



Carrowdale Ltd

**MANAGEMENT
BUY INS
BUY OUTS**

**AN INTRODUCTION
TO AND OVERVIEW
OF THE PROCESS**

NIAL FLEMING

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OBJECTIVES OF MEMORANDUM

- Set out an introduction to a typical deal structure
- Explain the thinking behind, purpose and key terms of the principal legal documents
- Assess what is important to Management
- Explain what is important to the other parties
- Ensure that Management are fully informed about the overall legal process
- Focus on the key commercial issues - not the legal detail
- Initiate a dialogue between Management and their legal advisers
- Save time and money

THE PARTIES TO AN MBI/MBO

- Management
 - Legal Adviser
 - Financial Adviser
- Vendor
 - Vendor's Lawyer
 - Financial Adviser
- Venture Capitalist
 - Institution's Lawyer
 - Financial Adviser
- The Bank
 - Bank's Lawyer
- Accounting Due Diligence Advisers
- Other Specialist Due Diligence Providers

SOURCES OF FINANCE COMPARED

VENTURE CAPITAL

Medium to long term
Committed until exit

Good for cash flow - repayments of dividend/capital linked to projections

Returns dependent on growth of Company

On failure, Investor ranks behind Banks and shareholders

Takes ownership of part of the Company exerts a degree of control and participates on exit

May take active part in management

SENIOR DEBT

Short to long term
Not committed if repayment of loan threatened - can be/become repayable on demand

Requires good cash flow to service interest and capital repayments

Returns dependent on ability to service interest and maintain asset value

Could exercise security rights other creditors alongside other

Does not own the Company - reliant on security therefore for loan only

Usually controls decisions through documentation only

- Typical deal financing is a combination of Venture Capital funding and senior debt with between 45% and 65% of the total funding being provided by way of senior debt/borrowings and the balance by way of equity funding

DEAL STRUCTURING

- Total finance required for a buy out needs to cover
 - purchase price
 - transaction costs
 - capital expenditure/working capital requirements
 - assumed debt
- Level of debt finance depends upon
 - cash flow
 - asset cover
 - interest cover

Bank will have certain ratios in mind and will look for repayment in, typically, five to seven years

- Key issues in any debt package include
 - interest rate
 - repayment profile
 - security required
 - financial covenants
- Level of equity finance depends upon level of debt that can be supported. Typically comprises
 - preference shares/loan with fixed dividend/interest rate
 - preference shares/loan are redeemed/repaid in defined period
 - ordinary shares or “equity”
- Key issues in any equity package include
 - split of ordinary shares/preference shares/other instruments
 - management equity and funding needed
 - use of a ratchet
 - dividend/interest structure
 - constraints over operational matters

Venture capitalists receive their return through a combination of income and capital growth. Increasingly capital growth is the critical factor as average deal size grows.

- annual dividend yield
- repayment of debt/preference shares
- exit
 - trade sale
 - flotation
 - sale to another Investor

As a rough guide the IRR will be in the range of 20% - 30% per annum

The rate of IRR required will be influenced by;

- risk associated with the proposal
- length of time funds are committed
- ease of exit
- competition from other parties

Other sources of funding might include

- mezzanine finance - ranks behind senior debt on a repayment but carries a higher interest rate and often warrants to subscribe for ordinary shares
- vendor finance - deferred consideration or loans or shares subscribed for by the vendor can be used where the vendor's price expectations cannot be met

