

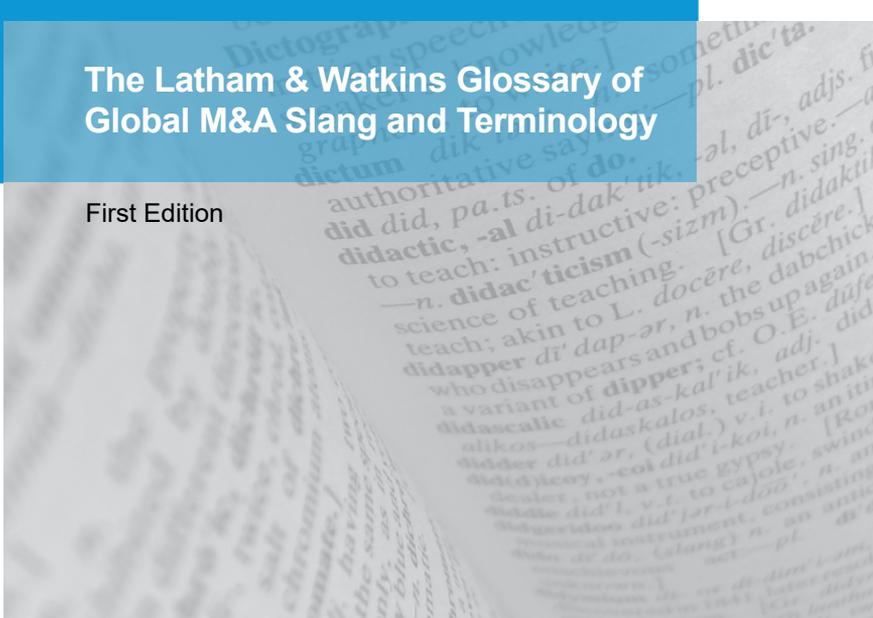
LATHAM & WATKINS LLP

The  
BOOK  
of  
JARGON®

Global  
Mergers & Acquisitions

The Latham & Watkins Glossary of  
Global M&A Slang and Terminology

First Edition





*Welcome to the Book of Jargon® – Global Mergers & Acquisitions. For readers who are lawyers, bankers, or studying to be one, this book can serve as an introduction to the legal and business terms — including corporate and private equity sponsor terminology — often encountered in the structuring, negotiation and execution of mergers, acquisitions and dispositions in many countries around the globe.*

*From statutory terms and nomenclature to sometimes colorful slang, this book includes the words that comprise both home country law and the lingua franca of the M&A world — which has become truly global. Whether private equity or strategic, most deals now cross borders, either due to the global nature of the business being acquired or sold, or because public companies combine to create truly global enterprises. In response, the authors have endeavored to provide an equally global Book of Jargon. This first edition includes key M&A terms used in the United States, the United Kingdom, France, Germany, Hong Kong, Italy, Qatar, Russia, Saudi Arabia, Singapore, Spain and the United Arab Emirates.*

*This glossary of more than 1,500 financial, legal and regulatory terms in the M&A area is also available as a free app for Apple and Android devices. These apps will always contain our most up-to-date glossaries.*

*Latham & Watkins publishes a series of practice area-specific glossaries. This publication does not itself constitute legal advice. The terms are also subject to change as applicable laws and customary practice evolve.*

*The authors welcome suggestions for additional terms as well as expanded or clarified definitions for the current terms via e-mail to [Mergerglossary@lw.com](mailto:Mergerglossary@lw.com)*

*Terms are applicable in the relevant jurisdictions using the key below:*

-  France
-  Germany
-  Hong Kong
-  Italy
-  Qatar
-  Russia
-  Saudi Arabia
-  Singapore
-  Spain
-  United Arab Emirates
-  United Kingdom
-  United States

**'33 Act:** another name for the Securities Act

*Jurisdiction:* 

**'34 Act:** another name for the Securities Exchange Act

*Jurisdiction:* 

**100 Day Plan:** the name often given to a Buyer's post Acquisition integration plan or plan to achieve a Financial Buyer's investment objectives

*Jurisdiction:* 

**13e-3 Deal:** see 13e-3 Transaction

*Jurisdiction:* 

**13e-3 Transaction:** shorthand for a Business Combination that is subject to the special disclosure requirements of SEC Rule 13e-3 — the SEC's going private rule. See also Going Private and Schedule 13E-3.

*Jurisdiction:* 

**1933 Act:** another name for the Securities Act

*Jurisdiction:* 

**1934 Act:** another name for the Securities Exchange Act

*Jurisdiction:* 

**2.4 Announcement:** used in the context of UK public Takeovers and shorthand for the announcement of a possible Takeover Offer subject to Rule 2.4 of the City Code

*Jurisdiction:* 

**2.7 Announcement:** used in the context of UK public Takeovers and shorthand for the announcement required by Rule 2.7 of the City Code of a firm intention to make a Takeover Offer

*Jurisdiction:* 

**2.8 Announcement:** an announcement, or informal statement, which a party will usually be held to for six months, referring to a decision not to make an Offer under the City Code

*Jurisdiction:* 

**2030 Vision:** the Qatari national vision to transform Qatar into a developed and advanced country by 2030

*Jurisdiction:* 

**28 Day Rule:** means the 28 day period under the City Code at the expiration of which (unless an extension is granted) a party making a possible Offer and a 2.4 Announcement must either make a firm 2.7 Announcement of an Offer or a 2.8 Announcement that it has no intention to Offer

*Jurisdiction:* 

**280G:** US Internal Revenue Code section that provides for the loss of tax deductions by the company and a 20 percent excise tax for the individual for Parachute Payments that exceed a certain Threshold amount paid to certain executives, shareholders and highly compensated employees of the Target Company in connection with a Change of Control transaction

*Jurisdiction:* **US**

**280G Gross Up:** a Gross Up for the excise tax penalty resulting under 280G, which puts the individual in the same tax position as if the excise tax did not apply

*Jurisdiction:* **US**

**338(h)(10):** US Internal Revenue Code section that allows purchasing and selling corporations to jointly elect to treat the sale of the Stock of a Target corporation as a sale of its assets for tax purposes, thus giving the Buyer a Step-Up in Tax Basis of the assets of the Target. Such election is available where the Target corporation is a member of a consolidated group, an affiliated group that does not file a consolidated return, or an S Corporation.

*Jurisdiction:* **US**

**363 Sale:** a transaction under the authority of Section 363 of the Bankruptcy Code in which certain assets of a bankrupt company in a Chapter 11 proceeding are sold to a Buyer free and clear of all debts and liabilities of and claims against the bankrupt company, except those specifically assumed under the terms of the transaction. Section 363 Sales are very common in Chapter 11 Reorganizations and are invariably structured as an Auction supervised by the Bankruptcy Court under specified mandatory procedures (as compared to M&A Auctions where the Auction rules are informal — developed and implemented by the Target Company and its Financial Advisor — and can and often are, unilaterally changed and/or ignored).

*Jurisdiction:* **US**

**409A:** US Internal Revenue Code section that sets forth rules regarding the timing of elections, deferrals and distributions of income paid under a Non-Qualified Deferred Compensation Plan. If such rules are not satisfied, all deferred amounts are includible in income when vested and subject to a 20 percent excise tax, interest and penalties plus any additional taxes, as well as interest and penalties imposed under similar state statutes.

*Jurisdiction:* **US**

**67 Plan:** a pre-Insolvency Restructuring plan under Article 67, third paragraph, letter (d), of the Italian bankruptcy law. The plan must be suitable to restructure the indebtedness and rebalance the financial position of an enterprise and an independent auditor shall attest to the reasonableness and also attest the truthfulness of the relevant financial information. A compliant 67 Plan protects from possible clawback

actions, payments and guarantees covered by the plan, and is often used to frame distressed M&A transactions. See Distressed Sale.

*Jurisdiction:* 

**800 lb Gorilla:** used to describe a party with significantly greater commercial leverage than its counterparties on a deal

*Jurisdiction:*  

**A/B Capital Structure:** see High Vote/Low Vote

*Jurisdiction:*      

**A/B Structure:** see High Vote/Low Vote

*Jurisdiction:*      

**ABI:** acronym for Association of British Insurers, the UK's leading shareholder group. ABI is the industry body which represents the general insurance, investment and long-term savings industry. ABI liaises with the government, regulators and UK, EU and international policy makers.

*Jurisdiction:* 

**Above the Line:** refers to items on an Income Statement (or Profit and Loss Statement) which are incurred before the calculation of a company's gross profit. Above the Line profit is gross operating profit before deduction of certain expenses to give net profit.

*Jurisdiction:*       

**Acceleration:** the end of the line in the Bond and loan world. The definitions of "Default" and "Event of Default" describe how we get there. Following an Event of Default, the bondholders (in accordance with the Terms and Conditions or the Indenture) or Lenders (under a Credit Agreement) have the right to "accelerate" the Due Date of their debts; in other words, they have the right to declare their Bonds or loans immediately due and payable. Note that practice in the US (and in European Indentures) is for Insolvency Events of Default to automatically lead to Acceleration, however this is uncommon in European bank financings. Note that Acceleration can lead to an obligation on the officers of the Issuer/Borrower to file for Insolvency, thereby precluding the ability to agree a consensual out-of-court Restructuring.

*Jurisdiction:*        

**Accordo di Ristrutturazione:** a pre-Insolvency Restructuring agreement under Article 182-bis of the Italian bankruptcy law. Filings bring about a stay on creditor action for 60 days, and the company can obtain an immediate stay preceding the agreement in certain circumstances. Must be supported by a report by an independent auditor attesting the agreement's feasibility and suitability to allow payment of all external creditors, and requires the approval of 60 percent of the creditors (by value). Must be homologated, or officially approved, by the bankruptcy court.

*Jurisdiction:* 

**Accretion/Dilution Analysis:** an analysis on a Pro Forma basis to illustrate whether a Business Combination will be Accretive or Dilutive to per Share attributes of the Buyer's Common Stock, such as Earnings Per Share. An Accretion/Dilution Analysis may be performed on a historical Pro Forma basis (e.g., based on LTM data for the Buyer and the Seller) or on projected Pro Forma basis (e.g., based on NTM projections for the two parties).

*Jurisdiction:* 

**Accretive:** means that a Business Combination will result (usually measured on a Pro Forma basis) in an increase in a Buyer's specified measure of financial performance, such as Earnings Per Share

*Jurisdiction:* 

**Accrual:** in Financial Statements, expected income which is still to be received or expected expenses which are still to be incurred

*Jurisdiction:* 

**Accrued Interest:** interest that has been earned by the Issuer or Borrower but that has not yet become due and payable (or which has been due but has not been paid)

*Jurisdiction:* 

**AcquiCo:** abbreviation for the Acquisition company

*Jurisdiction:* 

**Acquired Person:** another name for a Target Company or party selling assets or Securities in a Business Combination

1. (US) also a technical term under the Hart-Scott-Rodino Act referring to the Target Company or party selling assets or Securities in a Business Combination

*Jurisdiction:* 

**Acquirer:** another name for a Bidder, Buyer or Purchaser

*Jurisdiction:* 

**Acquiring Person:** another name for an Acquirer, Bidder, Buyer, or Purchaser or party acquiring assets or Securities of another party in a Business Combination

1. (US) also a technical term under the Hart-Scott-Rodino Act referring to the party acquiring assets or Securities of another party in a Business Combination

*Jurisdiction:* 

**Acquisition:** another name for a Business Combination or shorthand for an Acquisition of Securities or assets of another party

*Jurisdiction:* 

**Acquisition Agreement:** a generic name for any type of agreement that accomplishes a Business Combination or an Acquisition of Securities or assets of another party

*Jurisdiction:*            

**Acquisition Consideration:** the cash, Securities, or other assets paid by a Buyer in consideration for the Acquisition of a Target Company's Shares or assets. Consideration can be structured many ways and not all the consideration is necessarily paid at Closing of the sale and purchase. Some portion of the agreed consideration may be deferred and paid at a later date (referred to as the Deferred Consideration), or the parties may agree to additional consideration being paid if certain triggers are met (referred to as "Additional Consideration," Contingent Consideration or Earn Out depending on their nature). The consideration may also be adjusted to take into account changes between signing and Closing, sometimes referred to as an "Adjustment to Consideration" or Purchase Price Adjustment.

*Jurisdiction:*            

**Acquisition Facility:** a line of credit intended to be used to fund Acquisitions

*Jurisdiction:*           

**Acquisition Line:** see Acquisition Facility

*Jurisdiction:*          

**Acquisition Proposal:** an Offer by one party to acquire another party. Also called a Bid, if made pursuant to an Auction.

*Jurisdiction:*           

**ACRA:** Accounting and Corporate Regulatory Authority, which is the national regulator of business entities and public accountants in Singapore

*Jurisdiction:* 

**Acrylic:** a slang name for a Deal Toy or Tombstone

*Jurisdiction:*  

**Acting In Concert:** persons "Acting In Concert" comprise individuals or companies who, pursuant to an agreement or understanding (whether formal or informal), cooperate, through the Acquisition of Shares in a company, by any one of them to obtain or consolidate effective control of that company

1. (US) see also Group
2. (UK) a defined term under the City Code (see Concert Party)
3. (DEU) a defined term under the German Securities Acquisition and Takeover Act

4. (ESP) two or more Investors/shareholders working together to achieve the same investment goal over a Spanish Listed Company and/or to acquire control over a Spanish Listed Company
5. (HKG) a defined term under the HK Takeovers Code. See Concert Party.
6. (ITA) a defined term under Article 101-bis of the Consolidated Financial Act and Article 44-quarter of Regulation no. 11971 of 1999
7. (RUS) activities formally or informally agreed upon between two or more parties (usually shareholders of a company) with the intention of acquiring or consolidating control over a company or certain market niche
8. (SGP) a defined term under the Singapore Takeover Code

*Jurisdiction:* 

**Activist Investor:** a generic term for Investors that amass blocks of Stock in a Target Company in order to persuade or help persuade the Target Company to change a fundamental aspect of its business, operations or Management (including voting against a proposed Business Combination supported by the Target Company) with the goal (in the eyes of the Activist Investor) of increasing the trading value of the Target Company's Common Stock. Activism may range from private conversations with a Target Company's senior Management or Board, to private or public letter writing campaigns, to Proxy Contests and other contests for control of the Target Company. See also Shareholder Activism.

*Jurisdiction:* 

**Add-on Facility:** agreement increasing the credit line under the acquisition financing agreements which will be made available at the time of the Add-on Transaction

*Jurisdiction:* 

**Add-on-Transaction:** Acquisition of further companies or Shares by an Investor subsequent to an already completed investment, aiming at additional appreciation through the Synergy among these investments. See also Buy and Build

*Jurisdiction:* 

**Administrador Concursal:** person appointed by a Spanish Insolvency court to either supervise or fully manage an insolvent company. In most Insolvencies there must be three administrators: (i) a lawyer; (ii) an auditor or economist; and (iii) a creditor holding an ordinary or non-secured generally privileged claim. For more information on Spanish Insolvency, see *Latham & Watkins Client Alert No. 872, "Spanish Insolvency Act Changes — Paving the Way for Restructurings"* (29 May 2009), available at [www.lw.com](http://www.lw.com).

*Jurisdiction:* 

**Administration:** a formal Insolvency process in England and Wales designed to facilitate the Rescue of an insolvent company or achieve a better return to creditors than if the company immediately went into

Liquidation. Administration involves the control of the company passing from the directors to an Administrator and a Moratorium on most secured and unsecured claims. The procedure has gained notoriety through the use of Pre-Packs.

*Jurisdiction:*  UK

**Administrator:** a licensed Insolvency practitioner in England and Wales (usually an accountant) who is appointed by the court, the company's directors, or by certain qualifying secured parties for the purposes of Administration

*Jurisdiction:*  UK

**Admission and Disclosure Standards:** the rules, published by the UKLA, containing the admission requirements and the ongoing disclosure requirements which companies with Securities must observe if admitted to trading on the LSE markets. The rules do not apply (with the exception of Disclosure and Transparency Rule 5 for UK incorporated and controlled companies) to companies admitted to AIM.

*Jurisdiction:*  UK

**ADR:** acronym for American Depositary Receipt

*Jurisdiction:*  US  DEU  ESP  FRA  HKG

**ADS:** acronym for American Depositary Share

*Jurisdiction:*  US  DEU  ESP  FRA  HKG

**Advance Notice Bylaw:** a bylaw requiring a stockholder who intends to make a motion or nominate a candidate for the Board of Directors at a Shareholders' Meeting to provide the company with notice a specified time prior to the Shareholders' Meeting and usually requiring the shareholder to supply information about the proponent and candidate

1. (US) Advance Notice Bylaws apply to proposals other than those brought pursuant to SEC Rule 14a-8. They are considered an important defensive mechanism in the context of actual or threatened Proxy Contests, and a stockholder's failure to comply with all of the conditions of an Advance Notice Bylaw, at least in theory, would allow the company to disregard the motion or nomination. For that reason, a claim by a company of failure to comply will often provoke litigation testing both the facts and the underlying validity of the Advance Notice Bylaw as a matter of state corporation law.

*Jurisdiction:*  US  DEU

**Advisory Board:** a body that advises the Management of a corporation

*Jurisdiction:*  DEU

**Advisory Council or Majilis Al Shura:** a 35-member body whose function is both supervisory and legislative. No legislation may be passed in Qatar without first receiving approval from the Advisory Council, which acts as an advisory body to the Emir of Qatar.

*Jurisdiction:*  QAT

## ADX: Abu Dhabi Securities Exchange

Jurisdiction: 

**Affiliate:** defined slightly differently in different types of agreements, but generally refers to a subsidiary, corporation, Partnership, or other person controlling, controlled by or under common control with another entity

1. (US) a commonly used term in the Securities Act, the Exchange Act and SEC regulations
2. (UK and HKG) no definition commonly used, except that the term will often describe an entity wider than a direct subsidiary/Holding Company definition to include additional members of a group under common control
3. (DEU) any affiliated entities (*Verbundene(s) Unternehmen*) within the meaning of secs. 15 et. seq. of the German Stock Corporation Act
4. (ESP) a commonly used term in the Spanish Corporations Act, especially for consolidation purposes
5. (FRA) a commonly used term in France, but with no legal definition
6. (RUS) defined by law as an individual or a company de facto or de jure controlled by, controlling or under common control with another entity; the criteria based on which persons may be Affiliates are limited to those outlined in the current legislation
7. (SGP) see Related Corporation
8. (UAE) concept is used in agreements, but not defined in legislation

Jurisdiction:            

**Affirmative Covenant:** an agreement to do something

Jurisdiction:         

**AGCM:** acronym for *Autorità Garante della Concorrenza e del Mercato*

Jurisdiction: 

**Agio:** an additional amount paid on the nominal value, which has to be paid at the issuance of Shares

Jurisdiction: 

**AGM:** acronym for Annual General Meeting

Jurisdiction:  

**Agreed Takeover:** see Friendly Takeover

Jurisdiction:          

**AIM:** originally known as the Alternative Investment Market and abbreviated as AIM, this UK stock market is operated by the London Stock Exchange and is now known simply as AIM. It provides a lighter regulatory environment than the Main Market of the LSE, and so enables smaller and growing companies to access the public market.

Jurisdiction:  

**AIM Rules:** may refer to the AIM Rules for Companies or the AIM Rules for Nominated Advisers

*Jurisdiction:*  

**AIM Rules for Companies:** means the rules published by the London Stock Exchange for companies whose Securities are traded on AIM

*Jurisdiction:*  

**AIM Rules for Nominated Advisors:** means the rules published by the London Stock Exchange for Nominated Advisers of companies whose Securities are traded on AIM

*Jurisdiction:*  

**AJD:** acronym for *Actos Juridicos Documentados*, the Spanish version of Stamp Duty

*Jurisdiction:* 

**All or Substantially All:** this phrase is used in contractual provisions and corporate statutes, but the precise meaning is the subject of much debate (and litigation). It does not necessarily mean what it sounds like in general layman's terms. In general Substantially All means more than 50 percent, but how much more and what categories should be measured to determine whether the event fits the phrase (*e.g.*, assets, revenues, profits) are critical issues. Another critical issue is how to measure the object of the qualifying phrase, *e.g.*, assets. Should the assets be measured in terms of value, revenue producing capability, profit producing capability or some other attribute? Similar issues abound in the measurement of revenues (*e.g.*, over what period, on a cash or an Accrual basis, etc.).

1. (US) see, *e.g.*, Sharon Steel Corp. v. Chase Manhattan Bank, N.A., 691 F.2d 1039 (2d Cir. 1982); B.S.F. Co. v. Phila. Nat'l Bank, 204 A.2d 746 (Del. 1964); and Hollinger Inc. v. Hollinger Internat'l, Inc., 858 A.2d 342 (Del. 2004).

*Jurisdiction:*           

**Allotment:**

1. (UK and HKG) means the unconditional right of a party to be included on a UK or Hong Kong company's register of members, and occurring in advance of the issuance of such Shares to the party
2. (SGP) means the appropriation to a person of a certain number of Shares, though not necessarily specific Shares. A Share is said to be issued when a shareholder is put in control of the Shares allotted to him.

*Jurisdiction:*   

**Alternative Dispute Resolution:** collective term for the ways that parties can settle disputes short of litigation, most often with the help of a third party (*e.g.*, mediation, negotiations, Arbitration etc.)

*Jurisdiction:*         

**Amalgamation:** see Merger and Scheme of Arrangement

*Jurisdiction:*     

**Amendement Carrez:** see *Carrez Amendement*

Jurisdiction: 

**Amendement Charasse:** see *Charasse Amendement*

Jurisdiction: 

**American Depositary Receipt:** an issuance of negotiable certificates that represent Securities of a non-US company that trade in the US financial markets, with each individual Share referred to as an American Depositary Share. See also ADR and ADS.

Jurisdiction:      

**American Depositary Shares:** negotiable certificates that represent Securities of a non-US company that trade in the US financial markets, with the entire issuance of American Depositary Shares referred to as American Depositary Receipt. See also ADS and ADR.

Jurisdiction:      

**American Style Option:** a type of Option where the holder can exercise the Option at any time

Jurisdiction:    

**AMF:** acronym for the French *Autorité des Marchés Financiers*

Jurisdiction: 

**AML:** acronym for Anti-Money Laundering. Same as Know Your Client or KYC.

Jurisdiction:         

**Amortization:** in accounting, the expensing of the cost of the Acquisition of assets over the expected life of the asset

Jurisdiction:         

**Angel Investor:** an Investor (usually an individual as opposed to a firm) that provides capital for a business Start-Up, usually in exchange for equity ownership. Think "Shark Tank" or "Dragons Den," a series of reality television programs broadcast internationally featuring entrepreneurs pitching their business ideas in order to secure investment finance from a panel of Angel Investors/Venture Capitalists (the eponymous "sharks" and "dragons").

Jurisdiction:       

**Annual General Meeting:** means a general meeting of company's shareholders commonly called in order to approve the company's annual accounts. In the case of a Public Company, an Annual General Meeting is required to be called by law.

1. (FRA) an Annual General Meeting is required to be called by law for any form of company, either public or not, within six months of the fiscal year-end, in order to approve the company's annual accounts

Jurisdiction:   

**Antecedent Transaction:** see Reviewable Transaction

Jurisdiction: 

**Anti-Assignment Provision:** see Assignment Provision

Jurisdiction:            

**Anti-Competitive:** when a potential Business Combination would prevent or reduce competition in the market; such a deal is unlikely to receive Merger Clearance

Jurisdiction:       

**Anti-Dilution Provision:** a provision in a company's contract or constituent document that is designed to protect (in a specified fashion) the holder of a Class or series of equity Security from having the holder's Equity Interest in the company reduced or diluted by issuances of other Securities or dividends. There are a variety of common types of Anti-Dilution Provisions, so it is important to understand precisely which type of Anti-Dilution Provision is intended to be utilized in the specific circumstance.

Jurisdiction:           

**Anti-Money Laundering:** see AML, Know Your Client and KYC

Jurisdiction:         

**Anti-Sandbagging:** a provision in an Acquisition Agreement that limits or eliminates a Seller's liability for inaccuracies in Representations and Warranties of which the Buyer had knowledge before Closing

Jurisdiction:      

**Anti-Takeover Laws:** a generic reference to state or national statutes, as applicable, that impede or preclude Hostile Takeovers

1. (US) there have been several US Supreme Court cases dealing with whether various types of state Anti-Takeover Laws are pre-empted by the federal Takeover statute and rules. As a practical matter, state Anti-Takeover Laws have virtually no practical impact, because the universality of the Poison Pill precludes Closing on Unilateral Takeovers. Accordingly, Hostile deals invariably end either by being dropped by the Hostile Bidder or by becoming negotiated deals, in which case the Target Company Board will be required to waive the provisions of any applicable Anti-Takeover Law.

2. (SGP) see Frustrating Action

Jurisdiction:      

**Antitrust Clearance:** see Merger Clearance

Jurisdiction:      

**Anti-Trust Clearance:** see Merger Clearance

Jurisdiction:       

**Any and All Bid:** see Any and All Offer

*Jurisdiction:* 

**Any and All Offer:** a Tender Offer or Exchange Offer for all outstanding common Shares of a Target Company

*Jurisdiction:* 

**APA:** acronym for Asset Purchase Agreement

*Jurisdiction:* 

**Apostille:** a certificate issued pursuant to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (the Convention), which facilitates the circulation of public documents between state parties. The Apostille replaces the cumbersome and often costly formalities of a full legalisation process with the mere issuance of a certificate. Instead of legalisation by the appropriate embassy, the notary's certificate and seal are certified as genuine by the competent authority of the state on whose territory the document has been executed. The Convention applies to public documents (such as a notarial act or a document with notarial authentication of signatures) executed in one state party to the Convention and to be used in another state party to the Convention. So now you know.

*Jurisdiction:* 

**Appraisal:** a process for the judicial determination of the fair value of Shares, in jurisdictions for which Appraisal Rights are asserted

*Jurisdiction:* 

**Appraisal Rights:** rights provided by statutes that permit shareholders of Target Companies in certain types of Acquisitions to decline receipt of the Merger Consideration, and in lieu thereof, to sue in court to receive a judicially determined value for Shares of the Target Company. Exercise of Appraisal Rights usually requires strict adherence to statutory requirements.

1. (US) in practice, shareholders historically have rarely availed themselves of Appraisal Rights because of the procedural hurdles to assertion in an Appraisal proceeding and because of the costs, uncertainties and time involved to complete litigation. However, the historical trend is changing

*Jurisdiction:* 

**Arbitrage:** profiting by trading on price disparities involving the same item, similar items or fungible items. One type of Arbitrage involves capturing a difference in price for the same item in different markets (e.g., if a Common Stock is traded on both the NYSE and the LSE and does so at slightly different prices, an Arbitrageur can buy Stock in the cheaper market and sell the same amount of Stock in the other, pocketing the difference). See also Risk Arbitrage and Merger Arbitrage.

*Jurisdiction:* 

**Arbitrageur:** a person or entity that engages in Arbitrage

*Jurisdiction:* 

**Arbitration:** a form of Alternative Dispute Resolution outside of litigation, where the parties to a dispute refer it to one or more persons (often experts in a specific field) by whose decision they agree in advance to be bound

*Jurisdiction:* 

**Arbitration Provision:** a provision in an agreement according to which the parties agree to resolve their disputes arising from or in connection with the agreement through Arbitration

*Jurisdiction:* 

**Article 68 Company:** a company incorporated under article 68 of the Commercial Companies Law of Qatar. An Article 68 Company has the ability to opt out of provisions of the Commercial Companies Law of Qatar. A key pre-requisite for the incorporation of an Article 68 Company is that one of its founding shareholders must be an entity owned at least 51 percent by the government of Qatar.

*Jurisdiction:* 

**Articles of Association:** see Charter and Bylaws

*Jurisdiction:* 

**Articles of Incorporation:** see Charter

*Jurisdiction:* 

**ASAP:** as soon as possible. Usually heard in connection with the time required to Closing.

*Jurisdiction:* 

**Asset Acquisition:** a Combination effected through the Acquisition of assets from a Target Company. In most jurisdictions, an Asset Acquisition typically also involves an assumption of certain liabilities; however, because the parties can bargain over which assets will be acquired and which liabilities will be assumed, the transaction form can be far more flexible in its structure and outcome than a Merger, Combination or Stock Purchase. See also Asset Purchase Agreement and 363 Sale.

1. (HKG) in the Hong Kong context, consideration should be given as to whether an Asset Acquisition may constitute a business acquisition — in which case the Transfer of Businesses (Protection of Creditors) Ordinance applies

*Jurisdiction:* 

**Asset Acquisition Agreement:** see Asset Purchase Agreement

*Jurisdiction:* 

**Asset Deal:** see Asset Acquisition

*Jurisdiction:* 

**Asset Purchase Agreement:** an Acquisition Agreement providing for the Acquisition of a specified part or all of a Target Company's or Seller's assets, sometimes accompanied by an assumption of a specified part or all of a Target Company's liabilities. Asset purchases allow the Buyer to not acquire certain assets of the Target Company. See also Asset Acquisition.

1. (US) often used for various commercial reasons in M&A transactions, but very commonly used in Carve-Out Transactions, 363 Sales or other distressed M&A transactions
2. (UK) often used for various commercial reasons in M&A transactions, but very commonly used in pre-Administration or Pre-Pack and other distressed M&A transactions

*Jurisdiction:* 

**Asset Stripping:** a term describing the purchase of a business with the intention of breaking it up (rather than running it) because its NAV is greater than the purchase price. In some contexts Asset Stripping is something of a pejorative term.

*Jurisdiction:* 

**Assets Under Management:** the total sum of funds acquired and administered by a Private Equity firm

*Jurisdiction:* 

**Assignment:** a transfer of rights and, if possible, obligations under a contract (e.g., a Credit Agreement to a new Lender)

1. (UK and HKG) under English/Hong Kong law, while you can assign rights, you are not able to assign obligations (see therefore Assignment and Assumption and also Novation)
2. (FRA) under French law, while you can assign rights, you are not able to assign obligations (see therefore Assignment and Assumption and also Novation). Called *délégation* under French law.
3. (ITA) under Italian law an Assignment of obligations does not generally imply the release of the transferor, absent consent from the transferred party

*Jurisdiction:* 

**Assignment and Assumption** when rights are transferred and the assuming party (e.g., a new Lender) also assumes the obligations of the transferor (e.g., the old Lender), which is then released from those obligations

1. (UK and HKG) when an Assignment does not work due to the inability under English/Hong Kong law to assign obligations, and/or where a Novation is not practicable due to loss of Security implications, English/Hong Kong law uses an Assignment and Assumption
2. (FRA) under French law, called a *délégation parfaite*

3. (ITA) under Italian law an Assignment of obligations does not generally imply the release of the transferor, absent consent from the transferred party

*Jurisdiction:* 

**Assignment Provision:** a provision in a contract specifying under what terms and conditions the contract may be assigned for some or all purposes by a party to another entity or person. Assignments may be entire, or may be limited — as in an Assignment of payment streams or (except in Hong Kong) an Assignment of obligations. Sometimes called an Anti-Assignment Provision if it specifies that the contract may not be assigned (or may not be assigned except under specified circumstances) to another party for all or certain purposes.

*Jurisdiction:* 

**Assumed Liabilities:** liabilities assumed by a Buyer in connection with an Asset Acquisition

*Jurisdiction:* 

**Asymmetrical Collar:** when used to describe Exchange Ratio Collars, means Collars that deviate from the reference value or reference ratio by different amounts or percentages. So what goes up does not always come down in the same proportion or vice-versa.

*Jurisdiction:* 

**Auction:** a generic term used to describe a process for selling a Target Company or the assets of a Seller. The process involves at least two Bidders making Bids in competition with one another. There are no settled rules for an Auction, but two patterns are most common: (1) a controlled, limited, private, or Quiet Auction in which a limited number of parties are invited to participate and the process is almost always intended to be confidential; and (2) a Widespread Auction or Public Auction in which a larger number of parties are invited to participate, sometimes by what amounts to a public notice of the Auction Process.

*Jurisdiction:* 

**Auction Draft:** the Acquisition Agreement provided by a Seller (or Target Company) to potential Bidders in connection with an Auction

*Jurisdiction:* 

**Auction Process:** see Auction

*Jurisdiction:* 

**Authorised Person:**

1. (UK) a person who is authorised for the purposes of FSMA to carry out regulated activity
2. (HKG) a person who is authorised for the purposes of the SFO to carry out a regulated activity

*Jurisdiction:* 

**Authorized Share Capital:** is the maximum Par Value of Shares that a company may legally issue

1. (HKG) the concept of Authorized Share Capital for Hong Kong-incorporated companies will be abolished once the new Companies Ordinance comes into operation (expected in 2014)

*Jurisdiction:* 

**Autorità Garante della Concorrenza e del Mercato:** the Italian competition commission. See Competition Commission.

*Jurisdiction:* 

**Autorité de la Concurrence:** the French competition authority. See Competition Commission.

*Jurisdiction:* 

**Autorité des Marchés Financiers:** the French financial market authority

*Jurisdiction:* 

**B Reorg:** a Stock-for-Stock Acquisition treated as a Tax-Free Reorg under Section 368(a)(1)(B) of the US Internal Revenue Code if, among other things, the acquiring corporation exchanges solely its own voting Stock (or voting Stock of its 80 percent Parent) for 80 percent of the combined voting power and 80 percent of the total number of Shares of all Classes of a Target corporation's non-voting Stock

*Jurisdiction:* 

**Back-End Merger:** a Squeeze-Out Merger that follows a Stock Acquisition to complete an Acquisition of 100 percent of a Target Company's outstanding securities. In many, but not all cases, the Back-End Merger is pursuant to an Acquisition Agreement that requires the Buyer to initiate the Acquisition through a Tender Offer or Exchange Offer for a majority or all of the Target Company's voting equity Securities.

*Jurisdiction:* 

**Backstop Facility:** loan which a bank only grants if the Borrower has no other possibility to cover its borrowing requirement, e.g., through prior issuance of Bonds on the capital market

*Jurisdiction:* 

**Back-to-Back Confidentiality Agreement:** assumption of rights and obligations by a third party under a Confidentiality Agreement which has been concluded by other parties

*Jurisdiction:* 

**Back-to-Back Financing:** a financing structure according to which the Financing Sources (mostly banks) are granted collateral by certain shareholders participating in the financing

*Jurisdiction:* 

**Bad Leaver:** an employee or manager who holds Shares of the company and leaves his/her office because of his/her own interests or who is terminated for good cause (i.e., because of his/her own default or without the company giving the employee contractual notice). Leaving often results in a reduction in the Shares, Options, Earn-Out payments, etc. which may have otherwise been made to the employee.

*Jurisdiction:*        

**BaFin (Bundesanstalt für Finanzaufsicht):** the German Federal Financial Supervisory Authority (BaFin) is responsible for the supervision of banks and financial services providers, insurance undertakings and Securities trading. It is an autonomous public-law institution subject to the legal and technical oversight of the Federal Ministry of Finance. BaFin is funded by fees and contributions from the institutions and undertakings under its supervision.

*Jurisdiction:* 

**Bake Off:** see Beauty Contest

*Jurisdiction:*        

**Balance Sheet:** a component of Financial Statements on which a company reports its assets, liabilities and equity as of a given point in time. In contrast to an Income Statement, which depicts a company's operations over a period of time, a Balance Sheet provides a "snapshot" as of a moment in time. The term Balance Sheet derives from the accounting principle that a company's assets must equal (or "balance" with) its liabilities plus shareholders' equity. See also Income Statement.

*Jurisdiction:*          

**Bank Guarantee:** an undertaking from a bank to cover a debt, risk or liability on a transaction. In other words, if the debtor fails to settle a debt, the bank will cover it. Similar to a Letter of Credit.

*Jurisdiction:*         

**Bank Levy:** refers to certain taxes due by financial institutions in connection with the levels of risk on their lending activities. These taxes cover the French tax levied pursuant to Article 235 ter ZE of the French tax code (Code général des impôts), the United Kingdom tax levied pursuant to Section 73 of, and Schedule 19 to, the United Kingdom Finance Act 2011, or any other tax consisting of a Bank Levy in the sense referred to in the joint statement released by the French, UK, and German governments on 22 June 2010 that is levied or imposed in France or in any other jurisdiction. This term is used in a Credit Agreement when the parties intend to clearly exclude any Indemnification of the Lenders for any loss, liability, or cost suffered for or on account of such taxes.

*Jurisdiction:*   

**Bankability:** the responsibility for the financing of a project or a transaction, or the acceptance of a specific financial structure from the

banks' point of view, that was proposed by the Borrower

*Jurisdiction:* 

**Bank-Bridge Structure:** a set of Commitment Papers that contains terms for both a senior secured Credit Facility and a Bridge Facility

*Jurisdiction:* 

**Banker Book:** a written financial or other presentation by a Financial Advisor, usually to the Management or Board of Directors of the Financial Advisor's client (usually the Target Company or the Buyer), in the course of an M&A transaction. See also Board Book or Deck.

*Jurisdiction:* 

**Bank-Only Deal:** financing consisting only of bank debt (*i.e.*, no Bridge Facility or Securities)

*Jurisdiction:* 

**Bankruptcy:** in the US, Bankruptcy is a federal court process under the Bankruptcy Code whereby a company restructures its debt under the auspices of the Bankruptcy Court. There are advantages (such as the ability to Cram-Down a plan on dissenting creditors) and disadvantages (such as high costs and public disclosure requirements) to restructuring debts in a US Bankruptcy, as opposed to out of court. Restructuring debts in Europe is typically an out of court process, although court-based procedures such as Schemes of Arrangement are used as implementation tools, with Insolvency marking the typically court-driven end of the line. See also Insolvency.

1. (HKG) in Hong Kong, the term Bankruptcy is generally only used to refer to individual debtors and the applicable process under the Bankruptcy Ordinance to realise an insolvent individual's assets and distribute the proceeds amongst his/her creditors. With respect to corporate insolvencies, the terms commonly used are Liquidation or Winding Up.

*Jurisdiction:* 

**Bankruptcy Code:** Title 11 of the United States Code

*Jurisdiction:* 

**Bankruptcy Remote Vehicle:** a type of Special Purpose Entity

*Jurisdiction:* 

**Base Case Model:** refers to the financial Model and Business Plan required to be prepared and warranted by the Borrower and delivered to the Lenders under the Credit Agreement as a Condition Precedent, particularly in Leveraged Buyouts. The scheduled repayment installments under any amortizing loans and the levels of the Financial Covenants are set by reference to the agreed Base Case Model (in the case of Financial Covenants, through the application of the agreed deviations from the anticipated performance of the business set out in the Base Case Model).

Also referred to as the Business Plan, although in certain uses of the term, the Base Case Model can be one case within the Business Plan.

*Jurisdiction:* 

**Base Rate:** the rate quoted by individual banks to their customers as the rate at which such banks are prepared to lend money and pay for deposits

1. (HKG) in Hong Kong, also known as “Prime Rate” or “Prime Lending Rate”

*Jurisdiction:* 

**Basis Point:** one one-hundredth of a percentage point (e.g., 50 Basis Points equals 0.50 percent). See also bps.

*Jurisdiction:* 

**Basket:** in circumstances where Indemnification is provided for, Basket generally refers to a specified minimum dollar amount one party’s losses must exceed before the other party has an obligation to pay damages to the first party for the losses. See also Deductible and Tipping Basket.

*Jurisdiction:* 

**BCD:** see Book Closure Date (BCD)

*Jurisdiction:* 

**Bear Hug:** an Offer by a Bidder to buy a Target Company at a price usually meaningfully above the Target’s current Share price. Called a Bear Hug because the Acquirer hopes the price is impossible or at least hard to resist. A Bear Hug can be oral or written and can be non-public or public. A Bear Hug can also start as an oral, non-public communication and later be reiterated in writing and/or disclosed publicly. The purpose of the Bear Hug letter is to put pressure on the Target Company Board to negotiate a transaction.

1. (UK) this is a term for the public announcement commencing a UK Hostile Takeover. See also Virtual Bid and Offer Period (in relation to UK public Takeovers).

*Jurisdiction:* 

**Bear Market:** bad times. Hang in there for a Bull Market.

*Jurisdiction:* 

**Beauty Contest:** a way of providing companies and financial Sponsors with a choice of providers of financial, legal, and other professional services in connection with a potential transaction. A Beauty Contest normally involves drawing up a short-list of potential firms invited to pitch for business, usually by presentation and interview. Also called a Beauty Parade or Bake Off.

*Jurisdiction:* 

*Beauty Parade:* see Beauty Contest

*Jurisdiction:*        

*Bed Bug Letter:* a name for a letter by a participant in a Proxy Contest to the SEC staff arguing that the Proxy Material of another participant contains false or misleading information or is otherwise deficient under the Proxy rules. See also Sand in the Gears Letter.

*Jurisdiction:* 

*Below the Line:* in Financial Statements, items which affect the Balance Sheet rather than the Income Statement. Items such as extraordinary items which have no effect on the profit or loss in the current accounting period, are therefore Below the Line of gross profit.

*Jurisdiction:*       

*Beneficial Owner:* generally, where equity allows the use and benefit of property to belong to a person even though legal title of the property belongs to another person

1. (US) Section 13(d) of the Exchange Act and related SEC Rules (most notably Rule 13d-3) cover the details of this concept. In short, if a person has the power to vote or dispose of a particular Security, either individually or as part of a Group or others Acting In Concert, then such person is the Beneficial Owner of that Security.
2. (UK) the Law of Property Act 1925 requires that the transfer of an equitable interest in property (including Shares) must be in writing. The Articles of Association of some UK companies restrict the transfer of only “beneficial ownership” (as compared to the transfer of full legal title, being legal and beneficial ownership).
3. (DEU) in general, the beneficial ownership is agreed between the shareholders of an entity and a third party. Section 39 of the general tax code (Abgabenordnung) covers the details of this concept for the tax assessment. Section 246 of the German Commercial Code (Handelsgesetzbuch) requires the Beneficial Owner of an asset to disclose such information in its Balance Sheet.
4. (ESP) as per Royal Decree 1066/2007, of July 27, on public Takeover Bids, refers to an individual or entity actually enjoying the benefits of ownership of a property with the power to vote or dispose of that particular asset.
5. (FRA) there is no direct French equivalent of the term Beneficial Owner as used in other jurisdictions. It may be used to describe persons Acting in Concert.
6. (HKG) Hong Kong law recognizes the concept of beneficial ownership of property; however, the Companies Ordinance provides that no notice of any trust shall be entered on the register of Members, and provides that the holder of Shares on the register is therefore the only person the company recognizes as having an interest in the relevant Shares.

7. (QAT) Law No.(25) of 2004 (the Proxy Law) prohibits certain “beneficial ownership” arrangements in situations where a Qatari may be seen as assisting a foreign shareholder to circumvent laws designed to limit a foreign Investor’s rights, such as special voting arrangements
8. (RUS) there is no direct Russian law equivalent of a Beneficial Owner as such term is used in UK law. The term “beneficiary” is used to describe a party that manages and can be entitled to the use of assets which are legally owned by another party. The notion of “Beneficial Owner” in its true sense is used in reference to persons who can exercise de facto control over the company pursuant to legal provisions of foreign jurisdictions.
9. (UAE) in order to minimize the effect of the local 51 percent shareholding requirement, in an LLC arrangement, conditions are often put in place to split the legal and beneficial ownership of the company. A foreign shareholder will often beneficially own more than 51 percent of the Shares of the LLC but legally will only hold a maximum of 49 percent.

*Jurisdiction:* 

**Best and Final Bid:** an aspirational description by a Target Company of the kind of Offer it wants to receive from a Bidder. The term is also often used by a Bidder to describe the Bidder’s current Offer and thereby encourage the Target Company to give up its aspirations for a better Offer. When the term is used by the Bidder it sometimes is, in fact, an accurate description of the Offer. Other times, it is a bluff and the Bidder would in fact be willing to pay more.

*Jurisdiction:* 

**Best Efforts:** a common provision in an Acquisition Agreement to describe how hard a party needs to work to make good on its commitments. Like many other familiar contract terms (e.g., All or Substantially All), just what constitutes Best Efforts is far from clear. In many contracts, the nature of Best Efforts is modified by one or several adjectives, such as “Reasonable Best Efforts” or “Commercial Best Efforts” or even “Commercially Reasonable Best Efforts.” The point of the adjectives is to give greater clarity about just how hard (or not) the party must try to fulfill its promise. See also Best Endeavors.

*Jurisdiction:* 

**Best Endeavors:** see Best Efforts

*Jurisdiction:* 

**Best Knowledge:** the Seller’s obligation to assume liabilities is often restricted by a knowledge qualifier which is generally based on knowledge of specific persons or by Duty of Care obligations. The exact knowledge qualifier is to be defined in the agreement.

*Jurisdiction:* 

**Best Practices:** a common description of the nature of a corporate governance policy or procedure. There is no authoritative source for

determination of Best Practices; it is all in the eye of the beholder. Accordingly, the concept is usually used to describe or prescribe corporate governance conduct that the speaker believes, or wants a company to believe, is the “right” thing to do.

*Jurisdiction:* 

**Bet the Company:** a transaction that has potential Upside benefits to transform the applicable company and the “downside” potential pitfalls to cause significant damage

*Jurisdiction:* 

**Bible:** only a few would call this holy; this is the name given to the collection of principal deal documents which are collected together after Closing for ease of reference for the main deal participants. Traditionally prepared in paper format but now more commonly electronically on CDs. Also known as the Closing Set.

*Jurisdiction:* 

**Bid:** another name for an Acquisition Proposal or Offer made pursuant to an Auction

*Jurisdiction:* 

**Bid Conditions:** conditions contained in a Bid

*Jurisdiction:* 

**Bid Process Letter:** a letter, usually sent by a Seller’s Financial Advisor, to one or more potential Bidders describing terms and conditions of an Auction to which the Bidders must adhere. Typically contains a set of conditions and timetable to be followed. Most Bid Process Letters explicitly retain in the Seller the right to change, waive, or ignore all such terms and conditions in the Seller’s sole discretion. Nonetheless, Bidders typically comply, unless the Bidder decides to try to preempt the described Bid Process. See also Preemptive Bid.

*Jurisdiction:* 

**Bidco:** name given to the Special Purpose Vehicle (SPV) established by a Sponsor as the acquiring entity in a Leveraged Buyout or by a corporation in a Takeover. Usually Bidco will be the main Borrower in Acquisition-related Credit Facilities.

*Jurisdiction:* 

**Bidder:** another name for an Acquirer, Buyer or Purchaser

*Jurisdiction:* 

**Bidder Group:** a Group of two or more entities acting together to acquire a Target Company. PE Sponsors frequently form a Bidder Group to acquire a relatively large Target Company (thereby lowering each Sponsor’s investment and allowing greater diversification in the Private

Equity Fund's portfolio) or where one of the PE Sponsors may have special expertise relevant to the Target Company but its fund is not large enough to acquire the Target Company on its own.

*Jurisdiction:*            

**Bidding Contest:** any M&A situation in which two or more potential Acquirers submit Competing Bids

*Jurisdiction:*           

**Bifurcated Reverse Termination Fee:** a Reverse Termination Fee structure in which different fees are payable in different circumstances

*Jurisdiction:*      

**BIMBO:** Buy-In Management Buyout

*Jurisdiction:*     

**Binding Bid:** see Binding Offer

*Jurisdiction:*        

**Binding Offer:** an obligatory Offer of the prospective Purchaser to enter into an Acquisition Agreement regarding the Acquisition of a company or assets (generally made in an Auction). Also called a Binding Bid.

*Jurisdiction:*        

**Biz Dev:** shorthand for Business Development

*Jurisdiction:*            

**Blackout Period:** see Trading Blackout

*Jurisdiction:*       

**Blank Check Preferred Stock:** a Class of Preferred Stock that, pursuant to the Charter, may be issued in separate series, with each series having particular preferences and Rights described in a Certificate of Designations adopted by a Board resolution and filed with state officials as a part of the Charter. Because a Board has total flexibility to design the terms of each series of Blank Check Preferred Stock, it can potentially be used as an adjunct to a Takeover Defense. In practice, however, few Takeover Defenses (e.g., in Poison Pills) actually utilize Blank Check Preferred Stock. This is a case of the bark being far worse than the bite.

*Jurisdiction:* 

**Blocker Vehicle:** an entity which is usually put in place between Investors and a Portfolio Company of a Private Equity Fund in order to avoid the allocation of income of the Portfolio Company to the Private Equity Fund

*Jurisdiction:*    

**Blocking Right:** a provision in a Security that gives holders a right to block the issuance of certain other prescribed Securities. Sometimes Blocking Rights can only be dismantled by unanimous action; in other

cases, a simple majority or a super majority of holders of the Securities with the Blocking Rights can dismantle them. See also Veto Rights.

*Jurisdiction:* 

**Blue Book:** the colloquial name given to the City Code, as it is published in a blue folder

*Jurisdiction:* 

**Board:** shorthand for Board of Directors

*Jurisdiction:* 

**Board Book:** a Banker Book or Deck usually prepared for the Management or Board of Directors of the Financial Advisor's client

*Jurisdiction:* 

**Board of Directors:** governing body of an incorporated company. Its members (the directors) are normally elected by the shareholders of the company (generally at an annual general meeting). Subject to certain matters reserved by law for shareholders, the Board has the ultimate decision-making authority.

*Jurisdiction:* 

**Board Recommendation:** a recommendation by a Board of Directors that shareholders vote upon a proposal in a specified way. Bidders will invariably seek a Covenant and a condition that the Target Company's Board will recommend the deal.

1. (US) under Delaware judicial precedents, a Target Company's Board probably does not have the ability to contract away its exercise of its Fiduciary Duties to be able to change its recommendation under all circumstances; hence the Covenant that the Target Company will not change its recommendation almost always is subject to a Fiduciary Out. Exercise of the Fiduciary Out will customarily Trigger a termination right for the Buyer, and such a termination will usually Trigger the payment of a Termination Fee by the Target Company's Board.
2. (FRA) under French law, in the context of a Tender Offer, the Target's Board must issue a recommendation to the shareholders
3. (HKG) the Hong Kong Stock Exchange Listing Rules and HK Takeovers Code respectively require Board Recommendations in certain circumstances or transactions. In some situations, a recommendation from an independent board committee may be required.

*Jurisdiction:* 

**Boilerplate:** a generic name, often having or intended to have a pejorative connotation, for what is viewed by the beholder as standard provisions in a contract, such as choice of law, venue and method of giving notice. More substantive parts of an Acquisition Agreement may also be labeled as Boilerplate by participants who don't want to be bothered to read or

think about them. A word to the wise: there is no such thing as Boilerplate in M&A.

*Jurisdiction:*            

**Boilerplate Language:** see Boilerplate

*Jurisdiction:*            

**Bona Fide:** shorthand (or some would say a term of art) for a party or state of mind that is both real and meaningful. A *Bona Fide Bidder* means one which is both serious and has the capability to perform. A *Bona Fide Bid* is one that is both made by a *Bona Fide Bidder* and is meaningful in amount and type of currency.

*Jurisdiction:*           

**Bona Vacantia:** a description of English law origins that describes property with no apparent owner. See Escheat.

*Jurisdiction:*   

**Bond:** debt Securities in transferable form issued by companies that have a fixed principal amount and a fixed (or floating) interest rate. Also known as Notes or Debentures. Bonds may be issued by an Acquirer to finance an Acquisition and are very common in LBOs as a significant part of the financing package.

*Jurisdiction:*          

**Book Value:** the amount in the relevant currency stated for particular assets on a company's Balance Sheet

*Jurisdiction:*          

**Books Closure Date (BCD):** See Record Date

*Jurisdiction:*     

**Boot:** cash or other property received as taxable consideration in an otherwise tax-free transaction

*Jurisdiction:*     

**Borrower:** a company that borrows under a Credit Agreement

*Jurisdiction:*         

**Borsa Italiana S.p.A.:** the entity responsible for the organization and management of the Italian Stock Exchange. *Borsa Italiana S.p.A.* belongs to the London Stock Exchange group.

*Jurisdiction:* 

**Bottom Line:** refers to a company's net income, net earnings or Earnings Per Share. Bottom Line also refers to actions that may decrease or increase a company's net earnings or overall profit.

*Jurisdiction:*         

**Bought Deal:** an offering of debt or equity Securities in which one or a few Underwriters buy the entire issue at a fixed price before a formal marketing process has commenced

*Jurisdiction:*        

**bps:** shorthand for Basis Points and generally pronounced “bips”

*Jurisdiction:*         

**Branch:** a place of business where a foreign company or corporation regularly conducts its business directly (rather than, for example, through a locally established subsidiary company)

*Jurisdiction:*        

**Breakage Costs:** a prepayment penalty that has to be paid by the Borrower, if the Borrower wants to repay the loan prior to its maturity or before a fixed interest rate expires

*Jurisdiction:*      

**Break-Up Fee:** another name for Termination Fee

*Jurisdiction:*            

**Bribery Act:** the United Kingdom Bribery Act 2010 that sets out criminal law relating to bribery

*Jurisdiction:* 

**Bribery Ordinance:** the Prevention of Bribery Ordinance of Hong Kong that sets out criminal law relating to bribery

*Jurisdiction:* 

**Bridge:** shorthand for a Bridge Loan

*Jurisdiction:*            

**Bridge Facility:** another name for a Bridge Loan

*Jurisdiction:*            

**Bridge Facility Term Sheet:** an annex to a Commitment Letter that contains a summary of the terms of a Bridge Loan. In a Committed Financing, each series of Notes contemplated to be part of the permanent financing structure is backed up by a Bridge Loan, so in instances with more than one series of Notes (for instance, senior and senior subordinated), there will be multiple Bridge Loans. These multiple Bridge Loans may be described in one or multiple Term Sheets.

*Jurisdiction:*            

**Bridge Financing:** see Bridge Loan

*Jurisdiction:*            

**Bridge Loan:** short-term loans that typically (although not always) are intended to be replaced by other, more permanent, funding. The purpose of a Bridge Loan is to provide a Bidder with Committed Financing in

the context of an Acquisition Agreement that is intended or required to be Fully Financed at the time it is signed, as would be the case if the long-term funding plan for the Acquisition included Notes or Bonds, which would not be issued prior to consummation of the Acquisition. The name "Bridge" comes from its purpose of bridging the timing gap in the acquisition financing plan. Traditionally, Bridge Loans are used by PE Sponsors in Auction situations, but corporate Buyers also sometimes use Bridge Loans to finance Acquisitions. In the Commitment Papers context, Bridge Loans are sometimes referred to as the Bridge Facility. See also Bridge Financing.

*Jurisdiction:*            

**Bring Down:** shorthand for a document that deals with an interval of time, most often between signing an agreement and Closing of the applicable transaction. In many cases, the Bring Down will reaffirm a state of facts, the accuracy of a Representation, the performance of a Covenant or the like. Bring Downs can also be sought from third parties, such as a Bring Down Certificate of Good Standing.

*Jurisdiction:*            

**Bring Down Letter:** a letter in which the writer or a party of an agreement confirms formally, that the content of documents or information disclosed, e.g., a stock exchange Prospectus or a Due Diligence report, is still correct from an objective point of view and not deceptive

*Jurisdiction:*          

**Broadridge:** the leading US provider of distribution services of Proxy Materials to Beneficial Owners, the largest tabulator of voting instructions by Beneficial Owners to their custodians, and the largest tabulator of Proxies cast by custodians

*Jurisdiction:* 

**Bucket:** another name for a Basket

*Jurisdiction:*          

**Bull Market:** good times, until a Bear Market comes along

*Jurisdiction:*        

**Bullet Loan:** a loan that provides for payment of the entire principal at maturity (i.e., there is no Amortization prior to maturity)

*Jurisdiction:*           

**Bullet Maturity:** see Bullet Payment

*Jurisdiction:*            

**Bullet Payment:** when the entire principal of a Bond or Term Loan is due and payable on the maturity date (i.e., there is no Amortization prior to maturity). See also Bullet Maturity.

*Jurisdiction:*            

**Bump:** raising the price, or improving other terms, of an Acquisition Proposal

*Jurisdiction:* 

**Burden Shift:** a litigating term meaning that a trial judge has made a finding which has the effect of moving the burden of proof from one party to another

*Jurisdiction:* 

**Business Combination:** a name for any type of transaction that results in the economic and legal Combination of businesses and assets of two or more entities, whether accomplished pursuant to operation of law (as in a Statutory Combination, Merger or Scheme), or by an Asset Acquisition or Acquisition of Securities of one entity of another

*Jurisdiction:* 

**Business Combination Statute:** another name for an Anti-Takeover Law

*Jurisdiction:* 

**Business Development:** see Corporate Development

*Jurisdiction:* 

**Business Judgment Rule:** the default standard of judicial review of Board decisions under Delaware and almost all other US state corporation laws and, as applicable, certain national corporate laws. In its typical formulation as a procedural rule, the Business Judgment Rule means that, in reviewing a plaintiff's claim that a Board of Directors breached its Fiduciary Duty to its shareholders, a court will presume that the Board acted in Good Faith, with due care and with loyalty to the company and its shareholders. The plaintiff ordinarily has the burden of proof of rebutting the presumptions inherent in the Business Judgment Rule. The related substantive formulation of the Business Judgment Rule is that a court will not second-guess a Board's judgment unless the actions of the Board lack any rational basis. Similar reasonableness tests apply in other jurisdictions outside the US.

*Jurisdiction:* 

**Business MAC:** shorthand for the Condition Precedent in a Commitment Letter, Acquisition Agreement or Credit Agreement to confirm there has been no Material Adverse Change in the operations, business, or prospects of the Borrower or the Target Company. Sometimes called a Company MAC, this should not be confused with a Market MAC, which deals with Material Adverse Changes in market conditions. See also Material Adverse Change and Target MAC.

*Jurisdiction:* 

**Business MAE:** Business Material Adverse Effect. See Business MAC.

*Jurisdiction:* 

**Business Plan:** a detailed description of the plans of an existing business and its expansion plans or a new business, with financial projections. Also used to refer to the annual Business Plan which is often required to be delivered to Lenders under Credit Agreements for Leveraged Buyouts (effectively an update of the Base Case Model)

*Jurisdiction:*          

**Business Trust:** a defined term under the Business Trusts Act (Cap. 31A) of Singapore

*Jurisdiction:* 

**Butterfly Merger:** another name for a Double Dummy Merger

*Jurisdiction:*  

**Buy and Build:** an investment made in a business with the intention of acquiring further “bolt-on” businesses in order to build the value of the original investment

*Jurisdiction:*      

**Buy-Back:** when former shareholders (usually founding shareholders) buy back the Equity Interests in a company held by a Private Equity Fund. See also Share Repurchase and Share Buyback.

