

Share subscription agreement

Date: [date]

Between:

Shareholder 1: [name]

Shareholder 2: [name]

Shareholder 3: [name]

Shareholder 4: [name]

And [Company name]

And [Buyer name]

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Dated: [date]

This agreement is made between:

[Company name] number [company number], whose registered office is []
] “ ”

[full name 1]

of [full address] (a Shareholder)

[full name 2]

of [full address] (a Shareholder)

[full name 3]

of [full address] (a Shareholder)

[full name 4]

of [full address] (a Shareholder)

[full name 5]

of [full address] (the “ Subscriber”)

Background

- A. [full name 5] has agreed with the Shareholders to lend the Company the sum of £ [5,000,000]. The terms of .
- B. The parties have agreed that the Subscriber shall subscribe for [4560] .
- C. The Company joins in this agreement solely to provide a receipt for .

Terms of agreement

1. Definitions

So far as the context permits, the following words
:

“Accountants” means the firm of [name of Accountants]

“Accounts”	means the audited profit and loss account and balance sheet as at the Last Year End of .
“Completion Date”	means today or whatever future date on which .
“Confidential Information”	means all information about the parties to this agreement, including any information which may give a commercially competitive advantage to any other person. It does not include information that is reasonably necessary to disclose to a customer or other person
“Customer Information”	means : information about staff and their personal contact information, data or information relating to product plans, marketing strategies, finance, operations, customer relationships, customer profiles, sales estimates, business plans, , , ; It includes information about the Intellectual Property and - .
“Deficiency”	means the difference between the Minimum Net Profit and the Net Profit as certified .
“Disclosure Letter”	means the disclosure letter of the same date as this agreement .
“Domain Names”	means the Internet domain names used by the Company in connection with its Website or in .
“First Year Accounts”	means the audited consolidated balance sheet

of the Company at [first date after today to which annual accounts and balance sheet are

].

“FRS”

means a financial reporting standard or statement of standard accounting practice

“ICTA”

means the Income and Corporation Taxes Act 1988.

"Intellectual Property"

means intellectual property of every sort, whether or not registered or registrable in any country, including intellectual property of kinds coming into existence after today; and including, among others, patents, trade marks, unregistered marks, designs, copyrights, software, domain names, discoveries, know-

“Know-how”

means scientific or technical information, and other procedures and ways of working and organising

“Last Year End”

means [date] (being the date to which)

“Minimum Net Profit”

means the sum of £ [amount]

“Net Profit”

means the consolidated profit (less losses) of the Company as shown

- :
- a) after deducting all expenses and depreciation;
 - b) after adding added back all payments, bonuses, options and pensions and any ;
 - c) after adding back sums for transactions not at arm's

	;
	d) without taking account of capital profits or losses;
	e) before deducting tax on that profit.
“New Shares”	means new ordinary shares of £ 1
	,
	.
“Price”	means £ [15. 00]
	.
“Properties”	means the land and buildings owned and /
	,
	2 .
“Shareholder”	means every person
	.
“Subscription Price	means £10
	.
“Subscription Money”	means money paid by
	.
“Trustee”	means a
	.
“Warranties”	means the warranties and undertakings of
	[6 7]
	[1].
“Websites”	means the websites of all the Company and all data of the Company
	,
	“ ”,
	,
	.

2. Interpretation

In this agreement unless the context otherwise requires:

- 2.1 A reference to one gender shall include any or
.
- 2.2 A reference to a person includes a ,
.
- 2.3 In connection with any benefit given by ,
 , .
- 2.4 A reference to a person includes reference to that person's successors,
legal representatives,
 , ,
 - .
- 2.5 A reference to a paragraph or schedule is to
 .
- 2.6 The headings to the paragraphs and schedules ()
 .
- 2.7 Any agreement by any party not to do or
 ;
- 2.8 [\[except where stated otherwise\]](#),
 ;
- 2.9 A reference to the knowledge, information, belief or awareness
 , ,
 .
- 2.10 The words "without limitation" shall
 " " " "
 .
- 2.11 A reference to an act or
 .