THE BUSINESS PLAN

- This is an essential document for any buy in/buy-out or institutionally led deal and must be prepared to a high, verifiable standard -
- Production of a focused plan often takes longer than might be expected. Even if the plan is prepared by the institutions Management will be expected to review and endorse the plan and commit to the goals set
- Key areas to cover include
 - Executive summary
 - summarise the areas mentioned below
 - mission statement -
 - legal status of target
 - The market
 - define the target company's market and explain the industry sector
 - assess the size of the market/value/number of customers/units sold
 - describe geographical area, influences and scope
 - prospects for growth/decline
 - describe where the target fits
 - compare with the competition (current and new entrants) in terms of quality, cost, margin, price etc -
 - what are the market proportions
 - analysis of the target company's weaknesses and historic problems
 - set out entry barriers
 - address current concerns and risks
 - describe the target company's customer base by value/number/location
 - clearly illustrate the target company's projections for the target company and its market
 - The product/service
 - explain the competitive edge or unique selling point eg. new product/price/quality etc
 - what protections are available eg. patents
 - price and cost
 - set out what might impinge on the technology
 - describe the planned developments
 - The business operations
 - explain the processes
 - detail the R&D programme
 - Financial projections
 - assess costs (fixed and variable) cash flow and capex requirements
 - produce a pro forma P&L and balance sheet
 - explain the assumptions underpinning the figures
 - demonstrate the three to five year growth prospects
 - illustrate the net tangible assets position
 - describe the gearing
 - detail the costs
 - describe the budgets and how they will be met
 - present sensitivity analysis
 - are future rounds of funding likely?
 - Exit opportunities
 - assess the overall level of finance needed
 - explain what it will be used for
 - consider in outline how the Investor might realise his investment

TYPICAL PROCESS AND TIMEFRAME

The typical time frame from a Venture Capitalist reviewing a Business Plan or entering an auction process to concluding a deal could be between- three and six months although, clearly, transactions can be completed in a shorter timeframe with a willingness on all parts.

Whilst no two transactions are the same, most will involve some or all of the following. Although some stages are discreet in that they must take place before the next can take place, others may run concurrently

Stage	Timing	Action	Parties	Documents
Identifying opportunity/agreeing principle of the buy-out or first bids in an auction	1-4 Weeks from start	<ul style="list-style-type: none"> • Appoint advisors • Clear authority from Vendors 	<ul style="list-style-type: none"> • Management Team • Advisors Or <ul style="list-style-type: none"> • Venture Capitalist 	<ul style="list-style-type: none"> • Letter from Vendor
Initial enquiries and negotiation Or Second round bids in auction	3-8 weeks from start	<ul style="list-style-type: none"> • Prepare and review plan • Contact Venture Capitalists • Provide information • Negotiate outline terms with vendor • Negotiate outline terms with Venture Capitalist • Financial structuring and tax planning 	<ul style="list-style-type: none"> • Management Team • Advisers • Venture Capitalist • Vendor • Bank 	<ul style="list-style-type: none"> • Business Plan • Offer letter from Venture Capitalist • Offer letter to Vendor • Heads of Terms/Exclusivity
Due Diligence	6-12 weeks from start	<ul style="list-style-type: none"> • Initiate external due diligence • Ongoing negotiations with Vendor • Ongoing negotiations with Venture Capitalist • Provide more information 	<ul style="list-style-type: none"> • Management Team • Advisers • Venture Capitalist • Vendor • Bank 	<ul style="list-style-type: none"> • Due diligence reports • Refined Business Plan
Final negotiation and Completion	8-16 weeks from start	<ul style="list-style-type: none"> • Prepare legal documents • Ongoing negotiations with Vendor • Finalising financial structure • Provide yet more information 	<ul style="list-style-type: none"> • Management Team • Advisers • Venture Capitalist • Vendor • Bank • VC advisers • Bank advisers 	<ul style="list-style-type: none"> • Sale and Purchase Agreement • Vendor Disclosure Letter • Investment Agreement • Articles • Facilities Agreement • Inter-creditor Agreement
Concluding the deal	Completion	<ul style="list-style-type: none"> • Finalise all terms 	<ul style="list-style-type: none"> • All parties 	<ul style="list-style-type: none"> • All documents
Ongoing	All the time	<ul style="list-style-type: none"> • Manage the business 	<ul style="list-style-type: none"> • Management team 	
Afterwards	Until exit	<ul style="list-style-type: none"> • Provide periodic information • Communicate with investors 	<ul style="list-style-type: none"> • Management Team • Investors 	<ul style="list-style-type: none"> • Management Accounts • Board Minutes

