



Template disclosure letter

User notes

This is a template disclosure letter for disclosing against warranties provided in an M&A or capital raising transaction.

Typically under these transactions, a company (and, in some cases, its founders) provides statements to a purchaser or investor in the transaction documents. If any of these statements (known as warranties) turn out to be untrue, the purchaser or investor can bring a claim for a breach and potentially recover money from the parties that gave the warranties.

A *disclosure letter* protects warrantors, by allowing them to disclose any matters that are inconsistent with the warranties set out in the transaction documents. The purchaser or investor cannot bring a warranty claim in respect of matters which have been fairly disclosed. The disclosure letter is the document which formally records these disclosed exceptions to the warranties. It is therefore an integral part of the transaction documents and the earlier warrantors start preparing the document on any transaction, the better.

applicable law

This document is intended for use by companies domiciled in Southeast Asia. Because the laws in each Southeast Asian country are different, you may need to have the document reviewed by a local lawyer.

using this template

The **User Notes** and the statements in the footer below (all marked in red) are included to assist in the preparation of this document. They are for reference only – you should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- ▲ the requested details need to be inserted
- ▲ there are different options for you to consider within a clause
- ▲ the whole clause is optional and you need to consider whether to include it, based on the company's circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and ensure that all square brackets have been deleted.

If you delete any clauses or schedules, remember to cross reference check the document.

DISCLOSURE LETTER

From: *[insert the parties providing the warranties, e.g. the company and the founders]*
([Warrantor[s]])

To: *[insert the parties receiving the warranties, e.g. investors or purchaser]*
([Investor[s]/Purchaser])

Dated: *[insert date]*

Disclosure Letter

[User note: Insert below a description of the type of agreement governing the transaction, e.g. subscription agreement or sale and purchase agreement, and the parties to that agreement.]

1 In connection with the *[insert description of agreement]* between *[insert all parties to relevant agreement]* on or about the date of this Disclosure Letter (**Agreement**), the Warrantor[s] deliver[s] the disclosures set out in this Disclosure Letter.

[User note: Terms that are commonly used in share subscription agreements and sale and purchase agreements have been capitalised in this letter. Those terms, where used in this disclosure letter, have the meanings given to them in the Agreement. The square bracketed terms should be checked against the defined terms in the Agreement and amended if necessary.]

2 Capitalised terms used but not defined in this Disclosure Letter have the same meanings given to them in the Agreement.

3 This Disclosure Letter, and the information and disclosures contained in this Disclosure Letter, are exceptions or modifications to the warranties contained in the Agreement (including, to avoid doubt, the Warranties) and are intended only to qualify and limit those Warranties, but only to the extent that such disclosures are full, fair, accurate, not misleading, and include sufficient detail to enable the *[Investor[s]/Purchaser]* to understand the nature and scope of the impact on the Company and the Company's business. This Disclosure Letter, and the information and disclosures contained in this Disclosure Letter, may not be deemed to expand in any way the scope or effect of any of such Warranties.

4 Where any conflict arises between the contents of any document supplied to the *[Investor[s]/Purchaser]* or *[its/their]* advisers by, or on behalf of the Company (including, without limitation, any document referred to in this Disclosure Letter) and the information

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contained in this Disclosure Letter, the information contained in this Disclosure Letter prevails, unless otherwise expressly stated in this Disclosure Letter.

[User note: It is a generally accepted principle that a disclosure made in respect of a Warranty specified in paragraph 12 of this Disclosure Letter is effective against all Warranties.]

5 Any information disclosed in this Disclosure Letter, whether as a general or specific disclosure, is disclosed on the basis that any matter disclosed in this Disclosure Letter and/or in any of the Due Diligence Information (as defined below) in relation to a particular Warranty will be effective generally in relation to every Warranty and each such disclosure is given without prejudice to the generality or effectiveness of any other disclosure, and the Warrantor[s] will not be or be deemed in breach of any Warranty disclosed in this Disclosure Letter.

6 The term “Due Diligence Information” means:

[User note: Investors or Purchasers may not accept paragraph 6a below as it is hard to define what documentation the paragraph covers and technically could cover all forms of communication, such as email. Therefore it is more likely that only paragraph 6b will be accepted.]

a the documents disclosed or made available by or on behalf of the Company to any of the [Investor[s]/Purchaser] or any of their agents, employees or professional advisors; and

[User note: Insert below the URL of the electronic data room provided to the Investors or Purchaser as part of their due diligence. It is important that all documentation disclosed during the due diligence process is added to the datasite and a schedule of these documents is retained.]

b the documents (and their contents) located at [insert link to datasite] as at the date of this Disclosure Letter.

