquisition within the shortest possible time. The SAS is designed to help you achieve this for both large and small acquisitions by:

- providing you with the information you need in relation to the target business' customers, suppliers, employees, premises and other material arrangements quickly and effectively
- ensuring that you have early warning of trouble spots and are provided with clear recommendations to deal with them either pre- or post-completion or in the acquisition contract itself
- making the process itself as simple and straightforward as possible so that your management team can focus on the real issues of post-acquisition business planning
- completing the deal on time and to a pre-agreed budget calculated with you using our unique FeeScope model.

We have successfully implemented the SAS with a number of our corporate clients and we believe we are the only firm to deliver acquisitions through a service designed around the client's specific needs, working methods and reporting structures. Peter Cohen, Chief Executive of PHS Group plc, a substantial office-services company for whom we have completed well over 100 acquisitions ranging in price from sub-£100,000 to over £100m, has this verdict:

“Morgan Cole staff make themselves available to us when we need them, often working into the evening and at weekends in order to hit our deadlines. They are extremely helpful and flexible in dealing with our specific requirements.

The team at Morgan Cole has put effort into ensuring that they understand the way that our business works and what is important to us. They understand the ethos of the company and our working practices. Some parts of our business operate in highly-regulated industries. We are confident that the people at Morgan Cole have a clear understanding of the legal issues involved.

We are very pleased that the advice we receive is commercial, taking into account the requirements of our business. We receive a positive and proactive service from Morgan Cole. We are presented with ways of overcoming challenges rather than problems to be solved.”

This guide explains how the SAS achieves this high quality of service for the serial acquirer client.

## serial acquirer service



# 1.0 SAS service standards - our promises to you

1. We will complete the deal within the timescale you have agreed with us at the outset unless the sellers are unwilling or unable to do so.
2. Our fees will be the amount agreed with you in advance using our FeeScope tool (see 4.0 'Our Fees' on page 13), subject to any agreed amendments to reflect agreed variations in the deal or in our work.
3. Your Morgan Cole acquisitions team will be led by a corporate team partner. This will be the case for all acquisitions and that partner will not change except by agreement with you or at your request.
4. The rest of the team will consist of selected corporate lawyers and other Morgan Cole lawyers with specific acquisitions and due diligence experience in areas such as employment, tax, intellectual property, land and environmental law. Again, the expert provided in each field will not change except by agreement with you or at your request.
5. Full contact details of your Morgan Cole team members will be made available to you at the outset and we can be contacted direct at any time.
6. Each Morgan Cole lawyer will liaise regularly with his/her appropriate contact within your organisation in order to ensure that your working methods, policies and any other significant issues are fully understood.
7. We will not just provide options - we will provide clear recommendations, without the use of jargon, based on our experience of market practice and our knowledge of your business.
8. We will proactively make it our business to understand your business and to keep ourselves up-to-date with significant issues affecting it. We will apply our knowledge of your business to ensure the deal process works for you.

## 2.0 what is included in the SAS? the legal work

This section briefly sets out examples of the standard legal work which is included in the SAS. Those tasks (whether or not featured here) included in the tailored service, are discussed and agreed with you (see 3.2 'Designing your SAS' on page 8).

### 2.1 acquisition of shares

1. Assisting in drafting heads of agreement
2. Reviewing and negotiating confidentiality letter
3. Reviewing/drafting exclusivity agreement
4. Drafting and negotiating terms of share sale agreement
5. Drafting and negotiating terms of tax deed
6. Drafting and negotiating terms of disclosure letter
7. Drafting/reviewing and negotiating terms of any loan note instrument
8. Drafting/reviewing and negotiating any continuing seller's employment termination terms and any consultancy, service and/or compromise agreements for sellers
9. Preparing documentation/advising on financial assistance 'whitewash' requirements and papers
10. Preparing/reviewing/arranging ancillary documents
11. Drafting/negotiating guarantees or other security for deferred consideration
12. Raising due diligence requests, reporting upon replies received and making recommendations relating to agreed areas, for example:
  - corporate matters
  - commercial/customer contracts
  - supply agreements
  - finance/banking arrangements
  - pension scheme
  - employees and their terms of employment
  - property interests
  - insurance arrangements
  - regulatory issues
  - environmental/planning matters
  - intellectual property
  - disputes
  - tax
  - others by arrangement
13. Attending completion meetings
14. Dealing with post-completion filing of documentation at Companies House/stamping of stock transfer forms and deferred consideration monitoring
15. Preparing record folders of all documentation
16. Other tasks by arrangement