THE PRINCIPAL LEGAL AGREEMENTS

Disposal

- Sale & Purchase Agreement
- Vendor Disclosure Letter

Investment

- Investment Agreement
- Articles of Association
- Management Disclosure Letter
- Due Diligence Reports
 - Accounting
 - Property
 - Environmental
 - Intellectual Property
 - Employment
 - Pensions
 - Tax
 - Contracts
 - Customers
- Management Service Agreements
- Management Declaration
- Board Minutes
- Senior Debt
- Bank Facilities Agreement
- Inter-Creditor Agreement
- Financial Assistance Documentation

KEY AREAS OF LEGAL NEGOTIATION BETWEEN MANAGEMENT AND VENDOR

- For existing management freedom to put together a MBI/MBO (Service Agreement restrictions)
- Due diligence (contained in Due Diligence Reports)
- Disclosure (contained in Vendors Disclosure Letter)
- Scope of Vendors warranties (contained in Sale & Purchase Agreement)
- SERVICE AGREEMENT
- Management Team owes duties of confidentiality and “full time and attention” to their employer
- Such duties are implied by common law even if the Management Team do not have detailed Service Agreements covering these areas
- Disclosure of information by the Management Team to a third party (including a potential MBI candidate, Investor, Bank or adviser) without permission from the employer could constitute a dismissable offence
- Management Team need to declare their hand and document in a short letter their authority to involve themselves in the process
- DUE DILIGENCE REPORTS
- Management Team will be expected to put together information for those compiling Due Diligence Reports.
- Management need to be aware of:-
 - not giving any assurances as to accuracy of the information to the persons compiling the report without taking advice
 - avoiding duplication - get the various parties to tailor their requests for documents so as to dove-tail
 - the considerable demands the process places on their time - divide the responsibility amongst the Team members
 - treating multiple bidders fairly - particularly if Management are in competition with trade buyers or providing information as part of the auction process
 - the Vendor seeking to deny knowledge of matters which are not dealt with by Management - this will impact on the warranty cover in the Sale & Purchase Agreement
- Providing the same information to all parties does not prevent the Management Team from putting together their own Business Plan and projections which are for them alone

- VENDOR DISCLOSURE LETTER
- Existing Management Team will be asked to prepare the bulk of the disclosures for the Vendor
- Management will need to be aware of:
 - Vendor seeking separate assurances from the Management Team that the disclosures are full and accurate etc - this should be resisted as far as possible
 - Vendor seeking to disclaim responsibility for areas outside of Management Team's knowledge - this will reduce scope of warranty cover Vendor will be willing to give and correspondingly increase exposure of Management Team
- SALE AND PURCHASE AGREEMENT
- Vendor may seek to avoid giving Warranties on the basis that he is selling to Management
- Management should resist this stance as far as reasonably practical - let the Venture Capitalist lead this discussion
- Lack of warranty comfort from a Vendor will impact on a Venture Capitalist's assessment of the risk profile
- Lack of warranty comfort may therefore impact on pricing or terms offered to the Management Team
- The Management Team's personal exposure through the Investment Agreement may be correspondingly increased

KEY AREAS OF LEGAL NEGOTIATION BETWEEN MANAGEMENT AND VENTURE CAPITALIST

- Warranties (contained in Investment Agreement)
- Consents (contained in Investment Agreement)
- Dividend Rights (contained in Articles of Association)
- Share Transfers (contained in Articles of Association)
- Directors Packages (contained in Service Agreements)

