



Kemp Little LLP

Corporate Jargon-Buster

An A-Z of Private Company Acquisitions, Investments and Operations



The leading technology focused law firm

Corporate Jargon-Buster: *An A-Z of Private Company Acquisitions, Investments and Operations*

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| Alternate Director | A person, generally another director, appointed by a director to act in his place if he is absent from a meeting |
| Annual General Meeting (AGM) | Under the Companies Act 2006, a private company is not obliged to hold an AGM. For public companies, a meeting of shareholders must be held each year within 6 months from the day following its accounting reference date. Company legislation does not specify what business must be transacted at an AGM - usually the meeting is used for matters which must be dealt with each financial year, such as the consideration of the annual accounts, directors' report and auditors' report. A public company AGM requires at least 21 clear days' notice unless shorter notice is agreed by all members entitled to attend and vote |
| Annual Return | A form to be completed by a company and filed with Companies House each year. It provides a summary of a company's capital and shares, together with an up-to-date list of directors and shareholders |
| Anti-dilution | Protection of a shareholders' investment from dilution as a result of a new issue of shares at a price less than that paid by the shareholder for the shares he currently holds by way of issuing further shares to such shareholder (or adjusting the conversion ratio) |
| Articles | The articles of association of the company which set out the rights attaching to each class of shares and other constitutional matters |
| Asset Sale Agreement (ASA) | An agreement under which the seller agrees to sell the assets of a business (usually to enable it to be operated as a going concern) to the buyer |
| Asset Sale | The sale of all or a significant proportion of all the assets of a company |
| Authorised Share Capital | The amount of shares that a company is authorised by its shareholders to issue. The amount of initial authorised share capital together with the number and nominal value of the shares into which it is divided must be stated in the company's memorandum of association, but can be increased by an ordinary resolution of the shareholders |
| BIMBO | A term to describe a deal involving both existing and outside managers i.e. a Buy-In / Management Buy-Out |
| Burn Rate | The rate at which a business uses up the funds available to it |
| Business Angel (aka Angel) | Private individual investors who invest both money and time/expertise in a venture |
| Call Option | A right, but not an obligation, for someone to acquire shares in a company from a shareholder at a specified price (or a price to be calculated in accordance with a pre-agreed formula) and during a specified period or on the occurrence of a specified event. For example, if A has a call option granted by B, A can require B to sell B's shares to him |
| Carry | The portion of profits realised by a investing fund to which the fund managers are entitled |
| Certificate of Incorporation | The document issued by Companies House on the registration of a new company. A revised certificate of incorporation is also sent to the company on any change of its name |

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| Class Rights | Rights attaching to a particular class of shares |
| Companies House | The registry for companies incorporated in England and Wales |
| Completion | On an acquisition, the purchase of the assets or shares of the target by the buyer; on an investment, the release of the investment monies to the target and the issue of shares to the investor |
| Completion Accounts | On an acquisition, accounts of the target company drawn up at or shortly after completion which will form the basis for determining the final amount of consideration payable under the sale/purchase agreement. Completion Accounts can take the form of a full profit and loss account and balance sheet, a net assets statement or just a valuation of a specific asset. In order to minimise possible disputes, the seller and buyer will usually agree principles on which the accounts are to be drawn up. The sale/purchase agreement will also contain a mechanism dealing with who should prepare Completion Accounts, who should bear the cost of their preparation and how to resolve any disputes |
| Conversion | Exchanging one form of shares in a company to another (for example, changing shares of a preferred class into ordinary shares) |
| Conversion Ratio | The number of ordinary shares into which preferred shares will convert |
| Co-Sale Rights | The right for one shareholder to participate in any transfer of shares by another shareholder (in the same proportion) |
| Converted Basis | Considering preferred shares on the basis that they have converted to ordinary shares at the current conversion ratio |
| Cumulative Dividend | A dividend which continues to accumulate if not paid and which must be paid before any other dividend is declared |
| Covenant | An undertaking to carry out some action or to refrain from doing so |
| Data Room | Part of the disclosure process whereby the seller constructs a room (whether physical or virtual) full of information about the target business |
| Deadlock | Where the parties to an agreement have an irreconcilable conflict. This term is often used in connection with 50:50 joint ventures where neither party has a majority and a conflict arises over the management of the joint venture. Joint venture agreements commonly contain deadlock provisions to resolve such situations (which usually involve the transfer of shares from one party to the other) – see Russian Roulette and Texas Shootout |
| Deed of Adherence | An agreement to be signed by new shareholders under which they agree to be bound by the terms of a pre-existing shareholders' agreement |
| Deferred Consideration | Consideration that will or may be payable sometime in the future rather than at completion. Deferred consideration may be payable in a number of different ways including cash, shares or loan notes. It may also take a number of forms including earn-outs, completion accounts, or holdbacks but will usually incorporate a mechanic whereby further payments are made if certain specified future events occur |
| De minimis | In the context of warranty claims, the specified minimum amount below which no individual claim for breach of warranty can be made |

