# Disclosure against warranties in UK corporate transactions

In UK corporate transactions, disclosure of information is a vital strategy for sellers to shield themselves from warranty claims when selling their shares or business.



Warranties, which are contractual promises or statements of fact, are typically given by sellers to prospective buyers in a purchase agreement. These warranties cover various aspects of the target company, business, or assets being sold. If any warranty proves to be inaccurate or untrue, the buyer may have grounds to pursue a claim for breach of warranty, seeking damages from the seller.

To mitigate the risk associated with such claims, sellers employ disclosure mechanisms. These disclosures, usually made through a disclosure letter and a virtual data room, allow sellers to provide information and documents that may be inconsistent with the warranties provided.

## Mechanisms of disclosure

### Disclosure letter

- **General disclosures** include information of a broad or general nature or details already available in the public domain (e.g., records at Companies House).
- **Specific disclosures** pertain to specific information, documents, or matters the seller identifies as relevant to and inconsistent with particular warranties.

### Virtual data room (VDR)

The VDR is an online repository where sellers, typically through their professional advisers, upload documents containing information relevant to the warranties and the overall disclosure exercise.

## Standard of disclosure

Disclosures must meet a certain standard to effectively protect sellers. The concept of 'fair disclosure' is central to this standard and has been examined in various court cases.

Courts usually refer to the definition of 'fair' agreed between the buyer and seller and set out in the purchase agreement. Typically, fair disclosure requires providing information or documentation with "sufficient detail to

More News/Insight

By expertise

By year

By type

Search

Links

Download page as PDF

Send link to PDF

Share link

Contacts

Evangelos Kyveris

+44 (0) 20 7299 6949

+44 (0) 7495 689 322

Full profile

Email

Download V.card

enable the buyer to identify the exact nature and scope of the matter disclosed." If the disclosures meet this standard, sellers are protected against claims arising from the warranties. However, if sellers later attempt to argue that matters that were not fairly disclosed should be inferred from documents or information, the courts are unlikely to side with them.

To meet the standard of fair disclosure, sellers should:

- Clearly and adequately disclose important issues in the disclosure letter, providing all relevant facts to ensure the buyer fully understands the matter's significance and its implications on the warranties.
- Avoid relying solely on broad or generic information or merely referring to documents in the VDR, as this does not normally satisfy the required standard of disclosure.
- Ensure that information is not hidden or inaccurately described in the VDR, as this would not constitute fair disclosure.

Furthermore, any deliberate concealment of crucial information by the seller may be considered fraudulent. In cases of fraud, the courts often disapply the limitations of liabilities that are usually set out in the purchase agreement, which could result in severe consequences for the seller.

## Conclusion

Disclosure is a critical element in UK corporate transactions, serving as a key mechanism for sellers to protect themselves from potential warranty claims. Sellers who fail to make fair disclosures risk facing significant legal and financial liabilities. It is, therefore, essential for anyone involved in the sale of assets or shares to seek legal advice to fully understand the mechanics of disclosure, navigate the disclosure process effectively and enhance protection against possible warranty claims.

**Speak to corporate solicitor Evangelos Kyveris today.**

*Note: This article is not legal advice; it provides information of general interest about current legal issues.*