INVESTMENT AGREEMENT

- Purpose
 - Regulates the basis on which VC's cash is introduced to the buy-out vehicle and the relationship between management and the investor
- Key areas to discuss
 - Warranties
 - VC's control over the business
 - Information requirements
 - Role of Investor director
- Warranties
 - Purpose of warranties
 - Effect of breach of warranty
 - Disclosures and their purpose
 - Typical Limitations on Warranties
 - Financial limit - 3 x salary
 - Minimum claim - Dependant on transaction size
 - Time limit - 2 years
- Typical Warranties from Management to VC
 - Individuals
 - No interests in competing business
 - No current/pending litigation
 - Financial background of individuals
 - Entering into Agreement does not breach existing service agreement
 - Other share interests
 - No criminal records
 - The Company
 - Accuracy of information, including factual content of third party reports, business plan, accountants report
 - Audited Accounts
 - Management Accounts
 - Bad and Doubtful Debts
 - Accounting Records

- Trading/actions since last Audited Accounts
- Shares
- Financial and capital commitments
- Subsidiaries
- Contracts
- Trading and trading practices
- Ownership and condition of assets
- Employment
- Intellectual property
- Licences
- Litigation and disputes
- Insolvency
- Insurance
- Property
- Taxation
- Pensions

Extent of warranties governed in part by the degree of comfort available from the Vendor in the Sale & Purchase Agreement and from third parties in specific reports.

If the acquisition is led by the Venture Capitalist the scope for limiting the warranties in the Investment Agreement is increased

Typical Consents

Institution's Consent

- Establish Option Scheme/Employee Share Scheme
- Change to: Accounting Period
 - Bankers/Auditors
 - Nature of Trade
- Material changes to annual Business Plan
- Level of borrowing
- Refinancing
- Capital expenditure over agreed limit
- Sale of shares
- Acquire/dispose of subsidiary
- New joint ventures
- Enter into service agreements
- Undertake acquisitions or diversification of the business

Institutional Director's Consent

- Grant of Options
- Capitalisation of reserves
- Expenditure outside annual Business Plan
- Acquire/dispose of fixed assets
- Acquire/dispose of IPR
- Entering into contracts (% of T/O)
- Making of loans
- Contracts not on arm's length basis
- Change to insurance cover
- Political contributions
- Change to professional advisors (exc. auditors)
- Commencement of litigation
- Appointment of overseas agents
- Changes to accounting policies

Information Requirements

- Management Accounts - Monthly
- Audited Accounts
- Budgets

The Role of the Institutional Director

- Often Non-Executive Chairman
- Aids decision making within the Company without reference to the Institution
- Degree of control for the Institution on areas which may affect investment

ARTICLES OF ASSOCIATION

- Purpose

Establish the internal regulations of the Company (ie. what the directors can do) and sets out the relations between the members of the Company.
- Deal with the following
 - Share capital structure
 - Dividends - Priority
- Management dividends
 - Capital
 - Redemption of Preference Shares (if any)
 - Ratchet mechanism
 - Class rights
 - Limitation on transfer of control
 - General meetings and resolutions
 - Voting
 - Directors
 - Board meetings
 - Borrowing powers
 - Powers, duties, proceedings of Directors

- Transfer of shares - Family Trusts
- Pre-emption rights/deemed transfer

Key areas to discuss

- Use of trusts by management
- Shares for employees - warehouse mechanism
- Dividend policy
- Management shares - what happens if you leave?
- Ratchet mechanism
- Sale of business - drag along option

Family Trusts

Investor will have to ensure:-

- Company does not pay costs of trusts
- Trustees to give warranties/indemnities on sale
- Limit of, say, 50% of individual shareholding

Dividends

If permitted likely to be conditions:-

- Venture Capitalist loan has been repaid/prefs. redeemed
- All other amounts owing to Venture Capitalist have been paid
- Subject to an overall dividend cover and reserves level - 3x
- Will be same per share (maximum) as Venture Capitalist if other criteria are met
- Non-cumulative payment
- Venture Capitalist dividend will be based on an agreed limit on directors emoluments

Transfer of Management Shares

- Ownership of shares outside team unattractive
- Shares for new management if need new replacement team members
- Sale of shares on listing/sale - do not want this frustrated or prevented

Typical Deemed Transfer Provisions

Venture Capitalist will want to include

- Par value for shares for agreed period after completion
- Good leaver/bad leaver
- Good leaver will get fair value
- Bad leaver will get lower of fair value or par

Ratchet

What is it?