*Jurisdiction:*        

**Buyer:** another name for an Acquirer, Bidder or Purchaser

*Jurisdiction:*            

**Buyer's Market:** a market situation in which more potential Target Companies are for sale than potential Buyers exist. This situation leads to buying conditions more favorable for the Buyer.

*Jurisdiction:*         

**Buy-In Management Buyout:** an Acquisition of a company where Management of a company invests its own funds alongside a Private Equity Sponsor or other Investor in exchange for equity in the Surviving Entity of the transaction. See also BIMBO, Management Buyout and Going Private transaction.

*Jurisdiction:*        

**Buy-Out:** an Acquisition of a controlling interest in a company, generally by a Financial Buyer

*Jurisdiction:*         

**Buy-Side:** the side of the Buyer in the context of an Acquisition of a company or the Purchaser of Securities in capital market transactions

*Jurisdiction:*         

**Bylaws:** together with the Charter, Bylaws usually make up the Constituent Documents of a corporation in many jurisdictions

1. (US) under the enabling policy of US state corporation laws, a company's Bylaws may contain any number of permissive provisions dealing with the election and functioning of the Board of Directors, the content and conduct of Shareholders' Meetings, the titles and job descriptions of senior executive officers, Indemnification of officers and directors, and other matters affecting the governance of the company. Unlike Articles of Incorporation, under most US state corporation statutes, directors and shareholders have co-extensive rights to adopt, amend, and rescind Bylaws without the approval of the other constituency. Accordingly, Bylaws are customarily viewed as being a more flexible tool for allocation of governance roles and responsibilities than Articles of Incorporation which require the concurrence of both the Board and shareholders for adoption, amendment or rescission.
2. (UK) called Articles of Association, they set out the constitutional rules by which the company is governed. This document must be registered at Companies House. Model articles are provided in UK Companies Act, although companies can adopt their own "Articles," subject to relevant UK Companies Act provisions.
3. (DEU) called Articles of Association, they set out the regulations by which the company is governed
4. (ESP) rules governing the internal Management of an entity or organization which, in the case of business corporations, are drawn up at the time of incorporation
5. (FRA) the Constituent Documents of a corporation which contain a number of provisions dealing with the election and functioning of the corporation, the content and conduct of Shareholders' Meetings, and description of the purpose of the corporation, of its Share Capital, of its location etc. The Bylaws of a French company may not be amended or rescinded without the prior approval of its shareholders.
6. (HKG) called Articles of Association, they set out the constitutional rules by which the company is governed. This document must be registered with the Hong Kong Companies Registry. Model articles are provided in the Hong Kong Companies Ordinance, although companies can adopt their own form, subject to relevant Companies Ordinance provisions.
7. (ITA) called statuto, are, in its initial form, attached to the Charter
8. (RUS) do not constitute Constituent Documents of a company and may not contradict the Charter or impose limitations which are not permitted to be envisaged in them; Bylaws regulate internal corporate matters, such as treatment of confidential information, powers and appointment of bodies.
9. (SAU) bylaws set out certain regulations by which a joint stock company is governed, together with the Commercial Registration Certificate and Articles of Association
10. (SGP) called Articles of Association, they set out the regulations by which the company is governed

*Jurisdiction:*          

**C Corporation:** refers to the default tax treatment of a corporation as an entity separate from its owner and taxed on its own income. Such entities include those organized as a federal or state law corporation, an association, or other business entity that is taxable as a corporation under the US Internal Revenue Code, but does not include any entity that has elected S Corporation status. Foreign “corporations” and limited liability companies are generally treated as C Corporations for US tax purposes, though some may elect to be treated as Partnerships or disregarded entities.

*Jurisdiction:* 

**C in C:** acronym for Change in Control

*Jurisdiction:*         

**C of C:** acronym for Change of Control

*Jurisdiction:*         

**C Reorg:** a stock-for-assets Acquisition treated as a Tax-Free Reorg under Section 368(a)(1)(C) of the US Internal Revenue Code. A C Reorg involves a corporation (or its 80 percent Parent) acquiring Substantially All of the Target corporation’s assets, in exchange for the acquiring or Parent corporation’s voting Stock and no, or a limited amount of, taxable consideration (referred to as Boot).

*Jurisdiction:* 

**Cabinet (UAE):** Federal Council of Ministers of the United Arab Emirates

*Jurisdiction:* 

**CAC 40:** index of the 40 most significant values among the 100 highest market caps listed on NYSE Euronext in Paris. CAC 40 is one of the main national indices of the pan-European stock exchange group Euronext.

*Jurisdiction:* 

**CAGR:** acronym for compound annual growth rate; often a measure used in the Business Plan

*Jurisdiction:*    

**Calcs:** shorthand for various calculations that are required on an M&A deal

*Jurisdiction:*    

**Call:** shorthand for Call Option

*Jurisdiction:*         

**Call Option:** one party’s contractual right, but not obligation, to call for the delivery of particular asset (*i.e.*, Shares) at a particular future point in time or within a particular time period at a Strike Price. Call Options often have an expiration period and are often used in public M&A as a tool to acquire an initial interest in the underlying Shares.

*Jurisdiction:*         

**Cancellation Scheme:** a Scheme of Arrangement used to effect a P2P public Takeover by cancelling all existing Shares upon payment of consideration to the Target Company shareholders and the issuance of new Shares to the Bidco

*Jurisdiction:*  

**Cap:** often used as a shorthand for a dollar limitation in financial definitions, Covenants, Negative Covenants, Representations and Warranties and Indemnification provisions (e.g. “a cap on the amount of Indemnifiable Damages”). Cap is also used as shorthand for a limit on the amount of cash or Stock consideration offered in an Acquisition where the consideration is a mixture of cash and Stock.

*Jurisdiction:*            

**Capex:** shorthand for Capital Expenditures

*Jurisdiction:*          

**Capital Call:** a demand by a Private Equity Fund from Investors for payment of all or a portion of unfunded capital commitments. Capital Calls are generally made at the time of the financing of an Acquisition, or to cover other costs. Capital Calls are usually made by issuance of a Draw-Down Notice.

*Jurisdiction:*         

**Capital Duty:** a tax charged in certain jurisdictions upon the issue of Share Capital or other Securities. See also Franchise Tax and Stamp Duty

*Jurisdiction:*    

**Capital Expenditures:** expenditures by a party for investments in fixed assets. Such expenditures are capitalized to the Balance Sheet of the party under applicable accounting rules and then amortized as an Income Statement expense over a period of more than one year, rather than being immediately expensed to the Income Statement in full in the current period. A Capital Expenditure is distinguished from a current expense because the asset has a long-term impact that will benefit the business in future years as well as the current year. In the context of business valuations the Free Cash Flow, which is material to the Enterprise Value, is determined by subtracting the Capital Expenditures from the cash flow.

*Jurisdiction:*          

**Capital Gains Tax:** a tax on the profit which is applied in various jurisdictions on a realized asset (i.e., Shares). See also acronym CGT. Transaction structures are often considered in the context of CGT liability.

1. (HKG) usage of the term generally refers to the same concept but Hong Kong itself does not levy Capital Gains Tax

*Jurisdiction:*       

**Capital Markets:** a broad term that refers to the market for raising money through Securities offerings

*Jurisdiction:*         

**Capital Stock:** a generic name for Stock of any Class or series of a corporation

*Jurisdiction:*      

**Capital Structure:** a term referring to the overall structure of a company's outstanding debt and equity. A company's Capital Structure is generally divided into several distinct constituencies, such as senior debt, subordinated debt and equity (common or preferred). Note the structure may look very different pre- and post- Acquisition in a Leveraged Buyout.

*Jurisdiction:*        

**Capped:** when used in the context of either a Cash Election or Stock Election transaction, Capped means that one or both forms of consideration are limited in amount. The fact that one or both forms of consideration are Capped requires that the Acquisition Agreement deal with allocation of consideration if the Capped form of consideration election is Oversubscribed. The two most common allocation structures are to allocate an Oversubscribed type of consideration on either a pro rata or a per capita basis. See Per Capita Acceptance and Pro Rata Acceptance.

*Jurisdiction:*        

**Carrez Amendement:** French tax rule enacted in 2012 and named after the parliament member who proposed it. The *Carrez Amendement* limits the deductibility of interest a French company incurs to acquire Shares when the company does not in fact make the decisions pertaining to such Shares. This provision was discussed frequently in French LBOs in 2012.

*Jurisdiction:* 

**Carried Interest:** a name for the fee structure Private Equity Sponsors commonly use as compensation for managing Private Equity Funds, including the Acquisition, and for managing and disposing of Portfolio Companies. The fee structure (which is not unique to Private Equity Funds) consists of the payment to the PE Sponsor of a specified amount of money (usually a percentage) of proceeds which Private Equity Funds realize on their investments. If properly structured under current tax laws (including US tax laws), Carried Interest will have the same tax attributes in the hands of the PE Sponsor as in hands of other participants in the Private Equity Funds. Since the paradigm for Private Equity Funds is to realize capital gain, not ordinary income, most Carried Interest will also be taxable to the PE Sponsor as capital gain not ordinary income. If, as is almost always the case, the PE Sponsor is an LP or an LLC, the capital gain treatment will flow through to its Partners or Members.

*Jurisdiction:*           

## **Carry:** shorthand for a Carried Interest

*Jurisdiction:*           

**Carry-Over Basis:** refers to a transferee's basis in property, to the extent the basis is determined by reference to the transferor's adjusted basis in the property

*Jurisdiction:*     

**Carve-Out Provision:** a provision that creates an exception to a more general provision. For example, an act of war may be carved-out of events that constitute a Material Adverse Change.

*Jurisdiction:*           

**Carve-Out Transaction:** generally refers to an Acquisition of a subsidiary, business unit or division from a larger enterprise with other operations

*Jurisdiction:*          

**Cash Box Placing:** a method of raising cash from a UK Listed Company's issue of equity Securities, structured through a Special Purpose Entity in order to avoid restrictions on issuing Shares on a non-preemptive basis

*Jurisdiction:* 

**Cash Confirmation:** a City Code requirement linked to the requirement for Certain Funds. The Cash Confirmation — which is usually given by the Offeror's Financial Advisor — is needed wherever cash forms part of the purchase price in a UK Public Company Takeover. A Cash Confirmation is a statement in the 2.7 Announcement and in the Offer Document that Bidco has the required cash to pay all accepting shareholders in full. The equivalent concept exists in the HK Takeovers Code. See also Certain Funds.

*Jurisdiction:*  

**Cash Election:** a Business Combination in which Target Company shareholders can elect to receive cash in lieu of the Bidder's Stock as consideration for their Equity Interest in the Target Company. Cash Election describes a methodology for delivering consideration to Target Company shareholders in a Business Combination, not the form of the applicable transaction and can be used in a Merger, a Stock Acquisition or an Asset Acquisition. Most commonly, a Cash Election is an alternative to giving each Target shareholder the same mix of Stock and cash consideration received by all other Target Company shareholders. A Cash Election is usually structured so that electing shareholders, and only electing shareholders, can receive all of their Merger Consideration in the form of cash (assuming, of course, that the Cash Election is not Oversubscribed). Reasons for structuring a transaction as a Cash Election include tax considerations for certain types of Target Company shareholders or a clear preference by some shareholders for cash and others for Bidder's Stock. Ordinarily, a transaction provides a Cash

Election when the predominant form of consideration is Stock, and Stock is the default form of consideration.

*Jurisdiction:*          

**Cash Equivalent:** highly-rated, short-term, liquid investments that are readily Convertible to cash and have short maturities. With regard to a Bond or loan, Cash Equivalents are treated the same as cash and allow the Issuer/Borrower to make unlimited investments in them.

*Jurisdiction:*          

**Cash Flow Statement:** a Financial Statement in which a company reports its incoming and outgoing cash flows during a specified time period (typically monthly, quarterly or annually)

*Jurisdiction:*          

**Cash Free/Debt Free:** describes a concept to determine the purchase price for a Target Company on the assumption that the Target Company has neither cash nor indebtedness at the time of Closing. In order to achieve this result, the parties agree to reduce the Enterprise Value by the company's financial debt and increase the Enterprise Value by the amount of the company's cash.

*Jurisdiction:*         

**Cash Management:** summary of the liquid funds held by various subsidiaries at a group's Parent company or held by a specific operating company in a Liquidity pool

*Jurisdiction:*         

**Cash Merger:** a Merger where the Merger Consideration consists solely of cash

*Jurisdiction:*       

**Cash Pooling:** synonym for Cash Management

*Jurisdiction:*         

**Catalist:** refers to the SGX Catalist Listing. A company seeking a listing on Catalist must meet certain admission requirements, including sponsorship, Offer Document, Working Capital and shareholding spread.

*Jurisdiction:* 

**CBs:** shorthand for Convertible Bonds

*Jurisdiction:*      

**CCASS:** acronym for the Central Clearing and Settlement System in Hong Kong

*Jurisdiction:* 

**CCL:** see Commercial Companies Law of Qatar

*Jurisdiction:* 

**CCS:** acronym for Competition Commission of Singapore

*Jurisdiction:* 

**Cede & Co.:** Cede & Co. is the Owner of Record for Shares held by DTC

*Jurisdiction:* 

**Central Clearing And Settlement System:** the system in Hong Kong operated by Hong Kong Securities Clearing Company Limited (a wholly-owned subsidiary of HKEx) to provide Securities clearing and settlement services in relation to trades executed on the Hong Kong Stock Exchange. This electronic system also provides related services to system participants. Often abbreviated as CCASS.

*Jurisdiction:* 

**Central Depository (Pte) Limited (CDP):** Singapore organization analogous to the US Depository Trust Company, providing centralized Administration, clearing and settlement services. See Depository.

*Jurisdiction:* 

**Centre of Main Interests:** the test used to determine in which country a company is able to file Insolvency proceedings that will be organized as "main proceedings" under the EU Insolvency Regulation. Known colloquially as COMI. See also COMI Shift.

*Jurisdiction:*     

**CEO:** shorthand for "chief executive officer," the CEO is the highest ranking executive officer of a company, in charge of managing a company's day-to-day affairs

*Jurisdiction:*          

**Certain Funds:** generally, a bank's affirmation to provide for a certain amount of time the loans agreed on under the Facilities agreement. The Takeover Panel and a number of comparable European regulators in Public Company Takeovers also require Certain Funds. In order for the Cash Confirmation to be issued (or equivalent step taken in jurisdictions other than the UK), the Financing Commitments for a Going Private transaction need to be almost completely condition free (so the Bidder can be "certain" that it will have the funds when it needs them). Although the Certain Funds requirement only applies as a matter of regulation to Acquisitions of European Public Companies, Buyers of Private Companies may also seek from their Lenders Certain Funds commitments to provide the required financing, in particular in LBO transactions. Such Buyers argue Certain Funds gives them a competitive advantage over other Bidders who do not have Certain Funds. See also Cash Confirmation, City Code and Blue Book.

*Jurisdiction:*         

### Certificate of Good Standing:

1. (US) a document issued by the Secretary of State (or comparable official) of the company's jurisdiction of incorporation certifying that the company is in good standing (*i.e.*, all fees, taxes and penalties owed to the regulator have been paid, annual reports have been filed, no articles of dissolution have been filed, etc.) as of the date of the certificate. Usually ordered in connection with a Closing.
2. (UK) a certificate that can be obtained from Companies House which, if a company is in "good standing," will state that the company has been in continuous, unbroken existence since its incorporation and no action is pending to strike the company off the register. The following details can also be requested and added to the certificate: (i) directors' names; (ii) secretaries' names; (iii) registered office; (iv) issues capital; (v) shareholders (names, shareholdings); (vi) company objects; and (vii) additional information such as dates of birth, nationality, etc.
3. (DEU) usually required if Common Law governed entities are involved in a deal
4. (FRA) the closest equivalent in France is a Certificate issued by the Registry of Commerce and Companies stating that the Company is not undergoing Bankruptcy proceedings
5. (HKG) the closest equivalent in Hong Kong is a Certificate of Continuing Registration from the Companies Registry which states that a Hong Kong incorporated company or non-Hong Kong company registered in Hong Kong under the Companies Ordinance, as the case may be, remains on the Register of Companies at the specified date, as well as the company's date of incorporation/registration.
6. (ITA) a certificate issued by the competent Company Register, attesting that a company is validly incorporated and existing (*i.e.*, not subject to Winding Up procedures and possible Bankruptcy procedures)
7. (RUS) the equivalent under Russian law would be an Excerpt from the Unified State Register of Legal Entities, which contains factual information about the company (such as number of registration, address, licenses held, and shareholders — in certain cases). The Excerpt does not contain compliance information or financials.
8. (SGP) a Certificate of Good Standing is issued by ACRA and certifies the existence of a company registered in Singapore. ACRA may also issue a Certificate of Compliance which certifies, among other things, that the company has: (i) promptly filed the requisite year's Annual Return and confirmed the accuracy of the information stated therein; (ii) no other year's Annual Return due or outstanding; and (iii) confirmed that it has tabled its statutory accounts for the relevant financial year at its annual general meeting for shareholders' approval and that the company's statutory accounts for that year have been filed on a timely basis.

Jurisdiction:        

### *Certificate of Incorporation:*

1. (US) specifically, the name for the Charter of a Delaware corporation
2. (UK) the document issued by Companies House in England and Wales (or the applicable companies' registrars in some other jurisdictions) on the registration and formation of a company as a separate legal entity
3. (DEU) specifically, refers to the deed of foundation of a Limited Liability Company (*Gesellschaft mit beschränkter Haftung*)
4. (FRA) the document issued by the Registry of Commerce and Companies called *extrait K-bis* under French law, certifying that the company is incorporated from a specified date and containing basic information relating to the company such as share capital, registered offices, the identity of legal representatives, corporate purpose, etc.
5. (HKG) the document issued by the Hong Kong Registrar of Companies certifying the incorporation of a company under the Companies Ordinance
6. (SGP) the document issued by the Registrar of Companies certifying that the company is incorporated from a specified date

*Jurisdiction:*        

*Certificate of Merger:* a document filed with and accepted by the applicable Secretary of State (or comparable official) evidencing a Merger of two or more entities into one entity

*Jurisdiction:* 

### *Certificate of Title:*

1. (UK) a written opinion of legal counsel stating that the title for the relevant real property is vested as stated in the chain of title. Where real property has a material value, Lenders may require these as a Condition Precedent. Not required in jurisdictions where title to real property is publicly registered and is therefore conclusively evidenced by an official excerpt from that register.
2. (HKG) a written confirmation from a Hong Kong law firm (usually the Issuer's Hong Kong counsel) as to good title to real properties in Hong Kong, including any significant issues of note
3. (SGP) a certificate issued by the land authority in Singapore in respect of title to real property

*Jurisdiction:*    

*Certificated:* where a certificate (as opposed to an electronic Depository and clearing system) represent a Share or other Security. Compare Uncertificated. See also American Depository Receipt and American Depository Shares.

*Jurisdiction:*      

*Cessation des Paiements:* in France a company is in a state of *Cessation des Paiements* when it is unable to pay its debts as they come due out of available company assets. The officers of a company that has not

petitioned for the opening of Conciliation Proceedings are required to petition for the opening of *Redressement Judiciaire* or *Liquidation Judiciaire* within 45 days of the company's *Cessation des Paiements*, failing which they may be personally exposed to civil liability.

*Jurisdiction:*  FRA

**CFC:** acronym for Controlled Foreign Corporation

*Jurisdiction:*  US  UK

**CFIUS:** acronym for the Committee on Foreign Investment in the United States (CFIUS). See also Foreign Investment Rules.

*Jurisdiction:*  US

**CFO:** shorthand for "chief financial officer," the CFO is the senior officer of a company primarily responsible for managing the company's financing and (usually) accounting activities

*Jurisdiction:*  US  UK  DEU  FRA  HKG  ITA  RUS  SGP  UAE

**CGT:** acronym for Capital Gains Tax

*Jurisdiction:*  US  UK  FRA  SGP

**Chain Principle:**

1. (UK) an obligation under the City Code (and under the applicable rules of other regulators of other European Public Companies) to launch an Offer for a subsidiary company in the event that a party makes an Offer for a significant majority shareholder/controllers company (which may or may not be subject to the City Code/other European regulators)
2. (FRA) an obligation to launch a Mandatory Offer under French law in the event of an Acquisition of a company which itself holds more than one third of the Share Capital or voting rights of a Listed Company
3. (HKG) under the HK Takeovers Code, in certain circumstances where an acquirer or acquiring group acquires control of a Target and thereby simultaneously acquires the control of a second Public Company in Hong Kong, the acquirer or acquiring group may be required to extend an offer to purchase the Shares of the second company
4. (ITA) called OPA "*indiretta*" or "*a cascata*," governed by Article 45 of Regulation no. 11971 of 1999
5. (SGP) the Singapore Takeover Code explains the "Chain Principle" as where a person or Group of persons Acting In Concert to acquire statutory control of a company (which need not be a company to which the Singapore Takeover Code applies) acquires or consolidates Effective Control (as defined in the Singapore Takeover Code) of a second company because the first company itself holds (either directly or indirectly through intermediate companies) a controlling interest in the second company, or holds voting rights which, when aggregated with those already held by the person or Group, secure or consolidate Effective Control of the second company

*Jurisdiction:*  UK  FRA  HKG  ITA  SGP

**Chain Principle Bid:** see Chain Principle

*Jurisdiction:*    

**Change in Board Recommendation:** one of a number of common terms used in Acquisition Agreements to describe a decision by the Board of Directors of the Target Company that would be inconsistent with its total support of the particular deal. The most common type of inconsistent action would be a withdrawal of the Board's recommendation to shareholders that they approve the particular deal. However, the term usually encompasses other actions by the Board of Directors, such as recommending in favor of another deal, refusing to reaffirm an earlier Board Recommendation or refusing to recommend against a Unilateral Tender Offer by a Competing Bidder.

*Jurisdiction:*          

**Change in Control:** see Change of Control

*Jurisdiction:*            

**Change of Control:** an event or series of events involving a change in ownership, Management or Board composition of a company. A Change of Control may Trigger provisions in various agreements or contracts intended to protect designated parties from changes in circumstances that could result from a Change of Control of a company. A 100 percent Acquisition transaction will constitute a Change of Control. However, the term is usually defined far more broadly, so that an Acquisition of 50 percent or somewhat less (e.g., 45 percent, 40 percent, or under French law in certain circumstances, 33 percent) of the beneficial ownership of a company's outstanding Capital Stock, a change in the senior executive line-up of the company and/or a defined change in the membership of the Board of Directors will also constitute a Change of Control. Parties typically protected by Change of Control Provisions include executive officers (e.g., through Parachute Payments), employees more generally (e.g., through automatic Stock Option Acceleration provisions in Stock Option and other Stock based incentive compensation plans), and debt holders (through Acceleration provisions in the debt agreement) that in each case are triggered by a Change of Control of the company. Also called a CIC, COC or Change in Control.

*Jurisdiction:*            

**Chapter 11:** part of the US Bankruptcy Code and the part most often discussed — as it governs Reorganizations of bankrupt companies in an attempt to turn them around and ensure their survival. Chapter 11 has been used by certain European groups as a Restructuring tool.

*Jurisdiction:*   

**Charasse Amendement:** French tax rule named after a former French minister of budget which limits the deductibility of interest on debts incurred to finance Acquisitions from related parties if the Target enters the same tax consolidated group as the Acquirer. Non-tax lawyers

are very much afraid of it although it sometimes does not Trigger any effective tax leakage.

Jurisdiction:  FRA

**Charter:** a name for the fundamental document prescribed under state or national corporate laws, as applicable, to create a valid corporation that qualifies for limited liability and all other state or national conferred aspects of incorporation

1. (US) generally called the Articles of Incorporation (California and other states) or the Certificate of Incorporation (Delaware), under the enabling policy of US state corporate statutes, which must contain a few essential provisions (e.g., name of entity, names of incorporators, authorized Classes of Stock, number of authorized Shares of each Class, and may contain any number of other permissive provisions dealing with the rights and powers of the corporation and the governance provisions of the corporation). The Charter can be adopted, amended, or rescinded only by action of the Board of Directors followed by an approving shareholder vote (ranging from a majority of votes held by all outstanding voting Securities to a Supermajority of such votes, such as 66 2/3 percent, 75 percent or 80 percent) specified in the state corporation statute or in the Articles of Incorporation itself. Because of the need for both Board and shareholder approval, Articles of Incorporation are usually thought of as being less flexible and more permanent than Bylaws which can typically be amended by either directors or shareholders acting unilaterally.
2. (UK) analogous to the concept of a company's "Constitution" or the Constitutional Documents, which in the UK are not explicitly defined but are generally deemed to comprise the company's Articles of Association (see also Bylaws), its Memorandum of Association (no longer required for UK companies), and any resolutions or agreements with shareholders to which Part 3, Chapter 3 of the UK Companies Act applies
3. (DEU) called Articles of Incorporation
4. (FRA) see Bylaws
5. (HKG) in Hong Kong this refers to the company's Memorandum of Association and Articles of Association. The new Companies Ordinance (which is due to come into force in 2014) will abolish the Memorandum of Association, leaving the Articles of Association as the sole constitutional document of a company.
6. (ITA) called *atto costitutivo*, containing the Bylaws as an attachment
7. (QAT, SAU, UAE) called a Commercial Registration, Industrial License or Trade License, this is the constituent document issued by the relevant authority (e.g., the Dubai Economic Department or the Saudi Ministry of Commerce and Industry) on incorporation. The certificates are simple and state the name of the company, its activities, its shareholders and often the general manager.
8. (RUS) the constituent document of a company, regulating certain fundamental issues

9. (SGP) a Singapore company's Constitutional Documents consist of three distinct documents: a Certificate of Incorporation, Memorandum of Association and Articles of Association. The Certificate of Incorporation (issued by the Registrar of Companies) certifies that the company is incorporated from a specified date. The Memorandum of Association is the company's constitution, and sets out the company's structure and aims. The Articles of Association sets out the internal regulations by which the company is governed (analogous to Bylaws).

*Jurisdiction:* 

**Chilling a Sale:** a term describing actions by a third party that would deter or preclude a sale of a company. Examples include a statement by a large, minority shareholder opposing a sale, a statement by a CEO or senior Management of unwillingness to work for a particular Bidder or for a specified type of Bidder, or adoption of Takeover Defenses that would effectively deter or preclude an Unsolicited Bid.

*Jurisdiction:* 

**CIC:** acronym for Change in Control

*Jurisdiction:* 

**CIM:** acronym for Confidential Information Memorandum

*Jurisdiction:* 

**Circular:** see Shareholders' Circular

*Jurisdiction:* 

**City:** in some contexts, shorthand for the City of London financial district

*Jurisdiction:* 

**City Code:** short for the City Code on Takeovers and Mergers. See Blue Book and the UK Takeover Code.

*Jurisdiction:* 

**Civil Code (UAE):** UAE Federal Law No.5 of 1985 regarding Civil Transactions (as amended)

*Jurisdiction:* 

**Class:** a term used to describe different types of a company's Capital Stock, so that Common Stock and Preferred Stock would be different Classes of the company's Capital Stock. Also, a generic name for Securities, which differ in terms of rights and privileges from similar Securities of the same rank in terms of a company's Capital Structure. For instance, a company may have two or more Classes of Common Stock, and/or two or more Classes of Preferred Stock.

1. (FRA) as a general principle, French law does not allow the issuance of different Classes of Common Stock (*action ordinaire*), except to some extent for the SAS type of French corporation. Preferred Stock is usually used for Shares of different Classes (*actions de préférence*).

*Jurisdiction:* 

**Class of Shares:** see Class

*Jurisdiction:*         

**Class Voting:** a type of voting for holders of different Classes of a company's Capital Stock, under which each specified Class must approve the action in question by a majority or higher vote specified in the Charter.

*Jurisdiction:*       

**Classified Board:** a Board composed of two or more classes of directors, with each class elected in a different year. The almost universal pattern is three classes of directors, with each class serving a three-year term, resulting in an election for one third of the directors each year. Also referred to as a Staggered Board.

1. (FRA) There is no such obligation for a Classified Board under French law. However, the AMF and the corporate governance codes recommend that the directors be elected by tier each year.

*Jurisdiction:*    

**Clawback:** a Buyer's right to the return of previously paid Merger Consideration if certain conditions are met. Compare Earn-Out.

*Jurisdiction:* 

**Clean Room:** the name often given to a Due Diligence mechanism by which a third party expert (or Clean Team) examines sensitive information on a Target Company's business (often in a physically separate space). The expert analysis is more often done by appropriate third party professional firms, not company employees, so the parties can continue to act as competitors as required by various antitrust regulators.

1. (DEU) often called a "Red Data Room"

*Jurisdiction:*      

**Clean Team:** see Clean Room. The same expert team often prepares a Synergies or Merger Benefits analysis for various different Bidders using a Bidder's input data.

*Jurisdiction:*      

**Clearstream:** Clearstream Banking S.A. acts mainly as International Central Securities Depository (ICSD). Clearstream also acts as the Central Securities Depository (CSD) for Germany and Clearing House for a number of Securities. See Depository.

*Jurisdiction:*  

**Close:** shorthand for Closing

*Jurisdiction:*         

**Closing:** the consummation of the transaction when all remaining documents are executed and the money changes hands

*Jurisdiction:*            

**Closing Accounts:** the reference accounts used by the transaction, against which any post-Closing adjustments are applied to determine the final purchase price. Contrast with Locked Box.

1. (UK and HKG) generally referred to as Completion Accounts

*Jurisdiction:* 

**Closing Actions:** measures and actions to be taken at Closing

*Jurisdiction:* 

**Closing Condition:** another name for a Condition Precedent

*Jurisdiction:* 

**Closing Confirmation:** declaration by the parties of an Acquisition Agreement after Closing according to which the parties confirm all Closing Conditions are fulfilled and that all Closing Actions have been completed

*Jurisdiction:* 

**Closing Date:** the date on which the Closing occurs

*Jurisdiction:* 

**Closing Dinner:** your reward. A dinner usually organized by the bankers to celebrate the Closing of the transaction. The better the deal, the better the wine.

*Jurisdiction:* 

**Closing Memorandum:** a formal, detailed memorandum used in Acquisitions and LBOs to set forth actions taken prior to and at Closing

*Jurisdiction:* 

**Closing Set:** another name for a Bible

*Jurisdiction:* 

**Club Deal:** refers to an LBO transaction where multiple Sponsors join together in order to buy a target

*Jurisdiction:* 

**CMA:**

1. (UK) shorthand for the UK's Competition and Markets Authority
2. (SAU) the Capital Market Authority of the Kingdom of Saudi Arabia, including where applicable any committee, sub-committee, employee or agent to which any function of the Capital Market Authority may be delegated

*Jurisdiction:* 

**CML:** Capital Market Law in the Kingdom of Saudi Arabia issued by Royal Decree No. M/30 dated 2/6/1424H

*Jurisdiction:* 

**CMPO:** a confidentially marketed public offering

Jurisdiction: 

**COC:** acronym for Change of Control

Jurisdiction:           

**Coercive:** when used in the context of the Unocal/Unitrin Doctrine, Coercive means a Takeover Defense in a US Public Company M&A, which by its structure forces or tends to force stockholders to forego the choice of accepting or voting for a Takeover Bid. The term is also used in the context of describing Takeover Bids which are structured so as to dissuade stockholders from rejecting a Takeover Bid, even if they perceive it as unfavorable (*i.e.*, a Bid whose terms would economically damage any stockholders who do not accept). At its root, the judicial concept of Coercive in the context of M&A situations refers to structural or substantive provisions that threaten stockholders' ability to choose whether or not to accept a Takeover Bid.

Jurisdiction: 

**Coffin:** a term for death benefits, typically used in combination with the words Golden or Silver (as in Golden Coffin benefits or Silver Coffin benefits)

Jurisdiction:   

**Co-Invest:** describes two or more Investors who join together in an investment on substantially identical terms

Jurisdiction:           

**Cold Comfort Letter:** see Comfort Letter

Jurisdiction:           

**Cold Shoulder:** the most severe of sanctions available to the UK Takeover Panel. Used to freeze individuals — involved in the most serious breaches of City Code from doing Takeover related business in the City. The equivalent concept exists in Hong Kong under the HK Takeovers Code, and the order imposed denies the persons access to the securities markets in Hong Kong.

Jurisdiction:  

**Co-Lead Manager:** a Lender bank which is next to a leading consortium bank at the top of a lending syndicate

Jurisdiction:         

**Collar:** see Exchange Ratio Collar

Jurisdiction:        

**Combination:** another name for a Business Combination or for a Statutory Combination. See also Amalgamation.

Jurisdiction:           

**Combination Agreement:** sometimes used to refer to an agreement providing for the Statutory Combination of one of the parties with one or more of the other parties. More generically, another name for an Acquisition Agreement.

*Jurisdiction:* 

**Comfort Letter:** a letter from a company's auditors addressed to the counterparty in an Acquisition transaction that provides "comfort" that the numbers included in a particular Financial Statement (usually included in a disclosure document) are accurate. In the US, the Statement on Auditing Standards number 72 (SAS 72) spells out the prescribed form a Comfort Letter should take. The party receiving the Comfort Letter usually wants the Comfort Letter to establish that the party's Board exercised appropriate due care and/or to establish a Due Diligence defense. The Comfort Letter allows the recipient to demonstrate reliance on experts for the audited financials and an element of a "reasonable investigation" for the unaudited financials and other unaudited financial information. Comfort Letters are uncommon in M&A transactions. The timing of a Comfort Letter's delivery will be specified in the Acquisition Agreement, as well as whether a Bring Down Comfort Letter will also be required and, if so, when.

*Jurisdiction:* 

**COMI:** acronym for Centre of Main Interests

*Jurisdiction:* 

**COMI Shift:** the process used by Restructuring professionals of migrating or moving a company's COMI from a jurisdiction with less favorable Insolvency laws and formal processes to a jurisdiction with more favorable conditions for Restructuring or (sometimes, if acting for a Sponsor or Borrower) vice versa. COMI Shifting to the UK has been common, in particular to implement Schemes of Arrangement.

*Jurisdiction:* 

**Comisión Nacional de la Competencia (CNC):** a Spanish public agency (independent of the Spanish Government) charged with preserving, guaranteeing and promoting effective competition in Spanish markets. CNC also ensures the Spanish Competition Act (*Ley de Defensa de la Competencia*) is consistently applied by: exercising the functions conferred by the Act; coordinating the activities of industry regulators and the competent offices of the autonomous regions, as well as cooperating with the competent courts. CNC, together with the European Commission, also directly enforces EU competition rules. See European Commission.

*Jurisdiction:* 

**Commencement Date:** most commonly used to identify the date a defined period begins, such as a Tender Offer Period or a Marketing Period for the sale or placement of Securities. Knowing precisely how to determine

a Commencement Date is critical in determining when the measured period ends. For example, in the US “Commencement Date” is a defined term under the SEC Tender Offer Rules under the 1934 Act because many of the SEC Tender Offer Rules are based on time periods that begin on the Commencement Date. Commencement Date in other contexts is a contractual term, so ensure the contract clearly defines the date.

*Jurisdiction:*            

**Commercial Code (UAE):** UAE Federal Law No.18 of 1993 regarding Commercial Procedures (as amended)

*Jurisdiction:* 

**Commercial Companies Law of Qatar:** refers to Law No. (5) of 2002 (as amended)

*Jurisdiction:* 

**Commercial Registration:** see Charter

*Jurisdiction:*   

**Commitment Fee:** a fee paid to the arranger of a Bridge Facility and/or senior secured Credit Facility for the commitment provided in the Commitment Letter. Note that the fee for a Bridge Facility is generally payable when the overall deal closes, whether or not the Bridge Loan is funded. The term also refers to a fee paid on the undrawn portion of a committed Revolver as compensation to the Revolver Lenders for keeping money available for borrowing. See Equity Commitment.

*Jurisdiction:*            

**Commitment Letter:** the letter by which financial institutions commit to provide loans. In the acquisition finance context, these loans generally consist of a Senior Secured Term Loan Facility and one or more Bridge Loan Facilities to “Bridge” any Notes offering expected as part of the permanent financing — meaning that the Bridge Loans are Committed Financing that will be available if the company is unable to issue the Notes successfully in time to fund the Acquisition Closing. The Commitment Letter consists of the actual text of the letter, along with annexes and exhibits that lay out the terms of the Facilities and the Conditions Precedent to funding.

*Jurisdiction:*            

**Commitment Papers:** a catch-all term referring to documents that together create Committed Financing, typically consisting of the Commitment Letter, Fee Letter and Engagement Letter (and the related annexes and exhibits)

*Jurisdiction:*           

**Committed Financing:** means that the providers of the financing and the recipient of the financing have signed Commitment Papers setting forth detailed terms for the provision of the financing. Committed Financing

should not be confused with Funds Certain Financing or similar terms used in European M&A. Because the Commitment Papers establishing a Committed Financing are not the definitive loan documentation, but more in the nature of extensive Term Sheets, enforceability of Committed Financing is not as certain as enforceability of definitive documentation.

*Jurisdiction:* 

**Committee on Foreign Investment in the United States (CFIUS):** an inter-departmental committee of the US executive branch charged with reviewing the national security implications of foreign investments in US companies. CFIUS is chaired by the Secretary of the Treasury and includes representatives of 16 US Departments and Agencies, including Defense, State, Homeland Security and the Director of National Security. See also Foreign Investment Rules.

*Jurisdiction:* 

**Common Stock:** the equity slice of the capitalization that sits at the bottom of the Capital Structure. Holders of Common Stock receive no interest payments, no principal payments and no Covenants. In most jurisdictions, the only protections for Common Stock holders are the Fiduciary Duties owed to them by the Board of Directors. By contrast, no Fiduciary Duty is owed to the creditors of a solvent company. The creditors' rights are contractual. Whether holders of Preferred Stock are owed a Fiduciary Duty is more complicated because of the nature of Preferred Stock, which often has attributes of Common Stock (particularly the right to vote and subordination to creditors) but also the attributes of debt (such as a preferred right to dividends, which are often fixed in amount, and extensive contract-like provisions regarding the Preferred Stock's rights vis-à-vis the Common Stock). To be safe, you should assume that a company's Board of Directors does not owe its preferred stockholders Fiduciary Duties. Also called Ordinary Shares in many jurisdictions.

*Jurisdiction:* 

**CompAcq:** see Comparable Acquisition Analysis

*Jurisdiction:* 

**Companies Act:**

1. (UK) the UK Companies Act 2006, the principal piece of legislation governing UK Public Companies and Private Companies
2. (SGP) the Companies Act (Cap. 50) of Singapore, the principal piece of legislation governing Singapore companies
3. (UAE) UAE Federal Law No.8 of 1984 concerning commercial companies (as amended)

*Jurisdiction:* 

**Companies House:** the registry for companies incorporated in England and Wales. Its register includes the incorporation, re-registration and striking-off of companies, the registration of documents that must be filed

under company, Insolvency and related legislation, and the provision of company information to the public.

*Jurisdiction:* 

**Companies Ordinance:** Companies Ordinance of Hong Kong, the principal piece of legislation governing Hong Kong companies. A new Companies Ordinance is expected to come into effect from 2014.

*Jurisdiction:* 

**Companies Registry:** the registry in Hong Kong responsible for administering the incorporation of Hong Kong companies and the registration of non-Hong Kong companies. The Companies Registry also administers the provisions of various company and Insolvency-related ordinances — including the Companies Ordinance — and provides public search facilities for company data and certain statutory registers.

*Jurisdiction:* 

**Company Secretary:** is the individual or entity responsible for a company's compliance with statutory and regulatory requirements

*Jurisdiction:*   

**Company Voluntary Arrangement:** an Insolvency procedure under English Insolvency legislation. Company Voluntary Arrangement involves a Restructuring proposal that must be approved by more than 75 percent by value of the company's unsecured creditors present and voting. Its use is limited as it cannot bind secured parties without their consent.

*Jurisdiction:* 

**Comparable Acquisition Analysis:** a financial and statistical analysis of measures of an actual or hypothetical purchase price for a company (such as relationship of the price to revenues, operating profits, EBIT, EBITDA and/or earnings, usually expressed in terms of percentages or Multiples) in comparison to the same measures for companies that have been sold and are identified as being comparable in certain ways. Sometimes referred to as CompAcq.

*Jurisdiction:*           

**Comparable Company Analysis:** a financial and statistical analysis of a specified company's operating statistics (such as revenue, operating margin, EBIT, EBITDA and/or earnings, usually expressed in terms of Multiples) in comparison to the same statistics for other companies that are identified as comparable in certain ways. Sometimes referred to as CompCo.

*Jurisdiction:*           

**CompCo:** see Comparable Company Analysis

*Jurisdiction:*           

**Competing Bid:** an Acquisition Proposal made by a Competing Bidder

*Jurisdiction:*           

**Competing Bidder:** has several related usages. Competing Bidder is sometimes used to describe all participants in a formal or informal Auction intended to identify a Bidder that will be chosen by a Target Company to acquire the Target through an Acquisition Agreement. Competing Bidder is also used to describe any Bidder making an Unsolicited Bid following the execution of an Acquisition Agreement, otherwise known as an Interloper.

*Jurisdiction:*           

**Competition and Markets Authority:** in 2014 the activities and powers of the UK's OFT and UK Competition Commission are due to be combined under the Competition and Markets Authority (CMA). The CMA will take control of all competition and antitrust matters, including cartel enforcement, Merger analysis and market studies which the OFT and UK Competition Commission currently control. See also Competition Commission.

*Jurisdiction:* 

**Competition Commission:**

1. (US) see Federal Trade Commission and see also Hart-Scott-Rodino Act
2. (UK) see Competition and Markets Authority and UK Competition Commission
3. (ESP) see *Comisión Nacional de la Competencia (CNC)* and European Commission
4. (FRA) see *Autorité de la Concurrence* and European Commission
5. (HKG) see Competition Commission of Hong Kong
6. (ITA) see *Autorità Garante della Concorrenza e del Mercato*
7. (RUS) see Federal Antimonopoly Service (FAS)
8. (SAU) see Council of Competition Protection
9. (SGP) see Competition Commission of Singapore

*Jurisdiction:*       

**Competition Commission of Hong Kong:** the Competition Commission to be established under the Competition Ordinance of Hong Kong. The Competition Ordinance will introduce a cross-section competition law regime in Hong Kong and is scheduled to be implemented in phases, with the substantive provisions not expected to be in force before 2014.

*Jurisdiction:* 

**Competition Commission of Singapore:** Singapore's competition authority, which administers and enforces the competition laws in Singapore. Often referred to as CCS. See Competition Commission.

*Jurisdiction:* 

**Completion:** see Closing

*Jurisdiction:*           

**Completion Accounts:** see Closing Accounts

*Jurisdiction:*           

**Completion Date:** see Closing Date

*Jurisdiction:*           

**Composite Document:** the one document that comprises the Offer Document and the Offeree Board Circular

*Jurisdiction:* 

**Compulsory Liquidation:** see Compulsory Winding Up

*Jurisdiction:* 

**Compulsory Winding Up:** the Winding Up of a company in Hong Kong following an order made by the Hong Kong courts based on the grounds set out in the Companies Ordinance. Although Compulsory Winding Up is not restricted to situations where a company is insolvent, in practice the majority of Compulsory Winding Up petitions are filed by creditors on the grounds that the company is unable to pay its debts. Also known as Compulsory Liquidation.

*Jurisdiction:* 

**Con Edison Provisions:** a provision in an Acquisition Agreement specifying that, in the event a Buyer breaches the agreement, the measure of damages to a Target Company is the loss suffered by the Target's shareholders, measured by the difference in trading market prices of the Stock either: before and after the transaction is first announced; or before and after the wrongful termination of the transaction by reason of the Buyer's breach of contract. The term is derived from *Consolidated Edison v. Northeast Utilities*, 426 F.3d 524 (2d Cir. 2005), in which the court held that a Buyer of a company cannot be held liable for the Target stockholders' lost Merger premium if the Target Company shareholders did not sign the Merger Agreement and/or were not intended third-party beneficiaries to the contract.

*Jurisdiction:* 

**Concert Party:** a person or Group of persons acting together to achieve a common or shared goal. Concert Party is used, and defined, in the City Code, the HK Takeovers Code, and by other European Public Company Takeover regulations in relation to those persons who actively cooperate to achieve control of a Target Company. See Acting In Concert.

1. (ESP) a person or Group of persons acting together to achieve a common or shared goal as per Royal Decree 1066/2007, of July 27 on public Takeover Bids and by other European Public Company Takeover regulations in relation to those persons who actively cooperate to achieve control of a Target Company. See Acting In Concert.

*Jurisdiction:*        

**Concordato Preventivo:** pre-bankruptcy arrangement with creditors pursuant to Article 160 and sub. of the Italian bankruptcy law. Shall be based on a plan which may provide for: (i) the Restructuring of the entity's indebtedness and the settlement of the creditors' claims; (ii) the sale of the business assets; (iii) the assignment of creditors to different classes, based on their claims; and (iv) a diversified treatment of creditors assigned to different classes. The arrangement proposal is subject to homologation, or official approval, by the bankruptcy court. A stay on creditors' actions is provided from the registration of the arrangement proposal in the Company Register up to its homologation by the bankruptcy court.

*Jurisdiction:* 

**Concurso de Acreedores:** refers to the creditors' meeting in a Spanish Insolvency proceeding regulated under Law 22/2003, of July 9, which can lead to either a Liquidation or Restructuring of the company. Either the debtor or its creditors can apply for a *Concurso de Acreedores*.

*Jurisdiction:* 

**Condition Precedent:** a condition which must be satisfied on, or prior to, the Closing of the relevant transaction. Also called a Closing Condition.

*Jurisdiction:*            

**Conditionality:** means the degree of conditions (e.g., Material Adverse Change, Due Diligence Condition, Financing Condition, Minimum Condition) that must be met in order for a deal to close pursuant to an Acquisition Agreement. Greater Conditionality reduces a Buyer's risk and lessens Deal Certainty for a Seller.

*Jurisdiction:*           

**Conduit:** Special Purpose Vehicle that acquires receivables to apply them for an asset securitization and/or sales of receivables on the capital market

*Jurisdiction:*     

**Confidentiality Agreement:** shorthand for a Confidentiality Agreement. See also NDA.

*Jurisdiction:*            

**Confidential Information Memorandum:** refers to the marketing document used to give potential Bidders an initial understanding of the Target Company. Often referred to as the CIM for short, or also Banker Book, Offering Statement, Information Memo, IM or Offering Memorandum.

*Jurisdiction:*            

**Confidentiality Agreement:** another name for a Non-Disclosure Agreement

*Jurisdiction:*            

**Confidentiality Undertaking:** unilateral commitment of one party to treat information confidentially and earmark what the other party disclosed to the first party under a Non-Disclosure Agreement

*Jurisdiction:*          

**Confirmatory Due Diligence:** the Buyers' final phase of the Due Diligence during which the Buyer confirms whether all issues identified in the Due Diligence are properly reflected in the Acquisition Agreement

*Jurisdiction:*          

**Conformed Copy:** the name given to a copy of an executed document in which all signatures are recorded in typed form. A Conformed Copy will also be periodically updated to include all amendments post execution.

*Jurisdiction:*        

**Connected Adviser:** a Financial Advisor or bank in the context of a UK public Takeover with reporting obligations under the City Code as a result of its advisory relationship with either the Bidder or Target Company. A similar concept exists under the HK Takeovers Code for "Connected Discretionary Fund Managers," "Principal Traders" and "Exempt Principal Traders."

*Jurisdiction:*  

**Consent Solicitation:** a solicitation of Written Consents from shareholders pursuant to a Charter provision permitting shareholders to act by Written Consent in lieu of a Shareholders' Meeting. The term Consent Solicitation is also used to describe the process by which a requisite number of debt holders agree to a change in the governing instrument for the debt.

*Jurisdiction:*        

**Consob:** shorthand for *Commissione Nazionale per le Società e la Borsa*, the Italian Securities and Exchange Commission (SEC)

*Jurisdiction:* 

**Consolidated Financial Act:** Italian Legislative Decree no. 58 of 1998

*Jurisdiction:* 

**Constituent Documents:** a company's Articles of Association, Articles of Incorporation, Certificate of Incorporation, Charter, Bylaws, etc. or other analogous documents in other jurisdictions. See Charter and Bylaws.

*Jurisdiction:*          

**Constitution (UAE):** the constitution of the UAE made permanent pursuant to Constitutional Amendment No.1 of 1996. The Constitution is the legal framework for the federation and the basis of all legislation promulgated at both a federal and Emirate level.

*Jurisdiction:* 

**Constitutional Documents:** see Constituent Documents

*Jurisdiction:*          

**Contingent Consideration:** consideration payable in respect of a transaction which only applies if certain Triggers are met

*Jurisdiction:*        

**Contingent Value Right:** a provision in an Acquisition Agreement or a Security issued to Target Company shareholders pursuant to an Acquisition Agreement, pursuant to which Target shareholders will receive additional Merger Consideration if specified contingencies occur. Contingent Value Rights are frequently discussed, but infrequently used, because of the difficulties of negotiating mutually acceptable measurements for realizing the contingency (e.g., reaching certain sales or earning goals). These difficulties are sometimes inherent in the nature of the contingency and are always controversial because of the Buyer's ownership of the assets and business which gives rise to the contingency and the Buyer's naturally strong interests in having a free hand to run the acquired business and reluctance to pay additional consideration. Also referred to as an Earn-Out or CVR.

*Jurisdiction:*         

**Contracts (Rights of Third Parties) Act 1999:** the Act that allows a third party the right to enforce a term or terms of a contract (to which it is not party)

*Jurisdiction:* 

**Contribution Analysis:** a financial analysis in the context of an Acquisition that compares the absolute (in terms of dollars) or relative (in terms of percentage) actual or projected contribution of each party to historical or projected Pro Forma combined data for the transaction (e.g., the relative contribution of the parties to Pro Forma combined revenues, Pro Forma combined EBIT or Pro Forma combined net earnings)

*Jurisdiction:*           

**Controlled Company:** a Public Company, in which the Majority Voting Securities is owned by an individual, a Group or another company. Controlled Companies are exempt from some of the stock exchange Independent Director requirements (other than those applicable to the audit committee). See also Independent Director.

*Jurisdiction:*    

**Controlled Foreign Company:** see Controlled Foreign Corporation

*Jurisdiction:*  

**Controlled Foreign Corporation:**

1. (US) a foreign corporation if more than 50 percent of its total voting power or value is actually or constructively owned by "US shareholders" on any day of the corporation's tax year. A "US shareholder" is a US citizen,

resident, corporation, Partnership, estate, or trust actually or constructively owning 10 percent or more of the corporation's voting power. See CFC.

2. (UK) Controlled Foreign Company rules apply to subsidiaries of Parent entities located in certain jurisdictions, typically when the subsidiary is located in a 'low tax' or 'no tax' jurisdiction. The term is principally used in reference to the UK, although other jurisdictions (in Europe and elsewhere) have similar or corresponding rules. Typically, part or all of the profits/unremitted profits of the CFC are attributed to the relevant Parent for tax purposes.

*Jurisdiction:*  

**Controlling Shareholder:** a shareholder or Group of shareholders who own a block of voting Securities of a Target Company; the exact amount may vary depending on the Capital Structure of the company and the jurisdiction, but is often at least 30 percent or more of a Target Company's voting Securities. A Controlling Shareholder can block the approval of a Business Combination, so Buyers will often negotiate directly with them to enter into a Support Agreement.

1. (FRA) under French law, the term Controlling Shareholder usually relates to a person or a group of persons Acting in Concert, who (a) holds directly or indirectly the majority of voting rights, (b) in fact exercises control over a company through the voting rights, or (c) has the capacity to appoint or revoke the company's legal representatives
2. (HKG) under the Hong Kong Stock Exchange Listing Rules, a Controlling Shareholder is a person or group of persons who: (a) are entitled to or control the exercise of 30 percent or more of the voting power in a company; or (b) are in a position to control the composition of a majority of the board of directors of the company
3. (SGP) under the Singapore Listing Manual, a Controlling Shareholder is a person who: (a) holds directly or indirectly 15 percent or more of the total number of issued Shares, excluding Treasury Shares, in the company, unless the Singapore Exchange determines otherwise; or (b) in fact exercises control over a company

*Jurisdiction:*      

**Conversion Price:** the price at which a given Convertible Security can be converted to Stock. The Conversion Price is set on the pricing date at a premium above the current market price of the underlying Stock on that date.

*Jurisdiction:*       

**Conversion Rate:** the rate at which a Convertible Bond may be converted into Stock, typically expressed as a Share number per \$/€1,000 in principal amount of Bonds. This is really just another way of expressing the Conversion Price.

*Jurisdiction:*       

**Convertible:** a Security or contractual right of repayment (such as a Bond, loan or other debt Instrument) convertible into another Security, typically Ordinary Shares

*Jurisdiction:* 

**Convertible Preference Shares:** see Convertible Preferred Stock

*Jurisdiction:* 

**Convertible Preferred Equity Certificate:** PECs are a form of Preferred Share issued by a Luxembourgian Company and which can be converted into Equity Interests

*Jurisdiction:* 

**Convertible Preferred Stock:** Preferred Stock, Preferred Shares or Preference Shares which entitle the shareholder to convert such into Common Stock/Ordinary Shares. See also Convertible Preference Shares.

1. (FRA) under French law, Preferred Shares can always be converted into Ordinary Shares by a decision of the shareholders, although such conversion is not in the Bylaws or in the terms and conditions of the Preferred Shares

*Jurisdiction:* 

**Converts:** shorthand for Convertible Bonds

*Jurisdiction:* 

**Corp Dev:** shorthand for Corporate Development

*Jurisdiction:* 

**Corporate Benefit:** a requirement, under certain legal regimes in Europe or elsewhere, that a company must derive an actual benefit, consideration or advantage from any transaction in order for the transaction to be lawfully entered into without its officers risking personal liability or a prison sentence or (worse) voiding the transaction. This is particularly the case for decisions involving the granting of guarantees or Security interests with respect to the liability of a third party. The extent to which a company can take into account the benefits derived by other members of its group when assessing the existence of Corporate Benefit differs between jurisdictions.

*Jurisdiction:* 

**Corporate Development:** in the M&A context, refers to employees of entities (usually corporates) who review strategic options and help to execute Business Combinations. See also Corp Dev.

*Jurisdiction:* 

**Corporate Governance Activist:** a name for a person or entity that frequently advocates changes in corporate governance policies and procedures that have, or are intended to have, the effect of increasing

## shareholders' role in corporate governance

Jurisdiction:        

### Corporate Governance Code:

1. (DEU) Corporate Governance Code, the Government Commission appointed by the Justice Minister in September 2001 adopted the German Corporate Governance Code on February 26, 2002. Through the declaration of conformity pursuant to Article 161 of the Stock Corporation Act (*Aktiengesetz*) as amended by the Transparency and Disclosure Law, entered into force on July 26, 2002, the Code has a legal basis.
2. (ESP) Code of Corporate Governance of the Listed Companies (*Código Unificado de buen gobierno de las sociedades cotizadas*). Corporate Governance and the rules of this Code are not compulsory for Spanish Listed Companies and follow the rule "comply or explain."
3. (FRA) codes of Corporate Governance and good conduct have been issued in France by associations of professionals (AFEP-MEDEF). Corporate Governance and the rules of this Code are not compulsory for French Listed Companies and follow the rule "comply or explain."
4. (HKG) Corporate Governance Code issued by the Hong Kong Stock Exchange and contained in Appendix 14 to the Listing Rules. Compliance with the Code is not mandatory, but Listed Companies are required under the Listing Rules to disclose their corporate governance practices and give explanations for deviations from the Corporate Governance Code in their annual reports.
5. (SAU) Corporate Governance Regulations in the Kingdom of Saudi Arabia issued by the Board of Capital Market Authority pursuant to Resolution No. 1/212/2006 dated 21/10/1427H (corresponding to 12/11/2006) (as amended)
6. (SGP) Code of Corporate Governance, issued by the Monetary Authority of Singapore. Compliance with the Code of Corporate Governance is not mandatory, but Listed Companies are required under the Listing Rules to disclose their corporate governance practices and give explanations for deviations from the Code in their annual reports.

Jurisdiction:      

**Corporate Governance Expert (Specialist):** a name for persons who claim expertise in corporate governance and who typically are proponents of Corporate Governance Activism

Jurisdiction:         

**Co-Sale:** another name given to a Tag-Along right

Jurisdiction:      

**Cost Coverage:** the affirmation of a transaction party to compensate the costs of another transaction party in whole or in part

Jurisdiction:     

**Cost of Capital:** the theoretical weighted economic cost to an entity of raising new capital

*Jurisdiction:*            

**Cost of Debt:** the theoretical economic cost to an entity (often expressed as a percentage of principal amount) of raising new debt capital

*Jurisdiction:*            

**Cost of Equity:** the theoretical economic cost to any entity (often expressed as a percentage of its notional value as set forth on the entity's Balance Sheet) of raising new equity capital

*Jurisdiction:*            

**Cost of Fund:** what it costs a Lender to borrow funds to provide to a Borrower. In Credit Facilities, a Lender's Cost of Funds is intended to be passed on to the Borrower and, on the assumption that Lenders raise their funds in the relevant interbank market, is represented by EURIBOR/LIBOR. EURIBOR/LIBOR is usually considered a fair reflection of a Lender's Cost of Funds — but not always, in particular when markets are volatile and Liquidity between financial institutions is scarce (although Lenders are often reluctant to admit this). See Market Disruption.

*Jurisdiction:*       

**Council of Competition Protection:** the Council of Competition Protection as constituted under the Competition Law in the Kingdom of Saudi Arabia issued by Royal Decree No. M/25 dated 4/5/1425H. See Competition Commission.