## 2.2 acquisition of business and assets

1. Assisting in drafting heads of agreement
2. Reviewing and negotiating confidentiality letter
3. Reviewing/drafting exclusivity agreement
4. Dealing with any other pre-sale target reorganisation/preparation issues
5. Drafting and negotiating terms of sale and purchase agreement
6. Reviewing and negotiating terms of disclosure letter
7. Drafting/reviewing and negotiating terms of any loan note instrument
8. Drafting/reviewing and negotiating any consultancy, service and/or compromise agreements for non-transferring employees
9. Dealing with landlord's consent issues (per lease being assigned/sublet)
10. Dealing with contract assignment consent issues (per contract requiring assignment by consent of third party)
11. Dealing with IPR licence consent issues and registered IPR assignments
12. Raising due diligence requests, reporting upon replies received and making recommendations relating to agreed areas, for example:
  - commercial/customer contracts
  - supply agreements
  - finance/banking/security arrangements and dealing with discharge or letters of non-crystallisation
  - pension scheme
  - employees and their terms of employment
  - property interests
  - insurance arrangements
  - regulatory issues
  - environmental/planning matters
  - intellectual property
  - disputes
  - tax
  - others by arrangement
13. Preparing/reviewing/arranging ancillary documents
14. Drafting/negotiating guarantees or other security for deferred consideration
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16. Preparing record folders of all documentation
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## 3.0 unique features of the SAS

So much for the standard parts of the service. The following pages explain what makes the SAS different from standard law firm services and how we ensure that the SAS helps you to derive maximum value from your acquisitions.

## 3.1 understanding your business

It is essential in the context of dealing with acquisitions that we understand:

- your company's vision, values, strategy and goals
- the key factors affecting your turnover, margins and market value
- your internal organisation and management structure
- how the acquisition target will contribute to your business
- which assets and relationships of the target are key and which are not.

This understanding will enable us to tailor the way we approach:

- structuring the transaction
- focusing the due diligence exercise
- ensuring our due diligence report provides the information you want
- progressing the transaction
- helping you to make informed decisions.

This in turn will ensure that our service is efficient and valuable in terms of both the integration process and deriving value from the acquisition. It will also ensure that we minimise the amount of your company's management time taken up with the process.

To achieve this, we will arrange visits to your premises, free of charge, to introduce your Morgan Cole acquisition team to the relevant members of your management team. We will also keep a master file of relevant information about your business and will ensure that it is kept up-to-date. All members of your Morgan Cole team will be familiar with this file.

Recommended preliminary meetings, conducted without charge, would be between:

- our corporate lawyers and your Chief Executive, Finance Director, Company Secretary and the person who is to act as your acquisitions manager, so that we can obtain core information and an understanding of relevant issues
- our corporate lawyers and your accountants who undertake financial due diligence, so that we can understand your accounting policies and practices (which may be relevant in the context of, for example, net asset price adjustments, completion accounts and earn-out mechanisms, etc)
- our employment lawyers and your HR director
- our commercial lawyers and your procurement and customer services managers to understand your procurement policies, obtain standard terms of business and understand how customer care is dealt with
- where appropriate, our commercial property, intellectual property, banking, tax and other experts and the relevant management staff in your company.



