# Lexis<sup>®</sup> Practical Guidance

## Mergers & Acquisitions

### 1. Due diligence

### 1.1 The purpose of due diligence

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.1.1 The concept and importance of a due diligence exercise	Terms of engagement letter to client		
	Template of a transaction letter		
	Confidentiality agreement		
	Sample clause – Suspensive due diligence clause where buyer needs to complete due diligence exercise		
	Sample clause – Suspensive due diligence clause where seller needs to complete due diligence exercise		

#### 1.2 How to conduct a due diligence

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Guidance Note	Forms & Precedents	Checklists	Other Resources
1.2.1 Request for information	Template of due diligence letter requesting information	Information to be checked for a due diligence exercise	
	Template of due diligence letter acknowledging receipt of information		
	Confidentiality agreement		
1.2.2 Review of documents			CIPC enterprise search
			Example of a due diligence action plan
1.2.3 Data rooms			
1.2.4 Site visit and management presentation	Template of a letter requesting a site visit		
	Sample clause – Limitation of warranties		
	Confidentiality agreement		

### 1. Due diligence

### 1.3 The due diligence report

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.3.1 Preparing a due diligence report	Template of a due diligence report		
1.3.2 Providing for a due diligence exercise in an agreement	Sale of shares agreement		
1.3.3 Limitations of liability for professionals	Terms of engagement letter to client		
1.3.4 The impact of warranties on a due diligence exercise	Sample clause – Limitation of warranties		

### 2. Valuations

### 2.1 The role of valuations in transactions

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.1.1 Why do parties obtain valuations			
2.2 Valuation methods	S		
Guidance Note	Forms & Precedents	Checklists	Other Resources
2.2.1 Net asset value			
2.2.2 Discounted cash flow			
2.2.3 Capitalisation of earnings			
2.2.4 Intrinsic method			
2.2.5 Derivative method			

### 3. Starting points in a transaction

#### 3.1 Founding documents

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.1.1 The memorandum of incorporation and shareholders' agreement		Items to look for in an MOI	
3.1.2 The letters of authority and trust deed	Form J246 – Letters of authority		Case law summary on trust essentials
3.1.3 The association agreement			



3. Starting	points in a	transaction
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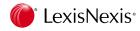
#### 3.2 Resolutions

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.2.1 Resolutions relating to companies	Template of a basic written board resolution		
	Template of a basic board minute		
3.2.2 Resolutions relating to trusts	Template of minutes of trustees' meeting		
	Template of a written trust resolution		
3.2.3 Resolutions relating to close corporations	Template of a basic minute		
close corporations	Template of a basic written resolution		

### 4. Sale of shares

4.1 Introduction to the sale of shares			
Guidance Note	Forms & Precedents	Checklists	Other Resources
4.1.1 What is a sale of shares	Trust agreement		
4.1.2 Acting for the seller of shares			Key issues to consider when acting for the seller or buyer of shares
4.1.3 Acting for the buyer of shares			Key issues to consider when acting for the seller or buyer of shares
4.1.4 Tax considerations relating to the sale of shares			
4.2 Required approva	ls		
Guidance Note	Forms & Precedents	Checklists	Other Resources
4.2.1 Board approval for the sale of shares	Template of a board minute authorising sale of shares		
	Template of board resolution authorising sale of shares		
4.2.2 Sale of all or greater part of the assets of a company	Notice in terms of section 112 of the Companies Act 71 of 2008		
	Minute in terms of section 112 of the Companies Act 71 of 2008		

4. Sale of shares				
4.2 Required approvals				
Guidance Note	Forms & Precedents	Checklists	Other Resources	
4.2.3 Financial assistance and distributions relating to the sale of shares	Shareholders' minute in terms of section 44 approving a share purchase			
	Shareholders' written resolution in terms of section 44 approving a share purchase			
	Notice of adoption of special resolution in terms of section 60 of the Companies Act 71 of 2008			
	Board minute in terms of section 44 approving a share purchase			
	Board written resolution in terms of section 44 approving a share purchase			
	Shareholder minute in terms of section 45 approving a share purchase			
	Shareholder written resolution in terms of section 45 approving a share purchase			
	Board minute in terms of section 45 approving a share purchase			
	Board written resolution in terms of section 45 approving a share purchase			
	Board minute in terms of section 46 approving a share purchase			
	Board written resolution in terms of section 46 approving a share purchase			



### 4. Sale of shares

### 4.2 Required approvals

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.2.4 Shareholder approval under the MOI and shareholders agreement	Shareholders' waiver of pre- emptive rights		
	Minute of special resolution approving restricted matter in sale of shares		
	Special written resolution approving restricted matter in sale of shares		
	Written pre-approval of restricted matter in sale of shares		
	Notice of adoption of special resolution in terms of section 60 of the Companies Act 71 of 2008		
4.2.5 Takeover regulations: affected transactions			
4.2.6 Takeover regulations: mandatory offers			
4.2.7 JSE listing requirements			
4.2.8 Ratification where there are personal financial interests	Shareholder minute ratifying director actions in a sale of shares		
	Shareholders' written resolution ratifying actions of director in a sale of shares		
	Notice of adoption of special resolution in terms of section 60 of the Companies Act 71 of 2008		
4.2.9 Competition, exchange control and other approvals for the sale of shares			
4.3 Sale of shares agre	eement		
Guidance Note	Forms & Precedents	Checklists	Other Resources
4.3.1 Essential terms of a sale	Sale of shares agreement		
of shares agreement	Sale of shares warranties		
4.3.2 Conditions precedent in a sale of shares agreement			

