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Client Playbook

Preparing for an Acquisition

A dispute-readiness review before you sign, not after you need it

Mercer & Stone LLP — Corporate Disputes — Client Playbook

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Why Dispute-Readiness Belongs in Deal Planning

The disputes we see most often after an acquisition were, in hindsight, foreseeable at signing.

Warranty and completion accounts disputes rarely come from left field. They tend to arise from ambiguity in terms that felt like a reasonable compromise during negotiation, but that no one stress-tested against the question: what would it actually take to prove a breach of this, if it came to that?

Reading Warranties Like a Litigator

A dispute lawyer reads a warranty clause differently from a deal lawyer — not looking for what it lets you negotiate, but for what it would take, evidentially, to enforce it later. This guide sets out the handful of warranty and indemnity structures that generate a disproportionate share of post-completion disputes, based on the firm's own caseload.

> **WORTH ASKING BEFORE SIGNING**
>
> For every warranty that matters commercially: if this were breached, what evidence would we need to prove it, and do we have a realistic way of gathering that evidence after completion?

Completion Accounts: Where Disputes Begin

Completion accounts disputes are frequently accounting disagreements dressed up as legal ones. The single highest-leverage step a buyer can take is agreeing a genuinely unambiguous accounting policy at signing, tested against a hypothetical dispute scenario — not just reviewed by counsel for legal form.

A Pre-Signing Checklist

- Has each material warranty been stress-tested against the question: how would we prove breach?
- Is the completion accounts methodology specific enough to survive a genuine disagreement, not just a cooperative one?
- Does the earn-out mechanism specify who controls the underlying business decisions during the earn-out period?
- Is there a clear, workable dispute resolution mechanism for valuation disagreements specifically?

A Final Word

None of this is a case for slowing down a transaction. It's a case for a short, focused review — often a matter of days — before signing, from someone who spends their time on what happens when these clauses are tested, not just when they're negotiated.