*Jurisdiction:* 

**Council of Ministers of Qatar:** the cabinet of Qatar, chaired by the Prime Minister of Qatar, is the supreme executive authority in Qatar

*Jurisdiction:* 

**Counterparts:** under many legal systems not all signatories to a document need to sign the same hardcopy document; each separate hardcopy document that is signed is known as a Counterpart and together they create a binding agreement

*Jurisdiction:*       

**Coupon:** the contractual interest rate stated on a Bond when the Bond is issued. Note the Coupon is not the same as the yield.

*Jurisdiction:*            

**Court of First Instance:** the court in which a complaint in a litigation is first lodged

*Jurisdiction:*          

**Court of Last Resort:** the highest court to which a given litigation may be appealed

*Jurisdiction:*          

**Covenant:** legalese for an agreement to do something (Affirmative Covenant), not to do something (Negative Covenant) or to maintain something (Maintenance Covenants). See also Interim Operating Covenants.

*Jurisdiction:* 

**CP:** see Condition Precedent

*Jurisdiction:* 

**CPECs:** acronym for Convertible Preferred Equity Certificates

*Jurisdiction:* 

**Cram-Down:** occurs in a Cash Election or Stock Election Acquisition, where at least one type of consideration is limited in amount. If the limited form of consideration is Oversubscribed, the shareholders electing the Oversubscribed consideration will receive the other consideration instead — hence the Cram-Down. Also referred to as a Single Cram-Down. See Double Cram-Down for a related structure involving shareholder elections where both types of consideration are limited in amount.

1. (US) also, the confirmation of a plan of Reorganization by a Bankruptcy court, even though one or more classes of creditors or Equity Interest holders has objected to the plan. The confirmed plan will bind all classes of creditors and Equity Interest holders, even those who voted against the plan. Hence the descriptive phrase Cram-Down for what happens to dissenters. This is a key tool for debtors and a major reason that some companies restructure in Bankruptcy, rather than out of court. Governed by §1129(b) of the Bankruptcy Code.

*Jurisdiction:* 

**Credit Facility:** a collective reference to loans and commitments from a Lender or group of Lenders. Examples of Credit Facilities include: Revolving Facilities, Term Loan Facilities, first lien Facilities, second lien Facilities and Bridge Facilities.

*Jurisdiction:* 

**Credit Risk:** the risk that a counterparty will default on its contractual obligations as a result of its failure or impaired financial situation. While most commonly referred to in Lender/ Borrower circumstances, essentially every party to the deal weighs the Credit Risk when considering a variety of execution risks.

*Jurisdiction:* 

**Creditors Voluntary Liquidation:** a type of English or Hong Kong Liquidation proceeding approved by a company's creditors. An alternative form of voluntary liquidation where a Members Voluntary Liquidation cannot apply because the company is not solvent.

*Jurisdiction:* 

**Creep(er):** the concept under the HK Takeovers Code which allows a person who holds between 30 percent to 50 percent of a Public Company's voting rights to acquire additional voting rights up to a maximum percentage increase (currently 2 percent) during a prescribed period of time without triggering an obligation to make a Mandatory Offer

*Jurisdiction:* 

**Creeping Tender Offer:** a colloquial term for an Acquisition of a large block of a Public Company's Stock (typically a controlling block) through Open Market Accumulations and/or private purchases. The term derives from the concept that the purchases of Stock achieve the ends of a conventional Partial Offer, but through a series of market purchases over time, rather than in a single transaction.

1. (US) because Tender Offers are regulated under the Williams Act and market purchases are not, a fair amount of litigation (and commentary from the practicing bar and academics) surrounds whether or not a Creeping Tender Offer constitutes a Tender Offer within the meaning of the Williams Act and is thus illegal. See *Wellman v. Dickinson*, 475 F. Supp. 783 (S.D.N.Y. 1979).
2. (FRA) under French law such market purchases are limited by the obligation to notify the crossing of certain legal and statutory Thresholds to the AMF and the Issuer

*Jurisdiction:*    

**CREST:** the central Depository for holding Uncertificated UK or Irish Securities. CREST is also an electronic Share trading settlement system used in the UK and Ireland. See Depository.

*Jurisdiction:* 

**CRO:** the QFC Companies Registration Office is the QFC companies' registrar operating within the QFC responsible for the day-to-day Administration of QFC companies' administrative affairs.

*Jurisdiction:* 

**Cross Border Merger:** a transnational Merger of companies

1. (UK) the term can also mean a transaction whereby one company merges into the other by operation of law pursuant to the European Directive 2005/56/EC on Cross-Border Mergers. In many jurisdictions the legislation implementing the directive has permitted true "Mergers" for the first time under relevant domestic legislation (for example the UK) and provides a new way for UK public and private limited companies to make or receive a transfer of assets and liabilities to or from companies in other European/EEA jurisdictions.
2. (ITA) the above mentioned European Directive was implemented in Italy by Legislative Decree no. 108 of 2008

*Jurisdiction:*       

**Cross Border Rules:** SEC promulgated rules that regulate aspects of Tender Offers and Exchange Offers for foreign companies that are subject to the 1934 Act (and, in the case of Exchange Offers, the 1933 Act), because a sufficient number of shareholders of the Target Company are US residents or because the Target Company's Stock is registered under the 1934 Act

*Jurisdiction:* 

**Crossing Up:** see Gross Up

*Jurisdiction:*   

**Crown Jewel:** a name for a Target Company's business that is economically important or crucial to the Target Company's profitability and/or prospects

*Jurisdiction:*          

**Crystallization:** the process whereby a Floating Charge becomes a Fixed Charge over the assets to which it relates. Crystallization can take place as a result of a notice (e.g., after an Event of Default) or, in some circumstances, may occur automatically on an Event of Default or some other agreed event.

*Jurisdiction:*     

**CTC:** the Central Tenders Committee of the Ministry of Economy and Finance is responsible for and processes public sector tenders in Qatar

*Jurisdiction:* 

**Cumulative Voting:** a relatively uncommon structure for shareholder voting for members of the Board of Directors. Cumulative voting entitles each shareholder to the number of votes equal to the total number of directors to be elected, and the holder of the Share has the right to allocate as many of its votes as it wishes for one, some or all candidates. Under this system, an organized minority of shareholders could have the opportunity to ensure election of one or several selected nominees by cumulating its aggregate votes for the chosen director(s).

*Jurisdiction:*     

**CVA:** acronym for Company Voluntary Arrangement

*Jurisdiction:* 

**CVL:** acronym for Creditors Voluntary Liquidation

*Jurisdiction:* 

**CVR:** acronym for Contingent Value Right

*Jurisdiction:*      

**D Reorg:** a Tax-Free Reorg under Section 368(a)(1)(D) of the US Internal Revenue Code wherein a Target corporation transfers assets to an acquiring corporation if 50 percent of the combined voting power and

value of the Stock of the acquiring corporation is owned by the transferor corporation and/or one or more of its shareholders immediately after the transfers. In an “acquisitive” D Reorg, Substantially All of the Target corporation’s assets must be transferred. In a “divisive” D Reorg that precedes a Spin-Off, only part of the assets need to be transferred.

*Jurisdiction:*  US

**D&O Coverage:** the insurance coverage provided to a director or officer (or to all directors and officers) under a Directors and Officers Liability Insurance policy

*Jurisdiction:*  US  UK  DEU  ESP  FRA  HKG  ITA  QAT  RUS  SAU  SGP  UAE

**D&O Insurance:** shorthand for Directors and Officers Liability Insurance

*Jurisdiction:*  US  UK  DEU  ESP  FRA  HKG  ITA  QAT  RUS  SAU  SGP  UAE

**Data Room:** name for specified records and documents pertaining to a company and its business which are available for Due Diligence review by a party entering into an agreement with the company. See also Virtual Data Room.

*Jurisdiction:*  US  UK  DEU  ESP  FRA  HKG  ITA  QAT  RUS  SAU  SGP  UAE

**Dawn Raid:** in the context of a Takeover, Dawn Raid describes a potential Bidder’s purchase of a substantial number of the Shares in a company as soon as the markets open, in an attempt to become a significant shareholder. See also Stakebuilding.

*Jurisdiction:*  UK  FRA  HKG

**Day 21:** the first permitted Closing Date after a UK Takeover Offer has been made under the City Code. The same rule exists under the HK Takeovers Code.

*Jurisdiction:*  UK  HKG

**Day 60:** the last day on which a UK Takeover Offer may be declared or become Unconditional As To Acceptances under the City Code. The same rule exists under the HK Takeovers Code.

*Jurisdiction:*  UK  HKG

**DCF:** acronym for Discounted Cash Flow

*Jurisdiction:*  US  UK  DEU  ESP  FRA  HKG  ITA  QAT  SAU  SGP  UAE

**De minimis:**

1. means not material. A Latin phrase meaning “minimal things,” which in the M&A context are often excluded from Due Diligence reporting and/or Representations and Warranties and Indemnity protections.
2. the Threshold which an agreement party must meet in order to have Indemnification claims under the agreement

*Jurisdiction:*  US  UK  DEU  FRA  HKG  ITA  RUS  SGP

**Dead Hand Pill:** a Poison Pill containing a provision that prevented Insurgent directors after a Change of Control of a Board of Directors from redeeming the company's Poison Pill

1. (US) This feature was invalidated by the Delaware and New York courts. See *Quickturn Design Sys., Inc. v. Mentor Graphics Corp.*, 721 A.2d 1281 (Del. 1998); and *Bank of New York Co. v. Irving Bank Corp.*, 528 N.Y.S.2d 482 (N.Y. App. Div. 1988).

*Jurisdiction:*  

**Deal Breaker:** a key issue(s) which will cause a party to stop pursuing a transaction or will prevent a deal from proceeding or being consummated

*Jurisdiction:*  

**Deal Certainty:** see Conditionality

*Jurisdiction:*            

**Deal Flow:** the often discussed rate at which investment propositions come to corporations, PE and other Investors, and the deals flow to the advisors. Also referred to as the Pipeline.

*Jurisdiction:*        

**Deal Jumping:** an Unsolicited Offer by a Competing Bidder to acquire a Target Company which is already in negotiations, or has a signed Acquisition Agreement, with another Bidder

*Jurisdiction:*      

**Deal Protection:** refers to provisions in an Acquisition Agreement which are intended to protect a Bidder by discouraging a Competing Bidder from engaging in Deal Jumping

*Jurisdiction:*       

**Deal Protection Fee:** another term for a Break-Up Fee or Termination Fee

*Jurisdiction:*     

**Deal Toy:** a gift (often made of lucite) handed out to deal participants to celebrate the Closing. Also called an Acrylic, Lucite or Tombstone.

*Jurisdiction:*      

**Dealer Manager:** name for a Financial Advisor to a Bidder in connection with a Tender Offer or Exchange Offer for Stock or debt of a Target Company. The name originated in the early days of modern M&A, when the Dealer Manager did, in fact, manage the solicitation of tenders or exchanges. The name is an anachronism today in Tender Offers and Exchange Offers for Stock because the Dealer Manager no longer provides this service and its role, as a practical matter, is limited to acting as a Financial Advisor to the Bidder. In Tender Offers and Exchange Offers for debt, however, Dealer Managers frequently do manage the solicitation, as well as act as Financial Advisor to the Bidder.

*Jurisdiction:*        

**Dealer Manager Agreement:** name for agreement between a Bidder and an Investment Bank in connection with a Tender Offer or Exchange Offer of any kind, pursuant to which the Investment Bank is hired to act as a Dealer Manager

*Jurisdiction:* 

**Debenture:** a document entered into between the company and a Lender setting out details of any Fixed Charges, Floating Charges, any other Security arrangements, and the related terms and conditions

1. (HKG) in Hong Kong, the term Debenture is used in the Companies Ordinance to describe essentially debt instruments

*Jurisdiction:* 

**Debt Financing:** a borrowing transaction to raise the portion of the Acquisition Consideration consisting of borrowed funds. Debt Financing typically takes the form of bank borrowings and/or issuances of senior and subordinated Bonds in the public or private High Yield Bond markets. Debt Financing may also consist of Mezzanine borrowings from Hedge Funds or specialized funds raised specifically to provide subordinated Debt Financing for Acquisitions.

*Jurisdiction:* 

**Debt for Equity:** the process whereby a debt interest is extinguished in exchange for an Equity Interest. Used to re-structure a company's Balance Sheet in a Restructuring. See also Loan-To-Own-Strategy.

*Jurisdiction:* 

**Debt Free/Cash Free:** see Cash Free/Debt Free

*Jurisdiction:* 

**Debt-to-Equity Swap:** the process of a Lender changing its repayment claim under the Facilities agreement to equity or assets of the borrowing company

*Jurisdiction:* 

**Deck:** see Banker Book or Board Book

*Jurisdiction:* 

**Declassify a Board:** the process of amending a company's Articles of Incorporation (or, in some cases, Bylaws) to remove classification of the Board and provide instead for annual election of directors. Compare Classified Board. See also Destagger the Board.

*Jurisdiction:* 

**Deductible:** shorthand for a provision in an Indemnification agreement which requires the indemnified party to bear the initial risk of loss, up to a specified amount, before being able to seek recovery from the applicable indemnifying party. The concept is the same as the deductibles in a health or car insurance policy.

*Jurisdiction:* 

**Deed Poll:** a deed but with no counterparty. The person entering into the Deed Poll promises to do certain things for the benefit of certain third parties and the third parties can enforce this obligation even though not a party to the document itself.

*Jurisdiction:*   

**Deferred Consideration:** see Deferred Purchase Price

*Jurisdiction:*          

**Deferred Purchase Price:** the portion of the purchase price the Purchaser does not have to pay at Closing but at a later time. See also Deferred Consideration.

*Jurisdiction:*          

**Defined Benefit (Pension) Plan:** a pension plan in which an employer promises a pre-determined entitlement to pension holders by reference to the former employee's service of employment rather than depending on investment returns. As a result, depressed stock markets have seen many Defined Benefit (Pension) Plans accrue contingent liability deficits, the future responsibility for which will generate discussion in relevant M&A deals.

*Jurisdiction:*    

**Defined Contribution (Pension) Plan:** a pension plan (now more common than a Defined Benefit (Pension) Plan) in which the amount of the employer's annual contribution is specified and the employer's liability is capped to the contributions made and are not tied to the former employee's service or investment performance of the plan.

*Jurisdiction:*    

**Delivery Versus Payment:** a delivery of Securities only upon receipt of payment, where delivery and payment are deemed to take place simultaneously

*Jurisdiction:*     

**Demand Registration Rights:** a type of Registration Right that entitles the holder, subject to certain agreed upon conditions, to force the Issuer to register the Issuer's Securities with the SEC, or other relevant authority. Compare Piggy Back Registration Rights.

*Jurisdiction:* 

**Demerger:** the division of a business into two or more separate organizations. Also known as a Spin-Off.

*Jurisdiction:*      

**Depository:** see Depository

*Jurisdiction:*         

**Depository:** name for an entity (usually one possessing trust powers under state or federal law) that agrees to receive and hold specified Securities and/or cash in connection with a commercial transaction. For example, depositories are commonly required in Tender Offers and Exchange Offers to receive tendered Securities and disburse the promised consideration to the tendering shareholders.

1. (US) see Depository Trust Company
2. (UK) see CREST
3. (DEU) see Clearstream
4. (ESP) see IBERCLEAR
5. (FRA) see Euroclear France
6. (HKG) see Central Clearing and Settlement System/CCASS
7. (ITA) see Monte Titoli S.p.A.
8. (RUS) see National Settlement Depository
9. (SGP) see Central Depository (Pte) Limited / CDP

See also Depository.

*Jurisdiction:* 

**Depository Trust Company:** a member of the US Federal Reserve System and an SEC clearing agency that brings efficiency to the Securities industry by retaining custody of millions of Securities, effectively "dematerializing" most of them so that they exist only as electronic files rather than as countless pieces of paper. DTC is the reason you don't have to keep actual physical Securities in your safe deposit box. Instead, DTC takes custody of the Security (which is placed in DTC's vault) and then keeps an electronic record of who the real owners of the Security are. See also Record Owner and Cede & Co.

*Jurisdiction:* 

**Depreciation:** in accounts, the method of allocating the cost of an asset to the period expected to benefit from its use

*Jurisdiction:* 

**Designated Areas:** in the UAE land ownership by non-GCC nationals is generally limited to land and/or buildings in Designated Areas in certain Emirates

*Jurisdiction:* 

**Destagger the Board:** analogous to Declassify the Board

*Jurisdiction:* 

**Determination Period:** a period of time specified in a contract for the measurement of events that determine specified contractual terms/sale at the period of time specified in an Acquisition Agreement — during

which a value of the Buyer's Common Stock is determined for purposes of establishing an Exchange Ratio

*Jurisdiction:* 

**Development Capital:** also known as Growth Capital and often provided by Venture Capital firms. Development Capital is the long-term equity capital raised to allow a company to grow without relying wholly on short-term bank debt.

*Jurisdiction:* 

**DFM:** the Dubai Financial Market is a stock exchange based in Dubai

*Jurisdiction:* 

**DFSA:** Dubai Financial Services Authority, the regulator for all ancillary firms, entities, and individuals carrying out financial services in or from the DIFC

*Jurisdiction:* 

**DGCL:** acronym for the Delaware General Corporation Law

*Jurisdiction:* 

**DIFC:** acronym for the Dubai International Financial Centre

*Jurisdiction:* 

**Diligence:** see Due Diligence

*Jurisdiction:* 

**Dilution:** in a financial context, the outcome of an event that reduces a financial statistic or ownership interest. Stock issued by a company at a very low value below market can cause a Dilution in the price and value of the previously outstanding Stock. An Acquisition can cause Earnings Per Share Dilution of the Buyer's Stock.

1. (UK) refers to the result of a non-pre-emptive offering of Shares to existing shareholders. Compare Pre-Emptive Rights.

*Jurisdiction:* 

**Dilutive:** a word that describes the effect of an event that causes Dilution, as in "the Merger is Dilutive to Earnings Per Share"

*Jurisdiction:* 

**Direct Merger:** a Merger between two Parent companies (the Buyer and the Target Company). See also Parent Company Merger.

*Jurisdiction:* 

**Director Resignation Policy:** a Board of Directors policy requiring a director to proffer his/her resignation if he/she receives less than a majority of votes cast in a shareholder election of directors

*Jurisdiction:* 

**Directors and Officers Liability Insurance:** liability insurance payable to the directors and officers of a corporation or other entity to offset losses suffered by the insureds as a result of specified acts or failures to act. D&O Insurance also typically covers reimbursement of the costs associated with defending a lawsuit.

*Jurisdiction:*        

### **Directors' Duties:**

1. (UK) in the UK, the duties owed by a director to a company are codified in Part 10 of the UK Companies Act. All directors in the UK have a duty to:
  - (i) in accordance with the company's Constitutional Documents and to exercise their powers for the purposes for which such powers were conferred (section 171);
  - (ii) promote the success of the company for the benefit of shareholders as a whole (section 172). See also Duty of Loyalty;
  - (iii) exercise independent judgment (section 173);
  - (iv) exercise reasonable care, skill and diligence (section 174). See also Duty of Care;
  - (v) avoid a situation in which the director has, or may have, a direct or indirect interest that conflicts or may conflict with the interests of the company (section 175). See also Duty of Candor;
  - (vi) not accept benefits from third parties (section 176);
  - (vii) declare a direct or indirect interest in a proposed transaction or arrangement with the company (section 177); and
  - (viii) a direct or indirect interest in a transaction or arrangement, which has already been entered into by the company (section 177).
2. (HKG) in Hong Kong, the Fiduciary duties and duties of skill, care and diligence owed by a director to a company are similar in scope but drawn from the common law instead of statute; they are however due to be partially codified when the new Companies Ordinance comes into force in 2014.

*Jurisdiction:*  

**Disclosure:** the process of limiting and qualifying (usually in the Disclosure Schedules) the Representations and Warranties in an Acquisition Agreement by disclosure of facts, against which the beneficiary of a Representation or Warranty may not then use as a basis to refuse to Close the transaction or raise a future claim. See also General Disclosures.

*Jurisdiction:*         

**Disclosure and Transparency Rules:** the UK rules for Issuers on the disclosure and control of Inside Information and transactions as contained in the FSA's Disclosure Rules and Transparency Rules Sourcebook

*Jurisdiction:*  

**Disclosure Letter:** another name for a Disclosure Schedule

**Jurisdiction:**        

### Disclosure Rules:

1. (US) see Securities Exchange Act
2. (UK) see Admission and Disclosure Standards
3. (ESP) see Spanish Securities Act
4. (FRA) periodic and ongoing disclosure requirements that the companies admitted to trading on the French Regulated Market, organized and managed by the AMF, must observe, as set forth, *inter alia*, by the French financial Code and the stock exchange regulation and instructions issued by the AMF
5. (ITA) periodic and ongoing disclosure requirements that the companies admitted to trading on the Italian Regulated Market organized and managed by Borsa Italiana S.p.A. must observe, as set forth, *inter alia*, by the Consolidated Financial Act, Regulation no. 11971 of 1999 and the stock exchange regulation and instructions issued by *Borsa Italiana S.p.A.*
6. (RUS) Disclosure Rules are provided for in the Federal Law FZ-39 "On Securities Market" dated April 22, 1996 and a number of Regulations of the Federal Service for Financial Markets, such as Regulation No. 11-46/ПЗ-Н "On the Information Disclosure by the Issuers of Securities"
7. (UAE) see Decision 3/R of 2000 and the relevant 2012 amendments

**Jurisdiction:**       

**Disclosure Schedule:** name for a document setting forth exceptions to Representations and Warranties contained in an Acquisition Agreement. Disclosure Schedules are usually not publicly available and sometimes can be used to avoid public disclosure of an issue or potential liability.

1. (US) the SEC takes the position that omitting public disclosure of material exceptions to Representations and Warranties can render publicly disclosed Representations and Warranties false and misleading. Extreme caution and sound judgment are needed when deciding to use a Disclosure Schedule to mask an otherwise material issue or potential liability.
2. (HKG) more commonly referred to as a Disclosure Letter

**Jurisdiction:**            

**Discounted Cash Flow:** a common, and many consider the most reliable, financial methodology for determining the value of a business. Discounted Cash Flow is calculated by summing the present value of a projected stream of annual projected earnings, Free Cash Flow, or similar metric measuring the profitability of a company over a significant period of time and discounting the total back to a present value. Like many analyses, a Discounted Cash Flow is only as reliable as its inputs, which include projections of a business' Income Statement over a meaningful number of years (usually five), determining the amount of that income

stream in perpetuity (either by calculating an assumed sale value for the business at the end of five years or by calculating the value of the stream into perpetuity, using an assumed rate of growth) and developing and applying a discount rate for purposes of calculating the present value of the projected income stream. Those inputs, in turn, obviously depend on numerous assumptions and theoretical constructs of such matters as the methodology for determining an appropriate discount rate.

*Jurisdiction:* 

**Disproportionate Impact Language:** many Business MAC provisions contain Carve-Out Provisions specifying that certain declines in the business will not Trigger a Business MAC. Examples include Material Adverse Changes triggered by problems specific to a particular industry, poor economic conditions generally, regulatory changes or an outbreak of war. In many cases, there is then a Carve-Out Provision to this Carve-Out Provision, known as Disproportionate Impact Language, which states that even if the Business MAC was triggered by one of the causes mentioned in the list of carve-outs (e.g., industry decline or general economic conditions), a Business MAC will be deemed to have occurred if the events had a disproportionately severe impact on that particular company, as compared to other companies in its industry.

*Jurisdiction:* 

**Dissenting Shares:** a name for Shares eligible for Appraisal

*Jurisdiction:* 

**Dissident:** another word (often pejorative) for Activist Investor

*Jurisdiction:* 

**Distressed Sale:** a transaction when the Target Company is in or near the Zone of Insolvency. See also 363 Sale.

*Jurisdiction:* 

**Distributable Reserves:** generally, a company can only make a Dividend Declaration if it has sufficient Distributable Reserves to do so. This amount will be subject to technical review in each case, but a company's profits available for Distribution are broadly its accumulated realized profits, so far as not previously utilized by Distribution or capitalization, less its accumulated realized losses, so far as not previously written off in a reduction or Reorganization of capital duly made.

1. (FRA and ITA) capital reserves resulting from a company's Balance Sheet and available for Distribution to the shareholders

*Jurisdiction:* 

**Distribution:** see Dividend Declaration

*Jurisdiction:* 

**Distribution Date:** the date on which a dividend or other Distribution is made

**Jurisdiction:** 

**Distribution in specie:** a dividend declared by a company which is satisfied by the transfer of assets (i.e., Shares in a subsidiary group company)

**Jurisdiction:** 

**Dividend Declaration:** a decision by a Board of Directors to make a payment with respect to Stock. Dividends on Preferred Stock are usually fixed in amount and payable quarterly under the terms of the Preferred Stock.

1. (US) under US state corporation laws, the dividend may not be paid until the Board formally votes on payment (the Dividend Declaration). A Board's failure to declare a Preferred Stock dividend results in the dividend being in arrears. Preferred Stock dividends in arrears usually must be paid before any dividends may be paid on Common Stock. Unlike Preferred Stock, Common Stock does not carry a fixed dividend right. Rather, dividends on Common Stock occur only as and when declared by a Board of Directors. This is sometimes done on a regular (usually quarterly) basis and in an amount previously announced by the Board as the company's current "dividend rate." However, unlike preferred dividends, a Board remains free to change or eliminate Common Stock dividends without creating arrearages. State corporation laws usually contain certain financial tests that must be met by a company before it is entitled to pay a dividend on any Stock, and a Board's failure to comply with this requirement often results in personal liability for all of the directors for the amount of the unlawfully paid dividend.
2. (UK and HKG) express provisions relating to Dividend Declarations and payments are usually set out in a company's Articles of Association. Standard practice is for the directors to declare and pay interim dividends, which are dividends declared and paid before the company's annual earnings have been determined. Final dividends, which are dividends declared and paid after the company's annual earnings have been determined, are usually recommended by the directors but declared and paid by the shareholders at a general meeting.
3. (DEU) under German law, a general Shareholders' Meeting shall approve the dividend resolution
4. (ESP) under Spanish regulation, a general Shareholders' Meeting shall approve the dividend resolution upon proposal of the Management body (i.e., Board of Directors)
5. (FRA) under French law, dividends attached to Ordinary Shares or Preferred Shares must be approved by the shareholders prior to their Distribution during the Shareholders' Meeting resolving on the approval of the annual accounts. However, the Board may be entitled in certain situations, to distribute interim dividends to the shareholders without prior approval.

6. (ITA) under Italian law, a general Shareholders' Meeting shall approve the dividend Distribution
7. (RUS) a decision approving the payment of a dividend to the shareholders of a company passed by the Shareholders' Meetings following the recommendation of the Board of Directors. Such decision usually states the amount and form of payment, terms of payment, etc. the Charter may provide for the fixed dividend for shareholders of privileged Stock.
8. (SGP) how and when dividends are declared is usually provided in a company's Articles of Association. Typically, the directors will recommend a particular rate of dividend, and the company in general meeting will declare the dividend subject to the maximum recommended by the directors. Note that section 403(1) of the Companies Act of Singapore provides that no dividends shall be payable to shareholders except out of profits.
9. (UAE) under UAE law, directors may declare a dividend out of Distributable Reserves

*Jurisdiction:*            

***DLLCA:*** acronym for the Delaware Limited Liability Company Act

*Jurisdiction:* 

***Don't Ask, Don't Waive:*** a combination of two provisions: (i) a type of Standstill provision, usually found in a Confidentiality Agreement, that prohibits the Bidder from requesting, privately or publicly, that the Target Company waive the Standstill, and (ii) a Merger Agreement provision, for the benefit of the Buyer that prohibits the Target Company from granting any waivers of the Standstill. These provisions are intended to force Bidders in an Auction or similar context to submit their Best and Final Bids in a process involving the sale of a company, rather than waiting until other Bidders establish a "floor" price that can be topped — the floor price might be lower than a Bidder feeling the heat of a competitive process would otherwise have Bid to win the process outright.

*Jurisdiction:* 

***Double Collar:*** when used to describe Exchange Ratio Collars, Double Collar means there are two Upside Collars and/or two Downside Collars. An example would be a Fixed Exchange Ratio with an initial Upside Collar and Downside Collar. Upon reaching either Collar, the Exchange Ratio would automatically convert to a Floating Exchange Ratio until the Bidder Stock appreciated or depreciated to the second Collar, at which point either the Exchange Ratio would be fixed or one or both parties would have the right to terminate the transaction.

*Jurisdiction:*       

***Double Cram-Down:*** an Acquisition which provides two types of consideration, each of which is limited in amount, and gives Target Company shareholders an election to choose between the two types of consideration. In the event either type of consideration is Oversubscribed,

shareholders will be forced to accept the undersubscribed type of consideration. A Double Cram-Down differs from a Cram-Down or Single Cram-Down because in the latter structure only one form of consideration is limited and the Cram-Down, if any, operates only if the limited form of consideration is Oversubscribed.

*Jurisdiction:*    

**Double Dummy Merger:** a Merger structure in which one party creates a wholly-owned subsidiary (which will become the Holdco). Holdco in turn forms two wholly-owned subsidiaries (the “dummies”) that enter into separate Triangular Mergers with each of the constituent companies, pursuant to which the Common Stock of each constituent company is exchanged for Common Stock of Holdco. The outcome is that Holdco wholly owns both constituent companies as separate entities, and the former common stockholders of each of the constituent companies receive Common Stock of Holdco, the new Parent entity. Sometimes called a Butterfly Merger.

*Jurisdiction:*  

**Double Luxco Structure:** a post-Credit Crunch method of structuring Credit Facilities in mid- to large-cap LBO Acquisitions of French Target groups in an effort to avoid the Sponsor or the obligor group putting themselves (or threatening to put themselves) in Sauvegarde, the so-called French Chapter 11. Two Luxcos are put in place above the first French company, with the top Luxco granting a Security interest over the Shares in the second Luxco, which owns the French Bidco. Under the EU Insolvency Regulation, the enforcement of this security interest is allowed notwithstanding the opening of Sauvegarde proceedings against the top Luxco (which might happen if its COMI is in or has been moved to France). Double Luxco Structure generates a host of Intercreditor Agreement issues with the Sponsor and the Mezz Lenders.

*Jurisdiction:* 

**Double Taxation Treaty:** an agreement (usually bilateral) between countries which is intended to prevent taxpayers from being taxed on the same amount of profit or gains in each country. A Double Taxation Treaty often includes reducing the rate of Withholding Taxes that would otherwise be due in respect of payments made by a person in one of the countries to a person resident in the other country, so long as the requirements of the Double Taxation Treaty are met.

*Jurisdiction:*        

**Double Trigger:** refers to a Parachute structure under which payments are triggered following a Change of Control, based on a subsequent event, usually involuntary termination of employment

*Jurisdiction:*       

**Downside Collar:** an Exchange Ratio Collar that applies in the event of a decrease in the market price of the Buyer's Stock

*Jurisdiction:* 

**Downstream Merger:** occurs when a Holding Company is merged into its subsidiary

*Jurisdiction:* 

**Drag-Along:** allows a majority shareholder to require that a minority shareholder participate in a sale to a third party. The idea is that a majority shareholder may not be able to recognize the full value of its holdings unless it can sell the entire company to a third party by dragging along minority shareholders. Drag-Along rights generally provide that the minority shareholder receive the same deal terms as the majority shareholder. Compare Tag-Along rights.

*Jurisdiction:* 

**Draw:** see Draw-Down

*Jurisdiction:* 

**Drawdown:** see Draw-Down

*Jurisdiction:* 

**Draw-Down:** a name for the process of obtaining cash proceeds under the terms of a Financing Facility

*Jurisdiction:* 

**Draw-Down Notice:** a Private Equity Fund request to the Investors to make available the amount of capital the Investors committed to within a certain time period

*Jurisdiction:* 

**Draw-Down Period:** time period during which the Private Equity Fund may make a Capital Call

*Jurisdiction:* 

**Drop Dead Date:** another name for End Date, Long Stop Date or Outside Date

*Jurisdiction:* 

**DTC:** acronym for Depository Trust Company

*Jurisdiction:* 

**Dual Track Process:** a process to sell a company whereby the applicable company simultaneously prepares an IPO on the one hand, and a private sale, usually through an Auction, on the other hand

*Jurisdiction:* 

**Due Diligence:** what parties to an M&A transaction and their advisors do to learn about a company. The Buyer (and its lawyers, bankers and accountants) performs Due Diligence so it can understand what it is buying. The aim is to ensure that nothing contradicts the Buyer's understanding of the current state and potential of the business. The individual elements of Due Diligence may include commercial Due Diligence (markets, product and customers), a market report (marketing study), an accountants report (trading record, net asset and taxation position) and legal Due Diligence (implications of litigation, title to assets and intellectual property issues). If a Seller's shareholders are receiving the Buyer's Stock as part of the Merger Consideration, the Seller (and its advisors) performs Due Diligence so it can understand what its shareholders are receiving. Due Diligence activities are broad and range from a review of relevant documents (see Data Room and Virtual Data Room) and Financial Statements to plant visits and interviews with Management, outside accountants, counsel, customers and suppliers.

*Jurisdiction:* 

**Due Diligence Condition:** a Condition Precedent in an Acquisition Agreement providing that the transaction is subject to the Buyer's satisfactory completion of Due Diligence. In an acquisition financing, a Due Diligence Condition means a Condition Precedent that the commitment is subject to the satisfactory completion of Due Diligence by the arranger. In most Acquisitions both the Buyer and the arranger will be expected to complete their respective Due Diligence prior to signing the Acquisition Agreement or Commitment Letter, removing the need for a Due Diligence Condition. Occasionally, either or both an Acquisition Agreement and related Commitment Letter may contain a Due Diligence Condition, which will have the effect of consummating the transaction far less certain. As a result, Target Companies generally abhor Due Diligence Conditions.

1. (UK and DEU) Due Diligence Conditions are uncommon in the UK and Germany

*Jurisdiction:* 

**Due Diligence Out:** another name for a Due Diligence Condition

*Jurisdiction:* 

**Dutch Auction Self-Tender:** an Auction in which each Seller specifies the price at which it is willing to sell and the Buyer accepts Offers to sell until it has spent the amount it intends to spend, starting with the lowest price offered and working up the pricing ladder until the money to be spent is gone. In a "modified Dutch Auction," the process is the same except that all Sellers are paid the same price based on the lowest price that will allow the Buyer to spend the intended amount.

*Jurisdiction:* 

## Duty of Candor:

1. (US) a US Fiduciary Duty of directors under Delaware judicial decisions that requires the Board of Directors to provide shareholders with all the material information necessary in order to decide how to vote on a matter. The Delaware courts have defined materiality using the same definition as the Supreme Court pronounced in the Northway case. Accordingly, at least in theory, compliance with the Duty of Candor requires the same disclosure as the Federal Securities laws.
2. (UK) similar to a UK director's duty to avoid a situation in which one has, or may have, a direct or indirect interest which conflicts, or may conflict, with the interests of the company. The duty is contained in Section 175 of the UK Companies Act. A conflicted or potentially conflicted director will not be considered to have breached his/her duty to avoid conflicts of interest if: (i) the situation cannot reasonably be regarded as likely to give rise to a conflict; or (ii) if directors who are genuinely independent have authorized the conflict, where such authorization is permitted under the company's Articles of Association. See also Directors' Duties.
3. (ESP) directors may not, for their own benefit or for that of their related persons, make investments or engage in any transactions involving company property which the directors have learned about as of result of the performance of their duties. Directors must declare to the Board of Directors and/or the general meeting any situation of indirect conflict they may have with the interest of the company (articles 228 and 229 of the Spanish Companies Act).
4. (FRA) there is no legal definition of Duty of Candor under French law. However, the Corporate Governance Codes provide that directors should inform the Board of Directors of any existing or potential conflicts of interests and should refrain from resolving on any matters in which they have an interest.
5. (SGP) the Companies Act of Singapore requires directors to disclose certain information to a company. For instance, Section 156 of the Companies Act of Singapore requires directors to disclose their interests (whether direct or indirect) in transactions or property with the company. Section 165(1) requires directors to disclose particulars of Interests In Shares, Debentures, participatory interests, Rights, Options and contracts as are necessary to maintain the register of directors' shareholdings.

Jurisdiction:     

**Duty of Care:** the Duty of Care is customarily articulated using the so-called objective "reasonable man" standard — that in making a decision a member of the Board of Directors must use the same degree of care as a reasonable business person would do in the conduct of his/her own business affairs

1. (US) under Delaware statutory law and judicial decisions directors clearly have an obligation to understand the situation and relevant facts, laws, etc., but in doing so are entitled to rely on officers and other directors of the company and on advisers whom they reasonably believe are

knowledgeable in the area. The seminal Delaware case on the Duty of Care is *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985), often referred to simply as *Van Gorkom*. The Duty of Care is one of the two central Fiduciary Duties of directors under US state corporation law. See also Duty of Loyalty.

2. (UK) similar to a UK director's duty to exercise reasonable care, skill and diligence, which is contained in section 174 of the UK Companies Act. The duty requires a director to exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both: (i) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the director's functions; and (ii) the general knowledge, skill and experience that the director actually has. See also *Directors' Duties*.
3. (DEU) defined term in the Limited Liability Companies Act (Section 43) (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*) as well as the German Commercial Code (Section 347) (*Handelsgesetzbuch*)
4. (ESP) directors will perform their duties with the diligence of a diligent businessman. Each director must keep diligently informed on the progress of the company (article 225 of the Spanish Companies Act).
5. (FRA) there is no legal definition of Duty of Care under French law. However, case law and the Corporate Governance Codes provide that directors should keep themselves informed and used reasonable diligence in order to take informed decisions.
6. (HKG) a director's common law Duty of Care has recently been codified into section 465 of the new Hong Kong Companies Ordinance, which will come into effect from 2014. The duty requires a director to exercise the reasonable care, skill and diligence which would be exercised by a reasonably diligent person with both: (i) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the director's functions; and (ii) the general knowledge, skill and experience that the director actually has. See also *Directors' Duties*.
7. (ITA) pursuant to the Italian Civil Code, directors must primarily: (i) comply with the duties imposed upon them by law and the Company's Bylaws with the required diligence; (ii) act in the Company's best interest and avoid conflicts of interests; (iii) manage the Company so as to achieve its corporate purpose and therefore avoid any action which could be a deviation from such purpose; and (iv) preserve the value of the Company's assets in order to protect the rights of the creditors and other Stakeholders
8. (SGP) a director's Duty of Care is prescribed under common law and statute. At common law, the Duty of Care requires that the director take as much care in the affairs of his/her company as he/she would reasonably take in his/her own affairs. A person who accepts the office of director of a particular company undertakes the responsibility of ensuring that he/she understands the nature of the duty a director is called upon to perform. The duty will vary according to the experience or skills that the director held himself/herself out to have in support of appointment to the office. The Duty of Care turns upon the natural expectations and reliance placed

by shareholders on the experience and skill of a particular director. The standard of care and diligence is objective, namely, whether the director has exercised the same degree of care and diligence as a reasonable director found in his/her position. The statutory statement of the director's duties under section 157(1) of the Companies Act of Singapore is as follows: a director "shall at all times act honestly and use reasonable diligence in the discharge of the duties of his or her office".

9. (UAE) a company's directors owe the Duty of Care to the company itself. Directors' duties are generally much less extensive in the UAE and are found in the Commercial Companies Law, Civil Code (UAE) and Penal Code.

*Jurisdiction:*  US UK DEU ESP FRA HKG ITA QAT SAU SGP UAE

***Duty of Loyalty:*** the Duty of Loyalty encompasses both conflicts of interest (and how to guard against them) and the requirement that the Board of Directors act in Good Faith in what they believe is the best interests of the company and its shareholders

1. (US) the second central Fiduciary Duty of the Board of Directors under state corporation law. See also Duty of Care.
2. (UK) similar to a UK director's duty to promote the success of the company for the benefit of shareholders as a whole. Duty of Loyalty is contained in Section 172 of the UK Companies Act. When exercising this duty, a director must have regard to (among other matters): (i) the likely long-term consequences of his/her decision; (ii) the interests of the company's employees; (iii) the company's business relationships with suppliers, customers and others; (iv) the impact of the company's operations on the community and the environment; (v) the benefits of maintaining the company's reputation for high standards of business conduct; and (vi) the need to act fairly between the company's shareholders. Note that the duty is subject to requirements to consider or act in the interests of the company's creditors, for example where the company is at risk of becoming Insolvent. See also Directors' Duties.
3. (DEU) the second central Fiduciary Duty of directors under German corporation law. See also Duty of Care.
4. (ESP) directors must perform their duties as a loyal representative in defense of the corporate interest, understood as the company's best interest, and will fulfill the duties imposed by Law (Article 226 of the Spanish Company Act)
5. (FRA) case law has established a Duty of Loyalty for directors in French companies. Though not as formal as in the US, the Duty of Loyalty requires that directors act in Good Faith in what they believe are the best interests of the company, its shareholders and Other Constituencies.
6. (HKG) a director has analogous duties at common law. At common law, directors have the duty to exercise their discretion in Good Faith in what they consider the interests of the company. The Duty of Loyalty obliges a director not to place himself/herself in a position where his/her duty and his/her interest conflict.

7. (ITA) see Duty of Care

8. (SGP) a director has analogous duties at common law and under statute. At common law, directors have the duty to exercise their discretion in Good Faith in what they consider the interests of the company. The Duty of Loyalty obliges a director not to place himself/herself in a position where his/her duty and his/her interest conflict. Section 157(2) of the Companies Act of Singapore provides that an officer or agent of a company "shall not make improper use of any information acquired by virtue of his/her position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself/herself or for any other person or to cause detriment to the company".

*Jurisdiction:* 

**Earnings Per Share:** profit after tax divided by the number of issued and outstanding Shares of Common Stock or, if applicable, Ordinary Shares in issue

*Jurisdiction:* 

**Earn-Out:** a provision in an Acquisition Agreement that provides for payment of additional consideration to the shareholders of the Target Company if the Target Company achieves specified objectives (usually financial, but sometimes also event driven, e.g., achievement of regulatory or other milestones) during a period following the Acquisition. Earn-Outs typically are found in Acquisitions of companies with a small number of shareholders, so that Earn-Out payments do not require issuance of a Security, such as a CVR. See also Contingent Value Right. Compare Clawback.

*Jurisdiction:* 

**EBIT:** a very common financial term which is an acronym for earnings before interest and taxes. EBIT is sometimes used in lieu of EBITDA and sometimes in addition to EBITDA as a measure of a company's ability to service debt.

*Jurisdiction:* 

**EBITDA:** acronym for earnings before interest, taxes, Depreciation and Amortization. Because this calculation eliminates the effects of financing and accounting decisions, EBITDA is often used to assess a company's ability to service debt.

*Jurisdiction:* 

**ECB:** acronym for European Central Bank or the English Cricket Board depending on where your interests lie

*Jurisdiction:* 

**EDGAR:** acronym for the SEC's Electronic Data Gathering, Analysis and Retrieval system. EDGAR is where you can retrieve a company's periodic and other SEC filings. It can be found at [www.sec.gov](http://www.sec.gov).

*Jurisdiction:* 

**EEA:** acronym for European Economic Area

Jurisdiction:    

**Effective Control:** under the Singapore Takeover Code, Effective Control means a holding, or aggregate holdings, of Shares carrying 30 percent or more of a company's voting rights, irrespective of whether that holding (or holdings) gives de facto control

Jurisdiction: 

**Effective Date:** see Effective Time

Jurisdiction:            

**Effective Time:** means the point in time at which an agreement becomes operational or otherwise goes into effect. Acquisition Agreements usually provide for an Effective Time, at which point the Acquisition goes into effect as a legal matter.

1. (US) also referred to as the time that the Merger is effective pursuant to the Certificate of Merger

Jurisdiction:            

**EGM:** acronym for Extraordinary General Meeting

Jurisdiction:  

**Electronic Data Room:** another name for a Virtual Data Room

Jurisdiction:           

**Emirate:** any of the following states of the UAE: Abu Dhabi, Dubai, Sharjah, Ajman, Fujairah, Ras Al Khaimah and Umm Al Quwain

Jurisdiction: 

**Emiri Decree Company:** a separate legal entity, established through the promulgation of a decree issued by the Ruler of an individual Emirate in the UAE. Unless specified in the relevant decree, the UAE Companies Act does not apply to such entities. The method of governance for such companies is as set out in the relevant decree. Examples include Emirates (the airline), Mubadala Development Company and Investment Corporation of Dubai.

Jurisdiction: 

**Employee Retirement Income Security Act of 1974:** the fundamental Federal statute regulating pension and welfare plans covering most classes of employees. ERISA has two primary impacts on M&A transactions. First, a Buyer will almost always conduct Due Diligence on a Target Company's employee benefit plans to confirm that the plans are maintained in accordance with ERISA's requirements. Second, in the event the Buyer is a PE Sponsor (almost all of which manage funds invested by ERISA regulated pension funds), the transaction will need to be structured appropriately to ensure that the pension funds' investment complies with ERISA requirements.

Jurisdiction: 

**Employee Share Option Plan:** a plan pursuant to which the company may grant Options to purchase its Stock and other forms of equity compensation such as Stock Appreciation Rights, Restricted Stock and Restricted Stock Units to employees, directors and consultants. Although sometimes referred to as an ESOP, it is not the same as an Employee Stock Ownership Plan.

*Jurisdiction:* 

**Employee Share Option Scheme:** see Employee Share Option Plan

*Jurisdiction:* 

**Employee Stock Ownership Plan:** a common form of Qualified Plan and trust that is invested primarily in company Stock. In M&A transactions ESOP participants usually have the right to direct the trustee who holds the company stock regarding the disposition of the Shares.

1. (US) additional ERISA Fiduciary requirements can apply to ESOPs in M&A transactions

*Jurisdiction:* 

**Employee Stock Purchase Plan:** an employee benefit plan pursuant to which cash contributions by employees are used to acquire company Stock at a discount (e.g., 15 percent) from the company during specified periods. See ESPP.

*Jurisdiction:* 

**Empty Voting:** in general, means any situation in which the person possessing the right to vote Stock has no economic interest or less than a full economic interest in the Stock, for example votes cast by an owner of Shares who has used Put Options and Call Options or other derivative Instruments to insulate herself from any changes in price of the Common Stock. Because the owner has Hedged away the economic interests of ownership, his/her voting is said to be Empty.

*Jurisdiction:* 

**End Date:** another name for Outside Date, Long Stop Date or Drop Dead Date. Also the date that an agreement comes to a natural end.

*Jurisdiction:* 

**Engagement Letter:** is most often used to describe a formal retention agreement between a company and its Financial Advisor (or sometimes its legal advisor). Virtually all Financial Advisors have a form of Engagement Letter covering such matters as fees, reimbursement of expenses, duration of engagement, rights of termination and the client's obligation to indemnify the Financial Advisor. Although the terms of an Engagement Letter typically are extensively negotiated, the Indemnification provisions are customarily considered sacrosanct by the Financial Advisor and thus not subject to meaningful negotiation.

*Jurisdiction:* 

**Enhanced Scrutiny:** a US standard of judicial review of a decision made by a Board of Directors. Enhanced Scrutiny — stricter than the Business Judgment Rule — may be applicable to certain Acquisitions. The Revlon Doctrine and Unocal/Unitrin Doctrine are examples of standards of Enhanced Scrutiny.

*Jurisdiction:*  US

**Enterprise Value:** means the value of a business on a debt free, cash free basis, i.e. irrespective of the sources of capital used to finance it. Commonly determined by adding the value of a company's debt to its Equity Value, minus cash and Cash Equivalents.

*Jurisdiction:*  US  UK  DEU  ESP  FRA  HKG  ITA  QAT  RUS  SAU  SGP  UAE

**Entire Fairness:** a judicially created doctrine under Delaware law which requires that a Controlling Shareholder treat its controlled entity with Entire Fairness when engaging in a transaction with the controlled entity. The most common application of the Entire Fairness doctrine is when the Controlling Shareholder purchases all of the publicly held Stock of the Controlled Company in an Acquisition. In the US, Entire Fairness encompasses both fair process and fair price. Fair process deals with whether and to what degree members of the Board of Directors of the company, independent of the Controlling Shareholder, as well as shareholders, were free of coercion by the Controlling Shareholder in determining their response to the proposed Related Party Transaction. Fair price addresses whether the consideration proposed to be paid by the Controlling Shareholder in the Related Party Transaction was equivalent to that which would have been received in an arms-length bargain with an unrelated third party.

*Jurisdiction:*  US

**Entrenched Provisions:** refers to provisions in a company's Constitutional Document which may be amended or repealed only if certain procedures are complied with, and/or if certain conditions are met; conditions more restrictive than those applicable in the case of a Special Resolution

*Jurisdiction:*  UK  HKG

**Entrepreneurs' Relief:** allows individuals or certain trustees to claim relief from Capital Gains Tax in respect of a disposal of assets or Shares of a company upon certain conditions being met

*Jurisdiction:*  UK

**Envy Ratio:** formula according to which the preference terms (e.g., conditioned by lower valuation) may be calculated pursuant to which the Management of a Target Company may acquire interests in the Target Company compared to the interests in the Target Company held by the Private Equity Fund. The formula is  $\text{Envy Ratio} = (\frac{x}{\% \text{ Shares}}) / (\frac{y}{\% \text{ Shares}})$ ; whereby  $x$  = investment of Private Equity Fund and  $y$  = investment by Management.

*Jurisdiction:*  DEU

**Equity Check:** see Equity Contribution

*Jurisdiction:*           

**Equity Commitment:** in a Leveraged Buyout, a Sponsor's commitment to make the Equity Contribution to a Special Purpose Vehicle or otherwise thinly-capitalized Purchaser entity

*Jurisdiction:*           

**Equity Contribution:** think of this as the Sponsor's "down payment" in a Leveraged Buyout. Equity Contribution is the amount of funds the Private Equity Fund contributes to finance a portion of the Acquisition Consideration. The amount of and terms and conditions for provision of the Equity Contribution are generally documented in the equity Commitment Letter. See also Rollover Equity.

*Jurisdiction:*            

**Equity Cure:** curing the breach of Financial Covenants by the contribution of new equity from the shareholders

*Jurisdiction:*      

**Equity Interest:** generally refers to an ownership interest in a company which is distinct from debt and entitled to a share of profit or earnings of the company. An Equity Interest may consist of Stock or Shares (preferred or common) in a corporation, Limited Liability Company or membership interests in a Limited Liability Company, Partnership interests (limited or general) in a Partnership, etc.

*Jurisdiction:*          

**Equity Kicker:** an Equity Interest offered to a debt provider (*i.e.*, a Lender under a Credit Agreement or a Bond Buyer), usually in the form of Warrants issued by the company to such debt provider, typically as an incentive for such Lender or bondholder to buy the debt

*Jurisdiction:*           

**Equity Slug:** see Equity Contribution

*Jurisdiction:* 

**Equity Sponsor:** an Investor, typically a Private Equity Fund. See also Private Equity Sponsor.

*Jurisdiction:*       

**Equity Value:** a very slippery term because of the large number of ways to value equity in a company, including a specific market trading price (such as the opening or closing price on a specified day), and average or weighted average of market trading prices over a period (ranging from a day to months or years) multiplied by the aggregate of all of a company's Common Stock on a Fully Diluted basis. Equity Value may also be assessed by reference to Comparable Company Analysis, Comparable Acquisition Analysis, Discounted Cash Flow, asset based value, sum of

the parts value, going concern value, etc.

*Jurisdiction:* 

**ERISA:** acronym for the US Employee Retirement Income Security Act of 1974

*Jurisdiction:* 

**Escheat:** a state's ability to claim abandoned property. If a person dies without heirs (or without an established will), such person's property is said to Escheat to the government. Merger Consideration payable to Target Company shareholders who cannot be located is subject to Escheat under many state corporation law statutes, if not claimed by the shareholders within the period specified in the relevant statute

1. (UK) see *Bona Vacantia*

*Jurisdiction:* 

**Escrow:** the act of placing money (or other items) with a third party (an Escrow Agent) to secure a future obligation. Often used to secure a Seller's post-Closing Indemnification obligation for pre-Closing breaches of Representations and Warranties. Also used colloquially to mean the holding of signed documents to prevent them becoming operative until a specified event, e.g., "We will hold the documents in Escrow until the Closing Date." Escrow can be informal or governed by a written agreement, with or without a third party acting as Escrow Agent. See also Escrow Agent.

*Jurisdiction:* 

**Escrow Account:** a bank account on which the Escrow Amount is credited

*Jurisdiction:* 

**Escrow Agent:** the Fiduciary who administrates the Escrow Account

*Jurisdiction:* 

**Escrow Amount:** the sum of money used in an Escrow as security for receivables from a contract party

*Jurisdiction:* 

**ESOP:** an acronym for an Employee Stock Ownership Plan, but sometimes used for an Employee Share Option Plan/Employee Share Option Scheme

*Jurisdiction:* 

**ESPP:** acronym for Employee Stock Purchase Plan

*Jurisdiction:* 

**EU:** acronym for European Union

*Jurisdiction:* 

**EU Insolvency Regulation:** Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency proceedings. The regulation sets out a regime for the determination of Insolvency jurisdiction, and the recognition of the effects of an Insolvency proceeding, throughout the EU (other than Denmark).

*Jurisdiction:* 

**EURIBOR:** the Euro Interbank Offered Rate (EURIBOR) is a daily reference rate based on the averaged interest rates at which Eurozone banks offer to lend unsecured funds to other banks in the Euro wholesale money market (or interbank market). See also LIBOR.

*Jurisdiction:* 

**Euro:** single European currency unit used by the Participating Member States of the EU and the cause of much political debate in the UK and elsewhere

*Jurisdiction:* 

**Eurobond:** generally used to describe a Bond typically issued in a currency other than the currency of the country or market of the Issuer. Typically, a Eurobond is issued in a Reg S Only offering and governed by an English law governed trust deed with relatively fewer Covenants compared to a High Yield Bond Indenture. Note that the term is also used in very broad terms to describe any Securities not offered pursuant to Rule 144A. Eurobond (or quoted Eurobond) also, however, has an additional, separate meaning in a UK tax context, as payments of interest on a “quoted Eurobond” are not subject to UK Withholding Taxes on interest. A quoted Eurobond for these purposes is a Security which is issued by a company, is listed on an “organized stock exchange” and which carries a right to interest (there is no stipulation as to currency in this context, in contrast to the alternative meaning previously described).

*Jurisdiction:* 

**Euroclear France:** the French central Depository and clearing organization. Euroclear Francshares an integrated settlement solution and harmonized custody service — Euroclear Settlement of Euronext-zone Securities (ESES) with other European countries.

*Jurisdiction:* 

**European Central Bank:** the central bank for the Euro, with primary responsibility to maintain the Euro's purchasing power and therefore price stability in the Euro area. The European Central Bank also sets short-term interest rates.

*Jurisdiction:* 

**European Commission:** the executive arm of the European Union and the body responsible for proposing European legislation and making decisions. Additionally, the European Commission, together with the national competition authorities, also directly enforces EU competition

rules to make EU markets work better, by ensuring that all companies compete equally and fairly on their merits.

*Jurisdiction:* 

**European Economic Area:** the trading area currently comprising the European Union Member States and Norway, Iceland and Liechtenstein. Created in 1994.

*Jurisdiction:* 

**European Style Option:** a type of Option where the holder can only exercise the Option at a certain time, normally at the time of maturity

*Jurisdiction:* 

**Event Driven Hedge Funds:** Hedge Funds which make investments based upon a likely occurrence of a future event, such as an Acquisition, disposition, Liquidation, Reorganization or other similar event. Some Event Driven Hedge Funds try to bring about the type of event which is the basis for their investment in a company by letter writing campaigns, Proxy Contests and other aggressive activities. When Hedge Funds act this way they are behaving like Activist Investors. Event Driven Hedge Funds also frequently Arbitrage M&A transactions and fall into the generic category of Arbitrageurs.

*Jurisdiction:* 

**Exchange Act:** see Securities Exchange Act

*Jurisdiction:* 

**Exchange Agent:** in a Public Company Merger where the Buyer's Securities form part of the Merger Consideration, the parties will often retain a bank or trust company (referred to in the transaction as an Exchange Agent) to Swap out Target Company Securities for Buyer Securities. For ease of Administration the bank or trust company picked as Exchange Agent will often be the Target Company's Transfer Agent.

*Jurisdiction:* 

**Exchange Feature:** the feature in a Shareholder Rights Plan permitting holders of Rights (other than the Hostile Bidder) to exchange their rights for Shares of the Company's Common Stock (generally at a one-for-one basis). This feature is less complicated than requiring holders of Rights to exercise them under the Flip-In feature and avoids the need for Rights holders to pay large amounts of cash for their new Shares. An Exchange Feature also allows the Target to invest the cash which is presumably surplus to its operating needs. Although not as Dilutive as requiring exercise of the Rights under the Flip-In feature, the Exchange Feature is considered sufficiently Dilutive to preserve the deterrent value of a Poison Pill.

*Jurisdiction:* 

**Exchange Offer:** a Unilateral Offer by a Bidder to purchase a Target Company's Securities directly from the owner of those Securities for non-cash consideration (most often Securities of the Bidder), in whole or in part. Other than the form of consideration offered, an Exchange Offer has the same basic legal and economic characteristics as a Tender Offer.

1. (HKG) the term Securities Exchange Offer is used

*Jurisdiction:* 

**Exchange Ratio:** the amount of Securities that the Buyer will pay for each Share of Target Company Stock. Exchange Ratio is sometimes (but not always) expressed as a mathematical ratio (e.g., 1.55 Shares of Buyer Common Stock for each Share of Target Company Stock or 1.55:1). If the Merger Consideration also includes a cash component, the amount of cash is usually expressed as an addition to the Exchange Ratio (e.g., 1.55 Shares of Buyer Common Stock and \$30 for each Share of Target Company Stock). Exchange Ratios may be fixed, in which case the ratio is determined at the time of signing the Acquisition Agreement and does not change, regardless of subsequent changes in the market price of the Buyer's Stock. Exchange Ratios may also be floating, in which case the Exchange Ratio in the Acquisition Agreement is expressed as a formula so that the market value of the Buyer's Stock deliverable at Closing is a constant and the number of Shares of Buyer's Stock that will be exchanged for each Share of Target Company Stock varies depending on the price of the Buyer's Stock over a measurement period immediately preceding Closing. See also Fixed Exchange Ratio and Floating Exchange Ratio.