2.12 All money sums mentioned in this agreement are calculated net of

2.13 This agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement

3. Agreement for subscription

3.1 Subject to , :

3.2 subscribe for [50,000]

3.3 lend to the Company the sum of £ [5]

3.4 The Subscription Money shall be paid as to £ [300 , 000]
£ [200 , 000]
[].

3.5 The Company acknowledges receipt of the sum of £ [300 , 000] []
].

3.6 All the Shareholders certify that the necessary arrangements have been made for the

4. Calculation of minimum Net Profit

4.1 After completion of this agreement the Accountants shall be instructed jointly by the Shareholders and []

4.2 The cost of the audit and certification shall be paid as

OR

4.3 The cost of the

4.4 The parties shall promptly provide to the

4.5 If the First Year Accounts show a Deficiency,

[3]

4.6 Any reduction in the Purchase Price

4.7 Any reduction in the Subscription

[,].

4.8 If the Subscription Price is reduced on account of a Deficiency,

5. Completion and delivery of documents

5.1 Completion of this transaction

5.2 The Shareholders shall deliver to the Subscriber:

5.2.1 a share certificate for the New Shares.

5.2.2 letters of resignation as directors by [name directors] with a written acknowledgment from

5.2.3 [the resignation

];

5.2.4 a list of all user names and

(Only if control is to be changed)

5.2.5 the statutory books

5.2.6 the certificate of incorporation of the Company;

5.2.7 the title

5.2.8 the appropriate forms to be

5.2.9 [Employment contracts / service agreements], signed in escrow,

[1] [2]
[3]
;

5.2.10 The minutes of meetings

[name] []
;

transfer forms
;

the resignations of [name] [] []

6. Warranties applicability and limitation

6.1 None of

6.2 Each of the Shareholders undertakes, in relation to any Warranty

6.3 Each of the Warranties is without prejudice to any other Warranty

6.4 The rights and remedies of the Subscriber in

6.5 Before the Subscriber is entitled to deduct

1 , :

6.5.1 provide full particulars

6.5.2 a barrister's opinion

6.6 [Each Shareholder / Every party to this agreement] waives

6.7 The Subscriber may make any agreement with one or more

6.8 The Subscriber acknowledges that it has not

6.9 The Subscriber undertakes to use his best endeavours to [operate /
manage / /]

6.10 If and only if any warranty cannot be generally referable to

7. Base Warranties

The Shareholders (except)
:

7.1 (If any Shareholder is a company) [
];

7.2 after completion of this ,
.

7.3 except as disclosed in the Disclosure Letter, all
; , , , ;

7.4 the contents of the Disclosure Letter are true
;
;

7.5 The warranties in
.

8. Shareholders' protection

8.1 Any claim against any Shareholder, in relation to the ,
;
.

8.2 No claim shall be valid unless made in writing, before the expiry of [
]
; , ,
;
.

8.3 If proceedings in respect of a Warranty claim have not been issued and
served [] ,
.

8.4 No single Shareholder can be liable for any Warranty claim unless his
;

, £ [5 , 000].

8.5 In the calculation of any Warranty claim or other payment

8.6 In any event, the

£ [20 , 000]

9. Miscellaneous matters

9.1 No amendment or variation to this agreement

9.2 The parties acknowledge and agree that this

9.3 Unless otherwise stated in this agreement, all expenses in connection

9.4 So far as any time,

9.5 If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated

9.6 Any obligation in this agreement

9.7 No public announcement shall be made

9.8 If, within three years of the Completion Date, any of the New Shares shall be sold or

9.9 No failure or delay by any party to exercise any right,

9.10 The parties agree that

9.11 Any communication to be served on either of the parties by

It shall be deemed to have been delivered:

if delivered :

;

if sent by post : 72

;

If sent by : 24

;

If sent by e-mail to the address from which the receiving party
has last sent e-mail: 24

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]

9.12 In the event of a dispute between the parties to this agreement,

9.13 This agreement does not give any right

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1999

9.14 In the event of any conflict between any term of this agreement and the

9.15 This agreement may be executed in multiple counterparts

9.16 The validity, construction and performance of this agreement shall be governed by the laws [/ /].
[/ /]

Signed by [name] a director of ,

Signed by [personal name], a Shareholder

Witness to signature:

