

## THE DISCLOSURE LETTER EXPLAINED

A disclosure letter is a key document in sale and purchase of business transactions as well as asset and share sales. A disclosure provides the buyer with specific information about the business acquired from the seller to assist them with their due diligence since it is prepared in a way that it includes general and specific disclosures regarding the seller's warranties in the acquisition agreement. In case a seller makes inadequate disclosures it will cause a breach of warranty that would enable the buyer to compensate a part of or even the entire purchase price.

As mentioned above, a disclosure letter serves two main purposes. Firstly, it provides specific information and includes provision to the purchaser that may be of particular interest to them about an asset, a business etc. This provision complements all of the information provided in "the data room" of the transaction or in an exchange made between the parties. It also has an updating effect with its information provision. Secondly, it minimizes the seller's liability. It is being used to limit any warranties that the seller provides in the purchase agreement and it must set out any information about the assets that is inconsistent with the warranties in the purchase agreement.

The disclosure letter consists of three parts: introduction, general disclosures and specific disclosures. The introduction clarifies the purpose of the letter and refers to the applicable sale agreement, while the general disclosures cover certain matters that appear in public records and/or of which the buyer ought to be aware on the basis of pre-contract enquiries or which a buyer would normally make. Usually, general disclosure parts are being prepared as wide as possible. It can be said that the special disclosures part is the most important one since an incorrect statement or not disclosing a specific matter will constitute a breach of warranty. Time to time, a seller may request to refer to certain documents when making a specific disclosure by annexing those documents that can also be named as the disclosure bundle. In this context, the disclosure bundle should contain all documents referred to in the warranties and/or the specific disclosures.

Even if there is no processes defined regarding to the disclosure or discovery documents under the Turkish Civil Procedure Law like it is under Common Law, parties may submit document that has the same characteristics of the disclosure letter. However, parties of a dispute may also submit any documental evidence to their pleadings even if that document is not named as a disclosure letter to rely in case of a dispute. Another possibility is that parties would need to make application to court that the opposing party should disclose a document or evidence in case of an on-going dispute which will prove that the other party is aware of the purchase elements entirely.

A disclosure letter or any document that has same characteristics must be prepared by a lawyer due to specific clauses that needs previous expertise in this matter. Parties should be aware of a poorly drafted disclosure letter may cause repaying of the entire purchase price by the seller or not being able to claim the purchase price by the buyer.

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**For further information and inquiries please contact:**

[en.hansu.av.tr](mailto:en.hansu.av.tr) | +90 216 464 12 12

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