*Jurisdiction:* 

**Exchange Ratio Collar:** a way to change the risk allocation inherent in either a Fixed Exchange Ratio or a Floating Exchange Ratio. A Collar limits the effect of a change in market price of the Bidder's Stock in the case of a Fixed Exchange Ratio by either converting the fixed ratio to a Floating Exchange Ratio when the Bidder's Stock price appreciates or depreciates by more than a stated amount, and/or by allowing one or both parties to terminate the Acquisition Agreement. A Collar limits the effect of a change in market price of the Bidder's Stock under a Floating Exchange Ratio by either converting the Floating Exchange Ratio to a Fixed Exchange Ratio when the Bidder's Stock appreciates or depreciates by more than a stated amount, and/or or by allowing one both parties to terminate the agreement. Collars are often negotiated in terms of a percentage movement in the price (or average price over a measurement period) of the Bidder's Stock, e.g., 10 percent or 20 percent.

*Jurisdiction:* 

**Exclusion Clause:** a contract term that seeks to restrict the rights of the parties. Depending on the nature of the contract, Exclusion Clause enforceability may be subject to limitation in most jurisdictions

*Jurisdiction:* 

**Exclusive Financing Commitments:** a Lock-Up of one or several of the banks which customarily provide Leverage acquisition financing by a single Bidder or Bidder Group. Depending on the size of the Target Company and the number and identity of the banks that have entered into Exclusive Financing Commitments, an Exclusive Financing Commitment can effectively serve to block Competing Bids.

*Jurisdiction:* 

**Exclusive Jurisdiction Provisions:** another name for Exclusive Venue Provisions

*Jurisdiction:* 

**Exclusive Venue Provisions:** specify a contractually selected venue as the exclusive jurisdiction in which claims among the parties to the agreement may be lodged. Exclusive Venue Provisions also customarily specify that the law of the exclusive venue shall govern interpretation and enforcement of the agreement.

1. (US) very commonly an Acquisition Agreement specifies Delaware (or the Chancery Court in Delaware) as the exclusive jurisdiction in which the parties may sue one another on claims arising under the Acquisition Agreement. Similarly, acquisition financing agreements very commonly specify New York, or the Supreme Court in the County of New York as the exclusive jurisdiction in which the parties may sue one another on claims arising under the financing agreement, even if the Acquisition being financed has a different applicable Exclusive Jurisdiction Provision.

*Jurisdiction:* 

**Exclusivity:** see Exclusivity Agreement

*Jurisdiction:* 

**Exclusivity Agreement:** an agreement to deal with one party exclusively with respect to a business opportunity. Buyers sometimes seek exclusivity provisions from Sellers with respect to negotiations involving an Acquisition. Private Equity Sponsors sometimes seek exclusivity provisions from one or more Financing Sources to prevent the Financing Sources from simultaneously dealing with other Bidders in an Auction. See also Exclusive Financing provisions and Lock-Up.

*Jurisdiction:* 

**Exculpatory Charter Provisions:** provisions in a Charter providing that members of the Board of Directors and officers will be exculpated from monetary liability arising in connection with their service to the corporation. Under Delaware law (Section 102(b)(7) of the DGCL), Charters may only exculpate directors from monetary damages for breaches of the Duty of Care, not the Duty of Loyalty. Almost every Public Company incorporated in Delaware has an Exculpatory Charter Provision.

*Jurisdiction:* 

**Execution Risk:** the risk that a deal will not Close. See also Conditionality.

**Jurisdiction:**           

**Executive:** the Executive Director of the Corporate Finance Division of the SFC, who administers the HK Takeovers Code, undertakes investigations of Takeovers and other matters to which the HK Takeovers Code applies

**Jurisdiction:** 

**Executive Compensation Plan:** plan or agreement negotiated between an employer and executive level employees that often provides: base salary, bonuses, long-term equity incentives, Severance Plan, Parachute Payments, 280G Gross Ups and additional executive-only benefits and perquisites

**Jurisdiction:**            

**Exercise Price:** the price at which an Option or Warrant may be exercised. See also Strike Price.

**Jurisdiction:**            

**Exit:** the opportunity for Investors to sell their investment. Normally, the Exit from investment in a Private Company occurs either through a sale of the company or through its IPO/Flotation on the stock market.

**Jurisdiction:**            

**Exit Multiple:** on an Exit, the Multiple of EBITDA (or a similar metric) received as consideration in the transaction

**Jurisdiction:**            

**Exon-Florio:** the US law pursuant to which the President was granted oversight over foreign investment in the US. President Reagan delegated the authority to review and approve such investments to the Committee on Foreign Investment in the United States (CFIUS). See also Foreign Investment Rules.

**Jurisdiction:** 

**Expiration Date:** another name for Termination Date

**Jurisdiction:**            

**Extension:** granting a party more time to perform an obligation under an agreement or moving a Termination Date further into the future

**Jurisdiction:**           

**Extraordinary General Meeting:** a general meeting of a company's shareholders called in order to seek their consent for matters requiring or deemed by Board of Directors to require such consent, particularly pursuant to the company's Articles of Association or under the relevant law

1. (FRA) required for certain reserved matters (determined by the Bylaws or the French commercial code, as the case may be and depending on the

corporate form of the company) which require the approval of 2/3 of the shareholders

*Jurisdiction:*  UK FRA HKG

*Facility:* another name for loan or credit line

*Jurisdiction:*  US UK DEU FRA HKG ITA RUS SGP UAE

*Fair Dealing:* see Fiduciary Duty

*Jurisdiction:*  US DEU ESP ITA SGP UAE

*Fair Price Provision:* a provision of a Company's Charter or Bylaws that requires that shareholders receive a "fair price" for their equity in a sale of the Target Company, usually defined as a required premium over market or a required premium over a prior Bid price. The purpose of most Fair Price Provisions is to make it too costly for a Buyer to engage in a Two Step Acquisition in which the first step is a Hostile Tender Offer or large Open Market Accumulation program, by requiring the Buyer to pay so much more to acquire the remaining public ownership of the Target Company's Stock that the Second-Step in the Acquisition will not make economic sense.

*Jurisdiction:*  US ESP ITA SGP

*Fair Price Statute:* US state law statute equivalents to Fair Price Provisions

*Jurisdiction:*  US ESP

*Fair Value Provision:* another name for a Fair Price Provision

*Jurisdiction:*  US ESP ITA SGP

*Fair Value Statute:* another name for a Fair Price Statute

*Jurisdiction:*  US ESP

*Fairness Opinion:* a letter or similar document from a Financial Advisor to its client, or to the Board of Directors of its client, expressing the Financial Advisor's opinion with respect to the fairness, from a financial point of view, of a proposed Acquisition (if given to the Buyer's Board of Directors) or the Merger Consideration to be paid to the Target's stockholders (if given to the Target's Board of Directors). Fairness Opinions are typically very stylized and not subject to significant negotiation. The function of a Fairness Opinion is usually to support a Board of Directors in its exercise of its Duty of Care. As such, Fairness Opinions are most often obtained by publicly held companies. The practice of obtaining Fairness Opinions, particularly for the Board of Directors of a publicly held Target Company, is routine in the US and gradually becoming more common in non-US M&A transactions.

1. (US) Fairness Opinions became ubiquitous for Public Company Sellers in the US in the mid-1980s after the Delaware Supreme Court noted that a Board, which the court held had not fulfilled its Duty of Care in approving a Merger, had not retained an Investment Banker to advise the Board with

respect to the Merger. *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985).

## 2. (HKG and SGP) see IFA Opinion

*Jurisdiction:* 

**FCA:** shorthand for the UK Financial Conduct Authority

*Jurisdiction:* 

**FCPA:** acronym for Foreign Corrupt Practices Act

*Jurisdiction:* 

**Federal Antimonopoly Service:** a Russian state authority exercising control over competition in the Russian market; parties may need to obtain the prior approval of or notify the Federal Antimonopoly Service of a Merger or an Acquisition. See Competition Commission.

*Jurisdiction:* 

**Federal Trade Commission:** an agency of the US government with primary responsibility for consumer protection and co-extensive responsibility with the Antitrust Division of the Department of Justice for antitrust oversight. As such, the FTC shares responsibility with the Antitrust Division for reviewing Acquisitions for potential Anti-Competitive implications under the Hart-Scott-Rodino Act. See Competition Commission.

*Jurisdiction:* 

**Fee Letter:** the part of the Commitment Papers package that sets forth the fees and contains the market flex provisions. The Fee Letter is a separate letter which outlines certain fees to be paid in connection with the various Credit Facilities contemplated by the Commitment Letter. Note that the Fee Letter is often not shared with the Target Company (among others). Always be careful as to whom this letter is distributed.

*Jurisdiction:* 

**Fiduciary:** a party which has a duty to act solely in the interests of another party. Officers and directors of a corporation/company serve as fiduciaries for the corporation's stockholders/company shareholders and are charged with serving in their best interests.

*Jurisdiction:* 

**Fiduciary Duty:** see Fiduciary. See also, e.g., Duty of Candor, Duty of Care, Duty of Loyalty and Directors' Duties.

*Jurisdiction:* 

**Fiduciary Out:** a provision in an Acquisition Agreement that allows the Board of Directors to terminate the agreement if a "better" deal arises with another party. Almost universally found in No Shop provisions in a Public Company Acquisition Agreements which permit the Target Company (notwithstanding the No Shop provisions) to provide information to and negotiate with a Competing Bidder upon certain determinations made by the Target Company's Board of Directors, including that the proposed

Acquisition terms from the competing third party Bidder are or are reasonably likely to become a Superior Proposal.

*Jurisdiction:* 

**Fight Letter:** a type of Proxy solicitation material, often in the form of a letter to shareholders, which is typically far shorter and punchier than a formal Proxy Statement in a Proxy Contest. Fight Letters, like political ads, seek to persuade the shareholders to vote in the manner proposed by the author.

*Jurisdiction:* 

**Fill-Up Rights:** when used to describe the consequences of hitting a Downside Collar in a fixed exchange rate deal, means the Bidder has the right (but not the obligation) to change the Exchange Ratio so as to make up for some or all of the loss in market value of the Bidder's Stock. If the Bidder fails to do so, the Target Company would typically have the choice of living with the Fixed Exchange Ratio or terminating the transaction. The new Exchange Ratio could also be subject to a Collar. A variation permits the Bidder to compensate the Target shareholders for some or all of the putative loss in value with cash consideration.

*Jurisdiction:* 

**Financial Adviser:** see Financial Advisor

*Jurisdiction:* 

**Financial Advisor:** is typically an Investment Bank acting as an independent contractor that provides advice to a participant in a transaction. A Financial Advisor sometimes, but not always, provides the Board of its client with a Fairness Opinion. Also customarily, though not obligatory, a Financial Advisor prepares presentations for the client's senior Management and/or Board (in which case the financial analysis is often called a Board Book) focusing on the financial aspects of a transaction. Sometimes spelled Financial Adviser.

*Jurisdiction:* 

**Financial Assistance:** rule prohibiting or restricting the grant by a company of assistance (whether in the form of a loan, a grant, or a guarantee or Security) for the Acquisition or subscription of its own Shares

1. (UK) introduced in jurisdictions throughout the European Community by the Second Council Directive of 13 December 1976 (77/91/EEC), but in varying shades depending on the applicable legal regime, and in particular whether the jurisdiction has a strong Corporate Benefit requirement. Since 1 October 2009 in England and Wales, a Private Company is allowed to provide Financial Assistance other than to support the purchase of Shares in a public Parent company, and no Financial Assistance may be given by public companies save for limited exceptions. However, not every other European country is as generous, and the Financial Assistance rules should be carefully considered before committing to provide secured debt

in European financings, as these rules can severely limit (or prevent) the ability to get collateral and guarantees. See also Corporate Benefit.

2. (ESP) introduced in jurisdictions throughout the European Community by the Second Council Directive of 13 December 1976. Financial Assistance in Spanish law refers to assistance given by a company for the purchase of its own Shares or the Shares of its holding companies. In many jurisdictions such assistance is prohibited or restricted by law. In Spain a company cannot anticipate funds, provide loans, provide guaranties or give any kind of Financial Assistance for the Acquisition of the own Shares of the company or any kind of Shares of any other company of the same group (Article 150 of the Spanish Companies Act). A Limited Liability Company cannot anticipate funds, provide loans, provide guaranties or give any kind of Financial Assistance for the Acquisition of the own Shares of the company (Article 143 of the Spanish Companies Act).
- 3 (FRA) Article L. 225-216 of the French Commercial Code provides that a French company shall not advance funds, grant loans or give Security for the purpose of the subscription or the Acquisition of its own Shares by a third party. A breach of such Article constitutes a criminal offence and may lead to the invalidity of the operation concerned. See Guarantee Limitation Language.
4. (HKG) under the Hong Kong Companies Ordinance, a company or its subsidiaries is, subject to certain exceptions, prohibited from giving Financial Assistance directly or indirectly for the purpose of an acquisition of its own Shares, whether the assistance is given before, after or at the same time as the acquisition. Under the new Companies Ordinance (coming into effect from 2014), exceptions will be introduced which will broaden the circumstances under which Financial Assistance will be permitted.
5. (ITA) Article 2358 of the Italian Civil Code, implementing the European directive mentioned above, provides that a company cannot grant loans or guarantees for the purchase or subscription of its own Shares unless certain conditions are met (*i.e.*, among other things, a Whitewash by a general Shareholders' Meeting shall be obtained).
6. (SGP) Section 76 of the Companies Act of Singapore prohibits (save for certain exceptions) a company from giving Financial Assistance to any person whether directly or indirectly for the purpose of the Acquisition or proposed Acquisition of: (i) Shares in the company or units of such Shares; or (ii) Shares in its Holding Company or units of such Shares.
7. (UAE) there are no Financial Assistance provisions in UAE legislation, but there is a proposal to introduce it for Public Companies.

*Jurisdiction:*       

*Financial Buyer:* generally, a Sponsor which is acquiring a business or Target Company as an investment rather than to achieve Strategic Synergies. Compare Strategic Buyer.

*Jurisdiction:*           

**Financial Conduct Authority:** in 2013 the FCA became responsible for regulation of conduct in UK retail, wholesale and financial markets, and the infrastructure that supports those markets. See also Financial Services Authority and Prudential Regulation Authority.

*Jurisdiction:* 

**Financial Covenants:** provisions in a loan agreement according to which the Borrower is obligated to maintain or fulfill specific financial target settings during the duration of the loan

*Jurisdiction:*         

**Financial Services Authority:** the former regulator for the UK financial services industry, given statutory powers by the Financial Services and Markets Act 2000. The Financial Services Authority's statutory objectives were to maintain market confidence and financial stability, promote public awareness, protect consumers and reduce financial crime. Anyone carrying out a Regulated Activity in the UK had to be authorized by the Financial Services Authority or able to rely on an exemption. In 2013, the FSA was replaced by two new regulatory bodies; (i) the Prudential Regulation Authority (PRA) became the UK's prudential regulator for deposit-takers, insurers and designated investment firms; and (ii) the Financial Conduct Authority became responsible for regulation of conduct in retail, as well as wholesale and financial markets and the infrastructure that supports those markets.

*Jurisdiction:*  

**Financial Statements:** the Income Statement, Balance Sheet and Cash Flow Statement of a company

*Jurisdiction:*       

**Financing Commitment:** usually refers to a binding agreement from a financing source to provide Debt Financing for an Acquisition transaction on specified terms (usually contained in an extensive Term Sheet) subject to the drafting and negotiation of a definitive loan agreement. Financing Commitments are usually obtained from a commercial or Investment Bank or banks, but are sometimes provided by other types of Lenders, including Hedge Funds or entities specializing in providing acquisition financing. See also Commitment Letter.

*Jurisdiction:*            

**Financing Condition:** a Condition Precedent in the Acquisition Agreement that makes Buyer's obligation to consummate the Acquisition subject to Buyer's obtaining sufficient financing to complete the transaction. Also called a Financing Out. The consequence of a Financing Out is that the Buyer does not have to consummate the Acquisition even where the Buyer has obtained Financing Commitments, if those commitments (as set forth in the Commitment Letter) do not fund. The Financing Out is a big deal and is hugely important to the overall structure of even a financed Acquisition because a Financing Out effectively incorporates into the

Acquisition Agreement all the Conditions Precedent in the Commitment Letter. Without a Financing Out, the Buyer will usually negotiate with its Financing Sources to limit or eliminate Conditions Precedent in the Commitment Letter because the Buyer is contractually obligated to consummate the Acquisition whether or not the financing is still available on the Closing Date. Financing Conditions are found principally in LBO transactions. They are a rarity in Strategic Acquisitions unless the Buyer is using significant indebtedness to finance the Acquisition.

1. (UK) Financing Conditions are not typical in UK transactions.

*Jurisdiction:* 

**Financing Facility:** a definitive agreement (or related agreements) to provide debt or equity funding

*Jurisdiction:* 

**Financing Out:** another name for a Financing Condition

*Jurisdiction:* 

**Financing Sources:** a generic term for banks and other providers of Debt Financing for Acquisitions

*Jurisdiction:* 

**Firm Offer Announcement:** used in the context of Hong Kong public Takeovers and shorthand for the announcement required by Rule 3.5 of the HK Takeovers Code of a firm intention to make a Takeover Offer

*Jurisdiction:* 

**First Round:** an initial round of Bid solicitations serving to determine the most interested potential Bidders for a Target Company or business. Often certain information will be withheld from potential Bidders until the field is narrowed to a select few contenders.

*Jurisdiction:* 

**First Step Acquisition:** another name for a Front-End Transaction

*Jurisdiction:* 

**Fixed Charge:** a charge taken under English law over a particular asset giving the chargee control over any dealings with that asset. A Fixed Charge is often taken as Security and is distinct from a Floating Charge as the asset charged does not change if Stock levels etc. change. A Fixed Charge ranks ahead of a Floating Charge in the order of repayment in Insolvency.

1. (HKG) a similar concept exists under Hong Kong law

*Jurisdiction:* 

**Fixed Exchange Ratio:** an Exchange Ratio that does not vary depending on changes in market value of the Buyer's Stock. One way to analyze a Fixed Exchange Ratio is as an allocation of the risk of changes in market

value of the Buyer's Stock between signing of an Acquisition Agreement and Closing by assigning to the Buyer's the "risk" of a price increase between signing and consummation, and assigning to the Target Company shareholders the reciprocal "risk" of a price decline between signing and Closing. An alternative analysis views a Fixed Exchange Ratio as an expression of the relative value of the two companies at the time of signing the Acquisition Agreement, a valuation which presumptively does not change merely because the market price of the Buyer's Stock (which may take into account the value of the Acquisition of the Target Company) changes during the interval between signing and Closing.

*Jurisdiction:*         

**Fixed Value Exchange Ratio:** another name for a Floating Exchange Ratio

*Jurisdiction:*         

**Flip-In:** a provision in a Poison Pill that grants Rights Holders the right to acquire additional Shares of the Target Company at a steep discount to market (customarily 50 percent) upon a Hostile Bidder acquiring Shares of the Target Company in excess of a specified Pill Trigger

1. (FRA) made in France via the issuance of Warrants which gives the right to acquire additional Shares of the company at a steep discount. Such issuance requires the prior approval of the shareholders.

*Jurisdiction:*  

**Flip-Over:** as opposed to a Flip-In, this provision in a Poison Pill permits Rights Holders the right to acquire a specified number of Shares of the Bidder at a steep discount to market (customarily 50 percent) if the Target Company is acquired in a Merger following the triggering of a Pill. The Flip-In provision has never been utilized because no Bidder has ever triggered a Pill and persevered to complete an Acquisition of the Target Company.

*Jurisdiction:* 

**Floating Charge:** a charge taken under English law over all the assets or a class of assets owned by a company from time to time. The charge "floats" over the assets and allows the chargor to continue to deal with the assets in the Ordinary Course of Business until Crystallization. A Floating Charge ranks behind a Fixed Charge in the order of repayment in Insolvency.

1. (HKG) a similar concept exists under Hong Kong law

*Jurisdiction:*   

**Floating Exchange Ratio:** an Exchange Ratio that varies depending on the price of the Buyer's Stock, usually expressed as the number of Shares of Buyer's Stock which, when divided by the market price of the Stock (usually averaged over a measurement period ranging from a few days

to as many as 30), produces an agreed dollar amount. Since the point of a Floating Exchange Ratio is to deliver an agreed market value to the Target Company's shareholders, the measurement period is usually set just prior to the Closing Date. In a Floating Exchange Ratio, the Buyer assumes the risk of a decline in its Stock price between signing and Closing (in which case it will have to issue more Shares than it would have had to at signing) and the Target Company shareholders assume the risk of a rise in the Buyer's Stock price between signing and Closing (because, unlike under a Fixed Exchange Ratio, they will not receive any market appreciation due to a rise in price of the Buyer's Shares).

*Jurisdiction:* 

**Flotation:** when a company initially trades its Shares on the public market. See Initial Public Offering.

*Jurisdiction:* 

**Follow-On Offering:** an offering of common Shares subsequent to the Initial Public Offering

*Jurisdiction:* 

**Football Field:** the bar graph depiction of a range of implied valuations for a company based on different methodologies, such as Discounted Cash Flow, Comparable Company Analysis and/or Comparable Acquisition Analysis. Typically the Football Field is included in the Banker Book or Board Book.

*Jurisdiction:* 

**Footsie:** slang term for the FTSE 100 index of the LSE's leading Shares by market capitalization

*Jurisdiction:* 

**Force the Vote Provision:** a provision in an Acquisition Agreement that precludes termination of the agreement prior to a Target Company shareholder vote, even if the Target Company has received a Superior Proposal, is entitled to a Change in Board Recommendation and encourages shareholders to vote against the original Acquisition Agreement. Force the Vote Provisions are very favorable to an incumbent Bidder faced with a Competing Bid because of the timing advantage it confers on the incumbent Bidder and the uncertainty as to whether, if the shareholders vote down the Acquisition Agreement, the Competing Bidder and the Target Company will in fact execute an Acquisition Agreement meeting the terms of the Superior Proposal. By the same token, Target Companies strenuously resist Force the Vote Provisions.

*Jurisdiction:* 

**Foreign Corrupt Practices Act:** the United States Foreign Corrupt Practices Act of 1977 that sets out federal law in relation to, among other things, bribery of foreign officials

*Jurisdiction:* 

**Foreign Investment Law (Qatar):** refers to Law No.(13) of 2000 which, among other things, sets the limit on foreign ownership of Qatari companies up to a maximum of 51 percent of the company's Share Capital (with the exception of a number of sectors which may permit 100 percent ownership). See also Foreign Investment Rules.

*Jurisdiction:* 

### **Foreign Investment Rules:**

1. (US) see CFIUS and Exon-Florio
2. (DEU) see German Foreign Trade Law and Regulations (*Aussenwirtschaftsgesetz, Aussenwirtschaftsverordnung*)
3. (FRA) under French Law, the prior approval of the French Ministry of Economy may be requested when foreign Non-EU or EU Investors intend to acquire French companies operating certain Strategic and sensitive businesses (e.g., gambling sector, the pharmaceutical and biotech sector, national defense, etc.)
4. (RUS) there are two main acts regulating foreign investment in Russia, including Federal Law No. 160-FZ "On Foreign Investment in the Russian Federation" dated 9 July 1999 and Federal Law No. 57-FZ "On the Procedure for Foreign Investment in Commercial Organizations of Strategic Importance for the National Security of the Russian Federation" (the Foreign Investment in Strategic Enterprises Law) dated 29 April 2008
5. (QAT) see Foreign Investment Law (Qatar)
6. (UAE) see Foreign Ownership Restrictions (UAE)

*Jurisdiction:*     

**Foreign Ownership Restrictions (UAE):** Article 22 of the UAE Companies Act sets out that every company incorporated in the UAE must have one or more national partners whose Share in the company capital must not be less than 51 percent of the company capital. GCC nationals will be treated as UAE nationals so long as the LLC in question is 100 percent owned by GCC nationals and/or UAE nationals. Public joint stock companies need to be 100 percent owned by UAE nationals. In addition, certain activities are restricted to corporate entities 100 percent owned by UAE nationals, including oil exploration, drilling, production and related activities and ownership of real estate (outside of Designated Areas). See also Foreign Investment Rules.

*Jurisdiction:* 

**Form S-4:** the type of SEC Registration Statement, pursuant to which new Securities are registered and offered to stockholders of a Target Company in an Acquisition which all or part of the consideration is in the form of Buyer Stock or other Securities. The Form S-4 almost always consists of a few additional pages of required information (called a "Wrap Around") that is combined with the Target Company's Proxy Statement to its shareholders to vote upon the proposed deal.

*Jurisdiction:* 

**Formal Sale Process:** see Auction

1. (UK) the announcement by a UK Public Company soliciting interest from potential Bidders, which may result in certain dispensations being given by the UK Takeover Panel as a result of the Target Board initiated effort to sell the company

*Jurisdiction:*   

**Forward Merger:** another name for a Forward Subsidiary Merger or Forward Triangular Merger

*Jurisdiction:*       

**Forward Subsidiary Merger:** a Triangular Merger in which the Target Company is merged with and into a subsidiary (usually a wholly-owned subsidiary created for this purpose) of the Buyer and the subsidiary is the surviving company in the Merger. Forward Subsidiary Mergers are usually not favored because they may complicate record ownership of real and certain personal property and because they may raise issues as to assignability of certain contracts without consent of the counterparty. Also referred to as a Forward Merger or Forward Triangular Merger.

*Jurisdiction:*     

**Forward Triangular Merger:** another name for a Forward Merger or Forward Subsidiary Merger

*Jurisdiction:*     

**Fractional Shares:** like the name suggests, a fractional Share is less than a full Share of Stock. Unless otherwise indicated by the entity's organizational documents, a fractional Share will generally convey a fraction of the economic and voting rights of a full Share. Fractional Shares occur in every instance where an Exchange Ratio is not expressed in whole numbers. However, most Acquisition Agreements provide that Fractional Shares will not be issued. In lieu thereof, the Agreement may either provide a mechanism for buying or selling Fractional Shares among Target Company shareholders or, more commonly, for a cash payment by the Bidder instead of the issuance of a Fractional Share.

*Jurisdiction:*       

**Framework Agreement:** a skeleton agreement which comprises provisions that should apply to several contemporaneous or subsequently concluded agreements

*Jurisdiction:*         

**Franchise Tax:** a tax charged in certain jurisdictions (e.g., US states) to corporations which are incorporated in or otherwise have filing obligations in those jurisdictions

*Jurisdiction:*  

**Free Cash Flow:** the net operating cash a company generates during a period after deducting all cash costs of doing business (including payment

of taxes and Capital Expenditures). A popular measure for a company's ability to create value. Free Cash Flow is not normally presented on an Accrual basis, is not a GAAP concept and is often modified (and given a different name) to better match a particular industry's business Model.

*Jurisdiction:*            

**Free Float:** see Public Float

*Jurisdiction:*     

**Free Zone:** various Free Zones have been set up in the UAE. Free Zones are Designated Areas set up with a business friendly environment to encourage development, investment or for some other reason. Free Zones are subject to their own laws and, in the case of the DIFC, have their own court system. In general, federal UAE laws will apply to Free Zones where they are not contradictory to the law of a relevant Free Zone.

*Jurisdiction:* 

**Freeze Out Provision:** a generic name for a provision in a Charter that sets special rules for a Buyer of a controlling stake in the company to acquire the balance of the public's Equity Interest in the company

*Jurisdiction:*     

**Friendly:** see Friendly Takeover

*Jurisdiction:*          

**Friendly Takeover:** a consensual Acquisition (as opposed to Hostile or Unsolicited Takeover), one which is not opposed by the Target Company. Friendly Acquisitions range from ones the Target Company actively solicited or supported to those to which a Target Company grudgingly acquiesced. Likewise, the adjective Friendly is used to describe Bidders in consensual transactions.

1. (UK) often called a "Recommended Takeover"
2. (HKG) more commonly known as an Agreed Takeover

*Jurisdiction:*           

**Front-End Transaction:** the first step in a Two Step Acquisition, usually a Tender Offer or Exchange Offer, but sometimes an Open Market Accumulation

*Jurisdiction:*      

**Frustrating Action:**

1. (UK) in the context of a UK Takeover, a Frustrating Action is action outside of the Ordinary Course of Business which a Target Company takes to defend itself from an Offer or potential Offer. Unless a majority of the Target Company's shareholders, or all other parties in the Offer process consent, the action is prohibited by Rule 21 of the UK Takeover Code. Contrast with the rules on Poison Pill.

2. (ESP) in the context of a Spanish Takeover, this is action outside of the Ordinary Course of Business which a Target Company takes to defend itself from an Offer or potential Offer. Generally a Frustrating Action is forbidden under the Spanish Takeover regulation as a passivity rule is imposed on a Target's Management body.
3. (FRA) under French Law, in the course of an Offer, the Board may not take any actions to prevent the Offer from succeeding without the prior approval of the shareholders. Authorizations and delegations granted by the shareholders to the Board before the date of the Offer will be suspended for the time of the Offer.
4. (HKG) in the context of a Hong Kong Takeover, once a *Bona Fide* Offer has been communicated to the Board of an Offeree company or the Board of an Offeree company has reason to believe that a *Bona Fide* Offer may be imminent, no action which could effectively result in an Offer being frustrated, or could result in the shareholders of the Offeree company being denied an opportunity to decide on the merits of an Offer, are to be taken by the Board of the Offeree company in relation to the affairs of the company without the approval of the Offeree company's shareholders in general meeting
5. (ITA) under Article 104 of the Consolidated Financial Act, unless approved by an ordinary or extraordinary general Shareholders' Meeting, as the case may be, Italian Listed Companies whose Securities are involved in a Takeover shall abstain from any actions or transactions, which could preclude the achievement of the Takeover's aims. The company's Bylaws, however, may provide an exception, in whole or in part, to such rule. Any exceptions shall be notified to Consob and made public.
6. (SGP) under Rule 5 of the Singapore Takeover Code, in the course of an Offer, or even before the date of the Offer, if the Board of the Offeree company has reason to believe that a *Bona Fide* Offer is imminent, the Board must not, except pursuant to a contract entered into earlier, take any action, without the approval of shareholders at a general meeting, on the affairs of the Offeree company that could effectively result in any *Bona Fide* Offer being frustrated or the shareholders being denied an opportunity to decide on its merits

*Jurisdiction:*      

***Frustration by Offeree Board:*** see Frustrating Action

*Jurisdiction:*     

***FSA:*** acronym for the Financial Services Authority

*Jurisdiction:*  

***FSA Handbook:*** a publication which sets out all the rules and guidance made by the FSA

*Jurisdiction:* 

***FSFM:*** acronym for the Russian Federal Service for Financial Markets

*Jurisdiction:* 

**FSMA:** acronym for the Financial Services and Markets Act 2000

*Jurisdiction:*  

**FTC:** acronym for Federal Trade Commission

*Jurisdiction:* 

**Fully Diluted:** a common and useful methodology of calculating the number of Target Company common Shares that will be outstanding at the time of a particular event, such as the Closing of an Acquisition. Fully Diluted common Shares outstanding adds to the number of Target Company Shares actually outstanding as of a specified date, the number of additional Shares which would be issued as of the date of the future event assuming all In the Money Options, Warrants and Convertible Securities are exercised or converted on or prior to the event date. The assumption that all such Options, Warrants and Convertible Securities will be turned into Target Company common Shares recognizes the economic reality that this is the only way that holders of those Instruments can realize the In the Money value of their Instruments.

*Jurisdiction:*            

**Fully Financed:** the financial ability to pay 100 percent of the proposed Bid Price and related expenses by Taking Down all debt and equity Financing Commitments

*Jurisdiction:*           

**Funding Fee:** a fee provided for in the Fee Letter that is paid to the arranger of a Bridge Loan if, and only if, the Bridge Loan is funded. Also known as a Takedown Fee.

*Jurisdiction:*            

**Funds Certain Financing:** see Committed Financing and Certain Funds

*Jurisdiction:*      

**Funds Flow Memorandum:** the Closing document that outlines where the money is going. In more complex transactions, the memorandum is often executed or organized by the Issuer/Borrower, particularly when the funding bank is directed to apply the funds in some manner on the Issuer's/Borrower's behalf. Also known as a Funds Flow Statement.

*Jurisdiction:*       

**Funds Flow Statement:** another name for the Funds Flow Memorandum

*Jurisdiction:*       

**GAAP:** generally accepted accounting principles. See also IFRS.

1. (US) US GAAP refers to GAAP in the United States. US GAAP represents a set of authoritative standards for recording and reporting accounting information and is the standard by which US companies report their Financial Statements.

- (UK) UK GAAP refers to GAAP in the United Kingdom and is the standard by which many UK companies report their Financial Statements, although IFRS is also commonly used (and required for all European Public Companies)
- (FRA) French GAAP refers to GAAP in France and is the standard by which French companies report their Financial Statements, although IFRS is also commonly used (and required for all European Public Companies)

*Jurisdiction:* 

**GCC:** Gulf Cooperation Council, a union of the following Arab States: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE

*Jurisdiction:* 

**Gearing:** the ratio of debt to equity capital. See also Leverage.

*Jurisdiction:* 

**GEM:** the Growth Enterprise Market; along with the Main Board, one of the two Securities markets operated by the Hong Kong Stock Exchange

*Jurisdiction:* 

**GEM Listing Rules:** in Hong Kong, this is a reference to the "Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited"

*Jurisdiction:* 

**General Disclosures:** qualify Representations and Warranties by reference to matters appearing in specified public records and/or of which the Buyer ought to be aware on the basis of Due Diligence documents, inquiries or searches

*Jurisdiction:* 

**General Offer:** another term for a tender or Exchange Offer for all outstanding common Shares of a Target Company

- (HKG) a generic term that covers both Mandatory General Offers and Voluntary General Offers. Also known as GO.

*Jurisdiction:* 

**General Partner:** a partner in a Partnership which may have personal liability for the liabilities and obligations of the Partnership (but see Limited Liability Limited Partnership). If a Partnership is not a Limited Liability Partnership or a Limited Partnership, its Partners will be General Partners by default.

*Jurisdiction:* 

**German Foreign Trade Law and Regulations (Aussenwirtschaftsgesetz, Aussenwirtschaftsverordnung):** pursuant to these rules a certificate may be required by the German Federal Ministry of Economics and

Technology (*Bundesministerium für Wirtschaft und Technologie*). See also Foreign Investment Rules.

*Jurisdiction:* 

**German Takeover Code:** the Takeover of Listed Companies in Germany has been regulated since 2002 by the German Takeover Code (*Wertpapiererwerbs- und Übernahmegesetz, WpÜG*). The Takeover Code supplemented by a set of rules, stipulates in detail the lower limit of the Offer price for a Takeover Offer.

*Jurisdiction:* 

**Give-Get:** another name for a Has-Gets financial analysis for a Stock-for-Stock Acquisition

*Jurisdiction:*     

**Glass Lewis:** the second largest Proxy Advisory Firm, currently owned by the Ontario Teachers' Pension Fund

*Jurisdiction:* 

**GO:** acronym for General Offer

*Jurisdiction:*   

**Go Shop:** provisions sometimes contained in Public Company Merger Agreements which delay the beginning of the No Shop provisions for a specified period of time (e.g., 30-60 days). During a Go Shop period, a Target Company is contractually free to actively solicit Competing Bids. Terms of Go Shop provisions vary, including the duration of the Go Shop period and the reduction, if any, during the Go Shop period of the Termination Fee. Go Shop provisions are most commonly found in Public Company Merger Agreements where there has not been a significant Market Check preceding the Target Company's Board of Directors approval of the Public Company Merger Agreement. Go Shop provisions are also more common in transactions where the successful Bidder is a Private Equity Sponsor.

*Jurisdiction:*          

**Going Private:** in its broadest meaning, Going Private refers to the elimination of all public ownership in a Public Company. This usage overlaps with the term Take Private, and many use the two terms interchangeably. A more precise usage of the term Going Private is to describe a transaction by which a Controlling Shareholder of a Public Company acquires all of the public shareholders' Equity Interests.

1. (US) a related and more technical meaning is a transaction meeting the definition of a "going private transaction" in SEC Rule 13e-3 under the 1934 Act. The term Going Private is also sometimes confusingly used to describe a transaction in which a publicly held corporation de-registers its Securities due to the number of shareholders falling below the applicable SEC Threshold.

*Jurisdiction:*          

**Golden Handcuffs:** a term often used to broadly describe employment incentive arrangements designed to ensure an employee does not leave a business

*Jurisdiction:* 

**Golden Handshake:** agreement between a company and a member of the Management which connects the termination of employment with a substantial financial settlement

*Jurisdiction:* 

**Golden Parachute:** provisions in an employment or Change of Control agreement for Parachute and severance pay in the event the employer is acquired in a transaction resulting in a Change of Control. Frequently, these provisions have a Single Trigger Parachute or Double Trigger Parachute which also requires the employee be involuntarily terminated within a specified period following the Acquisition. A Golden Parachute commonly provides for severance pay in a Multiple of base pay (and usually cash bonus), such as twice as much (2x) or three times as much (3x) as well as continued medical and other benefits; hence the adjective "golden" to describe the arrangement. Golden Parachutes also typically provide for Stock Option Acceleration, Stock Appreciation Rights, Restricted Stock Units, removal of restrictions on all Restricted Stock, payment of enhanced pension benefits (often pursuant to Supplemental Employee Retirement Plans, or SERPs) and 280G Gross Up provisions.

1. (FRA) under French Law, Golden Parachute entitlements in Listed Companies are subject to performance criteria established by the Board and the payment of the Golden Parachutes is subject to Board verification that the established criteria or targets are met. Such decisions must be publicly disclosed by the Board.

*Jurisdiction:* 

**Good Faith:** acting honestly and fairly towards one's counterparties. Similar to acting reasonably. Good Faith is also a critical component of a director's Duty of Loyalty.

*Jurisdiction:* 

**Good Leaver:** a manager who holds Shares of the company and leaves his/her office in consent or without being terminated for good cause. When a person ceases to be an employee of a company, a Good Leaver will usually mean leaving employment on grounds of death or disability and a Bad Leaver will usually mean leaving in circumstances connected with employee dismissal. The concept of Good Leaver/Bad Leaver is sometimes used to determine the Acquisition price of the Shares held by the manager or employee.

*Jurisdiction:* 

**Goodwill:** the value of intangible assets on a company's Balance Sheet. Goodwill includes the business's reputation, contacts and intellectual property; the reason why you buy Coke over Pepsi (or vice versa).

*Jurisdiction:* 

**Greenmail:** a once common method of getting rid of an Activist Investor in which the Target Company would purchase the Investor's block of Target Company Stock at a price above market and enter into some form of settlement or Standstill agreement with the Activist Investor. This practice became very controversial in the late 1980s and provoked legislation as well as institutional Investor backlash. As a result, Greenmail is rarely practiced in its traditional form.

1. (FRA) such method is prohibited in France because it would violate the equality of treatment among shareholders

*Jurisdiction:* 

**Gross Up:** a provision in an agreement which increases the amount of a specified payment so that, after payment of all applicable taxes owed by the recipient resulting from the payment, the recipient receives what it would have received if the payment had not been subject to the applicable taxes. A Tax Gross Up historically was very common in Parachutes, but under pressure from institutional Investors and Proxy Advisory Firms, has largely been eliminated from new Parachutes and has been negotiated out of many older Parachutes. A Tax Gross Up in loan agreements generally protects Lenders which are not otherwise subject to tax in the Lender's jurisdiction from the possible imposition, after the Closing Date, of Withholding Taxes by a taxing authority.

*Jurisdiction:* 

**Group:** generally when two or more persons agree to act together for the purpose of buying, holding, voting or disposing of a company's Securities. Proving when persons have actually formed a Group versus when persons just happen to all be taking similar actions at similar times can be difficult. See L&W M&A Commentary —CSX: Opportunities and Implications for Companies and Activist Investors (June 2008). See also Acting in Concert and Bidder Group.

*Jurisdiction:* 

**Growth Capital:** see Development Capital

*Jurisdiction:* 

**Guarantee Limitation Language:** in certain jurisdictions unlimited guarantees can be illegal or invalid, including because of Corporate Benefit of Financial Assistance prohibitions, and therefore a limitation language specific in each relevant jurisdiction may need to be inserted

*Jurisdiction:* 

**Guaranteed Delivery:** a provision in Tender Offer or Exchange Offer documents which, in lieu of requiring physical delivering of the tendered Securities, permits a broker, dealer, bank or trust company to guarantee delivery on behalf of a customer. Not all Tender Offers and Exchange Offers permit a guarantee of delivery because they have been extremely difficult to enforce, often to the regret of the Bidder.

*Jurisdiction:*     

**H: Hijri Calendar**

*Jurisdiction:*   

**Handbook:** the handbook of all of the FSA's rules, including (but not limited to) the Listing Rules, the Disclosure and Transparency Rules and Code of market conduct

*Jurisdiction:* 

**Hard Undertaking:** an undertaking with no "out," *i.e.*, binding in all circumstances, as compared to a soft undertaking which ceases to be binding if a higher Offer emerges or a semi-hard undertaking which ceases to be binding if a higher Offer emerges which exceeds the existing Offer by an agreed amount

*Jurisdiction:*     

**Hart-Scott-Rodino Act:** the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR); in general, requires that both the Bidder (the Acquiring Person) and the Target Company (the Acquired Person) make certain filings with the Department of Justice and the Federal Trade Commission at least 30 days (15 days in the case of a Tender Offer or Exchange Offer) prior to consummation of an Acquisition. The two federal antitrust agencies determine among themselves which will take precedence in reviewing the HSR filing. The reviewing agency can, in effect, stay consummation of the Acquisition by making a Second Request for additional information, which has the effect of extending the waiting period until the request has been fulfilled to the satisfaction of the agency. A Second Request ordinarily will be very detailed and compliance with it can take months. Notably HSR is strictly informational and does not change the antitrust principles otherwise applicable to the Acquisition. However, the delay inherent in a Second Request, coupled with its signaling effect in terms of potential agency concern about substantive violations of the antitrust laws, particularly if not expected, can be a concrete setback to deal timing and deal certainty. See Competition Commission.

*Jurisdiction:* 

**Has-Gets:** a common type of analysis of the financial aspects of a proposed Stock-For-Stock Acquisition, in which each party's contribution to the financial metrics of the Pro Forma combined entity (usually measured in percentages of the whole) is compared to the percentage of the

same financial metrics of the Pro Forma combined entity which will be represented by each entity's shareholders ownership of the combined entity. For example, one entity may be responsible for 50 percent of the Pro Forma combined earnings, but its shareholders may own only 45 percent to the combined entity following the deal. See also Give-Get.

*Jurisdiction:* 

**Hedge:** an investment or strategy which attempts to reduce the impact of adverse fluctuations in the price of one asset by taking an offsetting position in another asset. For instance, many companies Hedge their foreign exchange exposure by entering into a Currency Swap and their interest rate exposure by entering into an Interest Swap.

*Jurisdiction:* 

**Hedge Fund:** a fund that invests essentially at the derivatives market in derivative instruments such as Options and futures or that exploits price differences of financial instruments through other innovative portfolio strategies

*Jurisdiction:* 

**Helen of Troy:** tax regulations which impose additional requirements for an Acquisition to be tax-free to shareholders of a US Target corporation where the Target is acquired by a non-US Acquirer corporation

*Jurisdiction:* 

**Hell or High Water:** contract terminology used in a variety of circumstances. The term is most frequently used to describe a Covenant by the Buyer that it will take all actions within its power to resolve any antitrust issues which may arise, including the disposition of any of its, or the Target Company's, businesses.

*Jurisdiction:* 

**High Vote/Low Vote:** a structure in which different Classes of Common Stock have different voting rights (a Class A Share may provide a holder with one vote per Share, while a Class B Share may provide its holder with ten votes per Share). The High Vote/Low Vote structure permits Insiders, family members or early Investors to continue to control a company after its IPO (see the New York Times, Google and Facebook for some examples).

1. (FRA) the same goal may be achieved under French Law when choosing a certain corporate form which enables the separation of capital and control

*Jurisdiction:* 

**High Yield Bonds:** Bonds rated below Investment Grade by the ratings agencies, but note that in emerging markets where Issuers may be rated below Investment Grade, their Bonds are often not strictly speaking High Yield Bonds in that the Covenant package and the structuring will be simpler

*Jurisdiction:* 

**Highly Conditional:** a high degree of Conditionality

*Jurisdiction:*           

**Highly Confident:** a non-commitment Commitment Letter. A Highly Confident letter makes no binding promises or commitments, but indicates that the issuing institution is confident that the described financing can be obtained. Often delivered in initial rounds of an Auction for a Target Company to demonstrate that a Bidder has Financing Sources lined up (even if not locked down).

*Jurisdiction:*           

**Hive-Down:** a form of Reorganization of a company or group of companies whereby a company transfers a part of the business to a subsidiary

*Jurisdiction:*       

**HK Takeovers Code:** the set of general principles and rules which establish the framework for public company takeover, merger and Share repurchase transactions in Hong Kong. The Codes on Takeovers and Mergers and Share Repurchases do not have the force of law and represent "a consensus of opinion of those who participate in Hong Kong's financial markets and the SFC regarding standards of commercial conduct and behavior considered acceptable for takeovers, mergers and share repurchases...."

*Jurisdiction:* 

**HK Takeovers Panel:** the Takeovers and Mergers Panel, the body that hears disciplinary matters in the first instance and reviews rulings by the Executive at the request of any party dissatisfied with such a ruling; the panel also reviews, from time to time upon request by the SFC, the HK Takeovers Code and recommends appropriate amendments

*Jurisdiction:* 

**HKEx:** the Holding Company of the Hong Kong Stock Exchange, Hong Kong Futures Exchange Limited and Hong Kong Securities Clearing Company Limited which was established in 2000. Formally referred to as Hong Kong Exchanges and Clearing Limited.

*Jurisdiction:* 

**HKFRS:** acronym for Hong Kong Financial Reporting Standards, which is the set of financial reporting standards issued by the Hong Kong Institute of Certified Public Accountants

*Jurisdiction:* 

**HMRC:** shorthand for Her Majesty's Revenue and Customs, a department of the UK Government responsible for the collection of taxes

*Jurisdiction:* 

**Hockey Stick Projections:** a descriptive term, with a pejorative connotation, for a Target Company's projections which show a sharp

upward trajectory

*Jurisdiction:* 

**Hold Harmless:** where one party agrees (often by letter agreement) not to hold another contracting party responsible for claims and/or liabilities which it may incur

*Jurisdiction:* 

**Holdback:** another term for an Escrow

*Jurisdiction:* 

**Holdco:** shorthand for Holding Company

*Jurisdiction:* 

**Holdco Debt:** debt at the Holdco level. Particularly where the Holdco has no operations or assets other than its Stock in the operating company, Holdco Debt is an interesting creature, generally not guaranteed by the operating company below it. So from the Holdco debtholders' perspective, Holdco Debt is debt. But from the lower operating company perspective, the Holdco Debt is essentially equity because payments on the Holdco Debt can only be paid with dividends up from the operating company. The ability to incur new debt at a Holdco level depends on whether the operating company Indentures and Credit Agreements restrict Holdco Debt.

*Jurisdiction:* 

**Holding Announcement:** an announcement made by a Listed Company in the event of a leak of a potential material corporate event and generally advising shareholders to exercise caution when dealing in the Shares of the company

*Jurisdiction:* 

**Holding Company:** a company which sits on top of (or "holds" the Stock of) one or more operating subsidiaries. This concept sometimes connotes a company that does nothing else (*i.e.*, has no operations). See Parent, Holdco Debt and Double Dummy Merger.

1. (UK) defined in the UK context by section 1159 of the UK Companies Act

*Jurisdiction:* 

**Hold-Separate Agreement:** agreement entered into in connection with a Cross-Border Merger according to which specific companies in certain countries of a Target group are to be treated separately until obtaining the respective Merger Clearances in order to enable the parties to consummate a substantial part of the transaction independent therefrom beforehand

*Jurisdiction:* 

**Hong Kong Stock Exchange:** the only recognized stock exchange or stock market in Hong Kong. Formally referred to as The Stock Exchange

of Hong Kong Limited, commonly abbreviated to “SEHK” or “HKSE,” is a subsidiary of Hong Kong Exchanges and Clearing Limited or HKEx.

*Jurisdiction:* 

**Hostile:** see Hostile Bidder

*Jurisdiction:*           

**Hostile Bidder:** a Bidder proposing a Business Combination which, at least initially, is opposed by the Target Company

*Jurisdiction:*           

**Hostile Takeover:** frequently used to describe a Business Combination or a proposed Business Combination that, at least initially, is opposed by the Target Company or proposed by a Hostile Bidder. There are many degrees of hostility, ranging from an initial Unsolicited Acquisition Proposal which is withdrawn if the Target Company turns it down, to a Tender Offer or Exchange Offer which is made in the face of a Target Company's fierce opposition. Note that once a Target Company agrees on the terms of a Hostile Bid, the deal becomes negotiated and is no longer a Hostile Bid. Hostile, as a description of an Acquisition Proposal or an Acquirer, usually is intended as a pejorative connotation, although the connotation is usually mostly in the eyes of the Target Company's Board of Directors, Management and employees, not the market.

*Jurisdiction:*           

**HSR:** acronym for the Hart-Scott-Rodino Act

*Jurisdiction:* 

**Hurdle:** the term typically used to describe the level after which certain commercially agreed terms will apply. For example, a director may receive additional equity in the event that the Hurdle percentage Return on Investment in a transaction is reached.

*Jurisdiction:*     

**Hurdle Rate:** a defined break-even point in a Private Equity or Venture Capital Fund which has to be reached so that a fund manager receives a remuneration in the form of Carried Interest

*Jurisdiction:*      

**IBC:** acronym for Independent Board Committee

*Jurisdiction:* 

**IBERCLEAR:** the Spanish Central Securities Depository. IBERCLEAR is in charge of both the register of Securities (held in book-entry form) and the clearing and settlement of all trades from the Spanish Stock Exchanges, the Public Debt Market, the AIAF Fixed Income Market and Latibex (the Latin American stock exchange denominated in Euros). See Depository.

*Jurisdiction:* 

**IBES:** the Institutional Brokers' Estimate System or I/B/E/S collects and compiles earnings estimates by stock analysts for US Public Companies

*Jurisdiction:* 

**IBO:** acronym for Institutional Buy-Out

*Jurisdiction:*      

**IFA:** acronym for Independent Financial Advisor

*Jurisdiction:*  

**IFA Opinion:** refers to the opinion of the IFA on the Offer of the Offeror in a Takeover Offer

*Jurisdiction:*  

**IFRS:** International Financial Reporting Standards issued by the International Accounting Standards Board (IASB). This is the international equivalent of US GAAP. More than 100 countries permit or require use of IFRS for preparing Financial Statements of Listed Companies, including countries in the European Union, Australia, Brazil, Canada, Chile, China, India, Israel, Mexico, South Africa and South Korea. Rule amendments which the SEC adopted in December 2007 allow foreign private Issuers to use Financial Statements without reconciliation to US GAAP, if the Financial Statements are prepared using the English language version of IFRS. See *Latham & Watkins Client Alert No. 667, SEC Accepts Financial Statements From Foreign Private Issuers Without Reconciliation to US GAAP If Prepared Under International Financial Reporting Standards (January 16, 2008)*, available at [www.lw.com](http://www.lw.com).

*Jurisdiction:*            

**IM:** acronym for Information Memorandum

*Jurisdiction:*            

**Implementation Agreement:** generally refers to an agreement between an Acquirer and a Target Company which implements a transaction such as a Merger, Acquisition or Scheme of Arrangement. Having been prohibited in 2011 in relation to UK Takeover Code transactions, use of Implementation Agreements in the UK is now more limited.

*Jurisdiction:*      

**In Play:** describes a company which has become a potential Takeover Target or has put itself up for sale

*Jurisdiction:*     

**In the Money:** a Stock Option is In the Money when the holder can exercise it for a profit. A Convertible Bond is In the Money when its conversion value exceeds its Par Value.

*Jurisdiction:*           

**Incentive Stock Option:** a Stock Option tied to the performance of the company

1. (US) ISOs qualify for special tax treatment under the US Internal Revenue Code. ISOs are generally not taxed at grant or exercise, but upon disposition of the Shares acquired upon exercise of the ISO. If certain holding periods are met, the disposition of the Shares is eligible for long-term capital gain/loss treatment.

2. (UK) see Long Term Incentive Plan

*Jurisdiction:* 

**Income Statement:** a Financial Statement on which a company reports its Results of operations over a period of time (usually monthly, quarterly or annually). Also commonly referred to as a Profit and Loss Statement or P&L Statement. Think of an Income Statement as a movie and a Balance Sheet as a snapshot.

*Jurisdiction:* 

**Incumbency Certificate:** a certificate (generally issued by the secretary of a corporation) attesting to the fact that specified individuals are in fact officers, directors or otherwise authorized persons of the corporation.

1. (FRA) such a certificate does not exist in France, but the Registry of Commerce and Companies may deliver an Extrait K-bis which contains the main information regarding the company such as its name, Share Capital, registered address and the identity of its legal representatives

*Jurisdiction:* 

**Indemnification:** a promise to pay the other party in the amount of damages suffered by reason of a false Representation and Warranty or a breach of Covenant. In general, Indemnification is an amount paid to a party to make the whole with respect to a loss incurred against which the party had been indemnified or where recovery may not be available under contract or law.

*Jurisdiction:* 

**Indemnification Annex:** generally the first exhibit to the Commitment Letter, this annex lays out the terms of the Indemnification that must be provided by the Borrower or the Sponsor to the arranger as a condition to the offering of the commitment. Some bank forms incorporate the Indemnification provisions into the text of the Commitment Letter.

*Jurisdiction:* 

**Indemnification Caps:** a limit on the amount of Indemnification

*Jurisdiction:* 

**Indemnity:** see Indemnification

*Jurisdiction:* 

**Indemnity Clause:** see Indemnification

*Jurisdiction:* 

**Independent Board Committee:** a committee comprising of all non-executive directors who have no direct or indirect interest in an Offer, or possible Offer. The HK Takeovers Code requires a Public Company which is the target of an Offer to establish an Independent Board Committee to make a recommendation to that company's shareholders (i) as to whether the Offer is, or is not, fair and reasonable and (ii) as to acceptance of or voting (if any) on the Offer.

*Jurisdiction:* 

**Independent Chairman:** a chairman of the Board of a company who is an Independent Director

*Jurisdiction:*         

**Independent Director:** there is no single authoritative definition of a director's independence. In general, the term means a director who does not have a material relationship with the company.

1. (US) Sarbanes-Oxley and the rules adopted by the stock exchanges have a complex set of requirements as to who qualifies as an Independent Director. In general, you know one when you see one. SEC rules require that the audit committee of a company be comprised entirely of Independent Directors. Stock exchange rules require that the full Board be comprised of a majority of Independent Directors.
2. (FRA) the definition of an Independent Director and the requirement to appoint such directors in Listed Companies in France result from good practice codes such as the AFEP-MEDEF code and the AMF's recommendations
3. (HKG) more commonly known as an Independent Non-Executive Director or INED

*Jurisdiction:*           

**Independent Financial Advisor:** in a Takeover of a public Listed Company, the Board of Directors of the public Listed Company must appoint an Independent Financial Advisor to advise the Independent Directors and shareholders of the Offer. See IFA.

*Jurisdiction:*  

**Independent Lawyer:** at a minimum, independent means a lawyer who has no conflicts of interest (within the meaning of the Code of Professional Liability) with respect to the parties and the matter on which the lawyer is advising

*Jurisdiction:*        

**Independent Non-Executive Director:** an independent director who has no executive or management responsibility in the company. The tests of independence are found in Rule 3.13 of the Hong Kong Stock Exchange Listing Rules

*Jurisdiction:* 

**Indication of Interest:** a proposal for a Business Combination which is not intended to be binding. See also Letter of Intent.

*Jurisdiction:* 

**Indicative:** means illustrative terms. Indicative is frequently used in LBO transactions as a substitute provided by the Seller's Financial Advisor for a pricing indication from third party Financing Sources.

*Jurisdiction:* 

**Indicative Bid:** see Preliminary Offer

*Jurisdiction:* 

**Indicative Offer:** see Preliminary Offer

*Jurisdiction:* 

**Industrial License:** see Charter

*Jurisdiction:* 

**INED:** acronym for Independent Non-Executive Director

*Jurisdiction:* 

**Information Agent:** a function customarily performed by a Proxy Solicitor in connection with a Tender Offer or Exchange Offer. The Information Agent typically assists in the distribution of the offering documents to Beneficial Owners of the Security and stands ready to answer questions about the Offer, particularly its mechanics, and sometimes assists in the solicitation of Tender Offers.

*Jurisdiction:* 

**Information Memorandum:** another name for an Offering Memorandum. See IM.

*Jurisdiction:* 

**Initial Public Offering:** the first public offering of a company's equity Securities. See IPO.

1. (US) following an Initial Public Offering, a company becomes an SEC Reporting Company (if it wasn't already)
2. (UK) see also Flotation and Admission and Disclosure Standards
3. (FRA) following an Initial Public Offering, a company becomes subject to the AMF's General Regulation and to specific sets of rules of the French Commercial Code and French Monetary and Financial Code

*Jurisdiction:* 

**Inside Basis:** the basis that an entity has in its assets. Contrast with "outside basis," which is a partner's, member's or shareholder's basis in the entity's Equity Interests.

*Jurisdiction:* 

*Inside Information:* another name for Material Non-Public Information

1. (HKG) a defined term in the SFO, and refers to specific information about a company, its shareholders or officers or the listed securities of the company or their derivatives which is not generally known to the public but would, if generally known to them, be likely to materially affect the price of the listed securities.

*Jurisdiction:* 

*Insider:* a person who possesses Inside Information

*Jurisdiction:* 

*Insider Dealing:* see also Insider Trading

1. (HKG) generally describes the act of dealing in Shares on the basis of Inside Information. Insider Dealing includes disclosing Inside Information to another person or encouraging another person to deal in Shares on the basis of Inside Information. Insider Dealing is a form of Market Misconduct under the SFO that may lead to either civil proceedings before the Market Misconduct Tribunal or criminal proceedings before the courts.