- Method of incentivising Management to achieve higher exit price
- Based upon projections - allows Management to increase equity stake if targets met, IRR, Capitalisation
- Risk of becoming a disincentive if targets become unattainable

Drag Along Option

What is it?

- Mechanism which prevents minority shareholders from blocking sale of the business
- Based on majority of ordinary shareholders wanting to sell - important to determine control/who is majority

SERVICE AGREEMENTS

- Remuneration
- Term
- Car
- Expenses
- Pension Scheme
- Health Insurance
- Life Assurance
- Holiday
- Incorporate - Restrictions during employment
 - Non-competition
 - Termination

Key areas to discuss

- Your remuneration package/bonus scheme
- Length of contract/notice period
- What happens if you leave?

MANAGEMENT DECLARATIONS

- List of questions to give Venture Capitalist appropriate knowledge about you and your background
- Focus on:
 - Other business activities
Are they in competition?
 - Criminal record - Hopefully none
- Health
- Financial standing

KEY AREAS OF LEGAL NEGOTIATION BETWEEN MANAGEMENT AND THE BANK

- Covenants (contained in Facilities Agreement)
- Consents (contained in Facilities Agreement)
- Warranties (contained in Facilities Agreement)
- Security issues (contained in security documents and Intercreditor Agreement)
- Financial assistance (contained in financial assistance documentation)

FACILITIES AGREEMENT

Purpose is to regulate the basis on which the Bank lends money to the acquisition vehicle and terms of repayment, interest, security taken by Bank etc.

Key areas to discuss

- Financial and other covenants
- Bank's control over the business
- Warranties given by Newco
- Conditions precedent
- Issues between Bank and VC

Covenants

- Purpose of covenants
- Effect of breach of covenant
- Cash flow projections and financial covenants
- Typical covenants similar to "consents" in Investment Agreement - but not the same
- Typical exceptions to covenants include:-
 - permitted acquisitions/disposals
 - permitted level of capital expenditure
- "Look forward" tests
- Bank's control over the business
- Little management control - no direct input

- Control through potential appointment of receiver if security for loan threatened.
- Control through provision of information and advance warnings - should be same as for Venture Capitalist if possible
- Negative control through covenants

Warranties

- Not given by Management Team themselves - given by Newco
- Designed so that no need to produce disclosures
- Should dove-tail with warranties given to Venture Capitalist if possible

Conditions Precedent

- Time consuming, practical exercise eg. Keyman insurance
- Bank can waive if necessary but should not rely on this

ISSUES BETWEEN BANK AND VC

- Although not of direct concern to the Management Team (or even to Newco) it is important to be aware that there are some areas of negotiation between the Bank and the Venture Capitalist
- Key issues include:-
 - can a VC be obliged to repay dividends if a banking covenant is breached
 - can a Bank prevent dividend payments if a “look forward” test will be breached
 - what use can the company make of the proceeds of Keyman insurance payments
- It is useful to ensure that the Bank and the VC resolve such matters at as early a stage as possible in order to prevent undue delay

SECURITY DOCUMENTATION

Purpose

Gives the Bank the right to take action if the loan is unlikely to be repaid. Trigger events include breach of covenants

Key areas to discuss

- Intercreditor Agreement
- Overseas security
- Peripheral security documents

Intercreditor Agreement

- Purpose of Intercreditor Agreement - to govern the ranking of security taken by several debt providers
- Not a direct concern to Newco or the Management Team since Newco is largely a passive participant