Name:

Address:

Signed by [personal name], a Shareholder

Witness to signature:

Name:

Address:

Signed by [personal name], a Shareholder

Witness to signature:

Name:

Address:

Signed by [personal name], a Shareholder

Witness to signature:

Name:

Address:

Signed by [personal name], the Subscriber

Witness to signature:

Name:

Address:

Schedule 1 - The Warranties

Shareholder beware - Net Lawman have marked in red those warranties which, in our experience, best protect a Subscriber and which correspondingly may most damage a Shareholder. The Shareholder should consider qualifying or deleting them. A Subscriber should sleep well if they remain in place!

Change red to black and delete this notice before using the document!

General

1. All of the information and .
2. All information given by the Shareholders or their solicitors or accountants , , , , .
3. There are no facts in relation to , .
4. There are no facts in relation to the Company, , , .
5. No investigations or enquiries by, or on behalf , .
6. The Company has at all times complied with then current practice recommended by any department , , .

Effect of this agreement

7. The Shareholders have no knowledge, information

:

- 7.1. any arrangement may be terminated or changed;

7.2. any supplier of the Company will

;

7.3. any client or customer of the Company will cease

;

7.4. the Company will lose

;

7.5. any officer or

.

8. Compliance with

:

8.1. conflict with or change the nature

,

,

;

8.2. conflict with the

;

8.3. result in any increase in the indebtedness of

.

Company structure and operation

9. None of the Shareholders has any right or interest, directly or indirectly, in any business (other than those of the)

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5 %

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10. The directors of the Company are:

[list full names]

and there are no shadow directors.

11. Full details of any place outside the United Kingdom

,

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12. There are no agreements or arrangements in force which provide for the

,

13. No share has been issued or allotted, or

14. All returns required to be filed with the Registrar of Companies,

15. All charges in favour

16. The Company has in its possession:

16.1. all documents of title relating to its assets;

16.2. an executed copy

16.3.

Accounts

17.

18.

19. The Accounts:

19.1.

19.2.

2006 ,

19.3.

19.4.

20.

:

its purchase price;

its production cost;

its net realisable value.

21.

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22.

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23. Since the Last Year End:

23.1.

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23.2.

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23.3.

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Cash flow

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Taxation

29. Since the Last Year End:

29.1.

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29.2.

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29.2.1.

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29.2.2. ()

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2001 , . 177 ()
). . 183 ()

35.

2001 , . 85 ()
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36. . 770 (
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Bank and other borrowing

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42. , ,

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Assets

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51.

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51.1. are in its possession and control;

51.2. ,
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51.3. ;

51.4. ;

51.5. are required to operate the business.

52.

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Trading and contracts

53.

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54.

- - , / ,
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58. Since the Last Year End:

58.1.

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58.2.

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58.3.

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58.4.

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64. No subsisting contract:

64.1. is outside the normal course of business;

64.2.

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64.3.

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64.4.

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64.5.

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64.6.

[10] %

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65.

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65.1.

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65.2. no payments due to the Company are overdue;

65.3. all contracts comply with the relevant law;

65.4.

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66.

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69. As to the Company:

69.1.

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69.2.

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Business matters

71.

72.

73.

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75.

76.

Litigation and regulation

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Properties - all

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96.

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96.1.

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96.2.

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96.3. there are no rent reviews in progress.

97.

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100.

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101.

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102.

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103.

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104.

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104.1. water;

104.2. drainage;

104.3. electricity;

104.4. gas;

104.5. telecommunications.

105.

Properties let by the Company

106.

2 .

107.

108.

:

108.1. the name and address of the tenant;

108.2. the address of the Property;

108.3.

;

108.4. the rent;

108.5.

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108.6.

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108.7.

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108.8.

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108.9.

108.10. any unusual provisions.

108.11.

109.

Employment

110.

111.

112.

113.

114.

115.