*Jurisdiction:* 

*Insider Trading:* the trading of a company's Securities by Insiders. See also Insider Dealing.

1. (US) see also Rule 10b-5
2. (UK) describes the act of dealing in Shares on the basis of Inside Information. Insider Trading is a criminal offence in the UK under the Criminal Justice Act 1993 (CJA), which also makes it an offence to disclose Inside Information to another or to encourage another to deal in Shares on the basis of Inside Information (the "tipping offence"). See also the civil law Market Abuse regime, which applies to a broader range of abusive conduct (and may additionally apply to companies as well as individuals).
3. (DEU) regulated by the German Securities Trading Act (Wertpapierhandelsgesetz). According to Section 14 of the German Securities Trading Act, it is prohibited: (i) to make use of Inside Information to acquire or dispose of Insider Securities for one's own account or for the account or on behalf of a third party; (ii) to disclose or make available Inside Information to a third party without the authority to do so; or (iii) to recommend, on the basis of Inside Information, that a third party acquire or dispose of Insider Securities, or to otherwise induce a third party to do so.
4. (FRA) various sets of rules of the AMF's General Regulation in France strictly limit such trading, and if violated, may lead to criminal prosecutions if violated

## 5. (UAE) refer to Article 37 of SCA Decision No. 3/R or 2000

*Jurisdiction:*         

**Insolvency:** the more common expression used for describing Bankruptcy (which in certain jurisdictions is more usually applied to the Insolvency only of natural persons, although the terms are colloquially often used inter-changeably). The word describes both certain formal procedures, as well as the financial condition of being “insolvent,” which is the inability to pay one’s debts. This inability can trigger either Balance Sheet Insolvency (liabilities exceeding assets) or cash flow Insolvency (the inability to pay debts as they fall due), which vary according to the jurisdiction (see for example over-indebtedness which is a formulation of what can be seen as Balance Sheet Insolvency). In some jurisdictions, such as England or Germany, both the first two of these measures of Insolvency are in use and will determine eligibility to enter Insolvency proceedings. There is a significant amount of judicial authority on both cash-flow and Balance Sheet Insolvency, meaning that Insolvency is not necessarily easily proven, particularly by a creditor. As a result, and as a general precaution, European finance documents commonly include much wider situations of potential financial distress, including for example, the commencement of any security enforcement, which would be an Event of Default.

*Jurisdiction:*       

**Insolvency Act:** refers to the United Kingdom Insolvency Act 1986 which sets out the statutory framework for personal and corporate insolvencies in the UK

*Jurisdiction:* 

### **Insolvency Plan:**

1. (DEU) English translation of the German *Insolvenzplan*. This is a plan of re-organization which requires the approval of a majority of creditors in number and by value, in a majority of the classes of creditors, and also sanction of the court. Increasingly popular in German Restructurings including Herlitz, Ihr Platz, Senator Entertainment and Sinn Leffers.
2. (FRA) similar procedure to the German *Insolvenzplan* (see below) in Insolvency proceedings in France, often called a Restructuring plan

*Jurisdiction:*    

**Institutional Buy-Out:** where a financial institution acquires a business and installs its own Management. Slightly different from a Bought Deal, where an institution negotiates the Acquisition of a business with a view to handing it over to an MBO or MBI team. See IBO.

*Jurisdiction:*      

**Institutional Strip:** refers to a company’s equity Share Capital and/or loan capital held by a Private Equity provider

*Jurisdiction:*   

**Instrument:** sometimes used to describe the document constituting a particular form of loan or Share Capital

**Jurisdiction:** 

**Instrument of Transfer:** a document used to effect the transfer of Shares of a Hong Kong incorporated company

**Jurisdiction:** 

**Insurgent:** not the Target Company, but the other party in a Proxy Contest

**Jurisdiction:** 

**Intercreditor Agreement:** an agreement which sets forth the rules of engagement between two groups of Lenders with respect to shared Collateral or other intercreditor relationship matters. Think of this as a prenuptial agreement between two classes of creditors. Apart from addressing the obvious point that the first lien Lenders get paid out first from collateral proceeds and the second lien Lenders get paid out second in first lien/second lien deals, Intercreditor Agreements also lay out a number of important provisions regarding the right of each Lender group to take action with respect to the collateral and the Borrower generally. For example, in the Mezz market, the terms of the Subordination are set forth in an Intercreditor Agreement between the Mezz Lenders and the Administrative Agent under the Credit Agreement.

**Jurisdiction:** 

**Interested Person Transaction:** see Related Party Transaction

**Jurisdiction:** 

### **Interests In Shares:**

1. (UK) in relation to UK Takeover Code transactions, Interest in Shares or Interest in Securities are defined in the UK Takeover Code broadly to include all long economic exposure in interests in a relevant Listed Company's Securities (e.g., Options, voting control rights and full Share ownership).
2. (HKG) broadly defined under Part XV of the SFO to include "an interest of any kind whatsoever in the Shares" of listed corporations
3. (SGP) Section 7 of the Companies Act of Singapore defines Interests in Shares. For example, Section 7(4) provides that where a body corporate has, or is by the provisions of this section deemed to have, an Interest In Shares and: (i) the body corporate is, or its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of a person; or (ii) a person has a controlling interest in the body corporate, that person shall be deemed to have an interest in that Share.

**Jurisdiction:** 

**Interim Accounts:** a financial report that contains either a complete or condensed set of Financial Statements for a period shorter than an entity's full financial year. Typically, interim accounts are subject to a review, but not an audit, by the entity's auditors.

*Jurisdiction:*       

**Interim Management Statements:** under the EU Transparency Directive, and in the UK, the Disclosure and Transparency Rules, Interim Management Statements disclose financial performance updates by a listed Public Company (other than those who publish quarterly reports), during the first and second six months of a financial year

*Jurisdiction:*    

**Interim Operating Covenants:** Negative Covenants governing the Company's operations during the interim period between signing and Closing

*Jurisdiction:*          

**Interim Services Agreement:** an agreement under which the Seller of a division or subsidiary promises to perform specified services (such as IT) with respect to the division or subsidiary, on behalf of the Buyer, for a period of time following the Closing of the Acquisition. See also Transition Services and Transition Services Agreement.

*Jurisdiction:*        

**Interims:** see Interim Management Statements

*Jurisdiction:*   

**Interlocking Directors:** any situation where a director on the Board of company A also sits on the Board of company B and a director on the Board of company B also sits on the Board of company A. If there are already Interlocking Directors on the Boards of the Target Company or Acquirer, a careful analysis of the resulting conflicts of interest is in order, as well as a process for insulating the transaction against those conflicts of interest (for example, Interlocking Directors recusing themselves from consideration of the deal).

1. (US) if the Business Combination creates Interlocking Directors, a Latham antitrust specialist should review the deal to be sure it does not violate Section 8 of the US Clayton Act of 1914, as amended

*Jurisdiction:*     

**Interloper:** another name for a Competing Bidder

*Jurisdiction:*          

**Intermediary:** adviser that brings together the principals in a deal or prospective deal. Intermediaries are usually accountants, other corporate advisers and merchant bankers.

*Jurisdiction:*      

**Internal Rate of Return:** an index number for the success of an investment. The IRR is an internal discount rate which has to be applied on the expected cash flows arising from an investment so that the net present value of the investment equals zero.

*Jurisdiction:* 

**Inversion:** Acquisition transaction in which a Target corporation from one jurisdiction (e.g., US) is acquired by a corporation from another jurisdiction

*Jurisdiction:* 

**Investment Bank:** see Financial Advisor

*Jurisdiction:* 

**Investment Capital:** long-term equity capital provided by institutions to facilitate growth in Private Companies. See PE.

*Jurisdiction:* 

**Investment Committee:** a committee which controls and advises the Management on all investments, the long-term investment policy and planned business expansions

*Jurisdiction:* 

**Investment Company:** generally, a company whose main business is holding Securities of other companies purely for investment purposes. As defined in the Investment Company Act, an Investment Company is: (i) engaged primarily in the business of investing, reinvesting or trading in Securities (or holds itself out as being in that business); (ii) owns "investment securities" which constitute more than 40 percent of the value of its assets on an unconsolidated basis (excluding US government securities and cash items); and (iii) is not entitled to any exemption from registration. A typical example of an Investment Company is a mutual fund, which is an entity organized to accept money or assets from Investors, pool those assets, and invest the assets on behalf of the Investors.

1. (HKG) more commonly refers to investment companies or collective investment vehicles which are listed on the Hong Kong Stock Exchange in accordance with Chapter 20 of the Listing Rules

*Jurisdiction:* 

**Investment Grade:** a rating of Baa3 or better by Moody's, BBB — or better by S&P or BBB — or better by Fitch. For a discussion of Investment Grade Bond Covenants, see *White Paper, Improving Covenant Protections in the Investment Grade Market (December 17, 2007)*, published by the Credit Roundtable in association with the Fixed Income Forum, available at [www.creditroundtable.org](http://www.creditroundtable.org).

*Jurisdiction:* 

**Investor Presentation:** a presentation (typically accompanied by or consisting of a Power Point document) by a company to a targeted group of Investors in that company. In the M&A context, Buyers, often in conjunction with the Target Company, routinely make an Investor Presentation to the Target Company's and Buyer's institutional Investors and stock analysts, either in a large meeting or in one-on-one sessions, explaining the merits of the Acquisition transaction. In the US, Investor Presentations often constitute statutory Prospectuses under the 1933 Act and Proxy soliciting materials under the 1934 Act, and therefore must be filed as such on the day of first use. Companies frequently also make Investor Presentations to ISS and Glass Lewis in order to elicit a favorable voting recommendation from each of these Proxy Advisory Firms.

*Jurisdiction:* 

**Investor Relations:** refers to the department or personnel that handle communications with a company's shareholders or other investors, as well as with outside constituents interested in the company's finances. IR personnel also set up one-on-one investor presentations. See also Public Relations.

*Jurisdiction:* 

**Investor:** provider of capital for the long-term, as distinct from Lenders of short-term capital. Investors have rights, which Lenders don't enjoy — and accept risks to which Lenders are not exposed.

*Jurisdiction:* 

**IPO:** acronym for Initial Public Offering

1. (UK) also called a Flotation, an IPO is the initial offering of the company's Shares on an exchange

*Jurisdiction:* 

**IR:** see Investor Relations

*Jurisdiction:* 

**IRR:** acronym for Internal Rate of Return

*Jurisdiction:* 

**Irrevocable Undertaking:** a binding agreement by a Target Company's shareholder to accept a Takeover Offer. Bidders often seek Irrevocable Undertakings from the Target Company's major shareholders to accept the Bidder's proposed Offer to secure the success, or increase the success rate, of their Offer. See also IU, Lock-Up and Hard Undertaking.

*Jurisdiction:* 

**ISDA:** acronym for International Swaps and Derivatives Association

*Jurisdiction:* 

**ISDA Master Agreement:** a master agreement in the form published by ISDA. Parties to Hedges use the ISDA Master Agreement which was

designed by ISDA to be a balanced and easily administered agreement. The idea was to make an agreement so palatable to all that there would be few non-standard provisions required by any market player. The second generation ISDA Master Agreement was published in 1992 and the third generation was published in 2002. However, the 1992 form is more commonly used than the new form. The ISDA Schedule is part of the ISDA Master Agreement — an ISDA Master Agreement does not exist without an ISDA Schedule. Any two entities in the world that may want to enter into Hedges across from each other are supposed to have just one ISDA Master Agreement between them, which by itself has no economic effect until they enter into one or more transactions, which incorporate by reference their ISDA Master Agreement.

*Jurisdiction:* 

**ISDA Schedule:** the part of an ISDA Master Agreement that includes the specific choices/elections made by the counterparties, as well as notice information and any exceptions and addenda the parties wish to make to the preprinted form

*Jurisdiction:* 

**ISO:** acronym for Incentive Stock Option

*Jurisdiction:* 

**ISS:** the largest US Proxy Advisory Firm and the pioneer in the field. ISS historically was first known as Institutional Shareholder Services and then as Risk Metrics.

*Jurisdiction:* 

**Issued Share Capital:** is the aggregate par value of Shares issued by a company

*Jurisdiction:* 

**Issuer:** the company which is the Seller (or Issuer) of Securities

*Jurisdiction:* 

**IU:** acronym for Irrevocable Undertaking

*Jurisdiction:* 

**JAFZA:** Jebel Ali Free Zone Authority, the regulator for the Jebel Ali Free Zone, an industrial and manufacturing Free Zone in Dubai

*Jurisdiction:* 

**Joint and Several Liability:** where two or more parties assume liability and each is treated as having assumed the obligation both collectively and individually for itself. A third party may proceed against any one or more of the co-obligors for the full performance of the obligation, irrespective of which of them caused the breach. Guarantors will have Joint and Several Liability. See also Several Liability.

*Jurisdiction:* 

**Joint Prospectus:** see Joint Proxy Statement

*Jurisdiction:*    

**Joint Proxy Statement:** when an Acquisition involves issuance of a Public Company's Stock, filing a Registration Statement is required. Because the deal also involves a Proxy solicitation, a Proxy Statement must be filed. These documents are combined under the applicable rules and the result is called a Joint Proxy Statement or Joint Prospectus.

*Jurisdiction:*    

**Joint Venture:** not a legal definition, but rather a description of the commercial agreement between parties to promote joint business interests. A Joint Venture can take a number of legal forms for the purpose of undertaking the particular joint business.

*Jurisdiction:*          

**Junk Bonds:** another name for High Yield Bonds or non-Investment Grade Bonds

*Jurisdiction:*        

**Just Say No Defense:** refers to a Target Company of an Unsolicited Acquisition Proposal refusing to negotiate with the Bidder, not pursuing alternative transactions and relying on its Poison Pill and other structural defenses (such as a Staggered Board) to prevent the Unsolicited Bidder from going directly to the Target Company shareholders through a Tender Offer or Exchange Offer.

*Jurisdiction:*     

**Keyman Policy:** life assurance policies taken out on certain key executives. May be required as a Condition Precedent to some Credit Facilities. No doubt should be called Keyperson Policy.

*Jurisdiction:*    

**Kickback:** colloquial for a bribery performance

*Jurisdiction:*     

**Kingdom:** the Kingdom of Saudi Arabia

*Jurisdiction:* 

**Know Your Client:** refers to policies in place and information required to establish a client's identity to safeguard against money laundering risks and to comply with multi-jurisdictional regulatory requirements. See Anti-Money Laundering, AML and KYC.

*Jurisdiction:*        

**KSA:** the Kingdom of Saudi Arabia

*Jurisdiction:* 

**KYC:** acronym for Know Your Client

*Jurisdiction:*        

**LBO:** acronym for Leveraged Buyout

*Jurisdiction:*           

**LBO Funds:** another name for a Private Equity Sponsor

*Jurisdiction:*          

**LBO Shops:** another name for a Private Equity Sponsor

*Jurisdiction:*          

**Lead Director:** see Lead Independent Director

*Jurisdiction:*       

**Lead Independent Director:** a Lead Independent Director is an Independent Director selected by a company's Independent Directors as their liaison to the CEO/Chairman and senior Management. A Lead Independent Director will chair executive sessions of the Board at which only Independent Directors are present. The Lead Independent Director also sometimes works with the CEO/Chairman of the Board on agendas for Board meetings. Think of a Lead Independent Director as an Independent Chairman "lite."

*Jurisdiction:*       

**Lead Investor:** a financial Investor who leads a consortium of financial Investors or initially makes an investment on its own and invites other financial Investors later to Co-Invest

*Jurisdiction:*         

**Lead Lender:** the bank that negotiates a Financing Package and takes a lead role in syndicating the Financing

*Jurisdiction:*         

**League Table Credit:** league tables are lists kept by certain institutions and publications, such as Thomson Financial and Bloomberg, which track deal volume and deal size by Investment Banks and law firms. League Table Credit refers to receiving credit for a specific deal for ranking purposes.

*Jurisdiction:*        

**Leaver Scheme:** regulates in a Management Participation contract the legal consequence of the withdrawal of a manager from his/her function and/or his/her employment contract. See Good Leaver and Bad Leaver.

*Jurisdiction:*   

**Legal Opinion:** a lawyer's written explanation answering one party's judicial subjects in the context of a transaction or financing

*Jurisdiction:*          

**Lender:** the financial institutions party to a Credit Agreement as Lenders (i.e., the ones lending the money)

*Jurisdiction:*            

**Letter of Credit:** a bank's payment promise, mostly arranged like a Bank Guarantee

*Jurisdiction:* 

**Letter of Intent:** these letters may closely resemble a contractual letter, but are usually no more than non-binding expressions of intention which may include binding provisions which would otherwise be included in separate agreement, *i.e.*, No Shop, Confidentiality Agreement, and which often outline the terms of a transaction prior to definitive and more detailed documentation. See also Indication of Interest and LOI.

*Jurisdiction:* 

**Letter of Transmittal:** the document used to tender or deliver Securities in a Tender Offer, Exchange Offer or Merger, and to convey ownership of the Securities when accepted by the Bidder or its agent. A Letter of Transmittal will often be provided by the Paying Agent or Exchange Agent and will contain detailed instructions for delivery.

*Jurisdiction:* 

**Letter to Banks, Brokers:** a document frequently included in Tender Offer or Exchange Offer materials which asks intermediaries to forward the bidding papers to Beneficial Owners of the Security

*Jurisdiction:* 

**Letter to Clients:** a form of document for use by banks, brokers and similar intermediaries transmitting bidding papers to Beneficial Owners of the Security

*Jurisdiction:* 

**Lever Up:** loosely speaking, to incur significant additional indebtedness

*Jurisdiction:* 

**Leverage:** describes the use of various financial Instruments or borrowed capital, such as margin, to increase the potential return of an investment. Leverage is the amount of debt used to finance a firm's assets. A firm with significantly more debt than equity is considered to be highly leveraged.

*Jurisdiction:* 

**Leverage Ratio:** an important measurement of a company's Leverage, which compares the company's overall debt level as of a particular date to the EBITDA (or another measure of cash generation, such as Adjusted EBITDA) generated over the most recently completed four-quarter period. Investors and analysts care about the Leverage Ratio because it measures the company's debt level against the company's cash performance measure. Credit agreements traditionally (although not always) have Maintenance Covenants requiring a Borrower to maintain a certain Leverage Ratio.

*Jurisdiction:* 

**Leveraged Buyout:** an Acquisition transaction in which a Sponsor uses debt as a principal source of cash to buy a Target Company. If the debt is Secured, the Security consists exclusively of the Target's Stock and assets, and neither the Sponsor nor its LBO Funds are liable for the debt. The LBO transaction structure allows Sponsors to finance large Acquisitions on a non-recourse basis to the Sponsor and the LBO Funds it manages and to use a minimum amount of equity capital from its managed funds. The use of debt as a principal source of funds (*i.e.*, the Leverage supplied by debt) has the effect of enhancing the transaction's return on equity as and when the Sponsor cashes in by selling the Target Company at a price higher than its cost basis. Since the Debt Financing has a first call on sale proceeds, the leveraged structure will lead to a higher negative return on equity to the managed funds if the Target Company is sold for an amount less than its cost basis.

*Jurisdiction:*           

**Leveraged Buyout Firm:** another name for a Private Equity Sponsor

*Jurisdiction:*        

**Leveraged Finance:** Debt Financing that often refers to the incurrence of indebtedness an amount greater than would be considered "normal." Thus, Leveraged Financing is riskier and has a higher interest rate than ordinary borrowing. Sometimes, the term Leveraged Finance is used only with respect to the issuance of non-Investment Grade debt. Among other things, Leveraged Finance is utilized in connection with LBOs and Leveraged Recapitalizations.

*Jurisdiction:*           

**Leveraged Recapitalization:** a transaction in which an unusually large dividend is paid to existing shareholders from borrowed funds, so that the resulting entity has a very different Capital Structure, in which debt has been substituted for most of the previously recorded equity on the company's Balance Sheet. From a financial perspective, the transaction creates the same kind of leveraged structure as would result from a conventional LBO, but because the public shareholders have received a dividend rather than a cash-out Acquisition payment, they will retain an equity stake in the now highly leveraged company. The accounting treatment of a Leveraged Recapitalization also differs from an Acquisition under the Purchase Accounting rules of GAAP.

*Jurisdiction:*          

**Levered Recap:** shorthand for a Leveraged Recapitalization

*Jurisdiction:*          

**LIBOR:** acronym for the London Interbank Offered Rate, which is the average interest rate leading banks in London estimate that they would be charged if borrowing from other banks. See also EURIBOR.

*Jurisdiction:*        

**Limitation Period:** the time period within which court action must be commenced in respect of a contract, tort or any obligation contained in a deed. Similar to a Statute of Limitations in the US.

Jurisdiction:  

**Limited Liability Company:** a type of company and organizational form which combines many of the attributes of a corporation with attributes of a Partnership. Like corporations, the equity holders in a Limited Liability Company (called Members) generally do not have personal liability for the company's liabilities and obligations. Members' liability is a fixed sum, usually limited to the investment in the company or Partnership made by the individual Member.

1. (US) like Partnerships (and unlike corporations), Limited Liability Companies are by default Pass-Through entities (although they can elect to be taxed like taxable corporations). Limited Liability Companies are created under state or national law (for example, in Delaware, by filing a certificate of formation with the Delaware Secretary of State) and are typically governed by an agreement among the company's Members (often called a Limited Liability Company Agreement, Membership Agreement, Members' Agreement or Operating Agreement).
2. (UK) such a company is either a private or publicly limited company
3. (FRA) the closest limited liability forms of company under French law would be *société anonyme*
4. (HKG) the term refers to a company where the liability of its Members is limited. There is no equivalent concept to a US Limited Liability Company which has the attributes of a Partnership.
5. (SAU) *société par actions simplifiées (SAS)* and *société à responsabilité limitée (SARL)*
6. (UAE) such companies are formed under the UAE Companies Act

Jurisdiction:            

**Limited Liability Limited Partnership:** a type of Limited Partnership where the General Partner is not personally liable for the liabilities and obligations of the Partnership. To qualify as a Limited Liability Limited Partnership, a Limited Partnership generally has to comply with the applicable statutory requirements in its state or other jurisdiction of formation.

Jurisdiction:     

**Limited Liability Partnership:** a type of Partnership which combines many of the attributes of a corporation with attributes of a Partnership, in which some or all of the Partners have limited liability. To qualify as a Limited Liability Partnership, a Partnership generally has to comply with the applicable statutory requirements in its state or other jurisdiction of formation.

Jurisdiction:      

**Limited Partner:** a partner in a Limited Partnership or Limited Liability Limited Partnership which generally does not have personal liability for the liabilities and obligations of the Partnership.

*Jurisdiction:*      

**Limited Partnership:** refers to a Partnership with Limited Partners and at least one General Partner. To qualify as a Limited Partnership, a Partnership generally has to comply with the applicable statutory requirements in its state or other jurisdiction of formation.

*Jurisdiction:*      

**Liquidated Damages:** a specified amount, or amount determined pursuant to a defined formula, which is payable by one party to a contract to another, in the event the other party does not meet a contractual obligation. Generally entails an acknowledgement by the parties that the recipient will incur damages as a result of the other party's failure to meet its obligations and that the actual damages would be difficult or impossible to determine. Liquidated Damages should also be a reasonable approximation of actual damages, or the Liquidated Damages may be unenforceable as a penalty under applicable law and/or a court may modify the amount.

*Jurisdiction:*        

**Liquidation:** see Winding Up

*Jurisdiction:*  

**Liquidator:** a person appointed by the shareholders or unsecured creditors of a company or by a court order, to manage the Winding Up of a company by selling off its assets

*Jurisdiction:*       

**Liquidity:** the degree to which an asset can be converted into cash. While US treasuries are considered highly liquid, a 49 percent interest in a Malaysian paper mill probably is not. Liquidity can also refer to a company's ability to meet its near-term payments. Also, where companies are publicly quoted, on the stock market, their Shares are said to be liquid if they are readily bought and sold. Smaller, or less fashionable, quoted companies may find their Shares lack Liquidity.

*Jurisdiction:*            

**Listed Company:** the term given to any company whose Shares or Securities are traded on a regulated exchange (e.g., in the UK this would refer to a company admitted to the Official List and subject to the Listing Rules)

*Jurisdiction:*            

**Listing and Quotation of Shares on SGX-ST:** a process, following which such Shares can be traded on the exchange

*Jurisdiction:* 

**Listing Approval:** in the context of an IPO, refers to the approval, given by the relevant Stock Exchange or committee thereof (e.g., the Listing Committee of the Hong Kong Stock Exchange) for listing of, and permission to deal in, the Shares of a listing applicant; in the context of new Shares issued by a Listed Company, refers to the approval for listing of, and permission to deal in, the new Shares of the Listed Company given by the relevant Stock Exchange (e.g. Executive Director–Listing of the Hong Kong Stock Exchange)

*Jurisdiction:* 

### **Listing Manual:**

1. (US) see, e.g., the NYSE Listed Company Manual or the NASDAQ Marketplace Rules
2. (UK) FSA published rules dealing with, among other things, the requirements for admission to listing of Securities and the ongoing obligations of Listed Companies in the UK
3. (DEU) rules published by the *BaFin* dealing with, among other things, the requirements for admission to listing of Securities and the ongoing obligations of Listed Companies in Germany
4. (ESP) rules in Royal Decree 1310/2005 and developed by each stock exchange. This Royal Decree partially develops Law 24/1988, of July 28, of the Stock Market, on admission to trading on official secondary markets, public offers of sale or subscription and the Prospectus required for such purposes, specifically the Spanish Securities Act.
5. (FRA) rules published by the AMF and in the French Commercial Code and French Monetary and Financial Code dealing with, among other things, the requirements for admission to listing of Securities and the ongoing obligations of Listed Companies in France
6. (HKG) see Listing Rules
7. (ITA) rules governing the requirements for admission to trading on the Italian Regulated Markets and ongoing obligations of Listed Companies as set forth in the regulation issued by *Borsa Italiana S.p.A.* and annexed instructions
8. (SAU) the rules in the Kingdom of Saudi Arabia issued by the Board of the Capital Market Authority pursuant to its Resolution Number 3-11-2004 dated 20/8/1425H Corresponding to 4/10/2004G (as amended)
9. (SGP) SGX-ST Listing Manual
10. (UAE) the UAE has two stock exchanges, the DFM and ADX. Refer to decision No. 12 of 2000 of the SCA.

*Jurisdiction:* 

### **Listing Rules:** see Listing Manual

1. (HKG) this is a reference to the “Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited”

*Jurisdiction:* 

**LLC:** acronym for Limited Liability Company

*Jurisdiction:*        

**LLP:** acronym for Limited Liability Partnership

*Jurisdiction:*        

**Loan Note:** financial Instruments evidencing the existence of a debt and the promise by the Issuer to repay the amounts due under the Notes to the noteholder(s). In the M&A context, Loan Notes are often used as a method of subscription investment by a Private Equity Investor or are issued as consideration to selling shareholders in order that consideration is released to them over a period of time

*Jurisdiction:*        

**Loan-to-Own-Strategy:** an investment strategy in which an Investor initially acquires a company's debt, transforms it into equity capital of the company and thereby secures the control of the company. See also Debt for Equity.

*Jurisdiction:*     

**Locked Box:** a Completion mechanism whereby the amount payable by the Buyer is calculated off a historical Balance Sheet of the Target Company. Therefore debt, cash and Working Capital are known at the date of signing rather than in a standard Completion mechanism where accounts are prepared post-Completion with the amounts of cash, debt and Working Capital. See also Purchase Price Adjustment.

*Jurisdiction:*       

**Lock-In Period:** another name for a Lock-Out Period

*Jurisdiction:*       

**Lock-Out:** often required by the Underwriters in connection with IPOs and other equity offerings, a Lock-Out is a restriction on the ability of officers, directors, large stockholders and other Insiders, as well as the Issuer, to issue or sell new Equity Interests during a certain period following the Closing of the offering. The purpose of the Lock-Out is to help stabilize the price of the Equity Interests following the offering by controlling the supply into the market. In some jurisdictions, including Hong Kong, called a Lock-Up.

*Jurisdiction:*        

**Lock-Out Period:** the period of time during which a Lock-Out applies

*Jurisdiction:*       

**Lock-Up:** a generic term for an agreement or arrangement that gives a favored party an exclusive right or privilege that cannot be obtained by another party. For example, a Lock-Up of votes means that the holder of the right to vote has agreed to vote in a certain way or in accordance with instructions from another party. A Lock-Up of an Acquisition opportunity means that the Target Company will not be able to be acquired by any

person not designated in the Lock-Up. A Lock-Up of a financing source means that no other party will be able to access financing from that source. See Shareholder Lock-Up.

1. (HKG) generally refers to exclusivity arrangements; however, also refers to a restriction on the ability of Controlling Shareholders and other insiders to sell or otherwise dispose of any interest or right in Shares during a specified period. See Lock-Out.

*Jurisdiction:*         

**LOI:** acronym for Letter of Intent

*Jurisdiction:*           

**London Stock Exchange:** one of the largest stock exchanges in the world, the LSE has a number of primary markets, including the Main Market and AIM

*Jurisdiction:* 

**Long Stop Date:** another name for Outside Date

*Jurisdiction:*       

**Long Term Incentive Plan:** an award of Shares to an employee at no cost, subject to the fulfillment of certain conditions, such as meeting performance targets or continuing employment with the company

*Jurisdiction:*   

**LP:** acronym for either a Limited Partner or a Limited Partnership

*Jurisdiction:*      

**LSE:** acronym for the London Stock Exchange

*Jurisdiction:* 

**LTIP:** acronym for a Long Term Incentive Plan, usually comprising Share Option awards in favor of key Management

*Jurisdiction:*   

**LTM:** acronym for "latest twelve months" which refers to an accounting period consisting of a recent 12 consecutive months. The term is usually used to refer to the most recently completed fiscal four-quarter period (even if that is not the latest 12 months). LTM also sometimes refers to the latest 12 months, even if not coincident with fiscal quarters. Compare NTM.

*Jurisdiction:*       

**Lucite:** see Deal Toy

*Jurisdiction:*      

**Luxco:** a company incorporated in Luxembourg, often used in European Leveraged Buyouts for tax efficiency reasons, including Luxembourg's extensive network of Double Taxation Treaties and favorable Withholding Tax rules (attributes shared by a number of other jurisdictions in Europe),

and now increasingly for Security interest efficiency reasons under Double Luxco Structures

*Jurisdiction:* 

**M&A:** shorthand for Mergers and Acquisitions — a phrase that covers the process of buying, selling and merging businesses. See also Business Combination.

*Jurisdiction:* 

**MAC:** acronym for Material Adverse Change

*Jurisdiction:* 

**MAC Clause:** a clause in an Acquisition Agreement or a financing treaty that entitles the Buyer or the financing bank to refuse the implementation of the Acquisition Agreement or the payment of the loan if a Material Adverse Change or a Material Adverse Effect is existent

*Jurisdiction:* 

**MAC Qualifier:** an exception to what would otherwise be an absolute assertion or Representation. See Material Adverse Change.

*Jurisdiction:* 

**Macaroni Defense:** a tactic used by a Target Company subject to a Hostile Takeover Bid. The Target Company issues a large number of Bonds that must be redeemed at a higher value if the company is acquired. In the event of a Takeover, the debt will expand.

*Jurisdiction:* 

**MAE:** acronym for Material Adverse Effect

*Jurisdiction:* 

**MAE Qualifier:** same idea as a MAC Qualifier

*Jurisdiction:* 

**Main Board:** along with GEM, one of the two Securities markets operated by the Hong Kong Stock Exchange

*Jurisdiction:* 

**Main Market:** the largest of the LSE's markets, comprising those Securities admitted to the Official List by the FSA acting as the UKLA for the purposes of FSMA. The listing of such Securities is subject to the Listing Rules and the Admission and Disclosure Standards.

*Jurisdiction:* 

**Maintenance Covenants:** legalese for an agreement to maintain something

*Jurisdiction:* 

**Majority of Disinterested Stockholders:** a more precise name for a Majority of the Minority

Jurisdiction:    

**Majority of the Minority:** in connection with a transaction between a company and one or more of its stockholders, refers to an approval of holders of a majority of the Common Stock not held by the interested stockholder(s). For example, a Majority of the Minority approval may be used in the context of a Going Private transaction to help shift the burden of proof in connection with a transaction that is subject to the Entire Fairness. Note, that notwithstanding the use of the word Minority in the term, the concept is applicable where the conflicted stockholders do not own a majority of the outstanding Stock. A more precise term would be a Majority of Disinterested Stockholders.

1. (FRA) similar concept in France with respect to Related Party Agreements. The "related party" will be deprived of its voting right, which will not be taken into account for the calculation of the quorum.

Jurisdiction:     

**Majority Voting:** refers to equity holders' ability to act with respect to an action or matter by a majority vote of a specified group of Equity Interests, such as all outstanding Shares of Common Stock or all Shares of Common Stock present at a meeting in person or by Proxy

1. (US) In Delaware, the default voting Threshold for most stockholder action in a corporation (unless the Charter or Bylaws otherwise provide) is a majority vote of a quorum at a stockholder meeting, and the default for a quorum is a majority of Shares entitled to vote. However, Mergers and Asset Acquisitions in Delaware require approval of a majority of the outstanding Stock of a corporation entitled to vote. In Delaware and almost all other states, the default requirement for the election of directors is a plurality of votes at a meeting where quorum is present (*i.e.*, the director candidate with the most votes wins, even if not elected by vote of a majority of the voting Equity Interests constituting a quorum). Corporate Governance Activists have successfully lobbied many companies to change the voting requirements for election of directors to a majority of the votes cast by shareholders present at meeting where a quorum is present, except in election contests where plurality voting would be in effect.

Jurisdiction:       

**Majority Written Consent:** refers to equity holders' ability to act with respect to an action or matter, without a vote at a meeting, by Written Consent of holders of a majority of the outstanding applicable Equity Interests having the right to vote on such action or matter

1. (US) although the ability to act by Majority Written Consent is the default for Delaware corporations under the DGCL, corporations have the right to vary voting by Written Consent and most Delaware corporations have done so by instead requiring unanimous Written Consent for stockholder action in lieu of a vote at a meeting

## 2. (FRA) requires unanimity in France

*Jurisdiction:* 

**Management:** generally refers to the executive or senior level officers of a company or individuals in similar roles. In a Public Company, Management often refers to the directors and Named Executive Officers (NEOs in the US) or Persons Discharging Management Responsibilities (PDMRs in the UK), but Management can refer to other senior officers as well.

*Jurisdiction:* 

**Management Accounts:** accounting reports intended to furnish the managers of a company with information relating to the company's performance

*Jurisdiction:* 

**Management Agreement:** in the Private Equity context, Management Agreement generally refers to an agreement pursuant to which the Sponsor provides management, operational and/or strategic services and support to one of its Portfolio Companies in exchange for a fee. There may also be payments upon certain specified events (e.g., an IPO, sale of the company or Recapitalization).

*Jurisdiction:* 

**Management and Employee Buyout:** a restructuring initiative involving both managerial and non-managerial employees buying out a firm in order to concentrate ownership into a small group from a widely dispersed group of shareholders; an MBO where a substantial number of employees as well as managers hold Shares in the company. See MEBO.

*Jurisdiction:* 

**Management Buy-In:** an LBO where an outside Management team acquires the Target Company, with or without a Sponsor. See MBI.

*Jurisdiction:* 

**Management Buyout:** involves the Management of a business, usually with the backing of external financing, taking over ownership of the business where they are employed. MBOs are a common way of changing ownership. Often, a large company hives off one of its subsidiaries by selling to its Management. Another source of MBOs is family businesses where the owner wishes to retire. See also Going Private transaction.

*Jurisdiction:* 

**Management Equity:** refers to incentive or compensatory Equity Interests given to Management in a company and may also refer generally to Equity Interests in a company held by Management

*Jurisdiction:* 

**Management Fees:** the fees payable to the Sponsor under a Management Agreement

Jurisdiction:        

**Management Incentive Plan:** an incentive plan implemented for certain managers and key employees of a company that provides for the payment of additional compensation or issuance of additional company Shares to the participants, subject to the occurrence of certain events. See MIP.

Jurisdiction:    

**Management Numbers:** financial projections or estimates prepared by the Management of a Target Company

Jurisdiction: 

**Management Participation:** describes generally the company-law participation of the Management in the company

Jurisdiction:     

**Management Stockholders Agreement:** similar to a Stockholders Agreement, but specifically conferring rights and restrictions on Management in their capacity as equity holders of a company

Jurisdiction:      

**Mandatory General Offer:** another name for Mandatory Offer

Jurisdiction: 

### **Mandatory Offer:**

1. (UK) a UK Public Company Offer required by Rule 9 of the City Code, usually as a result of a party (or Concert Party) acquiring greater than 30 percent of a UK Public Company's Shares (but other Triggers and dispensations do exist)
2. (DEU) in Germany regulated in Sections 35 et seqq. German Takeover Code (*Wertpapiererwerbs- und Übernahmegesetz (WpÜG)*)
3. (ESP) a Spanish Public Company Offer required by Article 3 of the Royal Decree 1066/2007, 27 July on public Takeover Bids as a result of a party (or Concert Party) acquiring greater than 30 percent of a Spanish Public Company's Shares or appointing the majority of the members of the Board of Directors of the Target Company
4. (FRA) under the AMF's General Regulation: (i) when a shareholder, acting alone or in concert, crosses the legal Threshold of one third of the Share Capital or voting rights of a Listed Company; or (ii) when a shareholder, acting alone or in concert, holds between 30 percent and 50 percent of the Share Capital or voting rights of a Listed Company, and such person acquires in any 12 months period an additional two percent of the Share Capital or voting rights of such company
5. (HKG) a Hong Kong Public Company Offer required by rule 26 of the HK Takeovers Code, usually as a result of a party (and his/her/its Concert Parties) acquiring 30 percent or more of a Public Company's voting rights

(note certain other Triggers and dispensations exist). Also referred to as a Mandatory General Offer or MGO.

6. (ITA) a mandatory Tender Offer for the purchase of the Shares of an Italian company, with Shares listed on an Italian Regulated Market, provided for by Articles 105 and sub. of the Consolidated Financial Act in connection with, inter alia, a purchase the company's Shares implying the overall stake rising above 30 percent of the Issued Share Capital
7. (SGP) under Rule 14.1 of the Singapore Takeover Code, except with the Securities Industry Council's consent, where: (i) any person acquires, whether by a series of transactions over a period of time or not, Shares which (taken together with Shares held or acquired by persons Acting In Concert with him/her) carry 30 percent or more of the voting rights of a company; or (ii) any person who, together with persons Acting In Concert with him/her, holds not less than 30 percent but not more than 50 percent of the voting rights and such person, or any person Acting In Concert with him/her, acquires in any six month period additional Shares carrying more than one percent of the voting rights, such person must extend Offers immediately to the holders of any Class of Share Capital of the company which carries votes. In addition to such person, each of the principal members of the Group of persons Acting In Concert with him/her may, according to the circumstances of the case, have the obligation to extend an Offer. Also referred to as a General Offer or "GO."

*Jurisdiction:*        

**Market Abuse:** a term to describe the civil enforcement regime against Insider Dealing and other offenses of market manipulation and distortion (see Part VIII of FSMA) or of the European Market Abuse Directive

1. (HKG) in Hong Kong, more commonly known as Market Misconduct

*Jurisdiction:*    

**Market Check:** describes any process by which an Acquisition Proposal is exposed to potential Competing Bids. A Market Check has no prescribed characteristics; it may be conducted with or without public notice, it may be formal or informal, it may be widespread and of a long duration or very targeted and of a very short duration. See Go Shop.

*Jurisdiction:*          

**Market Disruption:** a situation where banks cannot, or cannot cost-efficiently, refinance, for example because the agreed Refinancing interest rate could not be determined or they cannot cover the actual Refinancing costs

*Jurisdiction:*       

**Market MAC:** refers to a Condition Precedent that there shall not have been any material adverse disruption or change to the financial, banking or Capital Markets generally. Compare Business MAC.

*Jurisdiction:*          

**Market MAE:** another term for Market MAC

*Jurisdiction:*          

**Market Misconduct:** under the SFO, Market Misconduct includes: (i) Insider Dealing; (ii) false trading; (iii) price rigging; (iv) disclosure of information about prohibited transactions; (v) disclosure of false or misleading information inducing transactions; and (vi) stock market manipulation, and includes attempting to engage in, or assisting, counseling or procuring another person to engage in, any of the foregoing conduct

*Jurisdiction:* 

**Marketing Period:** a specified period of days prior to Closing that a Buyer may require in order to market some or all of the debt the Buyer is using to finance the Acquisition. A Marketing Period is almost always included in deals being financed in whole or in part with debt Securities. Often, Buyers require that all Conditions Precedent must be satisfied prior to the beginning of the Marketing Period to provide certainty that the Acquisition can Close upon the conclusion of marketing. Bank financed Acquisitions usually include a similar Marketing Period, most often called a Minimum Syndication Period.

*Jurisdiction:*           

**MAS:** acronym for Monetary Authority of Singapore

*Jurisdiction:* 

**Master Limited Partnership:** a Limited Partnership structure entitled to Pass-Through treatment of all of its tax attributes, in which one or more Classes or series of Partnership interests are or may be publicly owned without adverse tax consequences. The US Tax Code limits publicly owned MLPs to certain industries, such as oil and gas production, timber, and oil and gas pipelines. For more information on MLPs see Latham's MLP Portal available at [www.lw.com](http://www.lw.com).

*Jurisdiction:*    

**Matching Rights:** a name for a provision commonly found in Fiduciary Out provisions which gives the Buyer under an Acquisition Agreement an opportunity, for a prescribed period of time, to submit a revised Acquisition Proposal in response to a Superior Proposal from a Competing Bidder such that the latter's Bid ceases to be a Superior Proposal — in effect, giving the incumbent an opportunity to “win” the Bidding Contest by matching, rather than topping, the Competing Bid

*Jurisdiction:*         

**Material Adverse Change:** just like it sounds, this phrase refers to a “material adverse change” in something — generally either the business (see Business MAC) or the debt or equity markets (see Market MAC). Material Adverse Change is an extraordinarily high standard in Acquisition Agreements (no Delaware court has ever found a MAC to

have occurred). This term is used in two general contexts: either (i) as a Condition Precedent (for instance, a Seller would not have to Close on an Acquisition if there had been a Material Adverse Change to the business); or (ii) as a qualifier to Representations and Warranties (for instance, the environmental Representation is limited to instances where violations of the Representation could (or would) lead to a Material Adverse Change). See MAC. Also referred to as Material Adverse Effect or MAE.

*Jurisdiction:* 

**Material Adverse Effect:** another name for Material Adverse Change

*Jurisdiction:* 

**Material Non-Public Information:** information about a publicly traded company not generally disseminated to the public that a reasonable Investor would likely consider important in making an investment decision with respect to such company. The exact test applicable will be subject to the laws of relevant jurisdictions. See MNPI.

*Jurisdiction:* 

**Materiality Qualifier:** shorthand for a word or phrase in Representations and Warranties or in Covenants that limit their operation to material events, changes or facts. An example would be insertion of the word "material" in a Representation that a company has all licenses required for the operation of its businesses. MACs and MAEs all include a Materiality Qualifier.

*Jurisdiction:* 

**Materiality Strip:** a common provision in a Condition Precedent as to the continuing accuracy of certain or all Representations and Warranties which are subject to a Materiality Qualifier that has the effect of eliminating all Materiality Qualifiers contained in the underlying Representations and Warranties. The purpose of a Materiality Strip is to clarify that Materiality Qualifiers do not apply in both a Bring Down Representation and Warranty made at Closing and in the underlying Representations and Warranties covered by the Closing Bring Down Representation and Warranty.

*Jurisdiction:* 

**MBI:** acronym for Management Buy-In

*Jurisdiction:* 

**MBO:** acronym for Management Buyout

*Jurisdiction:* 

**MBT:** see MoBT

*Jurisdiction:* 

**MEBO:** acronym for Management and Employee Buyout

*Jurisdiction:* 

**Member:** a common name for the holder of an Equity Interest in an LLC, which is also commonly used in the state or national statutes governing LLCs

1. (HKG) in Hong Kong, there are no LLCs and the term Member is used interchangeably with Shareholder for the holder of Shares in a company

*Jurisdiction:* 

**Member State:** another name for Participating Member States

*Jurisdiction:* 

**Members Voluntary Liquidation:** a type of English or Hong Kong Liquidation proceeding approved by the members of a company. Applicable only where the company is solvent.

*Jurisdiction:* 

**Memorandum of Association:** see Charter

1. (UK and SGP) the company's constitution, which sets out the company's structure and aims
2. (HKG) after the new Companies Ordinance comes into effect in 2014, the concept of a separate Memorandum of Association will be abolished and the existing Memorandum of Association of a Hong Kong company will be regarded as part of the Articles of Association of the company. Thereafter, a Hong Kong company's constitutional documents will only comprise its Articles of Association.

*Jurisdiction:* 

**Memorandum of Understanding:** a written agreement of parties stating the intention to conclude an Acquisition Agreement under specific conditions. Similar to a Letter of Intent; though the Letter of Intent is a unilateral written declaration. Also referred to as an MOU.

*Jurisdiction:* 

**Mercato Telematico Azionario:** the Italian Regulated Market organized and managed by *Borsa Italiana S.p.A.*, divided into two segments: STAR (mid-size companies with a capitalization of less than € 1 billion and adhering to stricter and higher corporate governance, Liquidity and transparency requirements), and MTA International (high Liquidity market segment for Shares of foreign Issuers already listed in other EU Regulated Markets). See MTA.

*Jurisdiction:* 

**Mercury:** used to describe the rules regarding execution of documents governed by English law arising from the decision in *Mercury v. HMRC* [2008] EWHC 2721. These can have significant implications for the logistics of Closing. Like the element, Mercury is potentially poisonous.

*Jurisdiction:* 

**Merger:** a process pursuant to a US state corporate law or other national statute, as applicable, by which one or more corporations or other business entities (e.g., an LLC or LP) is combined by operation of law with one or more other corporations or business entities. Typically, the statute contemplates that each entity either be merged into another entity, which is the legally Surviving Entity (or Survivor) or be the Surviving Entity into which one or more other entities are merged. Many jurisdictions also provide a similar statutory procedure by which two companies are combined by operation of law with neither company being the Survivor. This process is called a Combination or a Statutory Combination, as distinct from a Merger, or a Statutory Merger. Many corporate law statutes provide for Mergers and Combinations of corporations with different forms of business entities, including domestic or foreign corporations, LLCs and LPs. See also alternative transaction structures such as Scheme of Arrangement, Takeover or Cross Border Merger.

1. (UK) there is no legal concept of a Merger in the UK
2. (DEU) the Merger process is regulated by the German Transformation Act (*Umwandlungsgesetz*)
3. (FRA) in France, the term Merger is not commonly used for the Acquisition of companies outside of a group, but rather for internal Reorganizations or ventures between companies. There are three different kinds of Mergers in France: (i) "classical" Merger; (ii) simplified Merger (when the Surviving Entity holds, prior to the Merger, 100 percent of the Shares of the merged company); and (iii) *Transmission Universelle du Patrimoine*.
4. (HKG) there is no legal concept of a Merger in Hong Kong and the term is used generally to refer to a combination of two or more corporate entities under a common Holding Company

Jurisdiction: 

**Merger Agreement:** an agreement between two or more entities providing for a Merger of at least one of the parties with or into one or more of the other parties. More generically, another name for an Acquisition Agreement. To become effective, a Merger Agreement almost invariably requires approval by both the Board of Directors and the shareholders of each of the companies participating in the Merger.

1. (HKG) an agreement between two or more corporate entities and/or their owners to effect a combination of the entities under a common Holding Company

Jurisdiction: 

**Merger Arbitrage:** a Hedge Fund strategy which, although often taking different forms, considers the risks of a deal not Closing (i.e., as a result of regulatory or shareholder approvals) and trades on the basis of the discount created by this uncertainty. See also Arbitrage and Risk Arbitrage.

Jurisdiction: 

**Merger Benefits:** in the context of public M&A, Synergies are often referred to as Merger Benefits

*Jurisdiction:* 

**Merger Clearance:** clearance of a Merger by the relevant Competition Commission or other competent authority. Also referred to as Antitrust Clearance.

*Jurisdiction:* 

**Merger Consideration:** the Acquisition Consideration received by Target Company stockholders in exchange for their Target Company Stock

*Jurisdiction:* 

**Merger Control:** assessment of Merger under respective Merger Control rules with respect to the effects of the Merger on the competition by the relevant Competition Commission

*Jurisdiction:* 

**Merger Control Filing:** a filing made by both the Bidder and the Target Company in relevant jurisdictions to review a transaction for antitrust issues. Timing of the filings and approval by the relevant governing authorities is critical to the success of any transaction.

*Jurisdiction:* 

**Merger of Equals:** a term of art for a Merger or other Combination of two relatively similarly sized companies, pursuant to which no or only a small premium is paid to shareholders of one of the constituent companies. The concept is one of Combination, rather than Acquisition, and a Merger of Equals is often characterized by a relatively equal division of senior Management positions among the Management of the constituent companies. A Merger of Equals is not a creature of statute, nor is its precise form, economics and governance structure prescribed by any authoritative source. As such, the concept is very much in the eye of the beholder, and the terminology is often used as a palliative for shareholders and executives of one of the constituent companies who might object to a more openly acquisitive transaction structure.

*Jurisdiction:* 

**Mergers and Acquisitions Regulations:** Mergers and Acquisitions Regulations in the Kingdom of Saudi Arabia issued by the Board of the Capital Market Authority pursuant to Resolution Number 1-50-2007 dated 21/9/1428 H Corresponding to 3/10/2007 (as amended)

*Jurisdiction:* 

**Mexican Standoff:** another word for negotiation deadlock. While both sides may benefit from a change in deal terms, neither side can agree to the value shift required to agree to the change.

*Jurisdiction:* 

**Mezz:** shorthand for Mezzanine (see Mezzanine Debt, Mezzanine Financing and Mezzanine Preferred Stock)

*Jurisdiction:* 

**Mezzanine:** types of high risk debt which have some attributes of debt and some of equity. Mezzanine ranks and is repaid after senior/junior debt but before institutional loan Stock. Generally carries an Option/Warrant or redemption fee, which tends to distinguish Mezzanine from junior debt.

*Jurisdiction:* 

**Mezzanine Debt:** unsecured debt issued to fund a portion of the cash consideration paid in an Acquisition, which is legally or functionally subordinate in right of payment to senior debt and carries a Coupon similar to High Yield Bonds. Mezzanine Debt is often issued at the Holdco level. It is often given equity-like features, frequently referred to as Equity Kickers, which may take the form of Warrants that permit the holder to purchase equity at a preset price, or conversion features upon certain events (such as a Change of Control). The combination of the debt Coupon and the Equity Kicker gives Mezz Investors a higher return than High Yield Bonds.

*Jurisdiction:* 

**Mezzanine Financing:** a generic name for acquisition financing that is Subordinate in Right of Payment to other acquisition financing (usually senior or senior secured debt) but superior in right of payment to common equity. As such, the term includes Mezzanine Debt and Mezzanine Preferred Stock.

*Jurisdiction:* 

**Mezzanine Loan:** another name for Mezzanine Debt

*Jurisdiction:* 

**Mezzanine Preferred Stock:** a name for Preferred Stock, the proceeds of which are used to provide a portion of the cash consideration for an Acquisition. Like most Mezzanine Debt, Mezzanine Preferred Stock is subordinate in right of payment to other debt but superior in right of payment to common equity.

*Jurisdiction:* 

**MFN:** acronym for a Most Favored Nation provision

*Jurisdiction:* 

**MGO:** acronym for Mandatory General Offer

*Jurisdiction:* 

**Mid Cap:** a company with a medium market capitalization. The thresholds for the qualification vary. In the US the range is approximately US \$2 billion to \$10 billion. The lowest thresholds in Europe range between € 250 million and € 1 billion and the maximum thresholds range between

€ 1 billion and € 5 billion. In France, the AMF considers a company with a market capitalization less than or equal to € 750 million as a Small Cap or Mid Cap.

*Jurisdiction:* 

**Milestones:** contractually agreed targets on the way to reach the overall target which fulfillment Triggers specific (agreed) consequences

*Jurisdiction:* 

**Minimum Condition:** a Condition Precedent in a Tender Offer or Exchange Offer establishing a minimum number of Target Company Shares that must be tendered in order for the Offer to become effective. A majority of the outstanding votes of all equity Securities entitled to vote for election of directors on a Fully Diluted basis is the most common Minimum Condition. However, Offers sometimes contain higher Minimum Conditions, which match the number of votes required to effect a Merger or Combination under the laws of the Target Company's jurisdiction of incorporation and under the Target Company's Charter.

*Jurisdiction:* 

**Minimum Marketing Period:** another name for a Marketing Period

*Jurisdiction:* 

**Minimum Syndication Period:** a Condition Precedent in the Commitment Letter that the banks will have a period of a certain number of consecutive days (generally 15 to 30, depending on the transaction) following the launch of the general Syndication of the Facilities (usually starting on the day of the bank meeting) to syndicate the Credit Facilities prior to the Closing Date. Minimum Syndication Period is the bank land cousin of Minimum Marketing Period.

*Jurisdiction:* 

**MIP:** acronym for Management Incentive Plan

*Jurisdiction:* 

**Mitigate:** the duty that arises following a breach of contract, whereby a claimant cannot recover damages for loss which could have been avoided had the claimant taken reasonable steps to reduce or eliminate the damages

1. (FRA) Under French Law there is no general duty to Mitigate damages. The principle is that anyone responsible for damages must "make it good in full," even if such principle tends to be more and more limited by French Courts.

*Jurisdiction:* 

**Mix & Match:** an election for a particular form of consideration or mix of consideration (*i.e.*, cash and/or Shares in the Offeror)

*Jurisdiction:* 

**MLP:** acronym for Master Limited Partnership

*Jurisdiction:*   

**MNPI:** acronym for Material Non-Public Information

*Jurisdiction:*          

**MoBT:** the Ministry of Business and Trade is the ministry in Qatar responsible for receiving applications to incorporate companies in Qatar (except for QFC companies). The MoBT also has wide-ranging regulatory powers and is considered Qatar's primary commercial and insurance regulator. Also referred to as MBT.

*Jurisdiction:* 

**Model:** the product of the financial analysis of the performance of the Target business or asset by reference to a set of projections and parameters

*Jurisdiction:*         

**MOE:** acronym for Merger of Equals

*Jurisdiction:*        

**MoM:** acronym for Multiple of Money

*Jurisdiction:*      

**Monte Titoli S.p.A.:** Italian organization analogous to the US Depository Trust Company, providing centralized administration, clearing and settlement services. See Depository.

*Jurisdiction:* 

**Moratorium:** analogous to Lock-Up

*Jurisdiction:*    

**Mortgage:** a Security Agreement which grants a particular type of ownership-based Security interest typically used for real property interests

*Jurisdiction:*      

**Most Favored Nation:** a contractual provision which assures the protected party that if the restricted party enters into a contract or other dealings with a third party containing more favorable terms than those applicable to the protected party then the protected party will receive the benefit of these provisions as well. See MFN.

*Jurisdiction:*           

**MOU:** acronym for Memorandum of Understanding

*Jurisdiction:*            

**Moving the Goalposts:** slang for a change in negotiating position by one party

*Jurisdiction:*      

**MTA:** acronym for *Mercato Telematico Azionario*

*Jurisdiction:* 

**Multiple:** factors by which certain performance figures of a company are to be multiplied (e.g., turnover, EBITDA). Such Multiples are generally generated on the basis of the stock exchange price of similar companies (Trading Multiples) or on the basis of Enterprise Values of similar companies in other M&A transactions (Transaction Multiples).

*Jurisdiction:*        

**Multiple of Money:** the cash returned to the Investors divided by the cash invested by the Investors. See MoM.

*Jurisdiction:*      

**Murabaha:** a form of Islamic financing. A kind of sale, compliant with *Shar'iah* law, in which the Seller expressly mentions the cost he/she has incurred on the commodities for sale and sells it to another person by adding some profit or mark-up thereon which is known to the Buyer.

*Jurisdiction:* 

**Musataha:** under the Civil Code (UAE) *Musataha* is a right to use and exploit land belonging to another person together with the right to build on that land. It is a right *in rem* and may not exceed 50 years.

*Jurisdiction:* 

**MVL:** acronym for Members Voluntary Liquidation

*Jurisdiction:*  

**Naked No Vote:** where the Target Company shareholders vote against the proposed Business Combination at the Special Meeting in the absence of a Superior Proposal

*Jurisdiction:* 

**Named Executive Officers:** a Public Company's principal executive officer, principal financial officer and three most highly compensated executive officers other than the principal executive officer and principal financial officer. See NEOs.

*Jurisdiction:*     

**NASDAQ:** the National Association of Security Dealers Automated Quotation is the largest US stock market in terms of companies listed and number of shares traded. Launched in 1971, NASDAQ is home to more than 82 percent of all the technology listings in the US. It is operated by the NASDAQ Stock Markets Inc., a wholly-owned subsidiary of the National Association of Security Dealers.

*Jurisdiction:* 

**Nasdaq Dubai:** the Stock Exchange based in the DIFC regulated by the DFSA

*Jurisdiction:* 

**National Settlement Depository:** Russia's Non-Bank Credit Institution CJSC "National Settlement Depository" (Национальный расчетный депозитарий) was nominated as the central securities depository by the Federal Service for Financial Markets (Regulation No. 12-2761/ПЗ-И) on November 6, 2012. The National Settlement Depository is Depository in 30 percent of cases. See also Depository.

*Jurisdiction:* 

**NAV:** acronym for Net Asset Value

*Jurisdiction:*         

**NDA:** acronym for Non-Disclosure Agreement

*Jurisdiction:*            

**NED:** acronym for Non-Executive Director

*Jurisdiction:*     

**Negative Assurance:** a reference to what the auditors say in the Comfort Letter about the quarterly financials and the period since the end of the last quarter (hopefully without material changes). Negative Assurance is a "we didn't see anything" standard, not a promise that everything is okay.

