

# Due Diligence Checklist

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## **1 Corporate Structure**

- 1.1 Details of all group entities and inter-relationships (form, place of registration, etc) – including dormant entities
- 1.2 Constituent documents of all group entities (including bye-laws, shareholder agreements and share capital details)
- 1.3 Organisational structure charts
- 1.4 Details of any minority shareholders holding interests in the target group
- 1.5 Details of any minority interests owned by the target group
- 1.6 Board and shareholder materials (papers and minutes) for the last 3 years
- 1.7 Details of selling and continuing shareholders and key officers/directors
- 1.8 Copies of constitutional documents of key shareholders or counterparties involved in a transaction

## **2 Transaction Structuring**

- 2.1 Details of the divestment process
- 2.2 Step by step legal and tax analysis of the investment (including potential exit structures)
- 2.3 Tax and legal opinions from council addressing investment/transaction specific issues

### **3 Accounting/Financial**

- 3.1 Copies of annual accounts (consolidated and individual entity) for at least 3 years
- 3.2 Copies of management accounts for at least 3 years
- 3.3 Description of assumptions underlying annual accounts (revenue recognition, capitalisation, depreciation, hedging)
- 3.4 Description of internal controls and accounting processes/systems
- 3.5 Management explanation of historic movements in financial position
- 3.6 Detailed revenue and operating cost breakdowns underlying management accounts
- 3.7 Detailed management budget and forecasts for each group entity/division/business line
- 3.8 Copies of bank statements for each group entity
- 3.9 Fixed asset schedules detailing historic cost, additions, depreciation, impairments, revaluations
- 3.10 Detailed working capital statements
- 3.11 Breakdown of equity ownership and capital structure (including all loan documentation)
- 3.12 Detailed schedule of all off-balance sheet liabilities, contingent commitments (eg. lease obligations, capital expenditure)
- 3.13 Detailed description of pension and other contingent liabilities
- 3.14 Description of budgeting process
- 3.15 Detailed description of invoicing/revenue collection process
- 3.16 Breakdown of key customers and suppliers and collateral posting/credit support requirements
- 3.17 Board papers and minutes
- 3.18 Audit committee reports
- 3.19 Details of any separation issues

Summary third party adviser accounting due diligence scope to include:

- Review of last 3 to 5 years financial statements for the consolidated group as well as each group entity
- Monthly working capital analysis
- Capital structure and net debt analysis (including loans, leases, tax equity etc.)
- Review of current trading
- Post-closing balance sheet analysis

- Quality of earning analysis
- Determination of normalised EBITDA
- Review of any hedging
- Financial projection analysis
- Analysis of historic budgeting accuracy
- Review of internal risk management controls
- Analysis of separation issues arising from the transaction
- Review of transfer pricing between group entities
- Analysis of customer/supplier turnover/concentration risk
- Review of loan/financing covenant compliance
- Review of related party transactions
- Review of purchase price adjustments under purchase agreement

#### **4 Tax**

- 4.1 Details of tax status/elections of all group entities
- 4.2 Statements of net operating or capital loss positions
- 4.3 Description and rationale for any deferred tax assets or liabilities
- 4.4 Statement of tax assumptions – including depreciation methodology, asset tax basis
- 4.5 Copies of tax filings for each entity for all open tax periods – federal, state, property etc
- 4.6 Correspondence with any tax authorities

Summary third party adviser tax due diligence scope to include:

- Review of open tax filings including federal, state, municipal – typically last 5 years
- Review of tax basis of assets
- Review of deferred tax assets or liabilities
- Review of capital and net operating loss (NOL) positions
- Review of tax assumptions going forward
- Review of transaction tax structuring
- Assessment of ongoing tax implications (income, withholding, capital gain) of investment structure – including in respect of exit