### 4. Sale of shares

### 4.3 Sale of shares agreement

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.3.3 Warranties and indemnities in a sale of shares agreement			
4.3.4 Payment and guarantees in a sale of shares agreement	Template of a demand guarantee		
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### 5. Issue of shares

#### 5.1 An overview of share issues

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.1.1 What is an issue of shares	Trust agreement		Notes on the nature of a public offer
5.1.2 Acting for the issuing company			Table of key issues when acting for the issuer or subscriber of shares
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5.1.4 Tax considerations relating to an issue of shares			
5.2 Required approval	S		
Guidance Note	Forms & Precedents	Checklists	Other Resources
5.2.1 Authorised shares and adequate consideration	Notice of adoption of special resolution in terms of section 60 of the Companies Act 71 of 2008		
	Board written resolution for issue of shares		
	Board minute for the issue of shares		
	Shareholders' retroactive written resolution for issue of shares		
	Shareholders' retroactive minute for issue of shares		



5. Issue of shares				5. Issue of shares			
5.2 Required approvals			5.2 Required approvals				
Guidance Note	Forms & Precedents	Checklists	Other Resources	Guidance Note	Forms & Precedents	Checklists	Other Resources
5.2.2 Shareholder approval relating to the issue of shares	Shareholders' waiver of pre-emptive rights on issue of shares			5.2.3 Financial assistance relating to the issue of shares	Shareholders' written resolution in terms of section 45 approving issue of shares		
	Shareholders' special written resolution approving issue of shares				Board minute in terms of section 45 approving issue of shares		
	Shareholders' minute of special resolution approving issue of shares				Board written resolution in terms of section 45 approving issue of shares		
	Shareholders' minute of special written resolution approving restricted matter in issue of charac			5.2.4 Options and convertible securities	Board minute to issue option and subsequent approval of issue of shares		
issue of shares Shareholders' special written resolution approving restricted matter in issue of shares Shareholders' written pre- approval of restricted matter is issue of characa			Board written resolution to issue option and subsequent approval of issue of shares Board minute to issue				
	Shareholders' written pre-				convertible securities and subsequent approval of issue of shares		
	in issue of shares Notice of adoption of special resolution in terms of section 60 of the Companies Act 71 of 2008	5.2.5 Takeover regulations:	Board written resolution to issue convertible securities and subsequent approval of issue of shares				
5.2.3 Financial assistance	Shareholders' minute			affected transactions			
elating to the issue of shares	in terms of section 44 approving issue of shares			5.2.6 Takeover regulations: mandatory offers			
	Shareholders' written resolution in terms of section			5.2.7 JSE listing requirements			
	44 approving issue of shares			5.2.8 Directors' conflict of interest	Shareholders' minute ratifying director actions in		
Notice of adoption of special resolution in terms of section 60 of the Companies Act 71 of 2008 Board minute in terms of section 44 approving issue of shares			issue of shares Shareholders' written resolution ratifying director				
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	Board written resolution in terms of section 44 approving issue of shares			5.2.9 Competition, exchange	60 of the Companies Act 71 of 2008		
	Shareholders' minute in terms of section 45 approving issue of shares			control and other approvals	11		1



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### 5. Issue of shares

#### 5.3 Subscription agreement

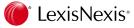
Guidance Note	Forms & Precedents	Checklists	Other Resources
5.3.1 Essential terms of a	Basic subscription agreement		
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5.3.2 Conditions precedent in a subscription agreement			
5.3.3 Warranties and indemnities in a subscription agreement			
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#### 6.1 An overview of share buybacks

Guidance Note	Forms & Precedents	Checklists	Other Resources
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6.1.2 Acting for the purchasing company in a share buyback			Table of key issues
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6.2 Required approval	s		
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6. Buyback of shares				
6.2 Required approva	ls			
Guidance Note	Forms & Precedents	Checklists	Other Resources	
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	Shareholders' minute in terms of section 45 approving buyback of shares			
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	Notice of adoption of special resolution in terms of section 60 of the Companies Act 71 of 2008			
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### 6. Buyback of shares

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Guidance Note	Forms & Precedents	Checklists	Other Resources
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### 7. Amalgamation or merger

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Guidance Note	Forms & Precedents	Checklists	Other Resources
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 shareholders' agreement
 Shareholders agreement

 8.3.2 Finance arrangements
 Shareholders agreement

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 Shareholders agreement

 8.3.4 Come along
 Image: Come along

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 Image: Come along

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 Image: Come along

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 Image: Come along

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 Image: Come along

 8.3.9 Distributions
 Image: Come along

 8.3.10 Restricted matters
 Image: Come along

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9.2 Required approva	9.2 Required approvals						
Guidance Note	Forms & Precedents	Checklists	Other Resources				
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10. Restructuring in business rescue					
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