1. (ITA) based on International Standard on Assurance Engagements (ISAE) 3400, as applied by Italian Auditors, a Negative Assurance is also expressed in respect of prospective financial information: "Based on our examination of the evidence supporting the assumptions, nothing has come to our attention which causes us to believe that these assumptions do not provide a reasonable basis for the projection..."

*Jurisdiction:*           

**Negative Assurance Letter:** a letter provided by both Issuer's and Underwriters' counsel at the Closing of a Securities offering. The letter states that based on the lawyers' Due Diligence efforts, nothing has come to their attention indicating that the Prospectus (for registered deals) or the Offering Memorandum (for non-registered deals) contains any misstatements of material facts or any material omissions.

1. (US) This is not an opinion, but is sometimes incorrectly referred to as a "10b-5 opinion." Also known as a "10b-5 letter."

*Jurisdiction:*           

**Negative Covenant:** legalese for an agreement not to do something. Negative Covenants governing the Target Company's operations during the interim period are also sometimes referred to as Interim Operating Covenants because they restrict the conduct of the company between the signing and Closing of an Acquisition Agreement.

*Jurisdiction:*            

**NEOs:** acronym for Named Executive Officers

*Jurisdiction:*     

**Net Asset Value:** value of an entity's assets minus its liabilities. See NAV.

**Jurisdiction:** 

**Net Debt:** amount of a company's total debt minus its cash and Cash Equivalents

**Jurisdiction:** 

**Nil Merger Premium:** a Merger where the shareholders do not receive a premium over the market value of their Shares before the transaction is announced

**Jurisdiction:** 

**No Leakage Provision:** in the context of a Locked Box concept, the Purchaser requests protection from any value drain of the company between signing and Closing by restricting the Seller from implementing certain measures, such as dividend Distributions and other distributions of proceeds, granting of loans to the company's shareholders, and agreement on certain services not at arm's lengths

**Jurisdiction:** 

**No Offer Announcement:** an announcement, or informal statement, which a party will usually be held to for six months, referring to a decision not to make an Offer under Rule 3.7 of the HK Takeovers Code

**Jurisdiction:** 

**No Poach:** See Non-Solicitation

**Jurisdiction:** 

**No Shop:** provisions found in a Public Company Merger Agreement (except in the UK) which preclude the Target Company from having any dealings with a Competing Bidder, unless specifically permitted by the Fiduciary Out provisions (if any) contained in the Public Company Merger Agreement. In Acquisitions involving an exchange of one company's Stock for the other's, particularly where the companies are relatively similarly sized, each party to the Acquisition Agreement may be subject to a No Shop provision.

**Jurisdiction:** 

**No Talk:** a name for a No Shop provision which does not contain a Fiduciary Out. No Talk is a term rarely used today, because beginning in the late 1990s Delaware law made inclusion of a Fiduciary Out a virtual requirement for Acquisition Agreements involving Target Companies organized in Delaware, and other state corporate laws are assumed to be similarly interpreted. Note that under very limited circumstances Delaware law may permit use of a No Talk version of the No Shop.

**Jurisdiction:** 

**No Teaming Provisions:** a provision frequently found in a Non-Disclosure Agreement between a potential Target and a potential Bidder providing

that the potential Bidder will not contact or have any type of discussion with other potential Bidders without the Target Company's consent. A No Teaming Provision is intended to preserve the Target Company's ability to use an Auction Process to produce the highest Bid available by precluding formation of bidding syndicates or Bidder Groups among potential Bidders without the Target first determining that such a bidding syndicate will enhance the Auction Process.

*Jurisdiction:*         

**NOL:** acronym for a net operating loss under the US Internal Revenue Code

*Jurisdiction:*        

**NOL Pill:** a Poison Pill intended to preclude Acquisitions of Shares of a company with significant net operating losses that might reduce or eliminate the company's net operating losses. Typically, an NOL Pill has a five percent Trigger. NOL Pills have been upheld in Delaware. See *Versata Enters., Inc. v. Selectica, Inc.*, 5 A.3d 586 (Del. 2010).

*Jurisdiction:*  

**Nomad:** shorthand for Nominated Adviser

*Jurisdiction:* 

**Nominated Adviser:** an adviser for companies listed on AIM that is approved by the LSE. AIM companies must retain a Nominated Adviser at all times. Also known as a Nomad.

*Jurisdiction:* 

**Non-Compete Clause:** a contractual restraint on competition

*Jurisdiction:*         

**Non-Disclosure Agreement:** a generic name for an agreement by one party not to disclose publicly information provided by a second party. Non-Disclosure Agreements are very common in the M&A context and are almost an invariable feature of any Due Diligence process. Non-Disclosure Agreements in an M&A context typically also prohibit potential Bidders from publicly disclosing the existence of the M&A process and often impose Standstill restrictions on potential Bidders so that the Target Company can maintain control of the Auction Process. Also referred to as a Confidentiality Agreement or NDA.

*Jurisdiction:*            

**Non-Distributable Reserves:** certain reserves such as a Share Premium Account, which companies are generally prohibited or restricted in distributing to shareholders

1. (FRA) in France, a legal reserve amounting to five percent of the Share Capital is mandatory in any form of commercial companies

*Jurisdiction:*        

**Non-Executive Director:** Non-Executive Directors are part-time directors but still share all the legal responsibilities of their executive directors on a company's Board of Directors. Non-Executive Directors usually provide advice and assistance to executive directors as independent consultants or advisers, although their exact duties will depend on the nature of the company and their particular expertise.

1. (FRA) also used to describe directors who do not have the power to represent the company in interactions with third parties

*Jurisdiction:* 

**Non-Qualified Deferred Compensation Plan (NQDC Plan):** plan or agreement that defers the payment of compensation earned in one year to a future year. NQDC Plans must comply with or be exempt from Section 409A, otherwise deferred amounts will be subject to an excise tax and other penalties under 409A.

*Jurisdiction:* 

**Non-Qualified Stock Option:** see Stock Option. A Stock Option that is not an Incentive Stock Option. Non-Qualified Stock Options are taxed as ordinary income at the time of exercise on the difference between the grant price and the fair market value at exercise.

*Jurisdiction:* 

**Non-Solicitation:** agreement not to poach or hire a company's employees. See No Poach. Not to be confused with a Non-Solicitation Agreement in the Public Company Merger Agreement context.

*Jurisdiction:* 

**Non-Solicitation Agreement:** another name for a No Shop. Not to be confused with the Non-Solicitation of a company's employees.

*Jurisdiction:* 

**Normalized Working Capital:** estimated average Working Capital required for the day to day running of a company. Normalized Working Capital is usually calculated by reference to a company's Stock, cash, debtors and creditors figures over the past year and will affect the overall value placed on the business.

*Jurisdiction:* 

**Notarisation:** see Notarization

*Jurisdiction:* 

**Notarization:** the act of a notary public confirming either that it has witnessed a person signing a document or that the person which it witnessed signing a document was duly authorized to sign the same on behalf of a specific entity; in certain jurisdictions, this formality is required for certain types of documents to be valid and can require signatories to initial every page of a document and possibly even have to read out the

document: beware of this before agreeing to attend a Closing meeting as you could be there for some time.

*Jurisdiction:* 

*Note:* another name for a Bond with a maturity of 10 years or less

*Jurisdiction:* 

*Notifiable Transaction:* a transaction which meets certain specified size tests under the Hong Kong Stock Exchange Listing Rules and thus, triggers public disclosure and possibly shareholder approval requirements for the relevant Listed Company. There are six types of Notifiable Transactions: Share transactions, discloseable transactions, major transactions, very substantial disposals, very substantial acquisitions and Reverse Takeovers.

*Jurisdiction:* 

*Novation:* the name given to the process by which obligations as well as rights are transferred by one party to another or (in some civil law jurisdictions) the name given to the process by which an existing obligation is morphed into a different obligation. Contrast (in the former case) with Assignment. Novations can cause the loss of Security granted in certain European countries (if you do not phrase your Novation carefully enough) hence the use of Assignment and Assumptions in these instances.

*Jurisdiction:* 

*NTM:* acronym for next twelve months. Compare LTM.

*Jurisdiction:* 

*Observer (status):* usually granted pursuant to a shareholders' agreement in a Private Equity transaction and which permits an individual to attend, participate in, and receive information relating to, meetings of a company's Board of Directors. An Observer is not permitted to vote on matters and is not himself/herself a director of the company.

1. (FRA) called a "*censeur*"

*Jurisdiction:* 

*OC:* acronym for Offering Circular

*Jurisdiction:* 

*Off the Shelf:* the act of implementing a Poison Pill, shelf offering of Securities or other plan that previously had been placed On the Shelf. See On the Shelf, Shelf Poison Pill and Shelf Registration.

1. (HKG) in Hong Kong, the term is used in the context of a Shelf Company

*Jurisdiction:* 

*Offer:* see Acquisition Proposal or Bid. Can also be shorthand for Tender Offer.

*Jurisdiction:* 

**Offer Document:** a document which, among other things, sets out the conditions of an Offer for Securities

1. (US) for Public Company Takeovers, the Offer set forth on Schedule TO
2. (UK) the contractual Offer circulated to Target shareholders in a UK Takeover
3. (HKG) see Rule 8 and Schedule 1 of the HK Takeovers Code
4. (SGP) see Rule 23 of the Singapore Takeover Code

*Jurisdiction:*        

**Offer Information Statement:** a document prescribed by the Securities and Futures Act, which can be provided in lieu of a Prospectus in connection with an Offer of Securities

*Jurisdiction:* 

**Offer Letter:** a generic term for a document that contains an Acquisition Proposal

*Jurisdiction:*           

**Offer Period:** the period commencing with the announcement of an Offer or possible Offer for a Public Company, during which enhanced market disclosure of Share dealing is required

1. (FRA) moreover, negotiations over the Shares of the Target Company and/or Bidder may be suspended

*Jurisdiction:*    

**Offer to Purchase:** common name for the Buyer's document setting forth the terms of a Tender Offer or Exchange Offer

*Jurisdiction:*          

**Offeree:** in a Takeover Offeree is the name given to the Target Company

*Jurisdiction:*    

**Offeree Board Circular:** Rule 25 of the UK Takeover Code, Rule 8.4 of the HK Takeovers Code and Rule 24 of the Singapore Takeover Code prescribe an Offeree Board Circular which must indicate, among other things, whether or not the Target Company's Board of Directors recommends to shareholders the acceptance or rejection of the Takeover Offer(s) made, or to be made, by the Offeror

1. (HKG) in an Agreed Takeover, the Offeror and the Offeree typically combine the Offer Document and the Offeree Board Circular into one Composite Document

*Jurisdiction:*   

**Offeree Circular:** see Offeree Board Circular

*Jurisdiction:*   

**Offering Circular:** another name for an Offering Memorandum. See also OC.

*Jurisdiction:* 

**Offering Memorandum:** a name for a memo describing a Target Company's business, financials and (almost always) projections, used in the sales process for a Target Company. Typically, early in a sales process the Target Company's Financial Advisor circulates an Offering Memorandum to potential Bidders, which the Target Company has approved to be actively solicited to participate in the Auction. Offering Memoranda are intended to give basic facts about the Target Company, including limited non-public information. Offering Memoranda are thought of as selling documents and typically emphasize the positives and downplay the negatives. A CIM is the analog of the Offering Memorandum for debt that is marketed in the non-public bank and Bond markets to finance a portion of the Target Company's purchase price. See also Confidential Information Memorandum.

*Jurisdiction:* 

**Offering Statement:** another name for a Confidential Information Memorandum

*Jurisdiction:* 

**Offeror:** in a Takeover, this is the name given to the Buyer

*Jurisdiction:* 

**Office of Fair Trading:** the non-ministerial government department dedicated to investigating and policing matters concerning consumer markets and, antitrust and competition in the UK. In 2014, the OFT (along with the UK Competition Commission) will be replaced by the Competition and Markets Association. See also Competition Commission.

*Jurisdiction:* 

**Official List:** the FSA's list of Securities that have been admitted to listing on a UK-Regulated Market

*Jurisdiction:* 

**OFT:** shorthand for the UK Office of Fair Trading

*Jurisdiction:* 

**OM:** acronym for Offering Memorandum

*Jurisdiction:* 

**Omnicare:** a reference to an important Delaware case involving a Target Company's Board of Directors' Fiduciary Duties when a Controlling Shareholder or near Controlling Shareholder enters into a Voting Agreement with a majority of the shareholders and there is no Fiduciary Out to accept a Superior Proposal and terminate the Merger Agreement. See *Omnicare v. NCS Healthcare, Inc.* 818 A.2d 914 (Del. 2003).

*Jurisdiction:* 

**On The Block:** in relation to a company or an asset, a description of the fact it is known that the business/asset has been put up for sale by its owners

Jurisdiction:    

**On the Shelf:** a generic name for an action or a document that can be implemented or adopted rapidly with a minimum amount of formalities at the corporate and regulatory levels. For example, On the Shelf is used to describe a Poison Pill that has been drafted and reviewed by a Board of Directors, but has not been adopted. Another example is as a description of unissued Securities covered by a Shelf Registration Statement, which are said to be On the Shelf.

Jurisdiction:    

**One Step Merger:** an Acquisition of one company by another through the single step of a conventional Merger. The term is used to distinguish it from a Two Step Acquisition.

Jurisdiction:    

**OPA:** acronym for *Offerta Pubblica di Acquisto*, i.e., under Italian law, a Mandatory Offer or Voluntary Offer in respect of all or part of the Shares of a company whose Shares are listed on an Italian Regulated Market

Jurisdiction: 

**OPD:** in a UK Takeover, OPD is the acronym for the Opening Position Disclosure required by all shareholders holding interests in Securities of over one percent of the Offeree's Shares

Jurisdiction: 

**Open Kimono:** a graphic term used to describe the act of sharing all the previously undisclosed information about a company, structure or situation. For example, when a company gives parties full access to its books, records and Due Diligence information, it has "opened the kimono." Also used to describe a situation or meeting in which participants are expected to hold no secrets from one another, and are expected to share their "private" information.

Jurisdiction:   

**Open Market Accumulations:** Acquisition of a significant block of a Target Company's Common Stock with implications of seeking a controlling position through purchases on a stock exchange or in private transactions which, in either case, is not accompanied by a public Offer to Purchase Stock. In this context, Open Market refers to the then existing markets on which Investors customarily purchase and sell the Target Company's Stock.

1. (FRA) such Acquisitions are subject to Threshold crossing disclosures and may have an impact on the purchase price or consideration in the event of a Takeover

Jurisdiction:      

**Open Market Purchases:** has the same meaning as Open Market Accumulations, except that Open Market Purchases can be used to describe smaller Acquisition programs without any control implications

*Jurisdiction:* 

**Opinion Letter:** a Legal Opinion from lawyers on a discrete matter which another party (such as the Lenders in a loan transaction or the Underwriters in a Bond transaction) will rely upon. A typical example of an Opinion Letter would be an opinion given as to whether a particular agreement is valid and enforceable in a particular jurisdiction or whether a particular party (typically the Issuer/Borrower) has capacity and authority to enter into certain agreements. Practice differs between the US and the European jurisdictions, and between the Bond and loan worlds, as to whether Opinion Letters are provided by counsel to the arranger or counsel to the Borrowers or by both, but opining on different legal aspects of the transaction.

*Jurisdiction:* 

**Option:** a contract that provides the contract owner the right, but not the obligation, to purchase (in the case of a Call Option) or sell (in the case of a Put Option) an asset at a future date at an agreed price (known as the Exercise Price or Strike Price). When a Call Option's Strike Price is below the current market price of the underlying asset, or when a Put Option's Strike Price is above the current market price of the underlying asset, the Call Option or Put Option is In the Money. When a Call Option's Strike Price is greater than the current market price of the underlying asset, or when a Put Option's Strike Price is lower than the current market price of the underlying asset, the Call Option or Put Option is Out of the Money. Options are commonly used in the context of LBOs to secure the Shares held by the Management. See Call Option, Put Option and Stock Option.

*Jurisdiction:* 

**Option Cash Out:** extinguishment of a Stock Option by the issuing company paying the holder the spread between the Exercise Price and the then trading market price. Many Stock Option plans explicitly permit Option Cash Outs in connection with an Acquisition of the issuing company. When the Option plan does not contain a cash out provision, the Option Cash Out is usually done by mutual agreement.

*Jurisdiction:* 

**Option Rollover:** a conversion of Target Company employee Options into the Buyer's Options in connection with an Acquisition. Most Employee Share Option Plans include mechanics for Option Rollovers through a formula that preserves the economics of the Target Company's outstanding employee Options following their conversion into Buyer Options.

*Jurisdiction:* 

**Ordinary Course of Business:** the term used to distinguish between extraordinary risks and risks arising from measures carried out in the Ordinary Course of Business; such distinction is often used to limit Representations and Warranties only to such circumstances outside the Ordinary Course of Business. Further, the Seller usually undertakes to carry out only such measures which are in the company's Ordinary Course of Business between signing and Closing.

*Jurisdiction:* 

**Ordinary Resolution:** a resolution of a company's shareholders (or Class of shareholders) passed by a simple majority of shareholders on a show of hands at a general meeting, or by a simple majority of the total voting rights of shareholders on a poll at a general meeting or by Written Resolution

*Jurisdiction:* 

**Ordinary Shares:** see Common Stock

*Jurisdiction:* 

**Other Constituencies:** a generic name for groups, other than common stockholders, which have a commonly shared economic interest in a company, such as debt holders, employees, customers or members of communities in which the company has facilities

*Jurisdiction:* 

**Out of the Money:** a Stock Option is Out of the Money when the holder cannot exercise it for a profit. A Convertible Bond is Out of the Money when its conversion value is less than its Par Value.

*Jurisdiction:* 

**Out Years:** years beyond those included in projections or a financial analysis. The term often applies to years beyond a specified year, such as the fifth anniversary of an event.

*Jurisdiction:* 

**Outside Date:** the last date on which a designated action must occur. An example of an Outside Date would be the common Condition Precedent in an Acquisition Agreement that the Closing must have occurred by a specified date. Effectively the provision permits either party to terminate the Acquisition Agreement if the Closing has not been completed by the Outside Date. Also called Drop Dead Date, End Date and Termination Date.

*Jurisdiction:* 

**Oversubscribed:** when used in the context of a Capped or otherwise limited amount of consideration (either in a Cash Election or Stock Election transaction or in a partial Tender Offer or partial Exchange Offer), Oversubscribed means more of the Target Company's holders

have elected the Capped or otherwise limited amount of consideration than is available under the terms of the Acquisition.

*Jurisdiction:* 

*Owner of Record:* see Record Owner

*Jurisdiction:* 

*Owner-Manager:* Owner-Managers of substantial businesses, many of whom became owners as a result of a Management Buyout or Management Buy-In

*Jurisdiction:* 

*P&L Statement:* shorthand for Profit and Loss Statement

*Jurisdiction:* 

*P/E:* acronym for price to earnings, as in Price/Earnings Ratio

*Jurisdiction:* 

*P2P:* shorthand for Public to Private, *i.e.*, a transaction whereby a Public Company is taken private. See also Public to Private, Going Private and Privatisation.

*Jurisdiction:* 

*Pac Man Strategy:* in a Hostile Takeover situation, when a Target Company of a hostile Tender Offer or Exchange Offer launches a Tender Offer or Exchange Offer for the Hostile Bidder

*Jurisdiction:* 

*Panel:*

1. (UK) shorthand for the UK Takeover Panel
2. (HKG) shorthand for the HK Takeovers Panel. Also commonly known as the "Takeovers Panel."

*Jurisdiction:* 

*Par Value:* means the face value of Shares or loan notes (as applicable)

*Jurisdiction:* 

*Parachute:* short hand for Parachute Payment

*Jurisdiction:* 

*Parachute Payment:* payments made to executives in connection with a Change of Control. Parachute Payments may be Double Trigger or Single Trigger. See also Golden Parachute.

*Jurisdiction:* 

*Parent:* another name for Holding Company

*Jurisdiction:* 

*Parent Company Merger:* a Merger of an Acquirer Parent and Target Parent entities. The Surviving Entity can be either Parent entity, although

it is most common for the Acquirer Parent to be the Surviving Entity. A Parent Company Merger is distinguished from a Triangular Merger which uses a wholly-owned subsidiary of the Acquirer Parent as the entity to be merged with the Target Parent and results in the Acquirer Parent becoming the Parent of the Target Company. See also Direct Merger.

*Jurisdiction:* 

**Parent-Parent Merger:** another name for a Parent Company Merger

*Jurisdiction:* 

**Pari Passu:** equality of treatment, e.g., in a right of payment

*Jurisdiction:* 

**Part Cash/Part Share:** see Part Cash/Part Stock

*Jurisdiction:* 

**Part Cash/Part Stock:** a Combination transaction in which the consideration consists of both Stock and cash. Outside of the US, this is more commonly called Part Cash/Part Share.

*Jurisdiction:* 

**Partial Bid:** another name for a Partial Offer

*Jurisdiction:* 

**Partial Offer:** a Tender Offer or Exchange Offer for less than all of a Target Company's outstanding Common Stock. See also Partial Bid.

1. (UK) Partial Offers for less than 100 percent of the Issued Share Capital of UK Listed Companies are governed by Rule 36 of the UK Takeover Code and require the consent of the Panel
2. (FRA) the principle under French law requires the Offer be made for all the Share Capital. However, the AMF's General Regulation provides for very limited exceptions under which a Partial Offer may be authorized.
3. (HKG) Partial Offers are governed by Rule 28 of the HK Takeovers Code and require the Executive's consent.
4. (SGP) a Voluntary Offer made by the Offeror for less than 100 percent of a Target Company's Shares not already owned by the Offeror and its concert parties. Partial Offers are governed by Rule 16 of the Singapore Takeover Code. The SIC's consent is required for any Partial Offer.

*Jurisdiction:* 

**Participating Member State:** the EU member countries which have adopted the Euro (€) as their sole legal tender. There are currently 17 Participating Member States.

*Jurisdiction:* 

**Participation-Exemption:** a favorable tax regime providing for a full or partial corporate income tax exemption on a company's dividend incomes

and/or in connection with a participation held in another company. This regime is generally available only for participations that represent a material value or stake in the Affiliate's equity and which are held over a minimum period of time. Such conditions vary from one jurisdiction to another.

*Jurisdiction:*  

**Partnership:** meaning depends in part on the context, but when referring to a legal entity, a Partnership is an association of two or more individuals or entities to carry on a business created under state or national law, as applicable. A Partnership is usually governed by a Partnership Agreement, the mandatory contents of which are specified by the relevant law. Like a corporate Charter, laws governing Partnership Agreements are enabling, permitting great scope for private ordering in the Partnership Agreement.

1. (US) Partnerships are subject to a special tax regime — both technical and complicated — spelled out in detail in the US Internal Revenue Code and IRS regulations. It is best to have an experienced Partnership tax lawyer at your side in designing Partnership structures and drafting Partnership Agreements because small slips can have large negative tax consequences.

*Jurisdiction:*       

**Partnership Agreement:** the agreement among Partners of a Partnership governing their relative rights and obligations among one another with respect to the Partnership. See also Partnership.

*Jurisdiction:*       

**Pass-Through:** a business entity which, for income tax purposes, is not subject to taxation at the entity level and the tax attributes of which are passed through the entity to its equity owners. The most common forms of Pass-Through business entities are Partnerships and Limited Liability Companies.

*Jurisdiction:*      

**Paying Agent:** a name for an agent, usually a bank or trust company selected by the Buyer, that manages the process of exchanging the Target Company's Equity Interests for cash in a Cash Merger. The party performing this function is sometimes called an Exchange Agent; however that term is better used in a non-Cash Merger where the Buyer's Stock is exchanged for Shares of the Target Company.

*Jurisdiction:*      

**Pay-in-Kind:** a feature of a Note or Bond (or a Preferred Stock) which allows the Issuer to pay Interest (or dividends) in the form of additional Notes or Bonds (or Shares of Preferred Stock) in lieu of paying in cash. See PIK.

*Jurisdiction:*           

**PBGC:** acronym for the Pension Benefit Guaranty Corporation

*Jurisdiction:* 

**PD:** acronym for Prospectus Directive

*Jurisdiction:*     

**PE:** acronym for Private Equity

*Jurisdiction:*           

**PEC:** acronym for Preferred Equity Certificate

*Jurisdiction:*  

***Pension Benefit Guaranty Corporation:*** a US quasi-governmental entity that insures (up to a certain extent) and administers Defined Benefit (Pension) Plans which have become insolvent. See PBGC.

*Jurisdiction:* 

***Pensions Regulator:*** the UK regulator which, pursuant to the Pensions Act 2004, has responsibility for all employment-based pension schemes in the UK and may investigate and issue contribution notices to better protect pensioners

*Jurisdiction:* 

***Per Capita Acceptance:*** an alternative to Pro Rata Acceptance used in Cash Election and Stock Election Acquisitions to determine which electing shareholders will receive an Oversubscribed type of Capped consideration

1. (US) the Williams Act prohibits Per Capita Acceptance from being used in Partial Offers to determine which tendering shareholders will receive the promised consideration when the Offer is Oversubscribed

*Jurisdiction:*   

***Periodic Reports:***

1. (US) the annual report on Form 10-K and the quarterly reports on Form 10-Q required by the Exchange Act to be filed with the SEC by all Public Companies with Securities registered with the SEC. The Securities laws specify precisely who is required to file these reports, but as a general matter Periodic Reports are filed by companies that have completed an IPO, have Securities listed on an exchange, or have a Class of Securities registered under the Exchange Act.
2. (FRA) the EU transparency directive requires Participating Member States to establish rules for the disclosure of periodic and ongoing financial and informational reports for companies whose Shares are admitted to trading on a Regulated Market. In France, the AMF's General Regulation govern the publication of an annual report as well as quarterly reports for Listed Companies.

*Jurisdiction:*  

**Permanent Securities:** the Securities (usually High Yield Bonds) intended to be issued to finance an LBO. These are the Securities that the Bridge Loans backstop in case the offering of Permanent Securities is unsuccessful.

*Jurisdiction:* 

**Perpetuity Growth Rate:** a financial concept utilized in DCF methodologies. Perpetuity Growth Rate basically means an assumed (and usually static) never ending growth rate.

*Jurisdiction:* 

**Piggy Back Registration Rights:** Registration Rights which permit private Securities holders to “piggyback” into a Registration Statement originally filed by the Issuer for a separate purpose. These rights give the holder the ability to “jump onto” an offering that another party (either the Issuer itself or another Security holder) initiated. Compare Demand Registration Rights.

*Jurisdiction:* 

**PIK:** acronym for Pay-in-Kind

*Jurisdiction:* 

**PIK Debt:** debt where Interest is only paid in PIK

*Jurisdiction:* 

**PIK Loans:** loans that only pay interest by way of PIK

*Jurisdiction:* 

**PIK Notes:** perhaps the most common form of PIK Debt, being Notes with a PIK feature

*Jurisdiction:* 

**Pill:** shorthand for Poison Pill

*Jurisdiction:* 

**Pill Threshold:** another name for a Pill Trigger

*Jurisdiction:* 

**Pill Trigger:** the percentage ownership of a company's outstanding Stock the Acquisition of which will result in Rights issued under the Pill becoming exercisable for company Stock as a significant discount to market, thus activating the poison in the Poison Pill. Poison Pill plans today frequently use, a 15 percent Trigger, although a higher 20 percent Trigger or a lower 10 percent Trigger are not uncommon. In the case of NOL Pills, a five percent Trigger is the standard.

*Jurisdiction:* 

**PIPE:** acronym for “private investment in public equity.” In a PIPE transaction, a Public Company issues equity Securities to institutional Investors in a Private Placement and, if required for the relevant

jurisdiction, undertakes to register the equity Securities for public resale promptly after the transaction closes.

*Jurisdiction:*          

*Pipeline:* see Deal Flow

*Jurisdiction:*        

*PJSC (Qatar):* acronym for public or private joint stock company, currently the only form of company permitted to list Shares on the QE

*Jurisdiction:* 

*PJSC (UAE):* public or private joint stock company established under the UAE Companies Act

*Jurisdiction:* 

*Placement Fee:* a fee paid to the Investment Bank when the Bond placement occurs (*i.e.*, when the Bond deal closes)

*Jurisdiction:*          

*Placing:* see Share Placing

*Jurisdiction:*      

*Players List:* another name for a Working Group List

*Jurisdiction:*         

*Poison Pill:* an action taken by a company to make its equity less attractive to potential Acquirers in order to prevent being acquired in a Hostile Takeover. Two common types of Poison Pills are the Flip-In, and the Flip-Over. Usually effected by an agreement (Shareholder Rights Plan) between a company and a trust company or similar corporate Fiduciary providing for the issuance to all of a company's shareholders of a Warrant to obtain one Share of the company's Stock at an Exercise Price that is far Out of the Money and further providing that any Acquisition by a third party of more than a specified amount of the outstanding Shares (usually, 10 percent, 15 percent or 20 percent) will, without any further act of the company, convert the Warrant into a Right to buy a multiple number of Shares of the company (perhaps as many as four or five) at half price, except for Warrants held by the third party which cannot be so exercised. The discriminatory nature of the Warrants, once triggered, makes their issuance vastly Dilutive. The Threat of such massive Dilution (the poison in the Poison Pill) serves as an effective economic deterrent to a purchase by a third party of more than the Pill Trigger amount of Stock. Poison Pills contain mechanisms that allow the company's Board of Directors to disarm them and permit Acquisitions of company Shares in excess of the Trigger percentage in Board of Directors approved situations, thus permitting Friendly Share Acquisitions and Friendly transactions. Poison Pills are by far the most effective Takeover Defense. The effectiveness of the Poison Pill's deterrence is demonstrated by the fact that, in the almost 30 years of the Poison Pill's existence, there appear to have been only two instances in which a third party intentionally triggered a Poison Pill.

While initially intended to be pejorative, the term Poison Pill has become ubiquitous and no longer has any meaningful negative implications. See also NOL Pill and Shelf Poison Pill.

1. (US) Poison Pills have been upheld numerous times in Delaware, beginning with the Household decision in 1985. See *Moran v. Household Int'l, Inc.*, 500 A.2d 1346 (Del. 1985); see also *Yucaipa Am. Alliance Fund II, L.P. v. Riggio*, 1 A.3d 310 (Del. Ch. 2010) (applying Unocal Doctrine and upholding the adoption of a Poison Pill by directors of Barnes & Noble in the face of Yucaipa's rapid Open Market Accumulation of Stock and threatened Proxy Contest), *aff'd*, 15 A.3d 218 (Del. 2011); *Air Prods. & Chems., Inc. v. Airgas, Inc.*, 16 A.3d 48 (Del. Ch. 2011).
2. (UK) Rule 21 of the City Code restricts such Frustrating Actions
3. (FRA) the French Commercial Code and the AMF's General Regulation strictly limit the use of such actions

*Jurisdiction:* 

**Portfolio Company:** a company which has been purchased by a Private Equity Sponsor and now sits in that Private Equity Sponsor's "portfolio"

*Jurisdiction:* 

**Possible Offer Announcement:** used in the context of Hong Kong Takeovers and shorthand for the announcement of a possible Takeover Offer, subject to Rule 3.7 of the HK Takeovers Code

*Jurisdiction:* 

**Post-Bid Market Check:** a Market Check conducted after receipt of a formal Acquisition Bid and prior to signing an Acquisition Agreement. Compare to Go Shop.

*Jurisdiction:* 

**Post-Merger Integration:** a phase subsequent to the Closing of the Acquisition of a Target Company during which the Target Company is integrated into the Buyer

*Jurisdiction:* 

**Power of Attorney:** an instrument permitting an individual to serve as the attorney or authorized agent of the grantor. In the Secondary offering context, selling shareholders will generally grant a Power of Attorney to someone (often a company officer) authorizing that person (an "attorney in fact") to sell to the Underwriters the number of Shares listed in the Underwriting Agreement and to execute the Underwriting Agreement (not used in Hong Kong). Generally signed in combination with a custody agreement. Powers of Attorney are also typically found in security agreements, granted by the chargors in favor of the security agent to allow the security agent to complete any tasks imposed on the chargor, which it has failed to complete.

*Jurisdiction:* 

**PR:** see Public Relations

*Jurisdiction:* 

**PRA:** acronym for the UK Prudential Regulation Authority

*Jurisdiction:* 

**Pre Bid Market Check:** a Market Check conducted prior to receipt of a formal Acquisition Bid

*Jurisdiction:* 

**Pre-Closing:** the time prior to Closing when you complete all the work so you can have a smooth Closing

*Jurisdiction:* 

**Preclusive:** when used in the context of a discussion of Fiduciary Duties of a Target Company's Board of Directors, Preclusive means a Takeover Defense that by its structure or effect prevents all or certain types of Takeover Bids, even if shareholders would want to accept them. Preclusive doesn't address shareholder choice; rather, it addresses things that would prevent a Takeover Bid, thus mooted the issue of shareholder choice.

*Jurisdiction:* 

**Preemptive Bid:** an Acquisition Proposal with such good terms, including in particular price, that it closes off (or, more frequently, is perceived to close off) any possibility of receiving a better Competing Bid. Determining whether a Bid is truly preemptive in an Acquisition context is challenging unless the Acquisition process is an Auction open to all comers, the Bid is received during the Auction and all other Bidders drop out. As a result, most Preemptive Bids are matters of perception, not fact.

*Jurisdiction:* 

**Pre-emptive Rights:** existing shareholders' rights to first refusal on the transfer of existing Shares or the issue of new Shares by a company, unless such rights are specifically not applied. See also Dilution.

1. (UK and HKG) known as pre-emption rights

*Jurisdiction:* 

**Preference Shares:** see Preferred Stock

*Jurisdiction:* 

**Preferred Bidder:** the potential Buyer whom the Seller or Target Company chooses as the preferred Purchaser after the submission of the Indicative Bid; often the parties agree upon Exclusivity in such case

*Jurisdiction:* 

**Preferred Equity Certificate:** hybrid Instruments, usually issued by a Luxco, which are treated as debt for the issuing company and equity for the holder with the interest paid on PECs being treated as dividends in

the hands of the holder. Private Equity Certificates can also be issued as Instruments Convertible into equity. See CPECs.

*Jurisdiction:*  

*Preferred Shares:* see Preferred Stock

*Jurisdiction:*            

*Preferred Stock:* Preferred Stock sits in between debt and Common Stock in the Capital Structure. Preferred Stock has Priority over Common Stock in a Liquidation, generally pays a fixed dividend (the equivalent of the Interest paid on debt) and does not share in the Upside to the same degree as Common Stock. Preferred Stock may have various different kinds of attributes which may notably concern dividend (fixed dividend, priority dividend), voting rights (double, multiple or no voting rights), company governance (grants the ability to elect a certain number of directors), etc. Outside of the US, the terms Preferred Shares or Preference Shares are used.

*Jurisdiction:*            

*Preliminary Bid:* see Preliminary Offer

*Jurisdiction:*        

*Preliminary Offer:* a prospective Purchaser's non-binding first Offer to enter into an Acquisition Agreement regarding the Acquisition of a company or assets (generally made in an Auction). Also referred to as an Indicative Bid or a Preliminary Bid.

*Jurisdiction:*        

*Premium Listing:* companies with a Premium Listing of equity on the LSE must comply with standards of regulation and disclosure that are super-equivalent to the relevant EU Directives, including as to corporate governance. Global Depository Receipts (similar to ADRs) and debt cannot obtain a Premium Listing. See also Standard Listing and Listing Rules.

*Jurisdiction:*  

*Pre-Pack:* the term generally used to describe any Insolvency proceeding or arrangement in which the Restructuring plan has been fully agreed to and the necessary approvals already obtained before filing for Insolvency. In England, Pre-Pack is more specifically used in relation to Administration proceedings, in which a sale of the company's assets has been pre-agreed by the prospective Administrator, and will be implemented immediately upon his/her appointment.

*Jurisdiction:*   

*Price Sensitive Information:* see Inside Information

*Jurisdiction:*           

**Price/Earnings Ratio:** a business's market price per Share divided by the Earnings Per Share. The P/E Multiple is sometimes applied to a business's profits to calculate the value of the business.

*Jurisdiction:*            

**Private Company:** a company with Shares that do not trade in public markets. The term is often used in counter-distinction to the term Public Company.

*Jurisdiction:*            

**Private Equity:** a generic term sometimes used as shorthand for a Private Equity Sponsor and/or the business of raising and managing Private Equity Funds

*Jurisdiction:*            

**Private Equity Fund:** a discrete entity that consists of third party funds managed by a Private Equity Sponsor which are intended to be invested primarily in LBO type deals. A Private Equity Fund is typically an LP in which Investors are Limited Partners and the Private Equity Sponsor (directly or through subsidiaries) is the General Partner. Some Private Equity Funds are constituted as corporations or other types of business entities.

*Jurisdiction:*            

**Private Equity Shop:** another name for a Private Equity Sponsor

*Jurisdiction:*          

**Private Equity Sponsor:** a firm which manages third party funds dedicated in whole or in part to being used as the equity component of Acquisition Consideration. Typically, a Private Equity Sponsor specializes in Leveraged Buyout transactions in which equity contributed by one or more Private Equity Funds comprises a minority of the Acquisition Consideration and borrowed funds comprise the majority. The Private Equity Sponsor's representative in a meeting will be the one asking why things cannot be done faster.

*Jurisdiction:*            

**Private Placement:** the sale of a block of Shares in a Private Company to an investment institution. Private Placements normally do not involve any Change of Control of the business. They can occur when shareholders wish to retire or, for some other reason, wish to realize all or part of their holdings. See also PIPE.

*Jurisdiction:*     

**Private Placing:** see Private Placement

*Jurisdiction:*     

**Private Treaty Sale:** the sale of a company or business in which the Seller and Buyer agree on the terms of sale between themselves

*Jurisdiction:*    

**Privatisation:** in its broadest meaning, refers to the elimination of all public ownership in a Public Company. Typically used instead of the terms Going Private or Take Private.

*Jurisdiction:*  

**Pro Forma:** means “for the sake of form” in Latin. A Pro Forma analysis assumes an Acquisition or other contemplated future event has occurred and reflects the financial impact of the contemplated future event on selected financial measures.

*Jurisdiction:*            

**Pro Forma Financials:** a kind of Pro Forma analysis consisting of Financial Statements calculated to reflect the impact of contemplated future events as if they had already occurred. These are the “what if?” numbers. For example, a company could have one million dollars of debt on its Balance Sheet as of December 31. If that company plans to borrow another one million dollars of debt in January, the company’s December 31 debt, Pro Forma for the January borrowing, would be two million dollars.

*Jurisdiction:*            

**Pro Rata Acceptance:** a mechanism for dealing with an Oversubscribed amount of a Capped type of consideration in which all electing or tendering Target shareholders receive a proportionate amount of the Capped type of consideration

1. (US) in a Partial Offer, where the Bidder seeks only a portion of the Target Company’s Stock and the total consideration is accordingly Capped, provisions in the Williams Act mandate pro rata allocation of the Capped type of consideration. The Williams Act does not apply to Mergers that include two types of consideration, at least one of which is Capped. In a Merger, if the Capped type of consideration is Oversubscribed, the Merger Agreement may provide for allocating the Capped type of consideration either on a Pro Rata or a Per Capita Acceptance basis. Because pro rata allocation of the Capped form of consideration may create unfavorable tax results for certain stockholders, very few Cash Election or Stock Election Mergers use a pro rata allocation methodology. Compare Per Capita Acceptance, which most Cash Election or Stock Election Mergers use.
2. (HKG) typically used in the context of a Rights Issue

*Jurisdiction:*        

**Pro Supp:** shorthand for Prospectus Supplement

*Jurisdiction:*      

**Process Letter:** see Bid Process Letter

*Jurisdiction:*           

**Profit and Loss Statement:** another name for Income Statement

*Jurisdiction:*         

**Project Finance:** a type of non-recourse financing or limited recourse financing whereby a project developer (known as the “project company,” which is formed by a “project sponsor”) incurs debt, often in combination with equity contributed by the project sponsor, to finance the development and construction of a capital-intensive project, such as a power plant or toll road, typically by means of construction loans that convert to Term Loans upon Completion of the project. A primary feature of Project Finance is that the Lenders advance debt on the basis of their evaluation of the project’s projected revenue-generating capability, rather than the credit quality of the project sponsor or the value of the project assets. The equity of the project company and the project assets, including the project’s revenue-generating contracts and other cash flows, are pledged as collateral for the debt. If you would like to know more about Project Finance, visit *Latham’s Book of Project Finance Jargon*®, available at [www.lw.com](http://www.lw.com).

*Jurisdiction:* 

**Proration:** the results of Pro Rata Acceptance

*Jurisdiction:* 

**Proration Factor:** the percentage of Shares of Stock tendered that will be accepted in a Pro Rata Acceptance

*Jurisdiction:* 

**Proration Period:** the period of time during which Shares may be tendered or elections submitted in an Acquisition in which an Oversubscribed type of consideration will be subject to Pro Rata Acceptance

*Jurisdiction:* 

**Prospectus:** plural is “Prospectuses.” Often referred to as an Offering Memorandum or Offering Circular.

1. (US) registered or public offerings are effected through the use of a marketing document called a Prospectus included in the Registration Statement filed with the SEC. This document forms the core of the sales material and the participants’ liability.
2. (UK, DEU, FRA, ITA) a Prospectus is used to describe the offering document prepared to comply with the Prospectus Directive either to achieve a listing on a Regulated Market or to make another form of Offer to the public
3. (ESP) a Prospectus is used to describe the offering document prepared to comply with the Prospectus Directive and the development regulation, specifically Royal Decree 1310/2005 either to achieve a Spanish listing on a Regulated Market or to make an Offer to the public
4. (HKG) a Prospectus is used to describe any document offering to the public (or calculated to invite offers from the public for) any Shares in or debentures of a company, for subscription or purchase for cash or other consideration
5. (SGP) the Securities and Futures Act defines Prospectus as any prospectus,

notice, circular, material, advertisement, publication or other document used to make an Offer of Securities, and includes any document deemed to be a Prospectus under Section 257 of the Securities and Futures Act (*i.e.*, a document by which a subsequent Offer is made), but does not include: (i) a profile statement; or (ii) any material, advertisement or publication which is authorized by Section 251 of the Securities and Futures Act (other than Subsection (5))

6. (UAE) a Prospectus or Offering Memorandum is used as a marketing document for Shares in public joint stock companies

*Jurisdiction:* 

**Prospectus Directive:** the Prospectus Directive effectively harmonizes all of the Prospectus Disclosure requirements across all EEA Member States. The PD applies if either the Securities are to be listed on a Regulated Market or a public Offer is made in a Member State. See PD.

*Jurisdiction:* 

**Prospectus Rules:** the rules introduced to implement the Prospectus Directive. Broadly, Prospectus Rules require the issue of a Prospectus, unless an exemption applies, whenever there is either an Offer of transferable Securities to the public in the relevant jurisdiction or a request for the admission to trading of transferable Securities on a Regulated Market. Prospectus Rules set out the form, content and approval requirements for Prospectuses.

*Jurisdiction:* 

**Prospectus Supplement:** a document that updates, corrects or otherwise amends a Prospectus. For example, a Shelf Registration Statement contains two parts: the Base Prospectus (which is in the initial filing) and the Prospectus Supplement containing the relevant terms of the offering and any necessary updates (which is filed when the Issuer sells Securities in a Shelf Takedown). Also referred to as Pro Supp.

1. (HKG) the term Supplemental Prospectus is more commonly used

*Jurisdiction:* 

**Proxy:** the most common meaning is a document (technically, a Power of Attorney) making the holder a stockholder's agent, with limited or unlimited authority, to vote the Shares covered by the Proxy. Another meaning of the word Proxy is a person who holds the Power of Attorney created by the Proxy. See also Proxy Statement.

1. (US) virtually all Shareholders' Meetings of US Public Companies conduct Share voting through the distribution of forms of Proxy (see also Proxy Card) to shareholders of record entitled to vote. Those executed by the shareholders of record are the Proxies that determine all voting at the meeting. All facets of Proxy voting at Public Companies that have Stock registered under the 1934 Act are governed by the SEC Proxy rules, as well as by state law relating to the conduct of Shareholders' Meetings.

- (HKG) where a shareholder is not personally present to cast his/her vote at a Shareholders' Meeting, he/she may appoint another person to vote on his/her behalf. Such a person is known as a Proxy.
- (SGP) for a Singapore incorporated company, where a shareholder is not personally present to cast his/her vote at a Shareholders' Meeting, he/she may appoint an agent to vote on his/her behalf. Such an agent is known as a Proxy.

*Jurisdiction:*            

**Proxy Access:** a general name for a process pursuant to a company's Charter or Bylaws or pursuant to a SEC Rule that permits a company's shareholder (which meets certain minimum ownership tests, including duration of ownership) to require the company to include in the company's Proxy Materials and Proxy Card the shareholder's proposed nominee for election to the company's Board of Directors. Proxy Access has been controversial since the SEC broached the idea in 2002, and the idea's future is currently uncertain.

*Jurisdiction:*  

**Proxy Advisory Firms:** a firm that reviews Proxy Statements and makes recommendations to its clients on how to vote their Shares on various ballot issues. Clients of Proxy Advisory Firms consist almost entirely of institutional Investors. Some clients follow a policy of voting in accordance with their Proxy Advisory Firm's recommendations, others make their own judgments using the Proxy advisor's recommendations as a key, but not, exclusive input.

- (US) in addition to making voting recommendations, the two principal Proxy Advisory Firms also act as an agent for their clients in submitting votes through the tabulation system run by Broadridge. The two principal Proxy Advisory Firms are ISS and Glass Lewis, which control well over 90 percent of the market.

*Jurisdiction:*     

**Proxy Card:** the common name given to forms of Proxies distributed in connection with Shareholders' Meetings. Proxy Cards for many years were designed so they could be tabulated by an IBM card reader. While this is no longer the means by which Proxy Cards are tabulated, the almost universal custom is to print them, usually on card stock, using the same dimensions as the original IBM Proxy Cards. The term Proxy Form is also commonly used.

- (HKG) in Hong Kong, the term used is Proxy FORM and it is typically not printed on card stock

*Jurisdiction:*       

**Proxy Contest:** a contest between two or more adversarial interests who compete to win an election contest or other contested shareholder vote at a Shareholders' Meeting. The Board and Management or most of the Board and Management are usually on one side. The adversary

may be Dissident members of the Board or Management, a long-time shareholder (either small or large) or a newly arrived shareholder (either small or large). The Proxy Contest may be over election of as few as one and as many as all directors, and/or over any aspect of corporate policy an Insurgent chooses on which to base a contest.

*Jurisdiction:*      

**Proxy Form:** see Proxy Card

*Jurisdiction:*       

**Proxy Law (Qatar):** refers to Law No. (25) of 2004 prohibiting any natural or legal person in Qatar from “harbouring” any non-Qatari. “Harbouring” includes allowing a non-Qatari shareholder from circumventing any restrictions that may be applicable to the foreign Investor under law.

*Jurisdiction:* 

**Proxy Materials:** a generic name for all writings generated in the context of soliciting Proxies with respect to a Shareholders’ Meeting

*Jurisdiction:*      

**Proxy Solicitor:** a firm that assists principals in soliciting, obtaining and counting Proxies in connection with a Shareholders’ Meeting. Proxy Solicitors advise on Proxy Statement content and on solicitation strategy. A Proxy Solicitor usually takes principal responsibility for ensuring Proxy votes are collected and accurately counted.

*Jurisdiction:*      

**Proxy Statement:** traditionally consists of the principal communication (written or published electronically) to shareholders with respect to the voting of Proxies. Other materials involved in a Proxy solicitation consist principally of the Proxy Card and Proxy Statement supplements. Compare Shareholders’ Circular.

*Jurisdiction:*      

**Prudential Regulation Authority:** in 2013, the Prudential Regulation Authority or PRA became the UK’s prudential regulator for deposit-takers, insurers and designated investment firms. See also Financial Services Authority and Financial Conduct Authority.

*Jurisdiction:* 

**Public Auction:** when Seller or a Target intentionally publicizes an Auction. Public Auctions very often include a large number of potential Bidders

*Jurisdiction:*        

**Public Company:** a generic term for a Listed Company

1. (US) a company with Shares registered under the Exchange Act

2. (HKG) generally means a company whose Shares are listed on the Hong Kong Stock Exchange or other stock exchanges but in some circumstances, may mean a company whose Shares are not listed for trading in Hong Kong but is still considered a Public Company in Hong Kong under the HK Takeovers Code and the Companies Ordinance

*Jurisdiction:* 

**Public Company Merger Agreement:** a Merger Agreement (or other type of Combination Agreement) where the Target Company is a Public Company

*Jurisdiction:* 

**Public Float:** the portion of a company's outstanding Shares held in the hands of public Investors, as opposed to company officers, directors, or controlling-interest Investors. Also referred to as Free Float. Listing Rules often contain specific guidance as to which Shares are considered to be held in public hands and counted as part of the Public Float.

*Jurisdiction:* 

**Public Relations:** refers to the department, personnel or outside firm that manages the dissemination of information about a company to its shareholders, the public, the media, its employees, or any other constituents interested in the company's goings-on. See also Investor Relations.

*Jurisdiction:* 

**Public to Private:** describes a transaction whereby a public Listed Company is acquired by a privately owned entity and subsequently delisted. See also P2P and Take Private.

*Jurisdiction:* 

**Purchase Accounting:** an accounting method used for all Business Combinations, such as Mergers, consolidations and Stock Acquisitions, initiated after June 30, 2001. Purchase Accounting treats the Acquirer as having purchased the assets and assumed the liabilities of the acquired company on the date of the Acquisition. The Book Values of the acquired assets and liabilities are reset to their respective fair market values as of the Acquisition date, and the difference between the purchase price and the aggregate fair value of the assets acquired is attributed to Goodwill.

*Jurisdiction:* 

**Purchase Agreement:** shorthand for a Stock Purchase Agreement, Share Purchase Agreement, or an Asset Purchase Agreement in an M&A deal. Also shorthand for the agreement with the initial purchasers in a US Rule 144A Financing. Make sure you know which is being discussed.

*Jurisdiction:* 

**Purchase and Sale Agreement:** see Sale and Purchase Agreement

*Jurisdiction:* 

**Purchase Price Adjustment:** a generic term for any mechanism built into an Acquisition Agreement which, if triggered, would change the amount of consideration (either up or down) received by Target Company shareholders. Purchase Price Adjustments are common in Acquisitions of Private Companies, but rare in Acquisitions of Public Companies. See also Locked Box.

*Jurisdiction:*           

**Purchaser:** another name for an Acquirer, Bidder or Buyer

*Jurisdiction:*            

**Purple Book:** UK slang for the Handbook

*Jurisdiction:* 

**Pushdown:** a procedure often used in LBOs where Borrowers “push down” debt from the Holdco to the operating companies to ensure a tax-efficient structure and to allow Lenders to take guarantees over the assets of the operating companies. See also Hive-down.

*Jurisdiction:*          

**PUSU:** see Put-Up or Shut-Up

*Jurisdiction:*  

**Put Option:** a financial contract between a Buyer and a Seller, where the Seller has the Option to sell a specific quantity of a commodity, Security or other financial Instrument to the Buyer at prices and within time periods that are stated in the contract. High Yield Bond and some Investment Grade Indentures generally provide bondholders with this right upon a Change of Control of the Issuer. See Change of Control Covenant and Change of Control Provision. More generally, a Put Option, or Put Right, is an asset holder's right to require another party to purchase the asset, usually at a predetermined price. Compare Call Option.

*Jurisdiction:*            

**Put Right:** see Put Option

*Jurisdiction:*            

**Put-Up or Shut-Up:** the deadline by which a potential Offeror on a Takeover either has to announce a firm Offer or walk away. See PUSU.

*Jurisdiction:*  

**Qatari Courts:** generally refers to the Courts in Qatar under the auspices of the Ministry of Justice in Qatar

*Jurisdiction:* 

**QCB:** the Qatar Central Bank oversees the activities of all Qatar's commercial banks and non-banking financial institutions. The QCB, among other things, also sets monetary policy in Qatar.

*Jurisdiction:* 

**QCCI:** the Qatar Chamber of Commerce and Industry is an organization of which all companies conducting business activities in Qatar must become a member

*Jurisdiction:* QAT

**QE:** acronym for the Qatar Exchange, a stock exchange based in Doha, Qatar which is partly owned by NYSE Euronext

*Jurisdiction:* QAT

**QE Venture Market:** the Qatar Exchange Venture Market was established in December 2011 as an alternative market for companies to list on with a lighter regulatory touch as compared to the QE's Main Market

*Jurisdiction:* QAT

**QFC:** acronym for the Qatar Financial Centre, a jurisdiction distinct from local Qatari law that has been set up to attract companies from the financial sector and related support service companies. QFC Law differs from local Qatari law regulating QFC companies and their employees, among other things.

*Jurisdiction:* QAT

**QFC Courts:** QFC Civil and Commercial Courts are distinct from Qatari Courts and have their own judges, procedural rules and jurisdiction to resolve QFC Law disputes in Qatar

*Jurisdiction:* QAT

**QFC Law:** generally refers to legislation, regulations and other rules of the QFC

*Jurisdiction:* QAT

**QFCA:** acronym for the Qatar Financial Centre Authority, the primary licensing authority of the QFC

*Jurisdiction:* QAT

**QFCRA:** acronym for the Qatar Financial Centre Regulatory Authority, the primary regulator within the QFC with the power to authorize natural and legal persons to undertake certain prescribed financial business activities

*Jurisdiction:* QAT

**QFMA:** acronym for the Qatar Financial Markets Authority, the primary regulatory authority for Qatar's Capital Markets and Listed Companies

*Jurisdiction:* QAT

**QIA:** acronym for the Qatar Investment Authority, Qatar's primary Sovereign Wealth Fund with investment interests all over the world

*Jurisdiction:* QAT

**QICDR:** acronym for the Qatar International Court and Dispute Resolution Centre, the QFC's dispute resolution centre

*Jurisdiction:* QAT

**QP:** acronym for Qatar Petroleum, the primary state-owned oil and gas company in Qatar

*Jurisdiction:* QAT

**QSTP:** acronym for the Qatar Science and Technology Park, currently Qatar's only free zone where Investors are permitted 100 percent foreign ownership of QSTP entities. Most QSTP entities have a science or technological focus and can benefit from certain incentives (such as tax incentives) offered within the QSTP.

*Jurisdiction:* QAT

**Qualified Majority:** see Supermajority

*Jurisdiction:* US UK DEU ESP FRA ITA SGP

**Qualified Plan:** a retirement plan that meets certain US Internal Revenue Code requirements and is therefore eligible to receive certain tax benefits (i.e., employer can deduct contributions made to the plan, employees are not taxed on assets in the plan until distributed and earnings on plan assets are tax deferred)

*Jurisdiction:* US DEU FRA SGP

**Qualifying Offer:** an Offer that meets the terms and conditions established in a formal or informal Auction

*Jurisdiction:* US UK DEU ESP FRA HKG ITA QAT SAU SGP UAE

**Quick Merger:** a French anti-abuse rule applying in case an indebted Holding Company is merged with its operating subsidiary in order to offset the financial expenses incurred by the Holding Company with the operating profit realized by its subsidiary. Tax reassessment is no longer very fashionable at the French tax administration.

*Jurisdiction:* FRA

**Quiet Auction:** an Auction for the sale of a Target Company that is not intended to be a matter of public record. A Seller or a Target Company often limits the number of potential Bidders

*Jurisdiction:* US UK DEU ESP FRA ITA QAT SAU SGP UAE

**Quotation Letter:** a document provided by a financial institution to a company that is partly financed with shareholder loans granted by a controlling Investor. The Quotation Letter provides evidence that the remuneration of such shareholder loans is not higher than the interest rate offered by unrelated parties for a loan having similar terms. Quotation Letters are generally used to secure the deductible nature of interest incurred on this type of shareholder loans for French corporate income tax purposes.

*Jurisdiction:* FRA

**Raider:** another name for a Hostile Bidder. Also used as a pejorative term for an Activist Investor.

*Jurisdiction:* US UK DEU ESP FRA ITA SGP UAE

**Ras Laffan:** a term used to describe the Ras Laffan Industrial City which is the main site for the production of LNG in Qatar

*Jurisdiction:*  QAT

**Ratchet:** also known as “equity ratchet” or “performance ratchet,” a Ratchet is used to incentivize managers by increasing or decreasing the amount of equity they hold in a company depending on their performance and the performance of the company

*Jurisdiction:*        

**Ratner:** a slang UK term to describe a member of company Management publicly destroying shareholder value by criticizing the company. In 1991 Gerald Ratner famously did this for the low-end jewelry shop which bore his family name.

*Jurisdiction:* 

**Realization:** the process of converting non-monetary assets, investments or services into cash or receivables through a disposal

*Jurisdiction:*        

**Recap:** shorthand for Recapitalization

*Jurisdiction:* 

**Recap Accounting:** accounting treatment under US GAAP for a Recap or Leveraged Recapitalization

*Jurisdiction:*     

**Recapitalization:** an adjustment or reshuffling of a corporation’s Capital Structure which may be treated as a Tax-Free Reorg under Section 368(a) (1)(E) where shareholders exchange old Stock for new Stock or where holders exchange certain Securities (generally, debt having a term longer than five years) for like Securities or for Stock. However, such exchanges may be taxable to the extent excess principal amount of debt is issued or Stock is issued for unpaid interest, certain unpaid dividends, or stock with a redemption premium. Sometimes called a Recap.

*Jurisdiction:* 

**Receivership:** a situation in which a receiver is appointed, either privately or by the court or a public body, to take control of the assets of a company which is unable to meet its liabilities. A receiver is usually given decision-making powers with respect to the assets in Receivership and has ultimate responsibility to recoup as much value as possible to satisfy the outstanding liabilities. See also Administrator.

