BMA Law

Practice Mergers

Legal considerations.

Practice mergers are a considerable undertaking and, as with any business merger, require a lot of legal input.

Poor planning and management can lead to inefficiencies, disputes and increased costs, so you must ensure that the terms of your merger are fit for purpose before you sign anything.

There are five main areas where seeking legal clarification is recommended:

1. **Due diligence**
   Due diligence looks at existing partnership agreements, supplier contracts (such as IT) and employee records to uncover any potential obstacles to a merger. Financial due diligence will reveal any financial liabilities.

2. **Agreements**
   There are a number of documents to be negotiated when conducting a merger, all of which will dictate the financial arrangements, management structure and day-to-day running of your new practice. In particular, a merger agreement will outline the contributions each party will make, as well as which assets, liabilities, indemnities and warranties are to be included (or expressly excluded). As such, specialist legal advice ensures that the terms you sign up to fully protect your interests. You will also need to update or create a new partnership agreement.

3. **Contractual and regulatory**
   There are several ways that contracts can be merged, but in all cases practices should consider the type of contracts held by the partnerships (e.g. PMS, GMS or APMS), potential financial implications and the possibility that, if a new contract is sought, that it may be subject to procurements legislation and put out for tender.

   You will need to get approval from NHS England on how the contracts will be 'merged', and you should consult with the CQC on the changing status of the partnership. Your specialist legal advisers will ensure that you continue to comply with regulatory requirements.

4. **Employment**
   There is a wealth of legislation around employment law, so you must ensure you're fully compliant. TUPE (Transfer of Undertakings (Protection of Employment) 2006) serves to protect employees' existing terms and conditions in the event that their organisation merges with another, and applies to organisations of all sizes. Two of the most important duties and obligations under TUPE are:

   - the duty to inform and consult the employees of the merger
   - the obligation to notify the transferee of any employee liability information.

5. **Premises**
   When practices merge, you may decide to move into a new premises, operate from an existing premises or continue to operate from separate premises. Where premises are closing, it may be necessary to invoke a break clause in your lease, and where you are transferring titles you may incur capital gains or stamp duty land tax. You should obtain advice on how this may affect you and your partners, as it could impact the financial viability of the partnership.

When seeking legal advice, you should take care to ensure that the firm you use have sector-specific experience. Poorly-planned mergers can lead to breakdowns in relationships, costing you time and money in the long run.

Expert legal advice

If you are considering a merger and are looking for expert legal advice, BMA Law offer a comprehensive merger package, with a 25% discount for BMA members. Contact us to find out more:

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