Overseas security

- It is important to identify if any assets of the target business are located overseas as soon as possible tell the Bank and your advisers
- Banks may need to obtain separate legal advice/opinions from overseas this will have an impact on costs and timing
- Certain overseas jurisdictions may also require additional regulatory approvals or clearances if a company or business based in their jurisdiction is to be sold

Peripheral security documents

- Keyman insurance for the Management Team can be expensive and you may be required to submit to a detailed medical for the insurer/Bank
- Will the Bank seek charges over shares or other additional security?

FINANCIAL ASSISTANCE

What is it?

- The Companies Act prohibits a target company from giving “assistance” to a third party in connection with the purchase of that target company’s shares
- Financial assistance nearly always arises where the shares of the target company are being purchased because that company will grant security to the senior debt providers. Such security is almost always “financial assistance”
- To give financial assistance is illegal unless certain prescribed procedures are adhered to
- It can constitute a criminal offence for the Directors of the target company and invalidate a Bank’s security
- The law in this area is often unclear and disputes on interpretation can arise as a result

How do you get round it?

- The Companies Act lays down a procedure known as the “whitewash” procedure whereby actions or documents that would otherwise be illegal can be approved
- It involves all of the Directors of the target company giving a statutory declaration that they are satisfied that the company will be able to pay its debts as they fall due for a period of 12 months from the date of the financial assistance
- The statutory declaration is supported by detailed cash flow projections and a statutory report from the company’s auditors
- The Bank will usually insist on an additional “non-statutory” report from the auditor
- In addition the shareholders of the target company need to pass a special resolution to approve the giving of the financial assistance

Other points to bear in mind

- At the time that the financial assistance is given, the Management Team will be the Directors of the target company
- The auditors at this point will usually be the Management Team’s financial advisers
- This is one of the few areas of law relating to transactions where criminal penalties can arise – it needs to be treated with particular care

The Company Law Reform Bill 2006 proposes a significant change for private companies with the abolition of the restriction preventing them from giving financial assistance for the acquisition of their own shares.

APPENDIX - GLOSSARY OF TERMS

Set out below is a summary of some (but by no means all!) of the jargon used by those involved in the corporate finance world.

Articles of Association	The legal constitution of Newco.
Auction sale	A process whereby the Seller invites competitive bids on a strictly controlled basis for the target company.
BIMBO	A combination of management buy-in and buy-out where the team buying the business includes both existing management and new managers, often introduced by the venture capitalist.
Bought deal	Where an institutional investor buys the target company as principal, later allowing either the existing management or a new management team to subscribe for equity.
Class transaction	An acquisition, disposal or finance raising by a quoted company that meets certain size criteria is subject to Stock Exchange rules laying down the information given to shareholders. In certain cases shareholders' approval may be required for an a buy out.
Credit committee	An internal body which is central to the investment process for the institutions. Approval from the committee will allow them to commit funds to a deal.
Debenture	A legal document which formalises the lenders' charge over the assets of the company.
Deferred consideration	An element of the purchase price that is to be paid at some time in the future. Payment may be contingent upon the outcome of defined future events, such as hitting profit targets.
Disclosure Letter	Disclosures are statements made and documents supplied by a Seller (or a Management Team) which form exceptions to the warranties given in the Sale and Purchase Agreement (or, in the case of the Management Team, in the Investment Agreement) preventing the person giving the warranties from being sued for the matters disclosed. Such disclosures are usually formalised in a Disclosure Letter.

