

Further update on claims under share purchase agreements



In August 2020, we highlighted a decision of the High Court in which the meaning of the phrase “*as soon as possible*” was examined in the context of claims made under a Sale and Purchase Agreement (SPA). From that case, we learnt that by imposing a secondary condition in the SPA that claims be made “*as soon as possible*”, a buyer cannot use the limitation period in the SPA as a back stop before bringing his claim against the seller. In other words, if the SPA stipulates that claims must be brought “on or before the seventh anniversary” and the buyer becomes aware of a potential claim in the year following completion, if the SPA requires that claims be made “*as soon as possible*”, then the buyer must give notice to the seller at the time he becomes aware of the matters or things giving rise to the potential claim. He does not have seven years in which to wait before bringing the claim.

A more recent case considered the notice provisions in an SPA and whether the buyer had satisfied the requirements of those provisions when making a claim in damages for breach of contract (*TP Icap v Nex Group Ltd*). In this particular case, the High Court struck out the claim because the buyer’s notices were considered to be ineffective.

On the facts of the case, the time limitation clause in the SPA required the buyer to give the sellers written notice of a warranty claim within a prescribed time and the notice had to state in reasonable detail the nature of the claim. To satisfy the requirements of the clause, the court determined that this type of notice clause required a description of the broad nature of the claim in the context of the warranty in question. The warranty in question confirmed that there had been no contravention of laws or regulations that might result in penalties or other sanctions that would have a material adverse impact on the target group’s business. The buyer’s notice as a consequence should have identified the laws and regulations alleged to have been contravened and the material



adverse consequences alleged to have flowed from it. The court rejected the buyer's argument that it had made a contingent claim; read objectively, the buyer had simply notified the possibility of a future claim, which was impermissible and, therefore, the buyer's claim failed.

This decision highlights again the difficulties for buyers in pursuing claims under an SPA, particularly when close to the expiry of time limits. It also highlights the difficulties of making contingent claims in the context of warranties for breach of laws and regulations. Given these difficulties, when negotiating warranties and time limits on behalf of buyers, particular care must be taken in the drafting of the time limitation clauses and, perhaps more importantly, buyers must seek advice as soon as they believe a claim, or contingent claim, has arisen under an SPA.

If you would like any more information about this case or more generally then please do not hesitate to contact the [corporate team](#).



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