116. The Company is involved in no employment dispute.

Pensions

117.

3 (“

”)

“

. 612

118.

118.1. copies of the trust deeds;

118.2. the latest actuarial report;

118.3. ,

119.

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120.

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Insurance

121.

122.

123.

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124.

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125.

126.

Intellectual Property

127.

128.

129.

130.

131.

132.

133.

134.

Internet and Domain names

135.

135.1. the name;

135.2. name and contact information of registrant;

135.3. tag holder name, land address and website;

135.4. date to which the name is registered;

136.

137.

138.

139. ,
- ;
140. [].
141. .
142. , :
- 142.1. ;
- 142.2. technical, customer and client support services;
- 142.3. ;
- 142.4. an email service provider.
143. .
- 12
144. ,
- .

Schedule 2 - Short particulars of the real properties

Part 1: Freehold properties

2 :

Part 3: Particulars of tenancies

Schedule 3 - Pension arrangements

[

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Explanatory Notes:

Share subscription agreement

General notes

1. What is the deal?

This document covers a deal whereby the subscriber subscribes to new shares. The structure of your deal will be agreed only after extensive consideration of the effects in tax and control of the company. The permutations are endless, so we have not tried to give you examples. Where we have inserted a figure, we have done so only to tell you that a

So far as different documents are inter-reliant, all documents should be exchanged as a pack. Do not complete one part of the agreement and leave some other part outstanding. Specifically, if a loan is involved you should record it properly in a loan agreement. The directors and members' meetings should be minuted in accordance with the requirements of

2. Tough or tender?

This agreement has been drawn to be tough on the existing shareholders. If your counter party is "friendly" he will certainly wish to see many of these points deleted. It is up to you

How you want to use a document depends not only on your business philosophy but also on your commercial strength. You cannot bully a rich counter party into accepting the terms you want, nor

We give thought to the question of who is our customer and we draw documents to support that person. But we sometimes make provision for matters which your counter party will insist on. We are trying to make your life easy, not saddle you with arguments when you first start to negotiate. Other documents,

There is a great psychological advantage in “presenting” the document for a deal. Your counter party may want additions, deletions and conditions, but he is still working on your document. It is rather like playing a new board game where the referee insists on the rules you have the only rule book. It is very rare indeed for a counter party to say “Sorry, I do not

We also consider whether your counter party is here in your jurisdiction or in some other. Our documents are based on the law where you are. However, there are surprisingly few occasions where fundamental issue arise from an international element.

But remember, the best way to avoid cash problems is to do a deal where you receive

3. More information

If you are not a professional lawyer or accountant and you have not yet read the Net Lawman articles on selling a limited company, we strongly recommend

4. More documents?

As you bought this document, we reminded you that you may also need

- loan agreement for subscriber if he is also ;
- shareholders agreement;
- new directors’ service contracts;
- company admin documents to record events and update ;
- example disclosure letter, based on these warranties;

You can buy all of these on the

5. Complete the agreement now

This agreement has been drawn for completion immediately “as signed”. Signing completes the deal. The parties must then immediately do whatever else they have promised in order to complete the process. It is perfectly possible to complete at a later date than the agreement is signed. However,

problems then arise with control of the company in the meantime and the possibility that anything may change between contract and completion. The Net Lawman recommended route is therefore

Paragraph specific notes

Notes following the numbered paragraphs

1. Definitions

You will find it easiest to edit the

First Year Accounts: the sale of a company rarely falls at the perfect time to tie in with prompt preparation of annual accounts. A subscriber must either insist on new accounts soon after completion, or chase for completion

“Net Profit” must be considered very carefully, as it is the base lines for calculation of a shortfall. The important point is to make the calculation the same for pre and

If the same accountants conduct the audits, that should present no problem. If the subscriber is likely to appoint new accountants, he would be wise to obtain a written statement from the Shareholders’ accountants setting out the method of

Provision has been made for the proposition that one or more people may hold shares as trustees. The subscriber should make certain that any such person is a disinterested trustee. It could be that a major Shareholder has placed some of shares in a family trust and he remains a trustee, or that some other person is

().