## 5 Legal

- 5.1 Constituent documents of all group entities including:
  - LLC agreements
  - Partnership agreements
  - Shareholder agreements
  - Articles
  - Share registers
- 5.2 Key contracts including
  - Concession agreements
  - Customer contracts as relevant including offtake agreements, O&M agreements etc
  - Key supplier agreements as relevant including
  - Construction agreements
  - Licenses (intellectual property, real property, easements etc.)
- 5.3 Finance documents including
  - Loan, bond, debenture and other debt or preferred equity documents
  - Tax equity documentation
  - Lease agreements
  - Security documents
- 5.4 Real property
  - Title
  - Easements, rights of way
  - Lease interests
- 5.5 Employment
  - Collective bargaining agreements
  - Key management employment contracts
  - Sample employment contracts for non-management employees
- 5.6 Environmental
  - Environmental legislation applicable to the assets
  - Remediation responsibilities and risk allocation under contracts
- 5.7 Litigation
  - Details of all litigation underway or anticipated by the company
  - Details of any legal or regulatory proceedings initiated by company counterparties
- 5.8 Other
  - Correspondence with regulatory authorities

Summary third party adviser legal due diligence scope to include:

- Review of all materials described above
- Review of competition and regulatory approval processes (including competition approvals)
- Review of representation and warranties in purchase agreements (or equivalent)
- Review of financing agreements (security, covenants, change of control, etc) and compliance/event of breach.
- Review of all asset pledges, encumbrances etc.
- Review of outstanding litigation
- Review of proposed transaction and tax structure
- Review of environmental liability exposure
- Review of regulatory regime
- Review of key employment agreements including collective bargaining agreement



## **6 Environmental**

- 6.1 Environmental liability exposure under law and contracts
- 6.2 Asset specific environmental risk assessment based on key performance indicators – eg. soil, groundwater, emission levels, sound etc.
- 6.3 Company or lender mandated reports on environmental issues
- 6.4 Potential remediation exposure and costs
- 6.5 Remediation work in progress and obligations
- 6.6 Analysis of historic environmental issues
- 6.7 Documentation from public regulatory or environmental authorities
- 6.8 Employee health hazards
- 6.9 Risk management processes

Summary third party adviser environmental due diligence scope including:

- Assessment of management of environmental risk
- Assessment of environmental regulatory and legal compliance
- Assessment of likelihood and max exposure of existing and potential environmental liability
- Analysis of company approach to remediation (if applicable)
- Review of environmental work in progress
- Assessment of ability to deliver business plan/growth within existing environmental constraints
- Review of employee related issues
- Advice on allocation of environmental risk between buyer and seller

## **7 Insurance**

- 7.1 Details of insurance policies maintained, cost of insurance
- 7.2 Details of outstanding claims
- 7.3 Review of any separation issues/change of control issues related to insurance

Independent review of insurance arrangements by a third party adviser including:

- Determination of prudent insurance coverage for the business
- Review and benchmarking of existing arrangements
- Analysis of cost policy renewal

## **8 Commercial/market**

Analysis should be specific to industry and sub-sector and should typically include:

- 8.1 Industry growth trends and opportunities
- 8.2 Local demographic trends
- 8.3 Analysis of market structure and position including barriers to entry, regulatory protection, potential substitutes etc.
- 8.4 Analysis of pricing power, restrictions, price elasticity
- 8.5 Management description of outlook for the business
- 8.6 Analysis of growth opportunities
- 8.7 Cost base analysis including benchmarking vs peers
- 8.8 Review of public relations of target
- 8.9 Market and feasibility studies prepared by or for management and or lenders

## **9 Pensions**

- 9.1 Review of IFRS and actuarial pension liabilities and underlying assumptions (eg. investment returns, mortality)
- 9.2 Review of defined benefit and defined contribution plans
- 9.3 Review pension contribution forecasts

## **10 Human Resources**

- 10.1 Details of group management
- 10.2 Employee organization charts
- 10.3 Collective bargaining agreements
- 10.4 Employee retention arrangements
- 10.5 Employment agreements
- 10.6 Details of any employee litigation
- 10.7 Details of any employee health and safety incidents
- 10.8 Details of employee benefit arrangements

## **11 Financial Modelling**

- 11.1 Audit of financial model for integrity and logic
- 11.2 Review of accounting assumptions in model
- 11.3 Review of tax assumptions in model
- 11.4 Review of cash distribution assumptions

## **12 Management**

- 12.1 Meetings/interviews with existing management
- 12.2 Industry research on existing management
- 12.3 Benchmarking against peer group
- 12.4 Review of management employment and retention arrangements
- 12.5 Analysis of succession planning for business