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| Dilution | The reduction of a shareholder's shareholding due to the issue of new shares |
| Disclosure | The process by which the seller, in the context of an acquisition, or (usually) the management team, in the context of an investment, qualifies the warranties so that each warranty statement, when read in conjunction with any disclosure, reflects reality. If the warrantors fail to disclose a relevant matter in respect of the warranties, they may be sued for breach of warranty. The warrantors usually make their disclosures in a disclosure letter and attach relevant documents to that letter to support the disclosures |
| Disclosure Letter | The letter to the buyer (on an acquisition) or the investor (on an investment) given by the warrantors setting out exceptions to the warranties |
| Dividends | Profit made by the company which can be distributed to shareholders |
| Down Round | A round of further investment in which shares are issued for a lower price than a previous round |
| Drag Along Rights | Rights contained in a company's articles of association for a majority of the shareholders (usually more than 75% in nominal value) to accept an offer to buy their shares and to force the holders of the remaining shares to accept such an offer on the same terms |
| Due Diligence | Investigation into the business, operation and management of a target company (usually prior to negotiation of the acquisition or investment documentation) |
| Earn-Out | Deferred consideration where at least part of the purchase price on the acquisition is calculated by reference to the future performance of the business being purchased. Commonly used as a management incentive where owner-managed businesses are sold and the managers continue to work in the business following the sale |
| EBIT / EBITDA | Earnings before interest and tax / Earnings before interest, taxes, depreciation and amortisation – financial metrics used in valuing a business or on which milestones can be based |
| Employee Share Option Scheme | A scheme to allow employees to hold shares in their employer company |
| Escrow Account | A bank account opened in the joint names of the seller and buyer or their respective solicitors into which part of the consideration may be paid at completion pending the preparation of completion accounts or determination of any warranty claims |
| Exit | The method in which a shareholder can realise his investment (usually by way of share sale, asset sale or IPO) |
| Exit Preference | A mechanic which enables an investor to be repaid their investment (or multiple thereof) on an exit. This may also be referred to as a liquidation preference as the provision will usually state that the same order of priority on a distribution of assets on a liquidation also applies on an exit |
| Financial Assistance | Rules prohibiting companies from giving financial assistance for the purchase of their shares or those of a parent company. Essentially the prohibition covers any company whose shares are being, or have been, acquired for the purpose of that acquisition, unless certain exceptions apply. It also covers any financial assistance given to reduce any liability incurred by the company or any third party for the purpose of the acquisition. Since 1 October 2008, a private company may give financial assistance for the purchase of shares in itself or another private company, but a private company may not give financial assistance for the purpose of |

the acquisition of shares in a public parent company. The prohibition remains for public companies

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| Follow-on Round | A further financing round by existing or new investors, the terms of which may be agreed at the time of the original investment |
| Full Ratchet | Anti-dilution provisions which allow a shareholder to retain his shareholding percentage over numerous rounds |
| Fully-Diluted Share Capital | The issued share capital of the company on the basis that all options, warrants and other rights to subscribe for shares have been exercised |
| General Meeting | Formerly known as an extraordinary general meeting. A meeting of the shareholders of a company called for a specific purpose (which is not an AGM). A general meeting may be called by the directors of the company or requisitioned by shareholders holding at least 10% of the paid-up voting shares of a public or private company or, in certain cases, 5% of the paid-up voting shares of a private company |
| Good Leaver / Bad Leaver | A mechanism which operates to determine whether an employee shareholder is obliged to transfer his shares upon the termination of his employment and the price which should be paid for those shares |
| Holdback | In respect of an acquisition, a proportion of the consideration held-back by the buyer for the warranty period, which the buyer may use to set off against any successful warranty claims made within that period |
| IP | Intellectual Property – the patents, copyrights, trademarks, design rights, database rights, moral rights and other proprietary rights owned by a company |
| IPO | An Initial Public Offer – the offer of shares to the public for the first time when a company obtains a quotation on a stock market (also referred to as listing, floating or going public) |
| IRR | Internal Rate of Return – the interest rate that equates the current value of possible returns to the cost of the initial investment |
| Indemnity | Generally, an undertaking by one person to meet a specific potential legal liability of another. An indemnity entitles the person indemnified to restitution (on a pound for pound basis) if the event giving rise to the indemnity occurs |
| Information Memorandum | A document which gives potential buyers or investors a reasonable amount of information about the target in order to elicit investment or, in an auction process, bids for the company. It will usually contain a description of the target's business and its history, its principal assets, up-to-date and historical financial information, projections for the future, and information about key customers and contracts |
| Key Man | Insurance in favour of the company in respect of the lives of management and key employees |
| Liquidation | Sale of all the company's assets and distribution to shareholders and creditors (also referred to as a winding-up) |
| Loan Notes | Debt securities or instruments whereby the holder is entitled, at some point in the future, to repayment (usually with some sort of premium and interest) |

