Select the right professional services firm – one with the industry depth, knowledge, and insight to help clients address their most pressing issues.

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KPMG’s post-acquisition disputes services

KPMG’s Forensic team provides accounting, economic, loss quantification and valuation-related advice and opinions as well as document disclosure services. Our objective assessments help to resolve disputes in arbitration, litigation, insurance claims and transactions. We serve as consultants, expert witnesses, arbitrators and independent accountant experts. We also support parties in negotiations and mediations.

When disputes arise, it is important to gather the relevant facts, isolate and understand the key business and financial issues as soon as possible. Disputes can involve complex economic, financial and technical issues as well as multiple client locations and applicable laws and standards. Parties with an understanding of the issues can make better decisions when responding to disputes.

KPMG’s Dispute Advisory Services team assists litigants and their legal counsel with potentially costly and disruptive disputes and litigation. KPMG delivers a wide range of services to assist with the resolution of disputes including:

- Forensic accounting investigations
- Early case assessment
- Document and electronic record disclosure
- Data analysis
- Corporate intelligence
- Valuations
- Economic analysis
- Accounting and auditing expertise
- Damages assessment
- Advice on negotiation strategy
- Expert witness testimony
- Independent expert determination

Disputes arising from acquisitions and disposals, as well as other forms of commercial agreements, have become increasingly common and complex in today’s marketplace.

Because of the complexities, differing interpretations of accounting principles, and the lack of specificity around the financial provisions in many sale and purchase agreements, buyers and sellers often find themselves in dispute over these provisions (such as final adjustments to consideration and earn-out provisions). Additionally, inadequate up-front due diligence can often lead to unforeseen obligations or exposures that may not have been contemplated by the parties, which could result in an unexpected reduction to consideration or a potential warranty claim.
Post-completion acquisition related dispute advisory services

01 Preparation or review of completion accounts
- Assistance in preparing completion accounts
- Calculation of purchase price adjustments
- Review of closing accounts to ensure consistency with the accounting principles set forth under the agreement

02 Dispute notice and good faith negotiations
- Review of draft completion accounts/earn-out statement
- Assistance with preparing any objection or dispute notice
- Assistance with strategy for good faith negotiations
- Drafting position statements on the disputed items
- Advising on discovery issues and access to books and records

03 Dispute resolution process
- Advising on the selection of the independent accountant or being that accountant
- Assisting as advocate in presenting the position to the independent accountant
- Acting as the independent expert witness
- Providing independent determination or arbiter services
- Assisting with international arbitration or local courts and arbitrations
Completion accounts disputes

KPMG advises on the preparation or review of completion accounts and dispute or objection notices, provides support in settlement negotiations, and helps to present a client’s case before an independent accountant/determiner, both orally and in writing.

Some questions to consider:

- Is there a likelihood of a dispute over one or more of the balance sheet areas in the completion accounts?
- Do you think that you have paid too much for a business?
- Have you received a dispute or objection notice from the other party?
- Are you finding it difficult to negotiate the resolution of disputed items with the other party?
- Have settlement negotiations broken down?
- Have you or the other party invoked the expert determination clause in a sale and purchase agreement?
KPMG Forensic can help:

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<th>You may need</th>
<th>We provide</th>
<th>Potential benefits to you</th>
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<tr>
<td>Assistance in preparing or reviewing completion statements.</td>
<td>Assessment of whether the completion statements have been prepared in accordance with the provisions in the sale and purchase agreement.</td>
<td>Identification of adjustments that could impact the value of consideration paid by the buyer or received by the seller.</td>
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<td>Assistance in preparing or reviewing a dispute notice.</td>
<td>Identification of items which can be taken forward for determination by an independent accountant.</td>
<td>Awareness of the strengths and weaknesses of your case and an ability to negotiate from a position of strength.</td>
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<tr>
<td>Assistance in settlement negotiations.</td>
<td>Assessment of the strength of your position. Identification of a likely range for settlement.</td>
<td>A fair and satisfactory result and faster resolution of a dispute, saving time and money.</td>
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<td>Advice on selecting an independent accountant and negotiating terms of reference.</td>
<td>Help in sourcing an experienced independent accountant, negotiating timetables and the process.</td>
<td>A qualified expert with a suitable timetable and terms of engagement to determine your case.</td>
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<tr>
<td>Assistance in the preparation of submissions, both oral and written, to an independent accountant.</td>
<td>A professionally prepared report or presentation which explains your position effectively and forcefully.</td>
<td>Credible and professional presentation of your case by experienced forensic accountants.</td>
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<td>The appointment of an independent accountant to determine or arbitrate the matters in dispute.</td>
<td>Independent accountants who are experienced determiners and arbitrators (see page 8).</td>
<td>An objective determination or award settling the dispute.</td>
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A KPMG professional can advise you or your client in a warranty dispute and act as an expert witness where appropriate. Warranty claims arise when a purchaser discovers after completion a difference between the acquired business as warranted and its condition at the date the vendor gave the warranties, subject to any disclosures.