Due diligence	The process by which an institution investigates the target business including its underlying problems in order to satisfy itself that it is safe to invest in the deal.
Envy ratio	A comparison of the amount invested by management for their equity compared to that of the venture capitalist.
Equity kicker	A mechanism whereby holders of debt or mezzanine finance are given the option of subscribing for shares, usually on an exit.
Exit	The point at which the institutional investors realise their investment typically via a sale or flotation of the business. Venture capitalists may, depending on the business and their own situation, look to achieve an exit in anything from a few months to over 10 years.
Financial assistance	A legal term relating to a prohibition in the 1985 Companies Act which prevents target companies from giving assistance to a third party to purchase the target companies' shares except in certain prescribed scenarios.
Fixed dividend	A dividend on preference shares which is cumulative and payable regardless of the level of profits.
Fixed or floating charge	A legal mechanism whereby security over the assets of the business is granted, often as part of a debenture.
Goodwill	The difference between the price paid for a business and the fair value of its assets.
Institutional Buy-out (IBO)	Similar to a bought deal where the key negotiations on the sale process are between the venture capitalist and the Seller. Typically the venture capitalist takes the far greater proportion of the equity with management having a smaller stake than on a traditional MBO.
Intercreditor Agreement	A legal document between the company and the providers of debt finance to the company which sets out the ranking of security granted by the company to those lenders and the circumstances in which they can enforce their security.

IRR	Internal rate of return. The average annual rate of return received by an investor over the life of their investment. This is a key indicator used by institutions in appraising investments.
Loan Notes	A legal document issued by the company which sets out the terms on which a debt (usually part of deferred consideration owing to a Seller) will be repaid. Loan notes can be secured or unsecured on the assets of the company and/or can carry a Bank guarantee and interest rates can be fixed or variable.
Newco	A new company normally formed to effect the buy-out by acquiring the target company or business.
Participating dividend of profits.	A dividend on ordinary shares calculated by reference to the level of profits.
Preference shares	Shares which carry a fixed dividend and are normally redeemable by Newco within a defined period.
Ratchet	A mechanism whereby the Management Team's equity stake may be increased (or decreased) on the occurrence of various future events, typically when the venture capitalist's returns exceed a particular target rate.
Restrictive covenant Purchase Agreement or by the	An agreement to refrain from competing with the target business given by the Seller as part of the Sale and Management Team as part of their Service Agreement.
Senior debt	Debt provided by a bank, usually secured and ranking ahead of other loans and borrowings in the event of a winding up.
Share warrants	A legal document that allows an institution, often a senior debt provider or provider of mezzanine finance, to subscribe for ordinary shares, usually on an exit at a fixed price.
Subordinated loan	Loans which rank in order of security after other debt. These loans will normally be repayable after other debt has been serviced and are therefore more risky from the lender's point of view.
Subscription or investment agreement	A legal agreement binding the various shareholders of the business. The primary purpose of the agreement is to safeguard the rights of the passive shareholders - the institutional investors.

Syndicated investment	Where an investment is too large, complex, or risky, the lead investor may seek other financiers to share the investment. This process is known as syndication.
Term sheet	The offer letter from the institutions to the Management Team setting out the terms on which they are willing to invest in the deal.
Vendor due diligence	A process whereby a vendor will have its own due diligence reports prepared in relation to the target business. These reports are then shown to and, potentially, assigned, to, the institutions in substitution for commissioning their own reports.
Warranties	Legal confirmations given by the Seller, regarding matters such as tax or contingent liabilities, to allow the Buyer an opportunity to sue the Seller if undisclosed liabilities subsequently come to light.
Whitewash procedure	A legal process which allows the target company to give financial assistance for the purchase of its own shares in accordance with the Companies Act procedures. Proposed to change fundamentally under the 2006 Companies Act.

Golddigga MBO

Equity provided by:



Debt provided by:



A member of the  **National Australia Bank** Group

Legal adviser to Octopus Investments:



MARTINEAU JOHNSON

Legal adviser to the management team:

Geldards LLP

Accounting services to the purchasers:



Carrowdale

Tax advisers to the management team:



HURST MORRISON THOMSON

Commercial due diligence provided by:



PBD Consulting