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| Locked Box | On an acquisition, a mechanism whereby the seller and the buyer agree a price payable for the target, generally based on a balance sheet, drawn up and settled between the parties to an agreed date in advance of signing |
| Management Buy-In (MBI) | A buy-out of a company or business in which the existing management are replaced by a new management team brought in by the investors backing the buy-out specially for the purpose |
| Management Buy-Out (MBO) | The purchase by the existing management team of the company or companies which they are managing or of all or part of the business(es) of the company or companies |
| Material Adverse Change (MAC) Clauses | In the context of an acquisition of a target, a clause in the purchase agreement which aims to give the buyer the right to walk away from the acquisition before closing, if events occur that are detrimental to the target company. Usually found in circumstances where there is a gap between the date of exchange and that of completion |
| Memorandum of Association | A constitutional document of a company which states its name, domicile, objects, liability, capital and (in the case of public companies) a declaration of its status. The Company may not act outside the scope of its objects. The memorandum must be submitted to Companies House before registration |
| Milestone | A target imposed on the company, often used as a condition for investing further amounts or making an earn-out payment |
| NewCo | A new company, incorporated solely for the purposes of the investment or acquisition |
| Nominal Value | The small cash amount assigned to a share by the company which must be paid for the share to be issued as fully paid (also referred to as par or par value) |
| Non-Executive Director | A director who is not a full or part-time employee of the company or holder of an executive office. There is no statutory definition of a non-executive director, but such a director will usually devote part of his time to the affairs of the company as an independent adviser |
| Option | The right to subscribe for shares in a company |
| Ordinary Resolution | A resolution that has been passed by a simple majority (50%) of members or their proxies, at a general meeting. The length of notice required for a general meeting where an ordinary resolution is proposed is 14 days, or any longer period specified in the company's articles of association |
| Ordinary Shares | The "vanilla" shares in a company that will rank behind any preferred shares |
| Pari Passu | Equally, without any preference |
| Pay to Play | A form of pre-emption right which requires an investor to participate in a future round or lose certain share rights (for example, anti-dilution rights) |
| Poll | A procedure used at a general meeting under which every ordinary shareholder present in person or by proxy has one vote for every ordinary share held. This procedure is usually used where it is not possible to obtain a clear or satisfactory result by voting on a show of hands |
| Post-Money | The value of a private company immediately after a round of investment |
| Pre-emption Right | The right of shareholders to participate in any new issue of shares or transfer in proportion to their existing holdings (usually before the original subscriber or transferee) |

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| Preference Shares | Shares with preferred rights which rank ahead of ordinary shares (may be referred to as preferred shares, A ordinary shares etc) |
| Pre-Money | The value of a private company immediately before a round of investment |
| Price Earnings Ratio (P/E Ratio) | Sometimes referred to as the earnings multiple - a company's share price expressed as a multiple of earnings (after deducting tax, minority interests and preference dividends) per share. Traditionally, a high price/earnings ratio suggests a growth company; a low price/earnings ratio suggests a company with a modest outlook or a company in a high-risk area |
| Proxy | Authorisation that another person may cast a shareholder's vote. Any shareholder entitled to attend and vote at a company meeting is entitled to appoint a proxy to attend and vote instead of him |
| Quorum | The number of people necessary to conduct business at a meeting. If there are insufficient people, the meeting is deemed to be inquorate and any resolutions passed at that meeting will be invalid. Both shareholder and board meetings require a quorum |
| Ratchet | A mechanism (often a mathematical formula) whereby the shareholdings of various groups of shareholders (investors, management, existing shareholders etc) or their rights on an exit are altered depending upon the performance of the business. This allows investors to effectively increase their stake if the company or management fail to hit any imposed milestones |
| Restrictive Covenants | Undertakings given by key employees that (for example) they will not compete with the company, or solicit employees or do anything which could damage the business or its relationships with customers or suppliers during their employment or for a set period after they have ceased to be employed |
| ROI | Return on Investment – the key metric for investors |
| Russian Roulette | A mechanism that can be used to terminate a deadlocked joint venture. Typically, it provides that shareholder A of the joint venture company may notify the other shareholder B and offer to transfer all A's shares in the company to B at a price specified by A. B must either accept A's offer and buy A's shares at the specified price or must sell all his shares to A at the same price per share |
| Second Round Funding | Literally, a second round of financing often needed to help a company which has run short of funds |
| Seed Funding | Small amounts of initial capital provided by angels, friends and family or banks to develop an idea (which is normally unproven) into a marketable product or service |
| Shadow Director | A person in accordance with whose directions or instructions the directors of a company are accustomed to act |
| Share Cap Table | A spreadsheet showing all shareholders and holders of options or other securities and the number of such securities in the company they hold |
| Shareholders' Agreement | An agreement between the shareholders of a company regulating the way in which the company operates and their relationship with the company |
| Share Purchase Agreement (SPA) | An agreement under which the seller agrees to sell the shares of the target company to the buyer |

