

Financial Due Diligence, Structure and Checklist: A real-world example

1 Basics & General

1.1 Overview

- 1.1.1 Governance model
- 1.1.2 Board members
- 1.1.3 Group ownership/names
 - 1.1.3.1 Group ownership — overview
 - 1.1.3.2 List of names under which <company> does or has done business
 - 1.1.3.3 Register of members and directors
- 1.1.4 Certificates of Incorporation
 - 1.1.4.1 Certificate of Incorporation of <company>, as amended to date
 - 1.1.4.2 Certificate of Incorporation of <company> engineering, as amended to date
 - 1.1.4.3 Certificate of Incorporation of NewCo, as amended to date
- 1.1.5 Custodians (governing body)
 - 1.1.5.1 Articles of Association for Custodian bodies
 - 1.1.5.2 Certificate of Incorporation for Custodian bodies
- 1.1.6 Bylaws of the Companies, as amended to date
- 1.1.7 Business plan outlines, brochures and reports describing <company> and its products
- 1.1.8 Full business plan, updated version
- 1.1.9 R&D program overview
- 1.1.10 Latest Project Plan/Timescale Draft
- 1.1.11 Management and investment studies or reports of the Companies, including any valuations and appraisals of the Companies or divisions during the last three years
- 1.1.12 Minutes of the last three (3) years of meetings of the Board of Directors of all Companies where applicable and any committees thereof and of the stockholders of the Companies and copies of written consents in lieu of such meetings
- 1.1.13 Annual shareholder's meetings minutes of the Companies for the last three years
- 1.1.14 List of bank accounts with authorized signers
- 1.1.15 Restructuring materials

1.2 Accounting

- 1.2.1 Description of accounting policies and bookkeeping system
- 1.2.2 Letters from the Companies' outside accountants or tax advisors during the last three years regarding the Companies' accounting controls, method of accounting and other procedures.

1.3 Auditing

- 1.3.1 Audited financial statements of the last three years of <company> and <company> engineering

1.3.2 Signed Disclosure of Director's Emoluments, Other Benefits and Related Parties

1.4 Contracts

1.4.1 Schedule of any transactions (including purchase, sale, financing or loan agreements) between the Companies and any shareholder, member, officer, director, employee or affiliate of the Companies (including spouses, children and other relatives of any affiliates thereof), and copies of all documents relating to such transactions.

1.4.2 Terms of purchase orders and other similar contracts and commitments

1.4.3 Any professional (outsourcing) service agreements

1.4.4 Computer (hardware, service bureau, etc.)

1.5 Information Technology

1.5.1 Schedule of all IT assets owned or leased by the Company

1.5.2 List of applications used to run the Company's business and support important internal departments and functions including, but not limited to: (i) human resources; (ii) finance; (iii) customer service; (iv) product provisioning; (v) email / fax / mobile devices; and (vi) intranet

1.5.3 Description of technological infrastructure, including servers, network and data centers, which are used to run the Company's and support important internal departments and functions

1.5.4 Terms/costs of present agreements with suppliers of hardware

1.5.5 Identify who is responsible for software and hardware asset management

1.5.6 Emergency plan exists for the event of a breakdown of the system

2 Capitalization

2.1 Capitalization Table: Spreadsheet with the series and classes of securities authorized and the number of shares or membership interests of each class or series issued and outstanding, including their price

2.2 Dividend policy in the light of different shareholder types (custodians vs. investors)

2.3 Schedule of all issuances of Company securities and grants of any stock options, warrants, convertible securities, restricted stock awards, stock appreciation rights, phantom stock rights, plans, or other commitments to issue securities, listing the holders thereof, the date of grant, the number of shares entitled to be purchased, vesting schedules, exercise price and fair market value on the date of grant as well as any associated stock option, performance, or incentive plans, if not considered in 2.1.

2.4 List of all current security holders (record holder as well as beneficial holder, if they are not the same person or entity), including number and type of securities issued or issuable upon exercise or conversion, if not considered in 2.1.

2.5 All agreements among security holders, or between any security holder and the Company, with respect to voting, grants of proxies, dividend declaration or payment, rights of first offer or first refusal, co-sale or participation rights, observation or information rights.

2.6 All agreements among security holders, or between any security holder and the Company, with respect to the management, ownership or control of the Company.

2.7 Stockholders agreements put or call agreements, voting agreements, stock transfer agreements or other arrangements among the shareholders of the Company