## 3.2 designing your SAS

Following our initial meetings with your team and other advisors, the corporate partner will tailor the SAS to your requirements by agreeing with you:

- the corporate and specialist lawyers who will work with you (see 3.3 'Appointing your SAS legal team' on page 9)
- how and by whom communication is to be made between Morgan Cole and you, and who is authorised to provide instructions for particular issues
- the standard tasks you will require us to perform (subject to agreement for any specific acquisitions) and the parameters within which we are authorised to negotiate issues without specific instructions (this will develop as our experience of your requirements grows)
- the key focus areas for our due diligence reporting
- the information (practical and legal) which is to be included in the due diligence report and the methods of presentation including agreeing a pro forma report template
- what specific key provisions/issues will need to be covered in all agreements and how transactions will be structured in order to ensure that key assets are secured and that the pricing mechanism in the agreement reflects your method of valuation
- invoicing and fee arrangements - fees will normally be agreed by reference to the FeeScope before work on a transaction commences, subject to review in certain circumstances (see 4.0 'Our Fees' on page 13). Our standard practice is to invoice on completion unless the transaction takes more than three months to complete, in which case an agreed proportion is invoiced after each period of three months
- any specific reporting or other arrangements which you require.



## 3.3 appointing your SAS legal team

### corporate partner

Morgan Cole's corporate team currently comprises five partners who are transaction specialists and 13 other transactions lawyers. From this pool we will select (and agree with you) one partner who will be your principal point of contact and will be responsible for the supervision of all acquisitions and the implementation of the agreed SAS standards and procedures. This partner will also be responsible for all fee discussion.

### corporate assistant solicitors

We will also appoint at least two other transactions lawyers from our team, one or other of whom will deal with each acquisition in conjunction with the partner.

This core corporate team will make it their business to fully understand your business and to know your management team, and will be fully conversant with the agreed service methods and procedures.

### specialist lawyers

In addition to the core team, we will identify and agree with you a team of specialist lawyers relevant to your business and to the agreed due diligence focus areas. To maintain consistency these specialists will be appointed to deal with all your acquisition work, as and when required, alongside the core corporate team.

Relevant specialisms are likely to include:

- employment and pensions
- property
- commercial contracts
- intellectual property/web site
- environmental/health and safety

and may also include other specialisms, such as construction, banking, dispute management and IT.

As a full-service commercial law firm, Morgan Cole has specialist lawyers in each of these areas who have developed specific expertise in providing support for corporate acquisitions - particularly in due diligence reporting and drafting the relevant legal documentation.





## 3.4 the legal documentation

Legal documentation can be extremely lengthy, complex and opaque. Our approach is to cut through this for you by:

- using documents which do not contain unnecessary legal jargon
- agreeing template documents with which you will become familiar
- agreeing with you how a variety of clauses/issues are to be dealt with for your deals.

Our objective is to get legal documentation agreed without wasting your time and money. We achieve this by:

- agreeing with you the extent of our authority to make decisions and the parameters of acceptability for various provisions
- having received the seller's comments on our draft, dealing with any points of disagreement (wherever possible, by telephone) between lawyers
- only referring to you for a decision where the matter is of commercial significance and we are unsure what your view will be (these areas will diminish as we become accustomed to your approach), or where we cannot agree a drafting matter with the seller's lawyers and we believe you would be exposed to an unreasonable/unacceptable burden or risk, and where the matter ought to be resolved with the seller direct.

Notwithstanding this approach, we will report to you on progress as often as you need.

The relationship will develop over time, but our extensive experience and expertise, coupled with the knowledge we will have gained of your business, should enable us to deal with the myriad of minor and legal issues which inevitably arise without distracting your management team.

Whenever we refer a matter to you we will explain clearly the point at issue and its significance, describe the sensible options open to you and make a firm recommendation of the best course of action.

## 3.5 due diligence reporting

### Agreeing the process

As soon as we obtain confirmation that the acquisition is to go ahead, we will issue the seller with a comprehensive information request. The content of this request will be agreed with you and will focus on the key reporting areas as well as including all specific information which you require.

We will ensure that satisfactory replies are received to all enquiries and that the relevant replies and supporting documentation are copied to the relevant member of your SAS team for specialist review.

Any further enquiries will be collated and delivered through the core corporate team. Again, replies are rigorously pursued and provided to the relevant specialists for review.

We will discuss with you the extent to which you require information to be copied to you and, in particular, will review the due diligence reporting channels to ensure that all relevant members of your team have the information they need as soon as it is available.

We will use the information obtained during due diligence to produce a formal due diligence report (see 'Designing your report' below).

### Agreeing your focus areas

We will agree with you, both generally and for each acquisition, the areas on which our due diligence review will focus (whilst ensuring that other significant legal issues are also drawn to your attention).