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| Share Sale | The sale of all (or a significant part) of the issued shares of a company |
| Short Notice | The ability of the shareholders of a company to agree to the holding of a meeting on shorter notice than required by company legislation or the company's articles of association. For a private company, short notice must be agreed by a majority in number of the shareholders having the right to attend and vote at the meeting holding at least 90% in nominal value of the voting shares (or such higher amount, up to 95%, as set out in the company's articles of association). For public companies, the relevant percentage is 95% for general meetings or 100% for AGMs |
| Special Resolution | A resolution passed by a majority of not less than 75% of shareholders or their proxies, at a general meeting. Special resolutions are necessary to, among other things, alter the articles of association for a company or change its name. The length of notice required for a general meeting where a special resolution is proposed is 14 days, or any longer period specified in the company's articles of association |
| Table A | Model articles of association contained in company legislation that automatically apply to any company limited by shares that does not adopt its own articles on incorporation. Most private companies adopt articles in the form of Table A with minor alterations. The most recent version of Table A can be found in the Companies (Tables A to F) (Amendment) Regulations 2007 (SI 2007/2541) |
| Tag Along Rights | Rights given to certain shareholders (usually minority shareholders) to prevent other shareholders who have found a buyer for their shares from selling their shareholding without first procuring an offer from the buyer to buy the entire issued share capital of the company (on the same terms). The tag along rights act as protection for the minority holders in case the majority choose not to exercise their drag along rights |
| Texas Shootout (aka Mexican Shootout) | A variation of a Russian Roulette provision where both parties are interested in buying the joint venture company. A Texas Shootout provision prevents deadlock and provides that both parties to the joint venture submit sealed bids to an "auctioneer"; the party who makes the higher bid buys the shares from the other party at that price |
| Venture Capital | A term which covers different types of financing in which the source of funding is usually a fund specifically established to invest in unquoted securities rather than in publicly quoted securities or government bonds |
| Warrant | A right to subscribe for shares in a company. Generally synonymous with an option, although there is a slight technical legal difference |
| Warrantor | A person who gives warranties |
| Warranty | An assurance or promise in a contract, usually written as a statement about the company. Breach of a warranty may give rise to a claim for damages, although liability of the warrantor is usually limited in terms of the amount that can be claimed, the circumstances in which a claim can be made, and the time period in which a claim can be brought against the warrantor |
| Warranty Basket (aka Warranty Threshold) | In the context of warranty claims, the aggregate monetary limit which must be exceeded before any claims can be brought (although, once exceeded, the total amount can usually be claimed) |
| Warranty Cap | The maximum amount that can be recovered from warrantors in respect of all breaches of warranty (on acquisitions, usually the total consideration of the acquisition) |

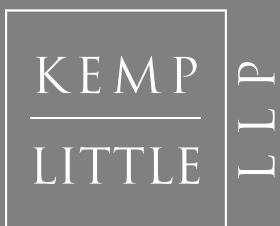
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| Warranty Period | The period from completion in which a warranty claim can be brought. Usually 6-7 years after completion in respect of tax warranties and 12-24 months after completion in all other cases |
| Weighted Average | Anti-dilution provisions which maintain a certain proportion of an early round investor's shareholding on a down round, but allows for some dilution (based on the number of shares issued compared to the number of shares previously in issue) |
| Written Resolutions | Resolutions of the shareholders of a company which are passed by the requisite number of shareholders signing a written document setting out the resolutions, rather than holding a general meeting. A written resolution containing an ordinary resolution is passed if shareholders holding a simple majority (over 50% of the total voting rights) sign it; the threshold increases to at least 75% of the total voting rights for special resolutions |

Kemp Little LLP
Corporate Practice



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