

February 03, 2023

WHAT YOU NEED TO KNOW ABOUT DISCLOSURE SCHEDULES

Disclosure schedules are more than just a helpful medium for parties to provide and receive information regarding details of a seller's business. Disclosures made or omitted by a seller in disclosure schedules have legal and practical consequences for both the seller and the buyer. From a seller's perspective, failure to disclose material information to the buyer could result in money damages or worse, and from a buyer's perspective, these schedules can alert buyers to potential red flags about the business and give the buyer an opportunity to negotiate additional protections and concessions.

What Are Disclosure Schedules?

Disclosure schedules are critical to a purchase agreement in an M&A transaction. Disclosure schedules are attached to the purchase agreement to supplement, qualify, and disclose exceptions to representations and warranties made in the purchase agreement. Although it is the due diligence process that largely acts as the opportunity for the buyer to obtain information about the inner workings of the seller's business, the disclosure schedules officially memorialize key aspects of the business in a legally binding way. For example, a disclosure schedule could be used to supplement a representation addressing material contracts of the seller by listing all material contracts and providing key details regarding those contracts. Alternatively, a disclosure schedule could be used to qualify a warranty. For example, a purchase agreement might warrant that, except as provided by a certain disclosure schedule, the seller does not have any outstanding tax liability. The seller discloses any known outstanding tax liabilities on that schedule to memorialize the disclosure and assure all parties are aware of the warranty exception. Thus, disclosure schedules give buyers vital details about the operations, assets, and liabilities of the entity it seeks to acquire and gives the seller the space to disclose those details in order to protect itself.

Why Are Disclosure Schedules Important?

Disclosure Schedules matter because they supplement and provide exceptions to the representations and warranties which themselves are linked to potential liability to the parties. Revisiting the example above, the seller could warrant in the purchase agreement that it did not have any outstanding tax liability, except as provided on a certain disclosure schedule. If the seller then properly listed any outstanding tax liabilities on the disclosure schedule, the seller would not be in breach of the warranty. If, however, the seller did not include that caveat to the warranty or included the caveat but failed to properly list all outstanding tax liabilities, the seller could be in breach of the warranty. Disclosure schedules are thus a powerful tool to protect a seller but only if properly

utilized. From a buyer's perspective, disclosure schedules give the buyer a level of detail about the seller's business that cannot practically be included in the purchase agreement. Moreover, as discussed above, disclosure schedules give buyers grounds for recourse in the event that a seller omits or misrepresents information in connection with representations and warranties.

Common Pitfalls and Helpful Considerations

Many clients have the understandable misapprehension that information disclosed during due diligence does not need to also be included in the disclosure schedules. This is not the case—these schedules provide the crucial and final written record of key disclosed information. Accordingly, preparing these schedules can be time consuming and detail intensive, but it is vitally important. Common mistakes include providing incomplete or outdated information, failing to coordinate with appropriate employees or others that could have relevant information, failing to understand the full scope of the representation or warranty, or simply overlooking responsive information. To avoid these pitfalls, it is helpful to work with experienced counsel in order to understand the purpose, scope, and implications of disclosure schedules and properly prepare them.

JAH Can Help

The **attorneys at JAH** are available to counsel you on all aspects of your merger, acquisition, sale, or disposition, including the preparation of disclosure schedules. **Our corporate attorneys** specialize in navigating the details with precision and tackling other complications surrounding M&A deals so that you don't have to. **[Click here to contact a member of our Corporate Group if you are in need of assistance.](#)**

*Please note that the above JAH article does not constitute legal advice nor does it create an attorney-client relationship. Should you be in need of legal services regarding a particular matter, please reach out directly to one of our attorneys. **[Click here for our full website disclaimer.](#)***