Some questions to consider:

- As a purchaser, are you concerned that financial, commercial or accounting information which has come to light post-acquisition would have affected the purchase price if you had been aware of it beforehand?
- Are you unsure whether a financial or accounting warranty has been breached?
- Are you facing a warranty claim which is diverting management’s time from running your business?
- Do you need help to quantify the amount of a warranty claim or to evaluate, document and present your position in a warranty dispute?
- Are you in need of a credible independent expert witness opinion to help resolve a warranty dispute?
KPMG Forensic can help:

You may need

- Dispute advisory services in presenting or defending a claim for breach of financial or accounting warranties.
- Quantification of damages, an evaluation of the likely outcome of the dispute, and assistance in negotiations.
- An impartial assessment of the warranty claim and strong expert testimony.
- A high quality realistic, written report setting out the factual details and arguments concerning the warranty claim.

We provide

- Wide-ranging industry focused tactical advice and experience in the dispute process.
- Efficient project management, document control and disclosure management.
- Objective opinions on the strengths and weaknesses of your case.
- Robust and credible expert witnesses with considerable experience of cross-examination.
- Reports drafted with precision and clarity, readily comprehensible to the non-accountant.

Potential benefits to you

- An accurate assessment of your position as soon as possible.
- A realistic view of the reasonable settlement range to allow you to negotiate from an informed position.
- A credible presentation of the evidence by a reputable expert witness.
- Clear and objective reports that provide a powerful presentation of facts, opinions and conclusions.
Independent accountant expert determinations

KPMG professionals have been appointed on many occasions as an independent accountant to carry out expert determinations. Our team is represented on the Institute of Chartered Accountants in England and Wales (ICAEW) list of independent accountants.

As with other forms of alternative dispute resolution, the benefits of expert determinations lie in their greater speed and lower costs in comparison to litigation or arbitration. We understand that, in order for these to be realised, the process must be run efficiently by a knowledgeable and experienced individual who understands not only the process to be followed but also the industry sector practices relevant to the dispute.
Our approach

Provide clarity around what is in dispute before finalising our appointment, thus significantly reducing the risk that litigation is required in order for the determination process to be concluded.

Control the process efficiently, including management of the timetable and circulation of submissions. This helps the dispute to be resolved in a timely manner, with neither party able to gain an advantage through the making of unsolicited submissions.

Stay within the scope of the terms of the determination. A great deal of trust is placed in an independent accountant due to the final and binding nature of the determination. Where independent accountants stray beyond their remit the integrity and validity of the determination may be compromised.

Make use of industry expertise where appropriate. Our global network of professionals holds a huge amount of industry specific understanding and experience, which we can access as necessary for an in-depth, focused understanding of the key aspects of the dispute.

Focus on the contractual basis for the dispute as the basis for a price adjustment is driven by the wording of the sale and purchase agreement. Advise on the accounting aspects of numerous sale and purchase agreements each year, providing us with a thorough understanding of price adjustment mechanisms and how these work in practice.

Give careful consideration to the parties’ submissions, meeting the independent accountant’s critical obligation to understand the parties’ positions in respect of each disputed item, consider what evidence is admissible and assess that evidence objectively.

Arrive at a well thought out and robust determination. KPMG adopts a conscientious and professional approach to deciding the outcome of the dispute, specifying the basis for the decision if requested.
**Case studies**

**01 Accounting expert determination: Mining company**

**Client Challenge**
The parties wanted a swift expert determination to resolve the dispute. Given that this was an independent determination there was virtually no interaction between the two parties and communication had to be managed simultaneously with both parties in an independent manner.