*Jurisdiction:*      

**Recitals:** a name for the words at the beginning of many Acquisition Agreements that explain who the parties are and the basic terms of the transaction

*Jurisdiction:*           

**Record Date:** the date established by the Issuer of a Security for the purpose of determining the holders who are entitled to receive a dividend or Distribution or to vote at a Security holders' meeting

*Jurisdiction:*  

**Record Owner:** the person who holds the Securities on the records of the corporation/company

1. (US) in US Public Companies, the Record Owner is almost always DTC. As a matter of state corporation law, only Record Owners have the right to vote Shares. However, because the DTC is a custodian, it passes all voting rights through to the DTC participants that have Stock certificates on deposit at DTC. Those members are typically brokers, dealers and bank custodians, all of whom also pass the vote through to the parties who placed the Shares in the custody of these intermediaries. Eventually, if all goes according to theory, the custodian at the end of the custody chain passes the voting rights onto the ultimate Beneficial Owner.
2. (FRA) under French Law, the registration of Shares in a shareholder's account is the proof of ownership of such Shares

*Jurisdiction:*       

**Red Flag Report:** a Due Diligence report limited to substantial issues/risks and findings identified in the course of the Due Diligence; additionally, the scope of the Due Diligence is rather limited

*Jurisdiction:*         

**Redact:** to blank out sensitive information in a document, either by hand or electronically. Certain confidential or commercially sensitive information is usually redacted from documents before they are disclosed to third parties.

*Jurisdiction:*         

**Reduction of Capital:** the decrease by a company of its Issued Share Capital by special shareholder resolution supported by a directors' solvency statement in the case of Private Companies limited by Shares, or by special shareholder resolution in the case of both Private Companies and Public Companies limited by Shares. Once the relevant resolution is passed, the company must obtain a court order that confirms the reduction. The court may impose additional terms and conditions on the reduction. A company may wish to reduce its Share Capital to free-up Distributable Reserves.

1. (FRA) the decrease by a company of its Issued Share Capital by special shareholder resolution. The decrease may be realized by way of: (i) purchase by the company of its own Shares followed by their cancellation; (ii) decrease of the Par Value of the Shares; or (iii) attribution of corporate assets in exchange for the cancellation of certain Shares. Also called capital redemption.
2. (HKG) a similar concept exists in Hong Kong

*Jurisdiction:*        

**Refinancing:** repayment of existing debt with the proceeds of a new debt issuance. Any Refinancing will require a careful review of existing Indentures and Credit Agreements to make sure the debt being Refinanced can, in fact, be repaid and to verify that any debt left in place permits the incurrence of the new debt. Indenture and Credit Agreement debt Baskets will generally allow the Refinancing of existing debt, but subject to certain conditions that must be read carefully. See *Latham & Watkins Client Alert No. 696, Restructuring High Yield Bonds: Getting Ready for the Next Phase of the Cycle (April 21, 2008)*, available at [www.lw.com](http://www.lw.com).

Jurisdiction:            

**Reg Rights:** shorthand for Registration Rights

Jurisdiction:   

**Registered Shareholder:** see Record Owner

Jurisdiction:        

**Registration Rights:** a Security holder's rights to force an Issuer to register the holder's Securities for sale under the relevant Securities laws (e.g., in the US, the 1933 Act). These rights enhance the Liquidity of the holder's Securities because registered Securities are freely tradable. Registration Rights can take several forms. Holders of equity Securities obtained in a Private Placement often have rights to demand that the Issuer register their Securities or piggyback onto an offering in which the Issuer is already engaging. See Demand Registration Rights and Piggy Back Registration Rights. In private offerings of High Yield Bond and Convertible debt Securities, Issuers customarily provide Buyers with Registration Rights to enhance the post-Closing Liquidity of the Securities sold in the offering and, in the case of Private Company Issuers, agree to become Reporting Companies under the relevant laws (e.g., in the US, the 1934 Act). See also Reg Rights.

1. (US) the February 2007 changes to Rule 144 have had a significant effect on how Registration Rights are granted in connection with private offerings. See *Latham & Watkins Client Alert No. 669, The Future of Registration Rights in Private Offerings of Debt Securities (January 22, 2008)*, available at [www.lw.com](http://www.lw.com).

Jurisdiction:   

**Registration Statement:** the document filed with the SEC to comply with the 1933 Act in connection with a public offering of Securities. The Registration Statement contains the Prospectus.

Jurisdiction:  

**Registro delle Imprese:** Italian company register, holding the public files for Italian-incorporated entities. An office of the register is based in, and competent for, each Italian province

Jurisdiction: 

**Regulated Market:** an exchange recognized as such by the relevant authorities. A Regulated Market has an exchange license, operates on a regular basis, and established disclosure requirements subject to the provisions of the Prospectus Directive. Other markets, such as AIM, are often "Recognised Investment Exchanges" when they are not prescribed Regulated Markets.

*Jurisdiction:*     

**Regulation 14A:** the name for the compendium of SEC rules dealing with Proxy Statements and Proxy solicitations

*Jurisdiction:* 

**Regulation M-A:** the SEC regulation which sets forth disclosure requirements for Acquisition Transactions. Many of the disclosure requirements in Regulation M-A incorporate by reference provisions in Regulation S-K.

*Jurisdiction:* 

**Regulation no. 11971 of 1999:** Consob's Regulation No. 11971 issued on May 14, 1999 (Issuers' Regulation)

*Jurisdiction:* 

**Regulation S-K:** the heart of the SEC's integrated disclosure system, which provides the standard instructions for filing SEC forms. The SEC's registration forms (such as Form S-1) and Periodic Report forms (such as Form 10-K) have cross-references to Regulation S-K. Regulation S-K then provides an outline of all the detail necessary for these forms.

*Jurisdiction:* 

**Regulation S-X:** the SEC's accounting rules for the form and content of Financial Statements. All Financial Statements included in SEC filings must comply with Regulation S-X. Rule 144A Financings are not technically required to comply with Regulation S-X, however, as a matter of industry custom many do or nearly do comply.

*Jurisdiction:* 

**Regulations:** a legally binding legislative act of the EU which is directly enforceable in Member States without the need for enacting Member State legislation

*Jurisdiction:*    

**Reincorporation:** means moving a company's state of incorporation to another jurisdiction. Reincorporation is different from a redomiciliation, the latter relates solely to a company's tax residency.

*Jurisdiction:*       

**REIT:** acronym for real estate investment trust

*Jurisdiction:*      

**Related Corporation:** defined in Sections 4(1) and 6 of the Companies Act of Singapore as follows: where a corporation: (i) is the Holding Company of another corporation; (ii) is a subsidiary of another corporation; or (iii) is a subsidiary of the Holding Company of another corporation, that first-mentioned corporation and that other corporation shall be deemed to be related to each other. See also Affiliate.

*Jurisdiction:*  SGP

**Related Party Agreement:** see Related Party Transaction

*Jurisdiction:*  US  UK  FRA  HKG  SGP

**Related Party Transaction:** can be those transactions between a Listed Company (or its subsidiaries or associated companies) and certain “interested persons” or “Related Parties” as defined under the relevant Listing Manuals (*i.e.*, directors, chief executive officers or Controlling Shareholders, or their respective associates). Such transactions are usually subject to announcement and shareholder approval requirements and, depending on the form of the company, a prior approval may also be required from the Board. Such provisions can also apply to non-Listed Companies.

1. (HKG) the term more commonly used under the Listing Rules of the Hong Kong Stock Exchange is “Connected Transaction” whereas the term Related Party Transaction is more often used in the Financial Statements

*Jurisdiction:*  US  UK  FRA  HKG  SGP

**Release Letter:** a certificate from the advisor of the company/Seller/Buyer provided to the Financing Sources according to which the respective Due Diligence report (or any other experts’ opinion) may be released to the Financing Sources. A Release Letter typically states the financing banks may not rely on the content of the disclosed documents. According to the Release Letter, the liability of the originator is usually excluded (or at least limited).

*Jurisdiction:*  US  UK  DEU  FRA  HKG  ITA  SGP  UAE

**Reliance Letter:** a letter which establishes that the named recipient may rely on certain provisions of an auditor’s opinion, independent expert opinion or Legal Opinion, or an expert’s Due Diligence report, as if the original opinion/report were addressed and delivered to the named recipient. Reliance Letters with respect to Due Diligence reports are typically given to original Lenders and those becoming Lenders in initial Syndication.

*Jurisdiction:*  US  UK  DEU  FRA  HKG  ITA  SGP  UAE

**Reorganization:** a generic term referring to some fundamental change in a company’s Capital Structure and/or in its financial and legal obligations as a result of an M&A transaction

1. (US) Reorganization is also a term of art under the tax laws and under the Bankruptcy Code. See also Chapter 11 and Tax-Free Reorg.

*Jurisdiction:*  US  UK  DEU  ESP  FRA  HKG  ITA  QAT  RUS  SAU  SGP  UAE

**Rep & Warranty Insurance:** insurance which provides cover from losses arising from a breach of Representation and Warranty or Indemnity. Such a policy is available to either Sellers or Buyers and, if structured properly, having the insurance policy can result in: (i) the Seller having immediate access to the sale proceeds, a reduced period of risk and, in many cases, no requirement to leave funds in Escrow; or (ii) the Buyer having a satisfactory level of recourse (which may have otherwise been unavailable) through an insurance policy with financially-rated insurers. Sometimes referred to as R&W Insurance or W&I Insurance.

*Jurisdiction:*      

**Report on Title:** like a Certificate of Title but more detailed (and therefore more expensive)

*Jurisdiction:*  

**Reportable Event:** an event which must be reported publicly pursuant to the relevant Disclosure Rules. Because of the almost universal desire for confidentiality surrounding M&A overtures and negotiations before an Acquisition Agreement or other transaction agreement is signed, a great deal of planning and care is usually devoted to avoiding prematurely engaging in a Reportable Event that would Trigger a filing and disclosure obligation.

1. (US) see also Periodic Reports
2. (UK) this may include events which a Listed Company is required to inform shareholders of in accordance with FSA rules, including the Listing Rules
3. (ESP) such information or event must be disclosed pursuant to the Spanish Securities Act
4. (FRA) such information or event must be disclosed pursuant to the AMF's General Regulation
5. (SGP) an event which must be reported publicly pursuant to Rule 7 of the Listing Manual, which generally provides for the disclosure of material and other information. Other Specific Disclosures prescribed in the Listing Manual include "Discloseable Transactions" (under Rules 1010 to 1013), "Major Transactions" (under Rule 1014) and "Very Substantial Acquisitions or Reverse Takeovers" (under Rules 1015 to 1017).
6. (UAE) refer to Articles 33-35 of the SCA's Decision No. 3

*Jurisdiction:*        

**Reporting Company:** a company that files Periodic Reports with the SEC. Public Company is often used synonymously with Reporting Company.

*Jurisdiction:*  

**Representation:** see Representations and Warranties

*Jurisdiction:*            

**Representations and Warranties:** an assertion of fact in a contract (such as an Acquisition Agreement, Merger Agreement, Credit Agreement

or Underwriting Agreement). Representations and Warranties are the means by which one party to a contract tells the other party that something is true as of a particular date. Representations and Warranties can also be used to allocate a risk of unknown facts and/or future events if appropriately drafted to do so.

*Jurisdiction:*            

**Rescue (finance):** to offer financial support to a company in debt in order to bring that company out of Insolvency or prevent it from becoming insolvent

*Jurisdiction:*       

**Restricted Stock:** Stock not registered for sale under the 1933 Act. As a result, the manner in which the Stock may lawfully be sold is restricted to Private Placements and other non-regulated transactions. With respect to equity compensation, Restricted Stock refers to Stock granted or purchased by an executive or director who is subject to Vesting and forfeiture, usually based on continued service.

*Jurisdiction:* 

**Restricted Stock Unit:** an equity award issued by a company that represents an unsecured promise by the company to grant a specified number of Shares of Stock to a holder in the future, usually upon Vesting and lapse of forfeiture provisions. RSUs can be settled in cash or Stock.

*Jurisdiction:* 

**Restrictive Covenant:** a kind of Negative Covenant, often a restriction placed on a Seller of a company or its current or former employee, usually in the form of a Non-Solicitation or Non-Compete Clause

*Jurisdiction:*         

**Restructuring:** bringing about fairly major changes in the organization of a company by changing the Management and/or the Share ownership structure

*Jurisdiction:*        

**Results:** a company's financial earnings and profitability, which may be shown in the company's Profit and Loss Statement

*Jurisdiction:*        

**Retained Liabilities:** a Seller's liabilities that are not transferred to or assumed by a Buyer of some or all of such Seller's assets

*Jurisdiction:*          

**Retention Bonus:** a bonus paid to an employee to encourage the employee to remain in the employ of the company, often during a specified period. See Golden Handcuffs.

*Jurisdiction:*           

**Return on Investment:** a calculation used to evaluate the efficiency of an investment. ROI is the amount of proceeds received from the sale of an investment less the cost of the investment, divided by the cost of the investment.

*Jurisdiction:*       

**Reverse Break-Up Fee:** another name for a Reverse Termination Fee

*Jurisdiction:*          

**Reverse Merger:** another name for a Reverse Subsidiary Merger

*Jurisdiction:*      

**Reverse Morris Trust:** a transaction in which a Parent corporation spins off its corporate subsidiary and the subsidiary is immediately merged into an acquiring corporation. Such transaction may be tax-free if the Parent's shareholders own more than 50 percent of the corporation that survives the Merger. See Spin-Off.

*Jurisdiction:* 

**Reverse Sub Merger:** another name for a Reverse Subsidiary Merger

*Jurisdiction:*      

**Reverse Subsidiary Merger:** a Triangular Merger in which a subsidiary of the Buyer (usually a wholly-owned subsidiary created for this purpose) is merged with and into the Target Company, and the Target Company is the surviving company in the Merger. A Reverse Subsidiary Merger is the preferred form of Triangular Merger because it avoids issues concerning the assignability of Target Company contracts and similar rights to the Buyer or one of the Buyer's subsidiaries. Also referred to as a Reverse Merger, Reverse Sub Merger, and Reverse Triangular Merger.

*Jurisdiction:*     

**Reverse Takeover:** when a small company acquires a larger competitor, or when the company being taken over is likely to be the major element in the combined business. See RTO.

1. (HKG) also a specific type of transaction defined in, and regulated by, the Hong Kong Stock Exchange Listing Rules

*Jurisdiction:*       

**Reverse Termination Fee:** amount payable to a Target Company by a Buyer for all or certain specified breaches under an Acquisition Agreement. Reverse Termination Fees, like liquidated damage provisions, usually constitute the exclusive liability of the Buyer for the specified breaches. Reverse Termination Fees are usually characterized as payment of a fee or an amount, not as Liquidated Damages, although the fees have the same effect. When a Reverse Termination Fee is the exclusive remedy for all Buyer breaches, the Reverse Termination Fee can essentially, in some cases, provide the Buyer an Option to back out of a transaction at a certain cost. Often utilized when financing or antitrust approvals are

conditions to Closing, thereby shifting cost of failure to the Buyer.

*Jurisdiction:* 

**Reverse Triangular Merger:** another name for a Reverse Subsidiary Merger

*Jurisdiction:* 

**Reviewable Transaction:** a transaction a company entered into, before the start of Insolvency, that an Administrator or a Liquidator may challenge under the Insolvency Act. The equivalent concept exists in Hong Kong.

*Jurisdiction:* 

**Reviewing Strategic Options:** widely understood as code for a planning process that includes the sale of all or a substantial part of a company's business

*Jurisdiction:* 

**Revlon:** a reference to one of the most important Delaware cases involving the Fiduciary Duty of a Target Company's Board of Directors when it is considering the sale of the company for primarily cash consideration. See also Revlon Doctrine.

*Jurisdiction:* 

**Revlon Doctrine:** a term derived from the famous case *Revlon v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986), which is used to describe both a standard of judicial review (or, as it is sometimes called, a level of judicial scrutiny, as in Enhanced Scrutiny) and a required determination by the Board of Directors of the Target Company. In its first usage, the Revlon Doctrine means that, rather than according a Target Company's Board of Directors the substantive and procedural benefits of the Business Judgment Rule, a court will require a showing by the Target Company that the Board of Directors' determination was reasonable, not merely rational. This level of review is sometimes called Enhanced Scrutiny, in contrast to the favorable presumptions supporting Board of Directors conduct that make up the Business Judgment Rule. In its second usage, the Revlon Doctrine means that to discharge its Fiduciary Duties of care and loyalty, a Target Company Board of Directors has the duty of selling the company at the highest price reasonably available under the circumstances.

*Jurisdiction:* 

**Revolver:** a senior secured Credit Facility structured as a line of credit that can be borrowed, repaid and reborrowed at any time prior to maturity, at the Borrower's discretion. A Revolver or Revolving Facility can also often be used for the issuance of letters of credit.

*Jurisdiction:* 

**Revolving Facility:** see Revolver

*Jurisdiction:* 

**Right of First Negotiation:** when a party that owns an item of property or a right agrees with a counterparty that it will not dispose of the property or right without first giving the counterparty an opportunity to negotiate an agreement to acquire the property or right. Right of First Negotiation is generally the weakest form of counterparty right and is distinguished from, in order of increasing strength, a Right of First Offer and Right of First Refusal.

*Jurisdiction:*            

**Right of First Offer:** when a party that owns an item of property or a right agrees with a counterparty that it will not sell the property or right without first giving the counterparty an opportunity to submit the first offer to purchase the property or right. Right of First Offer is generally a moderate form of counterparty right and is distinguished from the weaker Right of First Negotiation and the stronger Right of First Refusal.

*Jurisdiction:*            

**Right of First Refusal:** when a party that owns an item of property or a right agrees with a counterparty that it will not sell the property or right to a third party without first giving the counterparty a right to match the third party's Offer. If the counterparty meets the offering price, the first party will be obligated to sell the property or right to the counterparty. Right of First Refusal is generally the strongest form of counterparty right and is distinguished from, in order of increasing strength, a Right of First Negotiation and Right of First Offer. See also Matching Rights.

*Jurisdiction:*            

**Rights:** in an M&A context, Rights are frequently used as shorthand for the Instrument that is issued under a Shareholder Rights Plan or Poison Pill. More generally, Rights are another name for a Stock Option or Stock Warrant.

*Jurisdiction:*      

**Rights Agent:** a trust company which agrees to certain administrative duties in connection with a Poison Pill. The Rights Agent is the counterparty to the Rights Agreement which creates the Poison Pill.

*Jurisdiction:*    

**Rights Agreement:** an agreement between a company and a Rights Agent creating a Poison Pill

*Jurisdiction:*    

**Rights Issue:** a fundraising structure whereby existing shareholders are invited to purchase additional Shares in the Issuer at a reduced price in proportion to their existing holding

*Jurisdiction:*       

**Rights Plan:** shorthand for Shareholder Rights Plan, another (less pejorative) name for a Poison Pill

*Jurisdiction:*     

**Risk Arbitrage:** a very common form of Arbitrage in a M&A context. Risk Arbitrage consists of buying Shares of a Target Company on the assumption that the transaction will be completed. Given the risk that the transaction won't be completed, the Stock of a Target almost always trades at a discount to the deal price. The Arbitrageur makes money by successfully betting that the discount is too steep and is vindicated when the deal does Close on schedule. The Arbitrageur loses money when the deal doesn't Close or doesn't Close on time, proving the discount was not steep enough. Some Risk Arbitrageurs do not have another business. Others are Event Driven Hedge Funds which use Risk Arbitrage as one of their investment approaches.

*Jurisdiction:* 

**Road Show:** in the M&A context, Road Show means an organized series of in-person solicitations of institutional shareholders and Proxy Advisory Firms by Management; and in the financing context, Road Show means the same kind of process, but targeted at potential Buyers of the Securities being offered. A Road Show often requires extensive travel (hopefully first-class or private jet planes, limousines, fancy hotels and big steak dinners). In most cases Management and bankers go on the Road Show, not lawyers.

*Jurisdiction:* 

**ROFN:** acronym for a Right of First Negotiation

*Jurisdiction:* 

**ROFO:** acronym for a Right of First Offer

*Jurisdiction:* 

**ROFR:** acronym for a Right of First Refusal

*Jurisdiction:* 

**ROI:** acronym for Return on Investment

*Jurisdiction:* 

**Rollover Equity:** the use of investment proceeds to which a person is entitled, e.g., cash on a sale of Shares, to reinvest in the same or a similar investment. In a Private Equity context, managers may "roll over" their equity in a Target Company with the effect, on a tax deferred basis, that instead of receiving cash for their Shares they receive new Shares in the Target Company. As a rolled over investment is not realized, Capital Gains Tax liability may be deferred. The Rollover Equity will usually have the same basis as that of the LBO Sponsor with the result that retained Management will be able to realize the same return on equity as the LBO Sponsor.

*Jurisdiction:* 

**Roll-Up:** a series of Acquisitions by one company of other companies in the same line of business. The resulting combined entity is also

sometimes called a Roll-Up company or simply a Roll-Up. Sometimes also called a build-up.

*Jurisdiction:*      

**RSU:** acronym for Restricted Stock Unit

*Jurisdiction:* 

**RTO:** acronym for Reverse Takeover

*Jurisdiction:*       

**Rule 10b-5:** the SEC rule prohibiting employment of fraudulent, manipulative and deceptive practices. Rule 10b-5 is one of the most important SEC rules, serving as the basis for the case law prohibiting trading on the basis of non-public material information — so-called Insider Trading.

*Jurisdiction:* 

**Rule 10b-5 Representation:** a term generally used as shorthand for a Representation and Warranty by an Issuer, Bidder, Target Company or Borrower that the Due Diligence information provided is complete and correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading. This is “magic” language based on Rule 10b-5.

*Jurisdiction:* 

**Rule 13e-3:** SEC rule under the Securities Exchange Act governing Going Private transactions. See also Going Private transaction and Schedule 13E-3.

*Jurisdiction:* 

**Rule 14a-8 Proposal:** a resolution proposed by a shareholder at a Shareholders’ Meeting which the shareholder intends to include in the company’s Proxy Statement and Proxy Card for the meeting, pursuant to SEC Proxy Rule 14a-8. Rule 14a-8 provides that such a proposal, if it meets certain eligibility standards, must be included in a company’s Proxy Materials at no cost to the shareholder. Rule 14a-8 provides a very low cost way for shareholders to force a shareholder vote on proposals for company actions.

*Jurisdiction:* 

**Rule 14d-9:** the SEC rule implementing Section 14(d)(9) of the 1934 Act. Rule 14d-9 requires a Board of Directors of a Target Company, which is the subject of a Tender Offer or Exchange Offer, to make a recommendation to its shareholders with respect to tendering into the Offer and to provide certain related information.

*Jurisdiction:* 

**Rule 20.1 letter:** a letter to the UK Takeover Panel from a Financial Advisor chaperoning a Shareholders' Meeting concerning a UK Takeover. Rule 20.1 of the City Code requires that all information about parties to an Offer must be made available to all shareholders and persons having information rights as nearly as possible at the same time and in the same manner. The Financial Advisor is required to confirm that no new material information has been passed to a shareholder which will not be otherwise made publicly available.

*Jurisdiction:* 

**Rule 20.2 letter:** a request made pursuant to the equality of information provisions of Rule 20.2 of the City Code from a *Bona Fide* potential Bidder to receive all information provided to another known Bidder

*Jurisdiction:* 

**Rule 3 (adviser):** an independent adviser appointed pursuant to Rule 3 of the City Code, by the Board of an Offeree company to provide competent independent advice on an Offer

*Jurisdiction:* 

**Rule 5 of the Singapore Takeover Code:** prohibits Frustration by Offeree Board, whereby in the course of an Offer, or even before the date of the Offer, if the Board of the Target Company has reason to believe that a *Bona Fide* Offer is imminent, the Board must not, except pursuant to a contract entered into earlier, take any action, without the approval of shareholders at a general meeting, on the affairs of the Target that could effectively frustrate any *Bona Fide* Offer or deny shareholders an opportunity to decide on its merits.

*Jurisdiction:* 

**Rule of 6:** concept under Rule 2 of the City Code prohibiting possible Offerors from speaking to more than six external parties — including providers of finance, but excluding professional advisers — without announcing their interest publicly. See Practice Statement 20 of the City Code for further information.

*Jurisdiction:* 

**Russian Roulette:** a termination mechanism used for Joint Venture companies whereby shareholder A has the option to serve notice on shareholder B offering to transfer all of its Shares in the company to shareholder B at a price specified by A. B must either accept A's Offer and buy A's Shares at the stated price or must sell all its own Shares to A at the same price per Share.

*Jurisdiction:*        

**S Corporation:** a corporation that has, with the consent of its shareholders, elected to be treated as a Pass-Through entity (*i.e.*, not separately taxable on its own income) for federal tax purposes under the "small business

corporation” rules in Subchapter S of the US Internal Revenue Code. The shareholders, limited to US individuals and certain trusts, thus include their pro-rata Share of the corporation’s income in their own tax returns.

*Jurisdiction:*  US

**Sale and Purchase Agreement:** sometimes used to describe an Asset Purchase Agreement or a Share Purchase Agreement

*Jurisdiction:*   UK  DEU  ESP  FRA  HKG  ITA  QAT  RUS  SAU  SGP  UAE

**Sand in the Gears Letter:** see Bed Bug Letter

*Jurisdiction:*  US

**Sandbagging:** a common provision in an Acquisition Agreement antithetical to an Anti-Sandbagging provision. A Sandbagging provision effectively prevents the Buyer’s remedies from affecting any investigation conducted by, or any knowledge obtained or capable of being obtained by, the Buyer at any time prior to the Closing with respect to the accuracy of or compliance with any Representation and Warranty or Covenant of the Seller in the Acquisition Agreement.

*Jurisdiction:*  US  DEU  ESP  FRA  ITA  SGP

**SAR:** acronym for Stock Appreciation Right

*Jurisdiction:*  US  DEU  ESP  HKG  ITA  SGP

**Sarbanes-Oxley:** in response to the wave of corporate scandals including Enron and Worldcom, in 2002 Congress passed, and President Bush signed into law, the Sarbanes-Oxley Act of 2002, enacting a broad range of changes to the Securities laws that govern Public Companies and their officers and directors. See Section 404 of the Sarbanes-Oxley Act.

*Jurisdiction:*  US  DEU

**SCA:** the Securities and Commodities Authority of the UAE

*Jurisdiction:*  UAE

**Schedule 13D:** an SEC prescribed disclosure document required to be filed under Section 13(d) of the Exchange Act by a person who becomes the Beneficial Owner of more than 5 percent of a Class of equity Securities registered under the Exchange Act. Amendments of Schedule 13Ds are required for material changes in fact, until such time as the person goes below the 5 percent ownership Trigger.

*Jurisdiction:*  US

**Schedule 13E-3:** the SEC disclosure form required to be filed in connection with a transaction that meets the definition of a Going Private transaction under 1934 Act Rule 13e-3. Not all Going Private transactions meet that definition, although the vast majority do so. Note as well that many transactions not commonly viewed as Going Private deals meet the SEC definition.

*Jurisdiction:*  US

**Schedule 13G:** the SEC reduced disclosure form for certain institutional Investors that acquire more than 5 percent of an equity Security registered under the 1934 Act and don't have a control intent. Schedule 13G is an alternative and simpler filing than Schedule 13D.

*Jurisdiction:*  US

**Schedule 14D-9:** shorthand for a Statement on Schedule 14D-9

*Jurisdiction:*  US

**Schedule TO:** the compendium of SEC disclosure requirements for Tender Offers and Exchange Offers subject to Section 14(d)(1) of the 1934 Act. Schedule TO in turn incorporates much of its requirements by reference to Schedule M-A, which sets forth generic disclosure requirements for Acquisition transactions.

*Jurisdiction:*  UK  HKG  SGP

**Scheme:** shorthand for Scheme of Arrangement

*Jurisdiction:*  UK  HKG  SGP

**Scheme Meeting:** a Shareholders' Meeting convened by an order of the court to vote on a Scheme of Arrangement

*Jurisdiction:*  UK  HKG  SGP

**Scheme of Arrangement:** compare Merger

1. (UK) an English statutory procedure involving a compromise or arrangement between a company and a class of its creditors or members, with the sanction of a court. Approval requires 75 percent by value, and a majority of shareholders by number of votes cast. A helpful tool in Restructuring, allowing a Cram-Down to be implemented on creditors within the same Class (e.g., among secured parties) without requiring the company commence full scale Insolvency proceedings such as Administration. Can also be used to effect a P2P/UK public Takeover by either the cancellation of all existing Shares upon payment of consideration to the Target Company shareholders and the issuance of new Shares to the Bidco (a Cancellation Scheme) or by the transfer of all existing Shares to the Bidco (a Transfer Scheme).
2. (HKG) a statutory procedure involving a compromise or arrangement proposed between a company and its creditors or any class of them, or between the company and its Members and any class of them, which is binding if agreed upon by 75 percent in value of the creditors or Members present and voting at a meeting and sanctioned by the Hong Kong court. A majority in number of those present and voting at the meeting must also approve the Scheme but under the new Companies Ordinance (expected to come into operation in 2014), this headcount test will be replaced by a requirement that no more than 10 percent of the votes of disinterested shareholders be cast against the Scheme. Many Listed Companies in Hong Kong are incorporated in overseas jurisdictions, such as the Cayman Islands, Bermuda and the British Virgin Islands, where similar statutory procedures exist. In Hong Kong, the term is also used to refer to the statutory procedures under the relevant corporate laws in those jurisdictions.

3. (SGP) Section 210 of the Companies Act of Singapore provides for the restructure of a company by way of a Scheme of Arrangement. The company proposes the Scheme to its shareholders and if approved by: (i) three-fourths of the shareholders present in a meeting; and (ii) the Singapore court, the proposed scheme is binding. A Scheme of Arrangement may be used to effect Mergers and Amalgamations in Singapore.

*Jurisdiction:*   

**Scorched Earth:** refers to a Takeover Defense where the Target takes action to make itself less attractive to a potential Acquirer (and in extreme cases the stock market in general). For example, a Target Company may take on a large amount of indebtedness with a default upon Change of Control, or sell or contractually commit to sell a Crown Jewel to a Friendly party at a favorable price to the Buyer.

*Jurisdiction:*     

**Scriptless:** see Uncertificated

*Jurisdiction:* 

**SDLT:** acronym for UK's Stamp Duty Land Tax

*Jurisdiction:* 

**SDRT:** acronym for the UK's Stamp Duty Reserve Tax

*Jurisdiction:* 

**SEC:** acronym for the US Securities and Exchange Commission

*Jurisdiction:*  

**SEC Tender Offer Rules:** the rules promulgated by the SEC under Sections 14(d) and 14(e) of the Securities Exchange Act regulating Tender Offers and Exchange Offers for registered Securities

*Jurisdiction:*  

**Second Request:** a request by the reviewing antitrust agency under HSR for additional specified information concerning either or both parties to the Acquisition. Second Requests usually call for extensive information from both parties and can take months to fulfill. Second Requests are not good things for a deal and often signal significant antitrust issues.

*Jurisdiction:*  

**Second Round:** the phase in an Auction Process during which a preferred group of Bidders selected by the Sellers are invited to proceed, usually by conducting detailed Due Diligence and providing comments to an Auction Draft of an Acquisition Agreement

*Jurisdiction:*        

**Second Step Merger:** another name for a Back End Merger, so called because it is the second step in a Two Step Acquisition

*Jurisdiction:*            

**Secondary:** in a Private Equity context, a “secondary buyout” describes the sale of a business by its managers and Private Equity shareholder to a new (or existing) Management team with new financing provided by a different Private Equity Fund. See Secondary Buyout. A “secondary issue” refers to an issue of Shares by a company whose Shares are already listed on the stock exchange.

*Jurisdiction:*         

**Secondary Buyout:** an LBO of an LBO

*Jurisdiction:*        

**Secondary Purchase:** another name for Private Placement

*Jurisdiction:*       

**Section 228A Winding Up:** a special procedure under section 228A of the Companies Ordinance in Hong Kong for directors to initiate a Voluntary Winding Up of an insolvent company in limited circumstances where the Board of Directors consider that Winding Up is necessary but not reasonably practicable under any other section of the Companies Ordinance

*Jurisdiction:* 

**Securities Act:** the Securities Act of 1933, as amended, which governs the registration of Securities for sale to the public, permits the private sale of Securities without registration, and creates liability for both Issuer and Underwriters for false or misleading statements in a Registration Statement and Prospectus

*Jurisdiction:*  

**Securities and Futures Act:** Securities and Futures Act (Cap. 289) of Singapore. See SFA.

*Jurisdiction:* 

**Securities and Futures Commission:** a statutory body which regulates the securities and futures markets in Hong Kong. Commonly abbreviated to SFC.

*Jurisdiction:* 

**Securities Exchange Act:** the Securities Exchange Act of 1934, as amended, which: governs the continuing reporting obligations of companies with registered Securities; provides the SEC with authority to regulate the solicitation of Proxies; and contains the Williams Act (which established (i) mandatory filing requirements for holdings of 5 percent or more of a registered Class of equity Securities; (ii) procedural and substantive provisions; and (iii) rule making authority for tender and Exchange Offers for registered Securities). See also Disclosure Rules.

*Jurisdiction:*  

**Securities Exchange Offer:** an Offer in which the consideration includes Securities of the Offeror or any other company

*Jurisdiction:* 

**Securities Industry Council:** the regulatory body in Singapore that administers and enforces the Singapore Takeover Code. See SIC.

*Jurisdiction:* 

**Security:** definition depends upon the context. In Bond or equity land, a Security is a thing regulated by the Securities laws (e.g., the Securities Act and/or Securities Exchange Act). In bank land, Security is a reference to the granting of a lien on or Security interest in assets to secure a debt obligation. See also Debenture, Fixed Charge and Floating Charge.

*Jurisdiction:*          

**Seller:** another name for a Target Company or party selling assets or Securities in a Business Combination

*Jurisdiction:*           

**Seller Company:** another name for a Target Company

*Jurisdiction:*          

**Seller MAC:** a Business MAC or a Market MAC for a Seller or Target Company

*Jurisdiction:*         

**Seller MAE:** same as a Seller MAC

*Jurisdiction:*         

**Seller Note:** a Note of the Buyer accepted by the Seller of a business to help finance the transaction. A Seller Note is like a purchase money Mortgage, except the note is usually is not secured.

*Jurisdiction:*      

**Senior Independent Director:** see Lead Independent Director

*Jurisdiction:*       

**Separate Due Diligence Tracks:** in some M&A deals, different types of Bidders are treated differently in terms of access to certain data. For example, if a Target is taking Bids from both PE Sponsors and from Strategic Acquirers, the Target Company might restrict Strategic Acquirers' access to competitively sensitive information until the very end of the bidding period, or perhaps until a Strategic Acquirer has won the bidding, subject only to Confirmatory Due Diligence with respect to the competitively sensitive information.

*Jurisdiction:*         

**Separation Date:** the date under a Poison Pill when the Warrants issued under the Pill are separated from the Common Stock with which they

have previously been traded as a unit and thereafter must be traded as a separate Security. The point of the separation is to encourage creation of a market in the Warrants so that holders can sell the Warrants to a third party, rather than exercise them directly. In effect, the third party would be Arbitraging the Warrants in return for assuming the burden of exercising them and reselling the Target Company Stock it receives on exercise. The original holder will be paying the third party a fee for this service in the form of the third party's profit on the arbitrage spread between: (i) the price it paid for the Warrant and the cost of exercise of the Warrant; and (ii) the amount it receives on sale of the Target Shares it receives on exercise of the Warrant. The third-party Arbitrageur can either assume the market risk of the price changes in the Target Company's Common Stock between the time it purchases the Warrant and the time it receives Target Company Shares on exercise of the Warrant, or it can "lock in" its Arbitrage profit by selling short an equivalent number of Target Shares at the time it purchases the Warrant and use the Target Company Shares it receives on exercise to cover its short position.

*Jurisdiction:*     

**SERP:** acronym for Supplemental Employee Retirement Plan

*Jurisdiction:*    

**Several Liability:** alternative to Joint and Several Liability, Several Liability results in each party taking responsibility only for their own obligations and no one else's. Multiple arrangers and Lenders will require Several Liability as they will not commercially agree to be on the hook for the obligations of other unrelated financial institutions. Each party should ensure their specific obligations are clearly defined and agreed.

*Jurisdiction:*        

**Severance Package:** see Severance Plan

*Jurisdiction:*        

**Severance Plan:** a plan covering a large group or all of a Target Company's employees, which provides payments upon involuntary termination. Some companies maintain Severance Plans in the Ordinary Course of Business. Others adopt Severance Plans at the time of or in anticipation of their Acquisition.

*Jurisdiction:*        

**SFA:** acronym for Securities and Futures Act

*Jurisdiction:* 

**SFC:** acronym for Securities and Futures Commission

*Jurisdiction:* 

**SFO:** acronym for the Securities and Futures Ordinance of Hong Kong

*Jurisdiction:* 

**SFR:** acronym for Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005

*Jurisdiction:* 

**SGX:** acronym for Singapore Exchange Limited

*Jurisdiction:* 

**SGX Mainboard:** the SGX Mainboard lists companies that meet certain requirements including market capitalization, pre-tax profits and operating track record

*Jurisdiction:* 

**SGXNet:** an internet-based system hosted by the Singapore Exchange which allows users (including Listed Companies, their agents and Bond Issuers) to submit corporate announcements

*Jurisdiction:* 

**SGX-ST:** acronym for Singapore Exchange Securities Trading Limited

*Jurisdiction:* 

**Share:** a unit in the Share capital or equity of a company

*Jurisdiction:*            

**Share Appreciation Right:** see Stock Appreciation Right

*Jurisdiction:*       

**Share Buyback:** a company's repurchase of its own Shares

1. (UK) in the UK off-market, purchases are available to both private and public limited companies. However, only certain Public Companies are able to make on-market purchases of their own Shares to hold in treasury. Subject to the detailed requirements of the UK Companies Act (and limits on the level of buy back applying to Public Companies), Share Buybacks can be funded from Distributable Reserves or a new Share issue (and capital in the case of a Private Company).
2. (DEU) permissible under certain conditions pursuant to the German Stock Corporation Act (*Aktiengesetz*) and the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*)
3. (FRA) permissible under certain conditions pursuant to the French Commercial Code
4. (HKG) in Hong Kong, a Share Buyback of a Public Company is subject to the provisions of the Code on Share Repurchases contained in the HK Takeovers Code, and in the case of a company listed on the Hong Kong Stock Exchange, the Listing Rules also apply. More commonly referred to as a Share Repurchase.
5. (SGP) permissible under certain conditions pursuant to the Companies Act of Singapore

*Jurisdiction:*        

**Share Capital:** see Capital Stock

*Jurisdiction:*         

**Share Option:** see Stock Option

*Jurisdiction:*        

**Share Option Plan:** see Share Option Scheme

*Jurisdiction:* 

**Share Option Scheme:** any arrangement involving the grant of Share Options to participants over new Shares or other new securities of a company (typically a Listed Company) or any of its subsidiaries. Also known as Share Option Plan.

*Jurisdiction:* 

**Share Placing:** the sale of Shares to a number of Investors but not to the general public

1. (HKG) more commonly known as a Placing or Top-Up Placing, depending on the deal structure. The Shares are typically sold to institutional or professional Investors.

*Jurisdiction:*      

**Share Premium Account:** the portion of the shareholders' funds which represents the premium paid for new Shares above their nominal value. A Share Premium Account forms part of a company's Non-Distributable Reserves.

*Jurisdiction:*      

**Share Purchase Agreement:** an Acquisition Agreement providing for a Business Combination effected by the Acquisition of all or most of a Target Company's voting Securities. Not to be confused with a Purchase Agreement in the Securities offering context. Also referred to as an SPA.

*Jurisdiction:*            

**Share Purchase Rights:** another name for an Option, Warrant or Rights which gives a holder the ability to purchase Stock of the issuing company, contingent upon certain events, usually at a fixed dollar price

*Jurisdiction:*       

**Share Registrar:** a person who maintains in Hong Kong the register of Members of a company which lists or proposes to list securities on a recognized stock market

*Jurisdiction:* 

**Share Repurchase:** see Share Buyback

*Jurisdiction:*        

**Share Split:** see Stock Split

1. (HKG) more commonly known as a Sub-Division of Shares

Jurisdiction:        

**Share Swap:** an agreement under which the Shares of one company are sold or exchanged for the Shares of another company

Jurisdiction:       

**Share Transfer Form:** see Stock Transfer Form

1. (HKG) more commonly known as an Instrument of Transfer

Jurisdiction:      

**Share-for-Share Acquisition:** see Stock-for-Stock Acquisition

Jurisdiction:      

**Shareholder Activism:** behavior of a shareholder or Group of shareholders attempting to change or influence the behavior of the company's Board of Directors and/or other shareholders, usually with a view to changing corporate strategy, improving company performance, making changes to key personnel, or affecting the outcome of a Takeover, Acquisition or disposal in which the company is involved. Shareholder Activists may exercise their rights as shareholders to block votes or withhold acceptances, or more commonly they will privately approach the Board of Directors with the aim of negotiating the company's position before that position becomes public. See also Activist Investor.

Jurisdiction:      

**Shareholder Litigation:** a generic name for litigation brought against a company by one or more shareholders. Shareholder Litigation has become very common in some jurisdictions in the wake of M&A deal announcements, most often directed at the Target Company and its Board of Directors and alleging either or both disclosure violations and breaches of Fiduciary Duty. Also called a Strike Suit.

Jurisdiction:        

**Shareholder Lock-Up:** an agreement by one or more shareholders to vote in favor of an Acquisition (or to tender into a Tender Offer or Exchange Offer) to ensure, at a minimum, a block of votes to approve an Acquisition Agreement (or, in a Tender Offer or Exchange Offer, to ensure that a block of Shares are committed to tender). From a Bidder's perspective, the ideal is to Lock-Up a sufficiently large block of Stock to insure success of the transaction. See also Hard Undertaking and Irrevocable Undertaking.

1. (US) Delaware courts have held that less than 42 percent is acceptable
2. (FRA) under French Law, the validity of voting engagements may be challenged by the courts and therefore their enforceability is uncertain.

Voting engagements in the context of an Offer may be replaced by commitments from shareholders to tender their Shares to the Offer.

*Jurisdiction:*          

**Shareholder Proposal:** Rule 14a-8 Proposals and other recommendations from shareholders that a company or its Board take a particular action, which proposals (along with the company's proposals) are to be voted on during a Shareholders' Meeting

*Jurisdiction:*  

**Shareholder Rights Plan:** formal name for a Poison Pill. Initially intended to avoid pejorative connotations based on the discriminatory mechanism of a Poison Pill. Today Poison Pill is used interchangeably with Shareholder Rights Plan.

*Jurisdiction:*      

**Shareholders Agreement:** another name for a Stockholders Agreement

*Jurisdiction:*          

**Shareholders' Circular:**

1. (UK) describes any information document issued by a publicly Listed Company to all of its shareholders (other than certain compulsory documents, *i.e.*, Prospectus materials, annual reports and accounts, interim reports, and certain other standard shareholder information). Depending on the transaction, either the Listing Rules or the City Code will set out requirements for the content and approval of Shareholders' Circulars and also the circumstances in which they must be prepared.
2. (FRA) all communications and information which must be provided to the shareholders of a publicly Listed Company in France are governed by the AMF's General Regulation
3. (HKG) describes any information document issued by a publicly Listed Company to all of its shareholders (other than certain compulsory documents, *i.e.*, Prospectus materials, annual reports and accounts, interim reports, and certain other standard shareholder information). Depending on the transaction, either the Listing Rules or the HK Takeovers Code will set out requirements for the content and approval of Shareholders' Circulars and also the circumstances under which they must be prepared.
4. (SGP) under the Singapore Listing Manual, a Shareholders' Circular is a document issued by a Listed Company to its shareholder accompanying a notice of general meeting. Compare Proxy Statement.

*Jurisdiction:*    

**Shareholders' Meeting:** the meeting of a company's shareholders held on an annual or special basis, as applicable, to elect directors, vote on corporate matters (*e.g.*, a Merger or other Combination), and to ratify certain Management actions. See also Special Meeting.

*Jurisdiction:*            

**Shari'ah:** the primary source of UAE law, incorporated into UAE law by reference to the Constitution (UAE) and the Civil Code (UAE). The Civil Code (UAE) sets out that it is to be construed and interpreted in accordance with the principles of Islamic jurisprudence or *fiqh*.

Jurisdiction:  UAE

**Sharing the Downs:** a provision in an agreement that provides that two or more parties will Share losses or expenses incurred, contingent on a specified event, in some proportion. Compare Sharing the Ups.

Jurisdiction:  US  DEU  FRA  ITA  SGP  UAE

**Sharing the Ups:** the same idea as Sharing the Downs, but this time with respect to profits or recoveries received as a result of a specified event

Jurisdiction:  US  DEU  ESP  FRA  ITA  SGP  UAE

**Shark Repellent:** a name for any provision or structure that deters or precludes Hostile Bids or other types of Hostile activities, such as market accumulations or Proxy Contests. Also called Takeover Defense.

Jurisdiction:  US  DEU  ESP  FRA  ITA  UAE

**Shelf:** the figurative place where Poison Pills, almost fully registered Securities and other plans are placed when they are ready for implementation on short notice. See Shelf Poison Pill and Shelf Registration Statement.

Jurisdiction:  US  DEU  ESP  ITA

**Shelf Company:** a company which is founded without any of its own activity, assets or liabilities in order to start business activity or to buy another company. With an Acquisition the company becomes an active company. Shelf Companies are often formed by law firms and accountancy firms and then taken Off the Shelf at clients require, thus saving the time of incorporating a new entity. The concept of a Shelf Company is not necessarily available in every European jurisdiction so this may need to be factored into the timetable when thinking about deadlines.

Jurisdiction:  US  UK  DEU  FRA  HKG  ITA  SGP

**Shelf Poison Pill:** a Poison Pill that has been drafted and reviewed by a Board of Directors, such that it can be adopted on relatively short notice if needed. See On the Shelf and Shelf.

Jurisdiction:  US  ESP  ITA  UAE

**Shelf Registration:** a registration process that lets an Issuer complete most of the SEC registration procedures (including the filing of a Registration Statement) before it is ready to go to market. The registrant can then take Securities Off the Shelf by filing a Prospectus Supplement when ready to launch an offering. See Shelf Takedown, On the Shelf and Shelf.

Jurisdiction:  US  ESP

**Shelf Registration Statement:** used for a Shelf Takedown, a Shelf Registration Statement contains two principal parts: the Base Prospectus (which is in the initial filing) and the Prospectus Supplement (which is filed, along with the Base Prospectus, when the Issuer takes down Securities that are On the Shelf under a Shelf Registration). See also Registration Statement.

*Jurisdiction:*  

**Shelf Takedown:** a public offering which issues Securities Off the Shelf that were previously registered in a Shelf Registration. See Shelf Registration.

*Jurisdiction:*   

**Shop:** refers to a process of trying to find a Buyer for a company, as in “the Board decided to Shop the company.” The colloquial use of Shop is widespread — hence the terms No Shop and Go Shop.

*Jurisdiction:*        

**Short Form Amalgamation:** Squeeze Out Merger between a company and its majority equity holder that, by statute, does not require a vote of equity holders

1. (UK) see Squeeze Out
2. (DEU) a pool of shareholders owning at least 95 percent of a company's Shares has the right to “squeeze out” the remaining minority of shareholders by paying them an adequate compensation, secs. 327a through 327f German Stock Corporation Act (*Aktiengesetz*)
3. (FRA) when a Listed Company shareholder holds at least 95 percent of the company's Share Capital and/or voting rights, the shareholder may or must, as the case may be, eliminate minority shareholders representing the remaining 5 percent by offering to purchase their Shares
4. (ITA) a simplified procedure is provided by Articles 2505 and 2505-bis of the Italian Civil Code for the Merger of a company into its 100 percent or 90 percent equity holder, respectively. If a company's Bylaws provide, in both cases the Merger can be resolved by the Board of Directors, rather than by an extraordinary general Shareholders' Meeting, as generally required. The shareholders representing at least 5 percent of the Surviving Entity's Share Capital may, however, ask that the Merger be submitted for approval to a Shareholders' Meeting.
5. (SGP) governed by Section 215D of the Companies Act of Singapore, a Short Form Amalgamation is where: (i) a Parent company and one or more of its wholly-owned subsidiaries; or (ii) two or more wholly-owned subsidiaries of the same Parent company, amalgamate and continue as one company, if the members of each amalgamating company approve such Amalgamation by Special Resolution at a general meeting

*Jurisdiction:*     

**Short Form Merger:** Squeeze Out Merger between a company and its majority equity holder that, by statute, does not require a vote of equity holders

1. (US) for a Delaware corporation, subject to compliance with certain other statutory requirements, this can be accomplished so long as a majority stockholder owns at least 90 percent or, in some instances following a negotiated Tender Offer, that number of Shares sufficient to approve a Back-End Merger (*i.e.* generally 50.1 percent of the issued and outstanding Shares, unless the Charter provides for a different Threshold)
2. (UK) see Squeeze Out
3. (DEU) pool of shareholders owning at least 95 percent of a company's Shares has the right to "squeeze out" the remaining minority of shareholders by paying them an adequate compensation, Secs. 327a through 327f German Stock Corporation Act (*Aktiengesetz*)
4. (FRA) when a shareholder of a Listed Company holds at least 95 percent of its Share Capital and/or voting rights, it may or must eliminate minority shareholders representing the remaining 5 percent by offering to purchase their Shares
5. (ITA) a simplified procedure is provided by Articles 2505 and 2505-bis of the Italian Civil Code for the Merger of a company into its 100 percent or 90 percent equity holder, respectively. If a company's Bylaws so provides, in both cases the Merger can be resolved by the Board of Directors, rather than by an extraordinary general Shareholders' Meeting, as generally required. The shareholders representing at least 5 percent of the Surviving Entity's Share Capital may however ask that the Merger be submitted for approval to a Shareholders' Meeting.

*Jurisdiction:* 

**Short List:** a narrowed list of potential Bidders a Seller considers in an Auction. Bidders may be selected for the Short List based on factors such as the value or structure of their Offer, or their reputation in the market.

*Jurisdiction:* 

**Short Sale:** a sale of something you don't own. As a result, the party engaging in a Short Sale will have to borrow the thing it is selling short to make good delivery to the Purchaser. Short Sales of Securities are both very common and very controversial.

*Jurisdiction:* 

**Short Slate:** a slate of director nominees for less than the majority of the Board of Directors

*Jurisdiction:* 

**Short Squeeze:** describes a situation in which a significant number of Buyers in the market seek in a short period of time (usually in response to a Reportable Event) to buy Issuer Shares to cover their outstanding economic risk on Short Sale obligations. A Short Squeeze can result in a

rapid increase in an Issuer's Share price due to the Buyers' desire to limit their potential Short Sale loss as quickly as possible.

*Jurisdiction:*       

**Show Stopper:** a Takeover Defense that absolutely precludes a particular Hostile Bid

*Jurisdiction:*      

**SIC:** acronym for Securities Industry Council, whose main function is to administer and enforce the Singapore Takeover Code

*Jurisdiction:* 

**Side Letter:** auxiliary agreement entered into by the parties to a main contract

*Jurisdiction:*        

**Singapore Exchange:** Singapore Exchange Limited

*Jurisdiction:* 

**Singapore Takeover Code:** the Singapore Code on Takeovers and Mergers, issued by the Monetary Authority of Singapore. Singapore Takeover Code applies to corporations with a primary listing of their equity Securities, Business Trusts with a primary listing of their units in Singapore and REITs.

*Jurisdiction:* 

**Single Collar:** when used to describe an Exchange Ratio Collar, Single Collar means there is only one Upside Collar and one Downside Collar

*Jurisdiction:*       

**Single Cram-Down:** see Cram-Down. Compare Double Cram-Down

*Jurisdiction:*    

**Single Purpose Entity:** another name for a Special Purpose Entity or Special Purpose Vehicle

*Jurisdiction:*        

**Single Trigger:** refers to a Parachute structured so that payments are due solely upon a Change of Control, whether or not the executive is subsequently terminated

*Jurisdiction:*       

**Sister Company:** a company with the same Parent company as another company, both companies are therefore subsidiaries of the same company

*Jurisdiction:*        

**Slow Hand Pill:** a Poison Pill that contains a provision preventing redemption of the Pill for a period of time (e.g., six months) after a Change of Control of a Board of Directors. See also Dead Hand Pill.

1. (US) the Slow Hand Pill was invalidated in Delaware in *Carmody v. Toll Brothers*, 723 A.2d 1180 (Del. Ch. 1998)

Jurisdiction:    

**Small Cap:** a company with a small market capitalization (below Mid Cap). The relevant threshold between what is considered Small Cap and Mid Cap can range between EUR 250 million and EUR 1 billion depending on the jurisdiction.

Jurisdiction:       

**SME:** acronym for small and medium-size enterprises

Jurisdiction:  

**Social Issues:** euphemistic name for the congeries of “soft” issues that frequently arise in the context of combining two or more entities, such as senior Management composition, allocation of managerial roles and responsibilities, Board composition, executive pay and prerequisites (particularly for executives of the acquired company), name and location of headquarters of the surviving company, participation in charitable giving and levels of civic support formerly practiced by the acquired company

Jurisdiction:         

**Soliciting (Solicitation) Agent:** a service provider (usually but not always a Proxy Solicitor) which assists in the distribution of Tender Offer or Exchange Offer documents and in keeping track of and otherwise facilitating tenders of the Target Company's Shares

Jurisdiction:       

**Solvency Opinion:** based on certain assumptions, a Financial Advisor's opinion that a proposed transaction will not cause a participating entity to become insolvent within the meaning of the Bankruptcy laws

Jurisdiction:       

**Sovereign Wealth Fund:** an investment fund owned directly or indirectly by a country

Jurisdiction:      

**SOX:** acronym for Sarbanes-Oxley

Jurisdiction:  

**SPA:** acronym for Share Purchase Agreement

Jurisdiction:            

**SPAC:** acronym for a Special Purpose Acquisition Company

Jurisdiction:       

**Spanish Securities Act:** Law 24/1988, of July 28, of Securities Act, which regulates the Securities market in Spain. Adopted on July 28, 1988, the

Act contains the general regulation on the Spanish Capital Markets, its members and governing bodies, its control and supervision, and its standards of performance and behavior.

*Jurisdiction:* 

**SPE:** acronym for Special Purpose Entity

*Jurisdiction:*        

**Special Committee:** generally a committee of Independent Directors of a Board of Directors formed to deal with a transaction or litigation involving a conflict of interest on the part of some of the directors. See also Special Negotiating Committee.

*Jurisdiction:*      

**Special Meeting:** a Shareholders' Meeting convened by a company to vote on a Business Combination

1. (ITA) a meeting of the holders of special categories of Shares or other equity Instruments

*Jurisdiction:*   

**Special Negotiating Committee:** a general term for a committee of some members of the Board of Directors formed to supervise a specific transaction on behalf of the entire Board of Directors. Special Negotiating Committees are also frequently appointed to permit rapid action (such as pricing of a public offering) or to focus a few directors on supervising a transaction process that requires significant time and frequent meetings, such as a Business Combination. See also Special Committee.

*Jurisdiction:*     

**Special Purpose Acquisition Company:** Shelf Companies that have no operations but are formed and raise capital in order to merge with or be acquired by a company with the proceeds of the Special Purpose Acquisition Company's Securities offering. See also SPAC.

*Jurisdiction:*        

**Special Purpose Entity:** can be used in a number of different contexts. For example, a Special Purpose Entity can be an entity formed solely for the purpose of participating in a transaction or company established within a corporate group in such a way as to prevent the Insolvency of that company from affecting any other company within the group, often for a limited corporate purpose. A typical example would be when a Special Purpose Entity is set up for the purpose of acquiring or operating a particularly risky asset or making investments. Special Purpose Entities are also used for the purposes of issuing asset-backed Securities, or when structured as a Bankruptcy Remote Vehicle to limit the risks of the corporate entities that transfer assets to the entity. Also known as a Special Purpose Vehicle. Special Purpose Entities are often used to accomplish off-Balance Sheet arrangements. See SPE.

*Jurisdiction:*          

**Special Purpose Vehicle:** see Special Purpose Entity and SPV

*Jurisdiction:*         

**Special Resolution:** a resolution of a company's shareholders (or Class of shareholders) passed by a majority of at least 75 percent of shareholders on a show of hands at a general meeting, or by shareholders representing at least 75 percent of the total voting rights of shareholders on a poll at a general meeting or by Written Resolution

*Jurisdiction:*  

**Specific Disclosures:** disclosures which qualify Representations and Warranties by reference to actual and identifiable matters

*Jurisdiction:*     

**Spin-Off:** a distribution by a company of one or more of its businesses to its shareholders in the form of a dividend of the Stock of a newly created entity in which the business resides. Also used to describe a part of a business which has been split from the rest of the business and sold. See also Demerger.

1. (US) certain Spin-Offs can be accomplished on a tax deferred basis if they meet stringent and complicated tests under the Internal Revenue Code and IRS regulations
2. (HKG) typically used in the context of effecting a separate listing on the Hong Kong Stock Exchange (or elsewhere) of assets or businesses wholly or partly within an existing Listed Company group

*Jurisdiction:*        

**Split-Off:** a distribution by a company of one or more of its businesses to its shareholders accomplished by exchanging Stock of the Split-Off entity for Stock of the Parent entity

1. (US) certain Split-Offs can be accomplished on a tax deferred basis if they meet stringent and complicated tests under the Internal Revenue Code and IRS regulations

*Jurisdiction:*       

**Sponsor:** shorthand for the Private Equity Sponsor or other financial Investor whose fund (or SPV) is the Purchaser in a Leveraged Buyout, or the primary holder of the Equity Interests in a particular Borrower/Issuer

1. (UK) an entity (usually an Investment Bank) approved by the FSA to act as an adviser to a company involved in an IPO and to assist the company with its ongoing obligations under the Listing Rules

*Jurisdiction:*         

**SPV:** acronym for Special Purpose Vehicle

*Jurisdiction:*       

**Squeeze Out:** the right of the Bidder in a Public to Private/Takeover to require minority shareholders to sell their Shares to the Bidder once it

has reached a certain level of acceptances. In the UK and Hong Kong, this level is set at 90 percent but in other jurisdictions the Threshold can be higher.

*Jurisdiction:*   

**Squeeze Out Merger:** a Merger or other transaction that eliminates minority shareholders in a company for cash, resulting in the majority shareholder becoming the sole owner of the company. Squeeze Out Mergers may, but do not always, take the form of Short Form Mergers.