7 References in this Disclosure Letter and its schedule to paragraph or clause headings and numbers **[User note: Warranties are typically set out in a schedule to the Agreement. If that is the case here, insert the relevant schedule number. If not, remove the following square-bracketed option throughout this paragraph.]** of [schedule [insert warranty schedule] of] the Agreement are for convenience only and do not alter the construction of this Disclosure Letter nor in any way limit the effect of any of the disclosures, all of which are made against the warranties as a whole. A disclosure or qualification made by reference to any particular paragraph or clause of [schedule [insert warranty schedule] of] the Agreement will be deemed to be made also in respect of any other paragraph or clause of [schedule [insert warranty schedule] of] the Agreement to which the disclosure or qualification may

apply. Each of the Warranties is separate and independent and, save as expressly provided to the contrary, is not limited by reference to or inference from any other Warranty or any other term of the Agreement nor by anything in this Disclosure Letter, except where it is reasonably apparent from the plain reading of the disclosure that such disclosure is applicable to such other Warranty.

- 8 The disclosure of any matter or document, whether or not referred to in the Agreement, does not imply any Warranty not expressly given in the Agreement. Disclosure of any information or document in this Disclosure Letter is not a statement or admission that it is material or required to be disclosed.
- 9 Except where specifically warranted in the Agreement, no Warranty or other assurance is given by the Warrantor[s] in relation to any opinion, forecast, estimate, projection or statement of intent which may have been made by any person in this Disclosure Letter or in any correspondence or documents disclosed by or in connection with, or referred to in, this Disclosure Letter.
- 10 References in this Disclosure Letter to the provision or disclosure of information to the [Investor[s]/Purchaser] will be deemed to have been satisfied by the provision of such information in the Due Diligence Information, but only to the extent that such information is full, fair, accurate, not misleading, and includes sufficient detail to enable the [Investor[s]/Purchaser] to understand the nature and scope of its impact on the Company.

GENERAL DISCLOSURES

[User note: Investors and Purchasers are deemed to be on notice of all information described in the general disclosures. Typically this is a short list, limited to items such as public searches. It is however particularly important that the Due Diligence Information is accepted as generally disclosed.]

- 11 By way of general disclosure, the following matters are disclosed or deemed to have been disclosed to the [Investor[s]/Purchaser]:
 - a all matters which would be revealed by a search or inspection or by making appropriate enquiries at the date of this Disclosure Letter of the Company at the local companies registry and all matters which would be shown by searches or inspections at the local authorities, courts and all other public registers or registries relevant to the Company which would be carried out by a prudent [investor in/purchaser of] the Company including but not limited to intellectual property searches;
 - b the contents of the Agreement and all transactions referred to in, or contemplated by, the Agreement; and

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- c all or any information described in the Audited Accounts, Management Accounts and other financial statements of the Company which have been provided to the [Investor[s]/Purchaser];
- d any matter or information contained in the constitutional documents and any statutory books, registers or records of the Company which have been provided to the [Investor[s]/Purchaser]; and
- e all of the Due Diligence Information, copies of which the [Investor[s]/Purchaser] acknowledge and confirm that they have received and/or had access to.

SPECIFIC DISCLOSURES

[User note: Insert into the table below a detailed description of all matters which are inconsistent with any Warranty, or which may make a Warranty untrue. Insert the clause or paragraph reference of the relevant Warranty in the left-hand column.]

12 The specific disclosures set out below are made in relation to the Agreement.

Warranty	Disclosure
[insert]	[insert]

Please acknowledge receipt of this Disclosure Letter by countersigning and returning the attached copy.

Yours faithfully

[User note: Use the following signature block for the Company.]

duly authorised for and on behalf of

[insert name]

[User note: Use the following signature block for any individual providing Warranties.]

[insert name]

[User note: it is important that the Investors or Purchasers (as applicable) countersign the Disclosure Letter to acknowledge receipt of its contents and of the Disclosure Documents. Sometimes, on a capital raising transaction, a single lead investor may execute the disclosure letter on behalf of all investors to acknowledge receipt. If this is the case, the language in square brackets below should be included.] We acknowledge receipt and accept the contents of the Disclosure Letter, of which this is a duplicate and of all the Disclosure Documents [*for and on behalf of all Investors*].

[User note: Use the following signature block if the Investor or Purchaser is a company.]

duly authorised for and on behalf of [insert
name of Investor or Purchaser]

[User note: Use the following signature block if the Investor or Purchaser is an individual.]

[insert name of Investor or Purchaser]