The matters in dispute included the appropriateness of certain provisions and impairments made against assets in the business, interpretation of clauses specifying certain accounting treatment to be applied in the completion statements, with applicable tax rates to be applied.

**KPMG Response**
There were 14 points of dispute and the work involved interpreting the sale and purchase agreement to determine relevant facts. Both sides of each argument needed to be considered and research needed to be done into relevant International Financial Reporting Standards (IFRS) and their application to the case at hand.

After the initial submissions by both parties, numerous questions remained that needed to be answered. This made delivering a swift determination more challenging and was only achieved by calling upon our significant past experience of running such processes.

KPMG determined the accounting interpretation and application of the relevant clauses in the sale and purchase agreement governing the basis of preparation of the completion statements used to determine the final purchase price.

**Benefits to Client**
The clients benefitted from KPMG’s in-depth knowledge in expert determinations and were able to obtain a swift resolution to the dispute.
Post-deal disputes: Automotive parts manufacturer

Client Challenge
The clients, the ex-shareholders of an automotive manufacturing business, sold the business for £30 million to an overseas buyer. The clients were advised by KPMG’s Corporate Finance team on the deal.
As part of the deal, £4 million of the consideration was deferred until around 15 months after completion.
The buyer attempted to avoid paying the entire £4 million, based on its interpretation of the Sale and Purchase agreement (‘SPA’).

In the first instance the SPA provided for the clients to submit an objection notice setting out their reasons for disputing the buyer’s calculation of the deferred consideration. The SPA also provided for an Independent Accountant’s determination in the event the parties were unable to resolve the disputed items in the objection notice.
The clients faced an uncertain and unpredictable timeline including a requirement to make formal written submissions to the Independent Accountant.

KPMG Response
KPMG worked quickly to respond to the needs of the clients and to gain an understanding of potential items in dispute.
Per the sale and purchase agreement, KPMG prepared a formal objection notice on behalf of the clients which was delivered to the buyer; this notice contained significant adjustments resulting in the clients disputing the entire £4 million balance. We also assisted the clients in negotiations with the buyer.
As the parties were unable to resolve the matters in dispute, KPMG advised the clients on next steps, including the appointment of an Independent Accountant to resolve the dispute.
KPMG assisted the clients with detailed submissions to the Independent Accountant which included two rounds of submissions and responding to the Independent Accountant’s questions.

Benefits to Client
The final Determination of the Independent Accountant was an award of over 95% of the £4 million to our clients.
KPMG responded rapidly to the clients’ request for a review of the records and to meet with key personnel to gather the best available data to support a potential dispute. Using its in-depth experience of post-deal disputes, KPMG was able to advise the clients on the most appropriate next steps and alternative technical and tactical responses. KPMG worked closely with the clients to present a compelling case to the Independent Accountant based on the terms of the SPA.
Case studies

Warranty claim: Media company

Client Challenge
The Buyer acquired a portfolio of 5 divisions for £140 million.
There was limited financial information available and due diligence performed prior to the acquisition.
Post-acquisition, it was identified that one of the acquired divisions had a fundamentally flawed control environment resulting in overstated financials.
The Seller had warranted the material accuracy of the EBITDA presented in the Data Book.
The Buyer made a claim under the financial warranties in the Sale and Purchase agreement (‘SPA’) for circa £10 million.

KPMG Response
KPMG reviewed the Buyer’s approach to the financial restatement exercise required to restate EBITDA.
As part of the work, KPMG also reviewed the Buyer’s quantification of loss calculation methodology.
KPMG provided additional general accounting advice in relation to the various claim documents submitted to the Seller.

Benefits to Client
KPMG identified a numbers of errors in the restatement exercise and with the methodology used to quantify the loss. Subsequent to our review the claim value stood at circa £17 million.
Our independent review adds weight and credibility to the numbers claimed by the Buyer in any pre litigation negotiations with the Seller.
The client was able to claim the costs in relation to the work carried out by KPMG as part of its warranty claim.
Contact us

For more information, please contact:

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