*Jurisdiction:*       

**Staggered Board:** another name for a Classified Board

*Jurisdiction:*   

**Stakebuilding:** the process of buying a significant position in a Public Company, often with a view to launching a Takeover Offer or initiating Shareholder Activism

*Jurisdiction:*        

**Stakeholder:** any party with a vested monetary (e.g., employees, unions, pensioners) or non-monetary interest in a business

*Jurisdiction:*        

**Stamp Duty:** a tax charged on certain written documents (can be a fixed or ad valorem charge). The term is a UK, Hong Kong and Singapore tax law term, but other jurisdictions also impose similar taxes (sometimes generically referred to, among SDLT and SDRT and their equivalents in other jurisdictions, as Transfer Taxes). Stamp Duty is typically chargeable in respect of transfers of Shares, other marketable Securities and certain transactions involving Partnerships. In the UK, transfers of qualifying loans/Bonds are typically exempt from Stamp Duty. See also Franchise Tax, SDLT, SDRT and Capital Duty.

*Jurisdiction:*      

**Stamp Duty Land Tax:** a UK tax charged in respect of transfers of real estate. Other jurisdictions impose similar real estate transfer taxes. See also Stamp Duty.

*Jurisdiction:* 

**Stamp Duty Reserve Tax:** a UK tax charged in respect of certain agreements to transfer Shares and other types of Securities (introduced as an anti-avoidance measure in response to attempts to avoid Stamp Duty by not formally documenting certain transfers of interests). See also Stamp Duty.

*Jurisdiction:* 

**Standard Listing:** the listing of Securities on the LSE where such listing is not a Premium Listing

*Jurisdiction:* 

**Standstill:** Standstill provisions are very common in an M&A context and are intended by the recipient of the Standstill to protect against the counterparty's aggressive activities intended to force the protected party to consent to a Change of Control transaction or a transaction that may make the protected party more vulnerable to a Change of Control. Commonly prohibited activities in a Standstill include: acquiring voting Securities of the protected party beyond a specified Threshold, making an Offer to acquire the protected party, launching a Proxy Contest against the protected party, voting Securities of the protected party against Management or voting in other specified ways, and joining with a third party seeking to engage in any of these types of transactions. Standstills are commonly found in Non-Disclosure Agreements, settlements of Change of Control contests and Acquisition Agreements for less than all of the equity of the protected party.

*Jurisdiction:* 

**Staple:** shorthand for Staple Financing

*Jurisdiction:* 

**Staple Financing:** a financing package offered by an Investment Bank acting as the sell-side advisor in connection with the auctioning of a Target Company. Called "Staple" because the financing package (the Commitment Papers) is figuratively "Stapled" to the Bid materials sent out to potential Buyers. A Staple Financing arrangement can encourage a competitive Auction Process by ensuring that all prospective Bidders have access to adequate funds on terms that may encourage them to offer a more amenable price to the Seller.

1. (US) following the *Toys "R" Us* and *Del Monte* cases, there will be increased scrutiny on the conflicted role of Staple Financing providers (given the potentially larger fees a staple financing provider could earn compared with the fees payable as Financial Advisor). The ability to structure a Staple Financing without tainting the sale process by this conflict has become very challenging. As a result, many observers believe Staple Financing will recede and perhaps totally disappear, except in very unusual circumstances. *In re Toys "R" Us, Inc., S'holder Litig.*, 877 A.2d 975 (Del. Ch. 2005); *In re Del Monte Foods Co. S'holders Litig.*, 25 A.3d 813 (Del. Ch. 2011).

*Jurisdiction:* 

**Staple Papers:** Commitment Papers used in a Staple Financing

*Jurisdiction:* 

**Stapled:** see Staple Financing

*Jurisdiction:* 

**Starburst Defense:** when a Target Company of a Hostile Tender Offer or Exchange Offer launches a sale of All or Substantially All of its assets, in

a “defense” against the Hostile Bidder

1. (UK) consent of Target Company shareholders is required under Rule 21 of the City Code, as this would otherwise be viewed as a Frustrating Action

*Jurisdiction:*  

**Start-Up:** a new business which can be on any scale — but most Start-Ups are small. Their critical phase often comes later when they may need significant amounts of capital to enter their chosen market.

*Jurisdiction:*       

**Statement on Schedule 14D-9:** a disclosure document required by SEC Rule 14d-9 under the Exchange Act to be filed with the SEC and disseminated to shareholders by a Target Company in response to a Tender Offer or Exchange Offer that is subject to Section 14(d)(1) of the 1934 Act

*Jurisdiction:* 

**Statutory Combination:** name for a transaction prescribed under a state corporate law statute in which two or more entities are combined by operation of law into a single entity, but in which (unlike a Merger) no one entity is the Surviving Entity and no other entities are absorbed into the Surviving Entity. A Statutory Combination, like a Merger, requires approval of both the Board of Directors and the shareholders of each constituent entity to the Combination.

*Jurisdiction:*       

**Statutory Merger:** another name for a Merger

*Jurisdiction:*     

**Stay Bonus:** another name for a Retention Bonus

*Jurisdiction:*       

**Step-Up (Step-Up in Tax Basis):** an increase in the basis of property, typically in connection with a taxable transfer of that property, to the amount of consideration paid for the property (its fair market value)

*Jurisdiction:*       

**Stock:** Shares in a company/corporation

*Jurisdiction:*      

**Stock Acquisition:** an Acquisition of a company by means of the purchase of All or Substantially All of its outstanding Common Stock

*Jurisdiction:*       

**Stock Appreciation Right:** an equity award issued by a company which provides the holder with a bonus payable in cash or Stock equal to the appreciation in the value of a company’s Stock over a set price. Unlike Stock Options, holder is not required to pay an Exercise Price for a Stock

Appreciation Right. See SAR.

1. (HKG) in Hong Kong, the term Share Appreciation Right is more commonly used

*Jurisdiction:* 

**Stock Election:** a Business Combination in which Target Company shareholders can elect to receive the Buyer's Stock in lieu of cash, and the default consideration is cash. A Stock Election transaction is the reciprocal of a Cash Election transaction in terms of its structure and purpose.

*Jurisdiction:* 

**Stock Election Merger:** another name for a Stock Election

*Jurisdiction:* 

**Stock Option:** an Option issued by a company to acquire Stock /Shares of the company upon the payment to the company of a stated Exercise Price. The treatment of Stock Options upon a Business Combination depends on many factors, including the terms of the grant document and the applicable plan. See also Long Term Incentive Plan, Share Option Plan and Share Option Scheme.

*Jurisdiction:* 

**Stock Option Acceleration:** an event that accelerates the earliest exercise date of a Stock Option. A Change of Control of a company very often causes a Stock Option Acceleration.

*Jurisdiction:* 

**Stock Purchase:** a Combination effected through the Acquisition of the Stock of a Target Company

*Jurisdiction:* 

**Stock Purchase Agreement:** see Share Purchase Agreement

*Jurisdiction:* 

**Stock Split:** where the existing Shares of a company are split to create more Shares for the existing shareholders, with the shareholders' proportionate shareholdings remaining the same. Used, for example, to facilitate a Spin-Off.

*Jurisdiction:* 

**Stock Transfer Form:** an instrument to transfer Shares, executed by the transferor(s), containing information about the consideration paid for the Shares, the number of Shares, the Share Class, the transferor and transferee names and addresses, and a declaration of any Stamp Duty Liability

*Jurisdiction:* 

**Stock-for-Stock Acquisition:** any Acquisition in which the Target Company's stock is exchanged for, or converted by operation of law, into Buyer's Stock (except for Fractional Shares and Shares for which Appraisal is obtained)

*Jurisdiction:*      

**Stockholders Agreement:** an agreement among holders of Stock in a corporation (to which the corporation itself may also be party), governing the rights and obligations of stockholders in their capacities as such vis-à-vis the other parties to the agreement. Stockholders Agreement may cover Board nomination rights, a Voting Agreement among the stockholders with respect to nominees and other matters, restrictions on transfer, forced Exit rights (e.g., an IPO for a Private Company or a third party sale/Merger) and other matters. For non-corporate entities, many of the provisions commonly found in Stockholders Agreements may be found in the LLC Agreement or Partnership Agreement or the entity's similar governing documents. Also called a Shareholders Agreement.

*Jurisdiction:*       

**Straight Merger:** see Straight Subsidiary Merger

*Jurisdiction:*     

**Straight Subsidiary Merger:** a Triangular Merger in which a subsidiary of the Buyer (usually a wholly-owned subsidiary created for this purpose) is merged with and into the Target Company, and the Subsidiary is the surviving company in the Merger. A Straight Subsidiary Merger is generally not a favored form of Triangular Merger because it raises issues concerning the assignability of the Target Company's contracts and similar rights to the Surviving Entity.

*Jurisdiction:*     

**Straight Triangular Merger:** see Straight Subsidiary Merger

*Jurisdiction:*     

**Strategic:** where a Buyer purchases a Target Company for a particular commercial reason. Common Strategic rationales for an Acquisition are to create certain Synergies with, or to obtain particular assets expected to add value to, the Buyer's existing business interests. Strategic Buyers frequently operate in the same or related industries as the Target Company.

*Jurisdiction:*         

**Strategic Bidder:** a general name for a Buyer that has Strategic reasons to be interested in acquiring a Target Company. The term is often used in distinction to a financial Bidder which acquires a Target Company in order to improve its performance by changing its internal structures and policies. Presumably, a Strategic Bidder, as its name implies, believes it can create synergistic value through a Combination with the Target Company or between the Target Company and its other businesses.

Strategic Bidders are often thought to have an advantage over Strategic Buyers in an Auction because they usually expect to benefit from Synergies if the deal goes through and (at least in theory) can therefore “afford” to pay more for the Target Company. This concept is sometimes referred to as “sharing the synergies,” in the sense that some of the expected synergistic value is paid to Target Company shareholders.

*Jurisdiction:*           

**Strategics:** shorthand for Strategic Bidders

*Jurisdiction:*           

**Strawman:** an outline proposal or paper. Strawman often describes a preliminary summary version of the Structure Memorandum.

*Jurisdiction:*    

**Street Numbers:** financial projections or estimates for a Target Company prepared by stock analysts; such analysts often work for firms on “Wall Street” or the “Street”

*Jurisdiction:* 

**Street Sweep:** an aggressive Share Acquisition Program that usually is over a very short duration. See also Dawn Raid.

*Jurisdiction:*      

**Strike Price:** the price at which an Option may be exercised or a Convertible may be converted. See also Exercise Price.

*Jurisdiction:*        

**Strike Suit:** see Shareholder Litigation

*Jurisdiction:* 

**Strip (the):** the total mix of equity Share Capital and Loan Notes invested by a Private Equity firm in the newco set up for a Buy-Out. Also known as the “equity strip.”

*Jurisdiction:*     

**Structure Memorandum:** a memorandum prepared by the Bidder’s tax advisors or counsel in an LBO which describes the transaction structure and the tax consequences of the deal. Provided to the Lenders (or at least those becoming Lenders in Syndication) with a Reliance Letter.

*Jurisdiction:*       

**Stub Equity:** in the context of a Takeover, a Buyer offers mixed consideration to the Seller comprising a small amount of equity, as well as cash and/or Loan Notes. Stub Equity describes the equity portion of the total offered consideration.

*Jurisdiction:*     

**Sub-Division of Shares:** see Share Split

*Jurisdiction:* 

**Subordinated Shareholder Loan:** a loan granted to the company — by one of its shareholders or by a person who controls one of its shareholders — which is subordinated to all other debts. Terms and Conditions, Indentures and Credit Agreements often will provide Carve-Out Provisions to the debt Covenant or equivalent that allows incurrence of Subordinated Shareholder Loans, provided such loans have a maturity which extends beyond the maturity over the Notes/loans, and such loans are deeply subordinated. For tax reasons in European LBOs, often a Subordinated Shareholder Loan provides the Equity Contribution.

*Jurisdiction:*        

**Subrogation:** the substitution of one party in the place of another party with respect to a claim by that other party against a third party, so that the substituted party succeeds to the rights of the other party with respect to such claim. An example would be if an insurer pays an insurance claim to a third party payee on behalf of an insured party, and then “steps into the shoes of” the insured party to make a counterclaim against the third party payee in order to get back all or a portion of the payment.

*Jurisdiction:*       

**Subsequent Offering Period:** a period at the end of a Tender Offer or Exchange Offer for a registered equity Security during which tenders may be accepted as they occur, instead of having to wait until the end of the period

1. (US) Subsequent Offering Periods are a creature of SEC Tender Offer Rules and must be conducted in accordance with those rules

*Jurisdiction:*      

**Substantial Shareholder:** essentially refers to any person holding interests in 5 percent or more of the voting Securities of a company or a Class of voting Securities of a company

1. (UK) for the purposes of the Listing Rules, a person entitled to exercise, or to control the exercise of, 10 percent or more of the votes able to be cast on All or Substantially All matters at general meetings of the company or of an Affiliate of the company
2. (HKG) for the purposes of the SFO, a person who has an interest in the relevant share capital of a Hong Kong Listed Company which is equal to or more than 5 percent of the nominal value of the issued share capital of that company; for the purposes of the Hong Kong Stock Exchange Listing Rules, a person who is entitled to exercise, or control the exercise of, 10 percent or more of the voting power at any general meeting of the Hong Kong Listed Company

*Jurisdiction:*     

**Substantially All:** see All or Substantially All

*Jurisdiction:*           

**Success Fee:** a fee payable only upon successful Completion of a transaction. Investment Banking M&A fees typically consist predominantly of Success Fees. Lawyers' M&A fees are rarely Success Fees.

*Jurisdiction:*         

**Sukuk:** the Islamic finance equivalent of Bonds, structured so as to comply with Islamic law which prohibits the charging or paying of interest

*Jurisdiction:*   

**Summary Ad:** a newspaper advertisement announcing commencement of a Tender Offer or Exchange Offer that summarizes certain key terms of the Offer

1. (US) SEC Tender Offer Rules specify the minimum contents of a Summary Ad. See also Tombstone.

*Jurisdiction:*     

**Sunset Provision:** a provision in a Poison Pill which provides for redemption of the Pill after a specified period of time (such as three years), unless the Board of Directors, or sometimes the Independent Directors, vote to extend the Poison Pill. Sunset Provision refers to any provision which provides for the expiration of an agreement or right after a specified period of time.

*Jurisdiction:*   

**Superior Bid:** another name for a Superior Proposal

*Jurisdiction:*          

**Superior Offer:** another name for a Superior Proposal

*Jurisdiction:*          

**Superior Proposal:** frequently used as a defined term in the Fiduciary Out provisions of a Public Company Merger Agreement which prescribe the standards that must be met by a Competing Bid in order to give the Target Company a contractual right to terminate the Merger Agreement (almost invariably upon the payment of a prescribed Termination Fee) and enter into an agreement with the Competing Bidder. This right of termination is, of course, the Fiduciary Out. The standards for a Superior Proposal are usually the subject of intense negotiation between the parties, the Buyer seeking to make them as restrictive as possible (within the perceived boundaries of Delaware judicial precedent) and the Target Company seeking to make them as easily met as possible (to create maximum flexibility for it and a Competing Bidder). See also Superior Bid and Superior Offer.

*Jurisdiction:*        

**Supermajority:** when the required vote to approve an action or transaction is greater than a simple majority

*Jurisdiction:*        

**Supplemental Employee Retirement Plan:** non-Qualified Plan for key employees that provides extra benefits and/or retirement income in addition to what is provided under qualified defined benefit retirement plans. See SERP.

*Jurisdiction:*    

**Supplemental Prospectus:** see Prospectus Supplement

*Jurisdiction:* 

**Support Agreement:** an agreement by shareholders to vote in favor of an Acquisition. A Support Agreement commonly also includes provisions not to vote for Competing Bids, not to aid a Competing Bidder and the like. A Support Agreement may or may not constitute a Shareholder Lock-Up, depending on the number of Shares subject to the Support Agreement.

1. (UK) see Irrevocable Undertaking

*Jurisdiction:*          

**Surviving Entity:** another name for a Survivor

*Jurisdiction:*          

**Survivor:** the entity resulting from a Merger which holds all of the assets and liabilities of the merged entities

*Jurisdiction:*          

**Swap:** a transaction in which the parties agree to exchange specified cash flows at specified intervals (e.g., an Interest Rate Swap in which one party agrees with the other party that it will exchange a floating rate for a fixed rate on a specified notional amount of principal at the end of each quarter). Interest Rate Swaps are a tool Borrowers use to manage their exposure to changes in Interest Rates. Other kinds of Swaps include Total Return Swaps and currency Swaps.

*Jurisdiction:*          

**Sweat Equity:** where a party receives an ownership interest in a business or project in return for non-financial contributions, such as their work or effort (and, by proxy, their blood, sweat and tears)

*Jurisdiction:*        

**Sweet Equity:** Shares issued at a lower price, usually as an incentive to existing Management in the context of a Buy-Out

*Jurisdiction:*    

**Symmetrical Collar:** when used to describe Exchange Ratio Collars, means Collars that deviate from the reference value or reference ratio by the same amount or the same percentage

*Jurisdiction:*        

**Syndication:** the process by which a Lender sells a portion of its debt to other Lenders in order to reduce its own exposure and spread risk

*Jurisdiction:*       

**Synergies:** the cost savings and other efficiencies projected to materialize when two companies are combined. Examples include reduced SG&A, increased purchasing power, more efficient utilization of factories, warehouses and distribution centers, and headcount reduction in the sales force. See Strategic Buyer and Merger Benefits.

*Jurisdiction:*           

**Tadawul:** the Saudi Stock Exchange including where the context permits any committee, sub-committee, employee, officer, servant or agent to whom any function of *Tadawul* may for the time being be delegated, and "on *Tadawul*" means any activity taking place through or by the facilities provided by the *Tadawul*

*Jurisdiction:* 

**Tag:** see Tag-Along

*Jurisdiction:*           

**Tag-Along:** provisions are commonly used to protect minority shareholders, by giving them the right to require a shareholder selling its Shares to a third party to also acquire the minority shareholders' Shares — the minority shareholders are able to "tag along" with the selling shareholder. Compare Drag-Along. Also referred to as a Co-Sale right.

*Jurisdiction:*           

**Tail:** a period of time after termination of the principal agreement during which benefits or payments may become payable contingent on certain events. For example, most Investment Bankers' Engagement Letters for M&A transactions specify that for a period following termination of the agreement (typically ranging from six to 18 months) the Investment Banker will be paid its agreed upon fee, if the client signs up for or completes a transaction that would have entitled the banker to a fee if it had occurred before the termination of the Engagement Letter. The underlying idea is to protect the Investment Banker against a client terminating the engagement just before agreeing to a deal and to recognize that there usually is a strong element of "but for" causation between the banker's work on behalf of the client and a deal occurring shortly thereafter (shortly being a relative term in this context).

*Jurisdiction:*        

**Take Down:** a generic term for accepting tendered Securities in a Tender Offer or Exchange Offer and releasing the payment for the Securities. Take Down also frequently describes the process by which a Borrower obtains funds under a loan agreement, usually by satisfying conditions precedent to the disbursement of loan proceeds.

*Jurisdiction:*       

**Take Out:** shorthand for removing Security holders of the Target Company. For example, when a PE Sponsor acquires a Target Company, it Takes Out the public shareholders. Take Out should not be confused with the junk food you eat every night for weeks on end in a conference room when you negotiate a M&A transaction.

*Jurisdiction:*         

**Take Private:** often used interchangeably with Going Private. More technically, Take Private is the process by which a third party Buyer obtains ownership of 100 percent of a previously Public Company.

1. (UK) see Public to Private

*Jurisdiction:*        

**Takeover:** another name for an Acquisition, often used to refer to the acquisition of a controlling stake in a Public Company

*Jurisdiction:*        

**Takeover Code:**

1. (US) see the Securities Exchange Act
2. (UK) see UK Takeover Code
3. (DEU) see German Takeover Code
4. (ESP) Royal Decree 1066/2007, of 27 July, on public Takeover Bids regulation
5. (FRA) provisions may be found in the French Commercial Code and/or the AMF's General Regulation, depending on the contemplated Acquisition
6. (HKG) see HK Takeovers Code
7. (ITA) the provisions governing Takeovers are set forth in the Consolidated Financial Act and its implementing regulations issued by Consob
8. (RUS) no equivalent code exists under Russian law; M&A transactions are regulated by the Russian Civil Code and the Federal Law on the Protection of Competition
9. (SGP) see Singapore Takeover Code

*Jurisdiction:*        

**Takeover Defense(s):** a name for any substantive provision or structural device that deters, makes more difficult or precludes a Hostile Bid. See also Shark Repellent and Poison Pill.

*Jurisdiction:*         

**Takeover Panel:**

1. (US) see SEC
2. (UK) see UK Takeover Panel
3. (HKG) see HK Takeovers Panel

4. (ITA) see Consob
5. (RUS) in Russia, two federal services regulate M&A transactions, the Federal Antimonopoly Service and the Federal Financial Markets Service (FSFR, FSFM or FCSM)
6. (SGP) see Securities Industry Council
7. (UAE) see SCA

*Jurisdiction:*     

*Target:* see Target Company

*Jurisdiction:*            

*Target Company:* commonly used name for the company or business purchased in a transaction in which the economic buying and selling entities are discernible (as compared to a Merger of Equals where, at least in theory, there are no economic buying and selling entities). Also used to identify the subject company of a Tender Offer or Exchange Offer, without regard to whether there is a consensual Merger Agreement governing the Tender Offer or Exchange Offer and without regard to whether the Tender Offer or Exchange Offer is successfully consummated.

*Jurisdiction:*            

*Target MAC:* a Business MAC focused specifically on the Target Company

*Jurisdiction:*          

*Tax Consolidation:* a tax regime available in a number of countries which a group of wholly-owned or majority-owned companies located in the same jurisdiction can opt for, so that the group is treated as a single entity for income tax purposes

*Jurisdiction:* 

*Tax Covenant:* provisions contained in the SPA or in a standalone Tax Deed in Share sales to govern the responsibilities of the Seller and the Buyer in relation to certain existing and future tax liabilities of the Target Company

*Jurisdiction:*           

*Tax Deed:* see Tax Covenant

*Jurisdiction:*           

*Tax Gross Up:* a Gross Up with respect to specified tax obligations

*Jurisdiction:*           

*Tax Indemnity:* an Indemnity stemming from or related to a Tax Covenant or Tax Deed

*Jurisdiction:*           

**Tax Sharing Agreement:** together with tax warranties, a Tax Covenant protects the Buyer in a Share sale against the risk of the Target's pre-Completion tax liabilities that may not have been revealed by Due Diligence and which were not recognized in the accounts. A Tax Sharing Agreement provides a means of adjusting the price to reflect any such liabilities. A Tax Covenant can be included in the SPA itself or in a standalone Tax Deed.

*Jurisdiction:*       

**Tax-Free Reorg:** one of a number of transactions (e.g., B Reorg, C Reorg) described in Section 368 of the US Internal Revenue Code in which corporations and their shareholders may transfer or receive Stock or other property free of tax. To qualify for Tax-Free Reorganization treatment, a transaction generally must have a *Bona Fide* business purpose, provide that the Target corporation's owners direct or indirect ownership interest in the acquiring corporation, and provide that the Target corporation's assets continue to be used in a business. Note that Tax-Free Reorganizations involving insolvent Target corporations, other than certain Bankruptcy Restructurings, may face difficulties in qualifying for tax-free treatment under proposed regulations.

*Jurisdiction:*    

**Teaming:** another name for joint bidding. See also Bidder Group.

*Jurisdiction:*        

**Teaser:** short (often anonymous) description of a company which shall be sold in an Auction. Investment Banks send out Teasers to potential Investors. A Teaser usually offers limited information about the Target, as the intention is to generate interest from potential Bidders who then receive an Information Memorandum. If the potential Purchasers indicate interest in the company they then receive detailed information after signing a Confidentiality Agreement.

*Jurisdiction:*     

**TECOM:** a grouping of Free Zones in Dubai focusing on media, technology, IT, knowledge and education, and outsourcing

*Jurisdiction:* 

**Tender Agreement:** a Target Company's stockholder's agreement to tender or exchange their Securities in a Tender Offer or Exchange Offer

*Jurisdiction:*       

**Tender Offer:** a Unilateral Offer by a Buyer to purchase a Target Company's Securities directly from the owners of those Securities, usually for all cash. If the Buyer is offering to purchase Securities of the Target for consideration other than all cash, the transaction is more commonly called an Exchange Offer. However, the term Tender Offer is sometimes used generically to describe any Unilateral Offer to purchase another entity's

Securities, without regard to the type of consideration offered. A Tender Offer or Exchange Offer, unlike a Merger Agreement, does not need the assent of the Target Company, which is not a party to the transaction. Accordingly, Hostile Takeovers are commonly structured as Tender Offers or Exchange Offers. However, Friendly transactions can and often are structured as a Tender Offer or Exchange Offer, either exclusively or as a first step in a Two-Step Acquisition. See also Exchange Offer.

1. (UK) Tender Offers must be undertaken in accordance with Appendix 5 of the City Code

*Jurisdiction:* 

**Term Loan:** loan for a specific amount that the Borrower borrows on day one and then pays back according to a predetermined schedule

*Jurisdiction:* 

**Term Sheet:** summary of a transaction's principal terms. Term Sheets are very common in financing transactions and are an almost universal part of a Commitment Letter. Term Sheets are also very common for proposed Acquisitions of non-public Target Companies, transactions which do not require public disclosure of the negotiations. However, Term Sheets are very uncommon in Public Company Acquisitions because of concerns about required disclosure before the transaction is ripe for public disclosure. Term Sheets are rarely intended to be binding and ordinarily should contain a specific provision to that effect. There are instances, however, in which a party has tried, sometimes successfully, to enforce a Term Sheet in court.

*Jurisdiction:* 

**Terminal Value:** residual value for an enterprise in a DCF analysis for years beyond the end date of projections utilized to compute Discounted Cash Flows based on those projections

*Jurisdiction:* 

**Termination Date:** general term for the date on which a party or parties is no longer obligated to perform under a contract. Almost all Acquisition Agreements contain a Termination Date.

*Jurisdiction:* 

**Termination Fee:** amount payable under an Acquisition Agreement by the Seller to the Buyer as compensation for Seller's exercise of a Fiduciary Out provision if the consequence of the exercise is a termination of the Acquisition Agreement by either party. The typical range for a Termination Fee is one to four percent of the Equity Value of the transaction with fees in larger deals often in the two to three percent range. See also Break-Up Fee.

1. (UK) such fees are only available in relation to Private Company Acquisitions

*Jurisdiction:* 

**Termination Fee Tail:** period of time following termination of an Acquisition Agreement during which specified events (such as a sale to a Competing Bidder) will Trigger payment of a Termination Fee

*Jurisdiction:*          

**Termination Fee Triggers:** acts or events that give a Buyer under an Acquisition Agreement the right to be paid a Termination Fee

*Jurisdiction:*          

**Termination Provisions:** rights under an Acquisition Agreement for a party unilaterally to terminate the agreement contingent upon certain prescribed events. Public Company Merger Agreements almost always have Termination Provisions in favor of the Buyer if the Target Company exercises its Fiduciary Out. See also Outside Date and End Date.

*Jurisdiction:*           

**Texas Shoot-Out Clause:** solution to a deadlock. A Texas Shoot-Out involves each party sending a sealed all cash Bid to an umpire stating the price at which they are willing to buy out the other party. The sealed Bids are opened together, and the highest sealed Bid "wins," and that Bidder must then buy (and the "loser" must sell) the other half Share in the business.

*Jurisdiction:*      

**The Civil Code Qatar:** refers to Law No. (22) of 2004 – the Civil Code of Qatar

*Jurisdiction:* 

**The Companies Law Qatar:** refers to Law No. (27) of 2006 (as amended)

*Jurisdiction:* 

**The Constitution of Qatar:** also known as the Permanent Constitution of the State of Qatar. The latest version to be adopted was on 29 April 2003 and sets out the constitutional and legal framework of Qatar

*Jurisdiction:* 

**The Takeovers Law Qatar:** refers to Law No. (3) of 2010 amending the CCL

*Jurisdiction:* 

**Thin Capitalization:** a company is thinly capitalized when its capital is made up of a much greater proportion of debt than equity, meaning its Gearing is too high. Many European tax regimes have rules to ensure that companies have a fair proportion of equity capital so they cannot minimize taxable profits in this way. These rules typically work by restricting tax deductions in respect of the "excess" debt capital.

*Jurisdiction:*       

**Third Party Rights:** the ability to allow non-signatories to a document to enjoy the benefit of its terms in ways which differ according to the

## jurisdiction

1. (UK) enacted in the UK through the Contracts (Rights of Third Parties) Act 1999
2. (SGP) enacted in Singapore through the Contracts (Rights of Third Parties) Act (Cap. 53B)

*Jurisdiction:*        

**Threat:** term of art under the Unocal/Unitrin Doctrine referring to a judicially cognizable harm or detriment to a company or its shareholders. Examples include allowing a Buyer to acquire control of a company without paying any, some, or all of its shareholders an appropriate control premium, or a Buyer paying different amounts of consideration to similarly situated shareholders.

*Jurisdiction:*    

**Threshold:** often used as another word for Trigger

*Jurisdiction:*           

**Ticking Fees:** in an Acquisition Agreement context, Ticking Fee means a periodic extra payment by the Buyer to the Target Company's shareholders if certain events have not occurred within a specified time period. A common use of a Ticking Fee is a provision under which the Buyer will increase the consideration payable per Share by a specified additional monthly amount for each month after a Trigger date, until antitrust clearance is obtained. In the M&A financing context, Ticking Fee means a fee associated with a long-term commitment to provide a Bridge Loan or other Credit Facility, which starts accruing the day the Fee Letter is signed (or a specified number of days thereafter) and terminates when the underlying transaction is either consummated or terminated.

*Jurisdiction:*        

**TIDES:** acronym for three-year Independent Director evaluation (TIDE) and another name for Sunset Provisions in a Poison Pill

*Jurisdiction:*    

**Tipping Basket:** a term used to describe the minimum liability Threshold which must be reached for a party to become liable, and when reached the Basket is said to "tip." For example, a Share Purchase Agreement may specify that Party A will not be liable for claims which individually are less than \$10 in value and in aggregate are less than \$100. This means only claims of \$10 or more will make it into the Basket and Party A will not be liable for any of those claims until the Basket contains claims which add up to \$100, at which point the Basket tips and Party A is liable for \$100.

*Jurisdiction:*       

## **Tombstone:**

1. a name for an ad published to notify the world at large that an event — of actual or presumed importance to the financial services industry — has occurred. See Summary Ad.

2. another name for a Deal Toy

*Jurisdiction:*       

**Topping Bid:** a Competing Bid that is better than the current Bid

*Jurisdiction:*       

**Topping Fee:** a fee payable to a presumed winning Buyer if the Target Company receives a Topping Bid. See also Termination Fee, which, in practice, is often a Topping Fee.

*Jurisdiction:*       

**Topping Right:** a contractual right to submit a Topping Bid

*Jurisdiction:*      

**Top-Up Option:** in a Tender Offer or Exchange Offer context, Top-Up Option means an Option granted by the Target Company to the Buyer to purchase up to all of the Target Company's authorized but unissued common Shares, exercisable only if the Buyer has received tenders for sufficient Shares to permit it unilaterally to approve a Back-End Merger under both state law and the company's Charter. The Exercise Price of a Top-Up Option is almost always the Tender Offer or Exchange Offer price and is customarily payable by an unsecured Buyer's Note, as well as in cash. Top-Up Options only make sense if the Target has enough authorized but unissued common Shares to permit the Buyer to reach the ownership level required for a Short Form Merger. To avoid any state law issues regarding whether the issuance of Shares under a Top-Up Option adversely affects Appraisal Rights because the Top-Up Option is or could be Dilutive to the intrinsic value of Dissenters' common Shares, the Top-Up Option contract provision should explicitly provide that any Shares issued under the Top-Up Option are to be disregarded for purposes of Appraisal Rights.

*Jurisdiction:*    

**Top-Up Placing:** a company's placing of Shares facilitated by a company's substantial or Controlling Shareholder whereby already listed Shares of the existing shareholder(s) are first sold to investors and then the selling shareholder subscribes for the same number of new Shares from the company (subject to obtaining Listing Approval for the new Shares) at the same price, less the expenses incurred in the placing

*Jurisdiction:* 

**Total Return Swaps:** a type of Swap under which the so-called "long party" receives from its counterparty (typically a Swaps dealer and frequently called the "short party") any economic appreciation in value

of a specified “notional” number of common Shares of a company. The long party in return, promises to pay the short party any economic Depreciation in value of the notional number of Shares. The key terms of a Total Return Swap, accordingly, include the notional number of Shares covered, the starting date of the Swap and the ending date. A Total Return Swap gives the long party the economic equivalent of outright ownership of the notional number of Shares, but not voting rights.

1. (US) Total Return Swaps are used for a large number of investment strategies, but are controversial in the M&A context because they do not ordinarily require reporting as beneficial ownership and thus, standing alone, do not Trigger any reporting obligations under Section 13(d) of the Securities Exchange Act
2. (UK) such Option arrangements require disclosure in a UK Takeover, as they constitute Interests in Shares

*Jurisdiction:*       

*Trade License:* see Charter

*Jurisdiction:*   

*Trade Sale:* sale of a company to another company/Strategic Acquirer

*Jurisdiction:*       

*Trading Blackout:* a Trading Blackout prohibits a company's Insiders from trading in the company's Securities while the blackout is in effect. Also referred to as a Blackout Period or “Closed Period.”

*Jurisdiction:*       

*Transaction Fees:* a general name for fees payable to advisers (such as legal and financial) in connection with a M&A transaction

*Jurisdiction:*         

*Transfer Agent:* a bank or trust company hired by a Public Company to keep the official company records of the holders of record of its Stock. A company's Transfer Agent is responsible for issuing and transferring these ownership interests. The Transfer Agent function is not nearly as important as it used to be, because the vast majority of Public Companies' outstanding Shares are immobilized in and owned of record by Depositories, like DTC. Some Investors, particularly small Investors, still like to receive paper certificates as evidence of their Stock ownership.

*Jurisdiction:*    

*Transfer of Undertakings (Protection of Employment):* TUPE, (pronounced almost the same way as the gentlemen's hair piece), which, on a sale of a business or a service provision change, transfers the transferor's employees assigned to the undertaking (or part of the undertaking) to the transferee

1. (UK) provided under the Transfer of Undertakings (Protection of Employment) Regulations 2006
2. (DEU) provided in section 613a of the German Civil Code (*Bürgerliches Gesetzbuch*)

*Jurisdiction:*  

**Transfer Scheme:** a Scheme of Arrangement used to effect a P2P public Takeover by the transfer of all existing Shares to the Bidco

*Jurisdiction:*  

**Transition Agreement:** another name for an Interim Services Agreement

*Jurisdiction:*         

**Transition Services:** services a Seller of a division or subsidiary provides to a Buyer with respect to the business the Buyer has purchased from the Seller

*Jurisdiction:*         

**Transition Services Agreement:** another name for an Interim Services Agreement

*Jurisdiction:*         

**Transmission Universelle du Patrimoine:** see TUP

*Jurisdiction:* 

**Treasury Shares:** see Treasury Stock

*Jurisdiction:*        

**Treasury Stock:** issued and outstanding Shares that are purchased by the Issuer and not returned to the status of authorized but unissued Shares by means of a Charter amendment. Treasury Stock thus remains issued but not outstanding (*i.e.*, held by third parties).

1. (SGP) under the Companies Act of Singapore, "Treasury Shares" are Ordinary Shares or Stocks which have been purchased or otherwise acquired by a company in accordance with sections 76B to 76G of the Companies Act of Singapore and which the company has held continuously since such purchase or Acquisition

*Jurisdiction:*        

**Trees (Running Trees):** in the Acquisition context, Trees are references to different Bidders or Financing Sources. If a company puts itself up for sale (in an Auction), usually multiple Bidders will look at the Target Company, and each Bidder will in turn examine possible financing from a variety of banks. So if Sponsor A and Sponsor B were looking at the Target Company, and each had two possible Financing Sources (drafting Commitment Papers), there would be two Acquisition Trees and four financing Trees.

*Jurisdiction:*        

**Triangular Merger:** a Merger in which the Target Company and a subsidiary of the Buyer are merged, with the result that the Buyer becomes the owner (usually of all the equity) of the resulting merged entity. Triangular Mergers are by far the most common Merger structure because they do not impact any of the Buyer's legal, corporate and tax attributes. See also Forward Triangular Merger and Reverse Triangular Merger.

*Jurisdiction:* 

**Trigger:** a generic term for an event or condition that results in certain actions or consequences (e.g., Pill Trigger)

*Jurisdiction:* 

**TUP:** acronym for *Transmission Universelle De Patrimoine*, dissolution of a company without any Liquidation process. Decided by the sole shareholder of the company to be dissolved, to which all assets and liabilities will be automatically transferred.

*Jurisdiction:* 

**TUPE:** acronym for Transfer of Undertakings (Protection of Employment)

*Jurisdiction:* 

**Turn-Around:** changing a distressed business, in order to preserve it as a going concern. Such changes can include reducing liabilities through cost cutting measures, procuring new investment and debt Restructuring

*Jurisdiction:* 

**Two Step Acquisition:** an Acquisition of 100 percent of a Target Company's Common Stock pursuant to a Tender Offer or Exchange Offer (the Front-End Transaction or First Step Acquisition), followed by a Back-End Merger or Second Step Merger. In many, but not all cases, the Back-End Merger is pursuant to an Acquisition Agreement that requires the Buyer to initiate the Acquisition through a Tender Offer or Exchange Offer for a majority or all of the Target Company's voting equity Securities. The consideration payable in the Back-End Merger may be the same as in the Front-End Transaction or it may differ. For example, the Front-End Transaction might provide only cash consideration through a Tender Offer, and the Back-End Merger might use only the Buyer's Common Stock as consideration.

*Jurisdiction:* 

**Two Step Merger:** same as a Two Step Acquisition

*Jurisdiction:* 

**Two Tier Reverse Termination Fee:** see Bifurcated Reverse Termination Fee

*Jurisdiction:* 

**Two Tiered Offer:** a Two Step Acquisition in which the consideration for the Front-End Transaction differs from the consideration for the Back-End Merger. In many cases, the Front-End Transaction consideration will have a higher value than the Back-End Merger consideration.

*Jurisdiction:*       

**UK Competition Commission:** an independent statutory body that shares responsibility with the Office of Fair Trading (OFT) to investigate and report on issues affecting competition, antitrust and trade, Mergers, markets and certain functions concerning major regulated industries in the UK. In 2014, the UK Competition Commission (along with the OFT) will be replaced by the Competition and Markets Authority. See Competition Commission.

*Jurisdiction:* 

**UK Takeover Code:** the set of general principles and rules which establish the framework for Public Company Takeover transactions in the UK, “developed since 1968 to reflect the collective opinion of those involved in the field of Takeovers as to appropriate business standards and as to how fairness to shareholders and an orderly framework for Takeovers can be achieved” (according to the UK Takeover Panel). Also known as the City Code and the Blue Book.

*Jurisdiction:*  

**UK Takeover Panel:** the Panel on Takeovers and Mergers, the body that administers the UK Takeover Code and supervises/regulates Takeovers and other matters to which the UK Takeover Code applies

*Jurisdiction:*  

**UKLA:** acronym for the United Kingdom Listing Authority, the competent authority for listing on the LSE. Part of the FSA.

*Jurisdiction:*  

**Uncertificated:** where a Share or other Security is held in electronic form with a Depository rather than in physical Share certificates. Compare Certificated. See also American Depositary Receipt and American Depositary Shares.

1. (HKG) more commonly known as Scripless

*Jurisdiction:*       

**Unconditional As To Acceptances:** where a Bidder's Offer receives enough acceptances in respect of the Offeree shareholders' voting rights, to allow the UK public Takeover process to continue. Under the City Code, upon an Offer becoming Unconditional As To Acceptances, Withdrawal Rights are usually no longer available. The equivalent concept exists under the HK Takeovers Code. See also Wholly Unconditional.

*Jurisdiction:*   

**Under Water:** when a Convertible Security or Option has a higher Exercise Price than the market value of its underlying Securities, so that conversion or exercise is uneconomic

*Jurisdiction:*       

**Underwriters:** the Investment Banks that buy Securities in the initial purchase from the Issuer and then immediately resell them to the public in a public offering

1. (US) more technically, and in brief, Section 2(a)(11) of the Securities Act defines an Underwriter as any person who has purchased a Security from an Issuer or a controlling person of an Issuer with a view to distributing the Security
2. (HKG) Underwriters in Hong Kong typically agree to procure subscribers or purchasers for the Securities, and in the event any Securities are not so subscribed or purchased, the Underwriters severally subscribe or purchase the unsold Securities

*Jurisdiction:*            

**Underwriting Agreement:** the contract pursuant to which Underwriters agree to purchase Securities from an Issuer

*Jurisdiction:*            

**Unilateral Offer:** another word for an Unsolicited Offer

*Jurisdiction:*        

**Unilateral Takeover:** see Hostile Takeover

*Jurisdiction:*          

**Unilateral Tender Offer:** another name for an Unsolicited or Hostile Tender Offer

*Jurisdiction:*      

**Unitary Merger:** another name for a One Step Merger

*Jurisdiction:*     

**Unocal/Unitrin Doctrine:** shorthand for the two principal Delaware cases that establish the permissible limits under Delaware Fiduciary Duty principles of a Board of Directors adopted Takeover Defenses. Like the Revlon Doctrine, the Unocal/Unitrin Doctrine refers both to a standard of enhanced judicial review and a substantive standard by which Board conduct is measured. In the first usage, the Unocal/Unitrin Doctrine means that a court will not afford a Target's Board the favorable presumptions of the Business Judgment Rule. In its substantive usage, the Unocal/Unitrin Doctrine means that a Board is permitted to adopt a Takeover Defense in compliance with its Fiduciary Duties only if there is a reasonable and legally cognizable Threat to the company and its stockholders, the Takeover Defense is reasonable in relation to the Threat (also called proportional), and the Takeover Defense is neither Coercive or Preclusive. See *Unocal v. Mesa Petroleum Co.*, 493 A.2d 946

(Del. 1985); *Unitrin v. Am. General (In re Unitrin, Inc. S'holders Litig.)*, 651 A.2d 1361 (Del. 1995).

*Jurisdiction:* 

*Unsolicited:* see Unsolicited Takeover

*Jurisdiction:*          

*Unsolicited Takeover:* a less charged substitute for the adjective Hostile. The term is used to describe an Acquisition Proposal (as in an Unsolicited Bid), or a Bidder (as in Unsolicited Bidder) that makes an Unsolicited Bid. However, if a Target were to discuss, or negotiate on the basis of, an Unsolicited Bid, any resulting proposals and any resulting Combination would not be characterized as Unsolicited because of the Target's active engagement in negotiating Bid terms.

*Jurisdiction:*          

*Upside:* estimated increase in the value of a Share price or, of a business's profitability, as a result of a particular transaction

*Jurisdiction:*        

*Upside Collar:* an Exchange Ratio Collar that applies in the event of an increase in the market price of the Buyer's Stock

*Jurisdiction:*        

*Upstream Guarantee:* a subsidiary grants a guarantee to its Holding Company

*Jurisdiction:*        

*Upstream Loan:* a subsidiary grants a loan to its Holding Company or a company to its shareholders

*Jurisdiction:*        

*Upstream Merger:* a subsidiary is merged into its Holding Company

*Jurisdiction:*      

*USA Patriot Act:* acronym for the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended from time to time

*Jurisdiction:*  

*Use of Proceeds:* the specification in the Term Sheet (or Prospectus or Offering Memorandum) of how the proceeds of the financing will be used, and a Borrower's Representation and Warranty and Covenant in a Credit Agreement (or an Issuer in an Underwriting Agreement) affirming this is in fact where proceeds will go

*Jurisdiction:*            

*Value Added Tax:* a tax on supplies of goods and services. Typically, finance transactions and transactions relating to the granting of credit are

often exempt from VAT. As a consequence, the supplier is restricted in its ability to reclaim VAT which it has itself incurred on supplies made to it.

1. (HKG) use of the term refers to the same concept but Hong Kong itself does not levy Value Added Tax

*Jurisdiction:*     

**Van Gorkom:** see Duty of Care

*Jurisdiction:* 

**VAT:** acronym for Value Added Tax

*Jurisdiction:*     

**VC:** acronym for Venture Capital or Venture Capitalist, as the case may be

*Jurisdiction:*        

**VCOC:** acronym for Venture Capital Operating Company, a type of operating company which satisfies requirements under the ERISA plan asset regulations

*Jurisdiction:*  

**VCOC Rights:** certain Mezz Lenders are funds which have significant US pension plan Investors. In order to avoid issues under ERISA for these Investors, the Mezzanine Financing needs to qualify for an exemption from ERISA. The most commonly used exemption in these situations is to structure the Mezzanine Financing as an investment in a VCOC, achieved by giving VCOC Rights to these Mezz Lenders in a VCOC Side Letter. What are these rights? Well, they are direct contractual rights between the Mezz Lender and the Borrower/operating company that provide the Mezz Lender with enhanced “management rights” providing the Mezz Lender with a right to substantially participate in or substantially influence the Management of the Borrower/operating company. In practice, this typically requires the Mezz Lender to obtain the following three rights: (i) Board Observer rights; (ii) the right to receive more information than is required by the terms of the Credit Agreement; and (iii) the right to consult with Management.

*Jurisdiction:* 

**VCTs:** acronym for Venture Capital Trusts, specialist investment trusts, which offer tax advantages to Investors willing to provide money for investment in unquoted companies

*Jurisdiction:*   

**VDD:** acronym for Vendor Due Diligence

*Jurisdiction:*       

**VDR:** acronym for Virtual Data Room

*Jurisdiction:*        

**Vendor:** party that wishes to sell the Shares or business of an entity in which it is a shareholder. Vendors may hold minority or majority interests in the Target and can take the form of a Parent company, owner/manager, trust vehicle or, other corporate or individual shareholders.

*Jurisdiction:* 

**Vendor Due Diligence:** a Due Diligence which is initiated by the Seller, often in order to learn about its own company and to save the potential Purchasers' costs and expenses

*Jurisdiction:* 

**Vendor Finance:** also known as "Seller Capital." Where a Vendor invests in the purchase of its own Target Company by way of a subordinated loan to the Acquirer or, by subscribing to Shares. Vendor Finance is usually provided to assist the Acquirer in raising the required consideration for the Target. The Vendor may structure a loan-based Vendor financing arrangement by charging interest on the loan or, such that the Acquirer's repayment of the loaned amount represents Deferred Consideration for its purchase of the Target. The structure of the investment can depend on the Acquirer's risk profile and deal-specific tax considerations.

*Jurisdiction:* 

**Venture Capital:** risk capital in the form of equity and/or loan capital which an investment institution provides to back a business venture which is expected to grow in value

*Jurisdiction:* 

**Venture Capitalist:** person or investment firm that provides early stage funding to a company in return for an Equity Interest. Often Venture Capitalists will bring technical or other expertise to the company. Irreverently sometimes referred to as vulture capitalists on the basis VCs may take a large equity position for a relatively low price. See also Angel Investor and VC.

*Jurisdiction:* 

**Verification:** process undertaken to verify that information contained in a Prospectus or admission document is true, accurate and not misleading, thereby minimizing the directors' risk of potential criminal or civil liabilities. The Verification notes or a Verification memorandum will take the form of questions and answers, for which the directors and Management accept ultimate responsibility when they sign. The responses to the Verification questions should be given by reference to authoritative sources and copies of those sources should be retained in a Verification file kept by the company.

*Jurisdiction:* 

**Vesting:** technique commonly used in relation to Stock Options / Share Options, whereby the rights to exercise the Options are released to the beneficiary in a staggered manner, becoming exercisable at certain points over a particular Vesting period after the Options have been granted

*Jurisdiction:*        

**Veto Right:** term often used to describe minority shareholder protection provisions contained in a company's Articles of Association and/or the Shareholders Agreement. These reserved matters may be subject to Supermajority approval at the Board and/or shareholder level of a company. See also Blocking Right.

*Jurisdiction:*      

**VGO:** acronym for Voluntary General Offer

*Jurisdiction:* 

**Virtual Bid:** potential Bid to acquire a company, announced by a potential Offeror. Within 28 days of a potential Offeror making a Virtual Bid relating to a Takeover that will be subject to the City Code, a potential Offeror must announce whether or not it has a firm intention to make a formal Bid. See 28 Day Rule.

*Jurisdiction:*   

**Virtual Data Room:** Data Room that consists entirely of documents in digital format. A number of providers have developed software for the creation and operation of Virtual Data Rooms. Virtual Data Rooms have become ubiquitous and increasingly Data Rooms rely less and less on hard copies of the relevant documents.

*Jurisdiction:*          

**Voluntary General Offer:** another name for Voluntary Offer

*Jurisdiction:* 

**Voluntary Offer:** under Rule 10 of the City Code and Rule 15.1 of the Singapore Takeover Code, a Voluntary Offer is a Takeover Offer for a company's voting Shares made by a person when he/she has not incurred an obligation to make a Mandatory Offer. A Voluntary Offer must be conditional upon the Offeror receiving acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the Offer, will result in the Offeror and person Acting In Concert with it holding more than 50 percent of the voting rights. In addition, a Voluntary Offer must not be subjected to conditions whose fulfillment depends on the subjective interpretation or judgment by the Offeror or which lies in the Offeror's hands.

1. (HKG) similar concept exists under the HK Takeovers Code, and the terms General Offer, GO, Voluntary General Offer or VGO are also used

*Jurisdiction:*   

**Voluntary Winding Up:** a non-court based procedure to wind up a company in Hong Kong, where the shareholders of a company resolve to wind up a company without a court order or where the directors resolve to wind up a company under the Companies Ordinance (see Section 228A Winding Up)

*Jurisdiction:* 

**Voting Agreement:** another name for a Support Agreement. See also Irrevocable Undertaking.

*Jurisdiction:*          

**VWAP:** acronym for Volume Weighted Average Price or the result of a formula used by market participants to calculate a type of average price at which an equity Security trades over a period of time

*Jurisdiction:*     

**W&I Insurance:** see Rep & Warranty Insurance

*Jurisdiction:*      

**WACC:** acronym for Weighted Average Cost of Capital or the weighted average Cost of Capital of the types represented on a company's Balance Sheet

*Jurisdiction:*           

**Walkaway Rights:** right to terminate an agreement due to particular Trigger events arising or failing to materialize within a particular period. Commonly granted to a Buyer where there is an element of deal-uncertainty, such as where there is a split signing and Completion. For example, when used to describe the consequences of hitting a Collar under either a Fixed Exchange Ratio or a Floating Exchange Ratio, Walkaway Rights means that one or both of the parties would have a right of termination. Walkaway Rights could be a party's sole remedy or they could be an alternative to another structure. The exercise of a Walkaway Right may or may not have additional conditions and/or consequences for the parties, such as changing the Exchange Ratio or the reimbursement of certain costs. If so, the nature of any such conditions and/or consequences may differ depending on the particular Trigger event that occurs.

*Jurisdiction:*      

**Wall Crossing:** the act of making a person an Insider by providing them with Inside Information. Sometimes referred to as "bringing a party over the wall."

*Jurisdiction:*     

**Warrant:** another name for an Option or a derivative Security which gives the holder the right to purchase Shares in a company at a pre-determined price (the "strike" or "exercise" price). A Warrant is a long-term Option, usually valid for several years or indefinitely; sometimes

a feature of Mezzanine Financing which provides a higher return to Mezzanine Investors.

*Jurisdiction:* 

**Warranties and Indemnities:** the legal undertakings often required by the Purchaser of a business or asset from the previous owners to confirm there will be no nasty surprises post-Completion

*Jurisdiction:* 

**Warranty:** assurances from one party to the others as to the state of affairs subject to the contract (e.g., as to the condition of the Target Company or business). Breach of Warranty will only give rise to a successful claim in damages if the claiming party can prove breach and quantifiable loss.

*Jurisdiction:* 

**Waterfall:** sometimes called a Payment Waterfall, generally refers to the pre-determined flow of funds and priority of Distributions or allocations between or among debt or equity holders. Typically, Payment Waterfalls are agreed contractually between parties to override any order of payments which may apply automatically by operation of law. Think of the funds in question as water running down a flight of stairs with a bucket placed on each step — the water (money) flows to the top step first and fills that bucket before the overflow continues on to the second step, and fills that bucket before proceeding to the third step, etc. So, if your deal stipulates you get paid before someone else, your proverbial bucket will be placed higher in the Waterfall. The one most likely to be left with an empty bucket (or in practice, an unpaid obligation) is of course whoever is at the bottom of the Waterfall.

*Jurisdiction:* 

**WGL:** acronym for Working Group List

*Jurisdiction:* 

**White Knight:** in a Hostile Takeover situation, a Friendly Bidder who makes a rival Bid for the Target Company in an effort to prevent a Hostile Bidder from acquiring the Target Company

*Jurisdiction:* 

**White Squire:** in a Hostile Takeover situation, a person who acquires a significant stake in a company either by purchasing existing Shares or subscribing for new Shares, gaining a stake large enough to block a Hostile Takeover Bid. White Squires typically enter into a Standstill with the Target Company.

*Jurisdiction:* 

**Whitewash:** the name given to the statutory process which Private Companies go through in order to be able to give lawful Financial Assistance. Involves lots of pieces of paper.

1. (UK) no longer relevant given recent changes to the Financial Assistance provisions in England and Wales
2. (HKG) Whitewash may also be used in the Takeovers context to refer to the waiver granted by the SFC to a Bidder for dispensation from making a Mandatory Offer in certain limited circumstances where the transaction is approved by the Offeree's independent shareholders
3. (ITA) under Italian law, the resolution to be approved by a certain majority of the shareholders, required to avoid otherwise applicable provisions of law (e.g., see Financial Assistance)

*Jurisdiction:*    

**Wholly Unconditional:** when an Acquirer in a Takeover has sufficient acceptances from the Offeree shareholders to satisfy the acceptance condition, and all other conditions (e.g., Anti-Trust Clearance) have been satisfied, allowing the Acquirer to proceed to transfer the purchase consideration and take control of the Target

*Jurisdiction:*      

**Widespread Auction:** see Public Auction

*Jurisdiction:*       

**Winding Up:** the process of liquidating a company involving the appointment of an independent Insolvency practitioner (the Liquidator) who realizes the assets of a company in order to make a distribution to the creditors of that company

1. (HKG) in Hong Kong, there are two types of Winding Up, namely Compulsory Winding Up following a court order, and Voluntary Winding Up commenced voluntarily by the company's Members, creditors or directors. Also referred to as Liquidation.

*Jurisdiction:*       

**Window Period:** any time period during which specified action is permitted

*Jurisdiction:*        

**Window Shop:** a term used to describe the traditional No Shop provision in a Public Company Merger Agreement whereby the Target Company promises not to solicit or encourage a later Competing Bid, but which permits its Board of Directors, under certain circumstances, to respond to an Unsolicited Acquisition Proposal, by providing confidential information and engaging in discussions and negotiations of the terms of the Competing Bid

*Jurisdiction:*          

**Withdrawal Rights:** In relation to Takeovers, certain situations may arise whereby Offeree shareholders that have accepted an Offer are entitled to revoke their acceptances, such as but not limited to the following

circumstances: (i) 21 days after the first Closing Date of an initial Takeover Offer if, by that time the Offer has not become or been declared unconditional; (ii) an Offeror fails to comply with the requirements of Rule 17.1 of the City Code — a competitive situation arises after a “no extensions statement” or “no increase statement” is published and the relevant Offeree shareholders seek to withdraw have accepted the Offer after the statement was published; and (iii) as determined by the UK Takeover Panel in accordance with Rule 13.6 of the City Code

1. (HKG) a similar concept exists under the HK Takeovers Code

*Jurisdiction:*    

**Withhold Vote:** the act of not voting for a candidate for director. Withhold Vote is sometimes used more broadly to include voting against a director.

*Jurisdiction:*     

**Withhold Vote Campaign:** a campaign, often by a Proxy Advisory Firm or Corporate Governance Activist, to persuade shareholders to withhold their vote from one or several director candidates

*Jurisdiction:*     

**Withholding Tax:** tax levied frequently, but not exclusively, with respect to recurring payments, collected by requiring the payer to make a deduction on account of income tax before making the payment. Withholding Tax frequently applies to payments of dividends (although not those paid by UK companies, for example), interest and royalties. This liability is often reduced or eliminated under a Double Taxation Treaty. Essentially a method of tax collection, rather than a different tax as such.

1. (HKG) use of the term refers to the same concept but Hong Kong itself does not levy Withholding Tax

*Jurisdiction:*        

**Wolf Pack:** a common name for actions by Hedge Funds or other Activist Investors that are seemingly parallel but that do not constitute them as a Group (e.g., for purposes of reporting under Section 13(d) of the US Securities Exchange Act or for purposes of determining beneficial ownership under a Poison Pill)

*Jurisdiction:*      

**Working Capital:** a measure of a company’s short-term Liquidity, calculated by subtracting current liabilities from current assets

*Jurisdiction:*           

**Working Group List:** a list containing the contact information for each banker, lawyer, accountant, and Issuer or Borrower representative working on a particular deal. See WGL and Players List.

*Jurisdiction:*         

**Write-Down:** for capital allowances purposes, the balance of expenditure with respect to which capital allowances have not yet been claimed

*Jurisdiction:*     

**Written Consent:** a Securities holder's writing that approves a course of action. Under many state or national corporation laws, shareholders are permitted to act by Written Consent in lieu of voting at a Shareholders' Meeting, either by the same majority vote that would be required at a Shareholders' Meeting or by a unanimous vote.

*Jurisdiction:*        

**Written Resolution:** another term for a Written Consent

*Jurisdiction:*    

**Zakat:** the alms tax enforced in the Kingdom of Saudi Arabia

*Jurisdiction:* 

**Zone of Insolvency:** when a previously solvent Borrower nears Insolvency, the courts in certain jurisdictions (including the US and UK) have held that the Board of Directors' Fiduciary Duties morph to include (or in certain circumstances are owed exclusively to) the Borrower's creditors. Prior to entering the Zone of Insolvency, Borrowers do not owe their creditors any Fiduciary Duties.

*Jurisdiction:*  





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