2. Interpretation

A number of provisions, each of which has application at one of more points later

3. Agreement for subscription

This is the basic deal. Edit only

The issue of new shares will require evidence of proper authority in the form of minutes of an EGM of the Company, in respect of which proper notice has been given, and in which the proposed issue is put to those present as a special resolution, which is

75 %

100 %

If the subscriber (sensibly) requires a shareholders' agreement, the Company may be a party to

4. Calculation of minimum Net Profit

The template document provides for the possibility of a "claw back" from the Shareholders of some part of the purchase Price in the event of the Company failing to produce expected profits. Clearly, this provision is inappropriate if the subscriber is buying only a small

5. Completion and delivery of documents

We have included here only the documents whose form and content are well known in advance.

- 5.1. Share certificates are documents of title, but if not available (lost or never),
- 5.2. The subscriber will wish to avoid any claim for compensation by a former director. But the directors are not (necessarily) Shareholders, so it is important that they are bound by the proposition that they have no “ ” ,
- 5.3. This provides for any key people to remain as employees. Their new contracts would be dated

6. Warranties applicability and limitation

If you have not previously used warranties, we urge you to read the complete explanation in plain English at <http://www.netlawman.co.uk/info/selling-your-business-part1.php>

- 6.1. Prevents a Shareholder from saying later “Well, I was told this by George, who was acting as a director of the ,
- .”
- 6.2. In other words, the subscriber can do a deal or

7. Base Warranties

“Joint and several liability” means that all the Shareholders are jointly liable. No one of them can avoid liability to the subscriber by saying he was personally not to be blamed. This means that the subscriber can (and would) claim against the wealthier Shareholders if he had a claim at all, and not against those particularly involved in the warranty breach. To avoid this situation, the Shareholders should prepare a simple

A company may sign up to a deal, by the hand of its
(),
- .

Unlike the warranties in Schedule 1, these are

. (-
!)

8. Shareholders' protection

This paragraph is most important to the Shareholders as it caps their liability.
How this

9. Miscellaneous matters

A number of special points. We have identified each of these as

The Shareholders' signatures

If no more than say, ten Shareholders, then all should sign. There are no rules
on this. If more than say ,

No further notes on numbered paragraphs

Notes on Schedule 1: Warranties

Warranties: a subscriber has no particular “right”

1 .

These warranties have been draw to provide as large a “menu” as possible to a prospective subscriber. Some are very broadly drawn and others very specifically. For maximum protection of a ,

Additional warranties may ,

For Shareholders, warranties may be

“ ” “ ”

Warranties relating to accounts and tax are usually passed to the Company accountants with an instruction such : “

”

- 9 Competing business: this warranty has been marked in red because all the Shareholders are liable even if only one of their number has such a competing interest. That one may be a very small Shareholder to whom the agreement is less important than his plans to compete, leaving all other Shareholders to bear the cost of any claim by the subscriber.
- 10 A shadow director is someone who has the power to affect the direction of a company even though he is not technically a director. An example is a lender under terms whereby the borrower must act in a particular way in given circumstances. A shadow director may be liable to third parties for loss caused by his act or omission in just the same way as a formally appointed director.

15 A loan (or some other borrowing) by a company are registrable at Companies House and may be voidable if unregistered. However, it is the responsibility of the borrower to register, so registration is sometimes overlooked! This warranty reminds the Shareholders that loans to third party companies (not to the Company) must be registered to be protected.

19.2

and The law changes too.

19.3 The Shareholders should qualify this warranty before attempting to list exclusions in the Disclosure Letter.

64 Contracts may be oral or in writing or inferred from a course of conduct. Most Shareholders will fail to satisfy this warranty precisely. Nonetheless, a subscriber, with little knowledge of day to day matters in the Company, may reasonably ask for this warranty.

69 The percentage figure will obviously vary from one company to another. The subscriber will know what he requires in this warranty.

70 This is another warranty where the body of the Shareholders may be ignorant of some “private deal” struck by just one of the Shareholders, yet are bound to compensate the subscriber for any loss to the Company.

End of notes