The focus will invariably be on the assets which formed the basis of your valuation. These may be, for example:

- customer contracts, in which case their validity, duration, terms and assignability will be a focus area
- key employees, in which case their terms and conditions of employment, incentivisation, non-compete covenants and other relevant issues will be a focus area
- intellectual property such as trade marks or software copyright, in which case the ownership and robustness of these rights will be a focus area
- property assets and the liabilities that may come with them.

Identification of the key focus areas is essential to enable us to provide a more relevant report and to ensure cost-effective handling of the transaction.

### Designing your report

Having examined the relevant information, we will complete a due diligence report based upon a template which has been agreed with you (see 3.2 'Designing your SAS' on page 8). This report will include an executive summary in which all issues which we believe to be of significance to you will be clearly and succinctly set out. For each such issue, the report will set out our recommendations for:

- the terms of the legal documentation
- pre-completion action to be taken
- post-completion action to be taken

The report will also include a review of each relevant specialist area and will be of practical benefit to you by setting out the information which will be useful in integrating the target business and deriving value from it. For example, it would normally include:

- a spreadsheet showing for each of the target's employees age, length of service, job title, salary, main benefits, statutory redundancy entitlement, notice period entitlement and any enhanced redundancy entitlement
- a spreadsheet showing financial commitments such as hire contracts, HP agreements and equipment leases, the individual and aggregate commitment in each of your financial years until the obligations expire, together with all contract and contact details to enable your team to make arrangements to terminate or vary the contracts, if required
- a comparison of the target's standard terms of business with yours, and a commentary as to the impact of any significant differences (in, for example, payment terms or limits of liability)
- any purchase commitments agreed (and applicable terms and conditions) for trade supplies and all relevant contact details
- contract details of other suppliers, such as logistics providers, insurers and bankers for your team to bring these arrangements to an end, if required
- a report showing the liabilities that attach to each of the target's properties.

## 3.6 post-completion integration assistance

Unlike many other service providers, as part of the SAS we provide a full after purchase service including, for example:

- assistance with staff rationalisation procedures and avoiding claims
- assistance with the harmonisation of employment terms and conditions
- assistance with the termination of supply arrangements where no longer required
- assistance in disposing of unwanted premises
- assistance in harmonising customer terms and conditions
- a debt-recovery service for inherited debts.

We will also, as a matter of course, deal with:

- stamping of documents
- filing of all Companies House forms, Trade Mark Registry forms, property transfers, etc
- updating target company statutory books
- compiling a professional record folder of all legal documents for easy reference
- dealing with post-completion price adjustments and deferred payment arrangements.

The team will also be available to answer queries arising from the due diligence report and generally in relation to integration issues which may arise. The aim is to assist in achieving a speedy integration with minimum disruption and to enable you to derive maximum value from the acquired business as soon as possible.



## 4.0 our fees

Our fees for each acquisition will be discussed and agreed with you at the outset of any transaction. The fee structure will not be amended except by agreement with you in the light of any material change to the deal or to the scope of the work you want us to carry out.

### 4.1 method of calculation and 'no surprises' promise

Our FeeScope tool is used to calculate and agree the correct fee and is then maintained jointly as a live document to be amended in the event of any agreed changes. The amount which will be invoiced to you will be the amount agreed and recorded on the FeeScope (together with VAT and out-of-pocket expenses).

This is our 'no surprises' promise.

The FeeScope tool estimates the number of lawyer-hours likely to be required for each task. We take into account the complexity of the deal and the importance of specific tasks and we draw on our considerable experience of the minimum and maximum length of time required for such tasks. The calculation of the number of hours is then used to generate the correct fee, based on the appropriate hourly rates (which for simplicity is a blended rate based on our experience of lawyer involvement at various levels).

An invoice will be issued when the transaction is complete - unless the transaction takes longer than three months, in which case an interim amount will be invoiced after three months. Payment terms are 30 days from the date of the invoice.