- 2.8 Agreements relating to registration rights, preemptive rights, rights of first refusal or co-sale rights
 - 2.9 Any contract or agreement to which the <Companies> are a party which contains change of control provisions
 - 2.10 Key terms of trust agreements or other documents (if shares are held in fiduciary or entity capacity)
- 3 Finance & Tax
- 3.1 Most recently updated financial model, including financing needs.
 - 3.2 Monthly cash flow projection
 - 3.3 Description of cash management forecasting system
 - 3.4 R&D Tax Credit regulation and how <company> capitalizes on it
 - 3.5 EU Grant Agreement
 - 3.6 EU Agreements (other)
 - 3.7 Government Application for Business Finance
 - 3.8 Evidence for Employment Grant and how <company> capitalizes on it
 - 3.9 Evidence for Plug-In Grant
 - 3.10 Licensing fees as licensor/as licensee
 - 3.11 Tax Information
 - 3.11.1 Address of the Tax Office with Tax Identifying Number of the Companies
 - 3.11.2 Name/address of the tax advisor
 - 3.11.3 Certification for Registration of Value Added Tax for <company> LLP
 - 3.11.4 Certification for Registration of Value Added Tax for <company>
 - 3.11.5 Certification for Registration of Value Added Tax for NewCo
 - 3.11.6 Copies of all tax returns for the last three (3) years, including sales, property, franchise, payroll, excise, withholding and capital tax returns and consolidated returns (if any) of the Companies
 - 3.11.7 List of any pending tax matters, including, but not limited to, audits, extensions of time, waivers of statutes of limitations, and deficiency/assessments, and the status of any outstanding tax audits, including a list of all audit adjustments proposed by any taxing authority.
 - 3.11.8 Copies of all communications and agreements between the Companies and any taxing authority for the preceding three years. Any special tax rulings or agreements arranged with taxing authorities.
 - 3.11.9 List of tax years open
 - 3.11.10 Provide evidence that all payroll, withholding, sales, use, franchise and real and personal property taxes are paid
- 4 Personnel, Payroll & Organization
- 4.1 Staff organization chart
 - 4.1.1 Current officers and directors and other key employees (together with resumes for each)
 - 4.1.2 List of all employees with titles and grade levels
 - 4.1.3 For each employee listed on the organizational chart prepared above, provide list base salary, bonus potential, and all benefits.
 - 4.1.4 Schedule of all loans to any officer, director, employee, or shareholder and copies of all related documents.
 - 4.1.5 Standard employment contract

- 4.2 Payroll & Benefits
 - 4.2.1 Pension plan and pension trust instruments
- 4.3 HR Policies
- 5 Balance Sheet
 - 5.1 Assets
 - 5.1.1 Fixed Assets (Fix Assets)
 - 5.1.1.1 R&D and IP / Intangible Assets
 - 5.1.1.1.1 Summary of research and development expenditures over the last three (3) years
 - 5.1.1.1.2 Innovations/patents with an expiration date
 - 5.1.1.1.3 Domain names
 - 5.1.1.1.4 Trademarks
 - 5.1.1.1.5 Independent review of IP
 - 5.1.1.2 Tangible Assets
 - 5.1.1.2.1 Fixed assets register, including depreciation methods applied, for all <companies>
 - 5.1.1.2.2 Copy of latest physical inventory lists of all equipment and other assets
 - 5.1.1.2.3 Capital expenditures made in the last two fiscal years
 - 5.1.2 Financial Assets
 - 5.1.2.1 Scope and type of financial assets with income generated from them
 - 5.1.3 Current Assets
 - 5.1.3.1 Copy of most recent aged accounts payable report.
 - 5.1.3.2 Confirmations of balances for bank deposits as of closing date of latest audited financial statements
 - 5.2 Liabilities
 - 5.2.1 Leases/Indebtedness
 - 5.2.2 Copies of all significant lease agreements
 - 5.2.3 <company> loan agreement
 - 5.2.4 List and description of any contingent liabilities or off-balance sheet arrangements, liabilities or obligations of any nature not disclosed or described in financial statements.
 - 5.3 Financing
 - 5.3.1 Schedule of currently outstanding short-term debt, long-term debt, inter-company debt, contingent obligations and capital lease obligations of the Company, including amounts, maturities, balances due, interest rates and prepayment terms, together with copies of correspondence to/from lenders during prior 12 months and compliance reports prepared by the Company or its auditors.

- 5.3.2 Copies of all agreements evidencing borrowings by the Company, whether secured or unsecured, documented or undocumented, including loan and credit agreements, mortgages, deeds of trust, letters of credit, indentures, promissory notes and other evidences of indebtedness, and any amendments, renewals, notices or waivers.

6 Insurance

- 6.1 List of insurance coverages in force (e.g., business interruption, directors and officers, fire or casualty, extended coverage, general liability, key man, motor vehicle, professional liability, product liability, unemployment compensation, etc.), including names of carriers, brokers, description of coverage, amounts of coverage, amounts of premiums, expiration dates and significant conditions and benefits
- 6.2 Copies of cover sheets of policies and binders
- 6.3 Describe any potential uninsured or underinsured liabilities

7 Risk Management

- 7.1 Risk management approach
- 7.2 Risk management register

8 Marketing

- 8.1 Market research
 - 8.1.1 Describe the markets served by the Company and the Company's target market segments
 - 8.1.2 Determine total market size of relevant market and market forecasts
 - 8.1.3 Prepare a list of major competitors and describe generally their competing products
- 8.2 Product development
 - 8.2.1 Product profile
 - 8.2.2 Certification process
 - 8.2.3 Technical reports
 - 8.2.4 Product design
 - 8.2.5 Description of quality assurance system (in production site and with suppliers)
- 8.3 Pricing
 - 8.3.1 Determine gross margin per customer contract
- 8.4 Placement
 - 8.4.1 Describe sales channels
- 8.5 Promotion
 - 8.5.1 Description of marketing communications concept

9 Environmental

- 9.1 Schedule of material documents relating to regulatory proceedings / List of all provisions concerning environmental protection applicable at the corresponding location

- 9.2 Notices of approval and notifications
- 9.3 Copies of environmental studies and surveys
- 9.4 List of all environmental permits and permit applications of the Company
- 9.5 Environmental policy (statement) of <company>

10 Production & Logistics

- 10.1 General layout of the plant/company
- 10.2 General regulations due to location of the plant (industrial area, domestic area)
- 10.3 Occupied space and enlargement possibilities
- 10.4 Description/layout of production process
- 10.5 Type and technology machines and equipment required
- 10.6 Degree of automation
- 10.7 Production planning and control system
- 10.8 List of strategic suppliers