Merging or acquiring another practice probably seems like a daunting task, but with the right approach it may not be as difficult as you first thought. With careful planning at an early stage and the support of a good professional team, it is possible to minimise your commercial risks and the impact on your valuable time throughout the process.

The deal
It is likely that you will already have a target in mind. If you haven’t got this far, your professional adviser network would be a good place to start. For a fee, you could also instruct a corporate finance adviser to help.

The next step is your “heads of terms”. This is an important document that sets out the terms of the deal. You should note that this document will not be legally binding and either party can “walk away” at any time before the final agreement is signed.

You should also ask the seller to enter into an exclusivity agreement to prevent them from entering any third-party negotiations. Such an agreement also provides a useful timetable during which negotiations are to be concluded.

Transaction structure
Each deal is unique, but some factors should always be considered. Firstly, note the current corporate structure of both practices. Are they sole traders, partnerships or private companies? Each comes with its own transaction challenges and tax considerations.

If the target practice is a company, you would normally buy the shares by way of a share purchase agreement, or “SPA”. Note that most businesses have assets and liabilities – you will be purchasing both.

Alternatively, you can purchase the business and assets of the target. In this scenario, you may pick and choose which assets of the practice you are purchasing.

Due diligence
A thorough due diligence exercise is crucial. You will want to know exactly what assets, goodwill, IP rights, employees, properties, contracts and debts you are acquiring. You will also gain an understanding of the precise liabilities that exist. Legal due diligence is carried out by solicitors, and financial and tax due diligence by your accountants. At this point, it is common for the buyer to be asked to enter into a confidentiality agreement with the seller (otherwise known as a “non-disclosure agreement”).

The acquisition agreement and disclosure letter
The acquisition agreement sets out the full terms of the transaction. It will include the purchase price, the completion logistics and any indemnities, warranties and restrictive covenants or other buyer protections that are agreed. The agreement will be a point of negotiation and may take some time to conclude.

The disclosure letter sits alongside the acquisition agreement. It should disclose all liabilities that are adverse to the warranties in the acquisition agreement. Generally, if the seller makes the necessary disclosures, their position will be protected with regard to a later breach of warranty claim.

Exchange and completion can take place simultaneously or by exchange of contracts followed by completion some days, weeks or months later. For the latter method, the parties will need to consider who will take on the responsibilities and risks during the interim. Any conditions to completion will also need to be considered.

Property
The premises are normally very important to a deal. If the sellers hold the freehold of the property, it can either be transferred on completion or a new lease can be granted. If the property is leasehold, the landlord’s consent may be required to transfer the premises or, alternatively, you may ask the seller to underlet the premises to you. Obtaining the landlord’s consent can take some time.

Employees and pensions
However the deal is structured, the employees’ contracts are usually transferred to you automatically on completion. You will take on the employees with their existing terms. You may also be asked to take on the practice’s current pension scheme or, alternatively, offer a pension scheme to employees that are being transferred to your business.

Seek advice early and plan, plan, plan
Thorough and comprehensive planning will have a significant effect on the outcome of a deal. Seek professional advice; a good legal, accounting and tax team will have been through similar transactions before and they should spot potential difficulties at an early stage.

The drivers in making your decision are likely to include how urgently the funds are required, how much funding is required, what security is available and how much control over your business you are willing to relinquish.