## 4.2 pro forma FeeScopes

### share purchase - acting for buyer(s)

Task no.	Task description	Standard min fee earner hours	Standard max fee earner hours	Estimated fee earner hours for this transaction (SEE FACTORS BELOW)	Fee for this transaction this transaction (AT CURRENT BLENDED RATE PER HOUR)
1	Assisting in drafting heads of agreement	5	15		£0
2	Reviewing and negotiating confidentiality letter	2	4		£0
3	Reviewing/drafting exclusivity agreement	2	4		£0
4	Drafting and negotiating terms of share sale agreement	30	50		£0
5	Drafting and negotiating terms of tax deed	10	25		£0
6	Drafting and negotiating terms of disclosure letter	25	35		£0
7	Drafting/reviewing and negotiating terms of any loan note instrument	5	10		£0
8	Drafting/reviewing and negotiating any continuing seller's employment termination terms and any consultancy, service and/or compromise agreements for sellers	5	15		£0
9	Raising due diligence requests and reporting upon replies received relating to:				
	corporate matters	5	20		
	commercial/customer contracts	5	30		£0
	supply agreements	5	20		£0
	finance/banking arrangements	5	15		£0
	pension scheme	5	15		£0
	employees & their terms of employment	5	30		£0
	property interests	10	40		£0
	insurance arrangements	5	10		£0
	regulatory issues	5	15		£0
	environmental/planning	5	25		£0
	intellectual property	5	40		£0
	disputes	5	15		£0
	tax	5	20		£0
	others?	By arrangement			£0
10	Preparing documentation/advising on financial assistance 'whitewash' requirements and papers	10	30		£0
11	Preparing/reviewing/arranging ancillary documents	5	15		£0
12	Drafting/negotiating guarantees or other security for deferred consideration	5	10		£0
13	Attending completion meeting	10	20		£0
14	Dealing with post-completion filing of documentation at Companies House/stamping of stock transfer forms and deferred consideration monitoring	10	20		£0
15	Preparing record folders	3	6		£0
16	Other tasks? (please specify)	By arrangement			
<b>Total for all tasks</b>		<b>197</b>	<b>544</b>	<b>0</b>	<b>£0</b>

## purchase of business and assets- acting for buyer(s)

Task no.	Task description	Standard min fee earner hours	Standard max fee earner hours	Estimated fee earner hours for this transaction (SEE FACTORS BELOW)	Fee for this transaction this transaction (AT CURRENT BLENDED RATE PER HOUR)
1	Assisting in drafting heads of agreement	5	15		£0
2	Reviewing and negotiating confidentiality letter	2	4		£0
3	Reviewing/drafting exclusivity agreement	2	4		£0
4	Identify any other pre-sale preparation issues	By arrangement			£0
5	Drafting and negotiating terms of sale and purchase agreement	30	50		£0
6	Reviewing and negotiating terms of disclosure letter	25	35		£0
7	Drafting/reviewing and negotiating terms of any loan note instrument	5	10		£0
8	Drafting/reviewing and negotiating terms of any consultancy, service and/or compromise agreements for non-transferring employees	5	15		£0
9	Raising due diligence requests and reporting upon replies received relating to:				£0
	commercial/customer contracts	10	25		£0
	supply agreements	5	20		£0
	finance/banking/security arrangements and dealing with discharge or letters of non-crystallisation	5	10		£0
	pension scheme	3	10		£0
	employees and their terms of employment	5	30		£0
	property interests	5	30		£0
	insurance arrangements	3	6		£0
	regulatory issues	3	10		£0
	environmental/planning	5	25		£0
	intellectual property	5	25		£0
	disputes	5	25		£0
	tax	5	20		£0
	others?	By arrangement			£0
10	Dealing with landlord's consent issues (per lease being assigned/sublet)	5	15		
11	Dealing with contract assignment consent issues (per contract requiring assignment by consent of third party)	5	15		
12	Dealing with IPR licence consent issues and registered IPR assignments	5	15		
13	Preparing/reviewing/arranging ancillary documents:	5	15		£0
14	Drafting/negotiating guarantees or other security for deferred consideration	5	10		£0
15	Attending completion meeting	10	20		£0
16	Preparing record folders	3	6		£0
17	Other tasks? (please specify)	By arrangement			£0
<b>Total for all tasks</b>		<b>171</b>	<b>465</b>	<b>0</b>	<b>£0</b>



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We would be delighted to discuss the SAS with your further.

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