

# IMPACT PROJECTS

## Checklist for Project Due Diligence in Developing State by Dr D Euler

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### I. Financial Due Diligence

Check current and future finance (include sensitivity and scenario changes); historical and future profitability and financial state (EBIT, cash-flow, growth rates, working capital); historical.

#### A. Documents: Chartered Accountant's Reports, Budgets, and Plans

- Annual accounts, position reports and/or exam reports for last (up to three) business years
- Description and analyses of essential changes of the calculation lapping

#### B. Documents: Finance and Accountancy

- Investment plans and forecasts
- Current operational (topical) account documents and profit and loss statements
- Calculation patterns for inquiries of retail and b2b prices
- Inventory of in kind contribution and similar contributions with assessment
- Planned measures to check creditworthiness of the customer
- Overview of current loan lines and their potential limits
- Risk prevention strategy in the balance sheet

### II. Commercial Due Diligence

Check plausibility of revenue planning (include Market attractiveness, Customer analysis, and Competitor analysis)

#### A. Enterprise planning / business plan

Plausibility and installation of business in accordance with the business plan.

#### B. Market Attractiveness

- Explain production plan and program
- List the property required to produce the goods in accordance with the business plan
- Assess scale up into similar market (Scalability)
- List distributors of services and goods to produce and market product
- Assess distributors in accordance with the business plan (required certification)

#### C. Market Analysis

- Current domestic and international legal environment and potential changes
- Current domestic and international standards and potential changes
- Innovation attached to the product
- Market capacity in the markets in accordance with the business plan
- Assess reputational risk and fraud
- List partners (governmental agencies, international organisations and non-governmental organisations)

#### D. Competitor Analysis

- List competitors
- List production advantages
- Assess reputational risk and fraud attached to the business model
- List partner able to mitigate risk

### III. Operational Due Diligence

#### A. Distribution Channels

- Distribution channels, rails and capacities, including the planning and selling costs (include non-governmental and non-profit organisation)
- Identify partners to distribute products
- Competitor analysis of their distribution channels
- Feasibility of planned turnover in accordance with the business plan
- List potential market, customers and probability of sale transaction

#### B. Management / Process (Miscellaneous)

- List and describe management plans, life cycle assessment and ISO process management as well as other consultant reports and analysis
- Current and potential non-governmental certificates and reports to produce the goods in accordance with the business plan
- Identify partners to produce the goods

#### C. Staff

- Organisation chart
- Overview about areas of responsibility and qualification of the employees (include skilled and non-skilled workers)
- Essential creation parameters of the contracts of the executives
- Potential employee programs to increase know-how (for non-skilled workers in particular)

#### D. Research and Development

- Current and forecasted research and development expenditures
- Current and planned conferences concerning industrial standards and certificate of relevance
- Quality management and insurance documentations
- Market research, inspections and capacity, current and forecasted data concerning users, customers
- Current and planned cooperation to increase the quality of the production method and product as well as stakeholder's quality

### IV. Legal Due Diligence

#### A. Public Repositories and Charters

- Newest extract of the public repository (commercial register) (including extract of its holding companies), dates of required inspections in accordance with the repository and the relevant company law
- Company statute and shareholder agreements and similar agreements
- Overview of equity, debt structure and contract's aiming the modification of the equity and debt structure (any legal arrangement of stocks or shares, privileges, signed and to be implemented to increase or lower capital or in general change the capital structure or shares)
- Company name and the company's owned share capital; representation of the company and company history of the representation; proof of share transfers under the relevant law
- Employ profit sharing plans and similar participation models
- Monetary exchange the company and other participants as well as other agreements with regard to in kind contributions
- Solidarity and other legal relationships under the relevant law (particularly during a period of time after incorporation with its predecessors)
- Adherence of the requirements of implementation under the relevant law (liberation of shares; adherence of capital requirements, and transfer requirements for the foreign investor)
- Observance of the post foundation rules for acquisition contracts during the first years after registration under the relevant law (avoid under capitalisation); registration of employees, social, security and insurance plans
- Agreements with stakeholders at arm's length, market condition agreements (avoid looting the company)
- Encumbrances on company's asset and other security to thirds
- Minutes and decisions of arranged shareholder meetings (ordinary and extraordinary) in accordance with the relevant law (last three years)
- Minutes (including presentations) of higher management meetings; decisive-authorised committees or advisory boards (last three years)
- Board regulations and rules of procedure of higher management and decisive-authorised committees and advisory boards
- Organisational chart (including titles, function and area of responsibility of the board of directors, higher management, leading employees) from a legal and economic perspective (include conflict of interests and other personnel interweaving occupations of board of directors, supervisory board, personal equality, actual group)

## B. Contracts and Arrangements

- Collaboration contracts between the company and other entities on the same level, i.e. joint-venture, co-operative agreements and study groups (including statute and social contracts), consortia contracts etc. It excludes contracts like the shareholder agreements as mentioned above
- Participation contracts between the company and others which bind the company directly or indirectly towards other companies silently or circumventing the company structure. These are contracts that could link the company to a profit share and solidarity
- Supplier and service agreements that provide goods or/and services essential for the operative business; as well as other agreements essential for the operative business like license agreements
- Loan and other agreements which require payment or contribution in kind directly or indirectly. This includes agreements which depend on a future event.
- Agreements, arrangements and memberships in groups, formal and informal, which inform competitors in any form and may have an impact on the market conditions
- Agreements involving agencies, representatives, appointed dealers, distributors
- Other for the company contracts which may inherent legal risk to hinder the operative business or affect the legal obligations of the company in another form, i.e. liabilities
- Other agreements that provide warranty and guarantees to third persons in connection with takeovers (poison pills, litigation risk due to takeover, etc.)

## C. Obligations

- Describe the obligations of a foreign investor transferring funds into the country
- List medium and long term obligations with regard to shareholders and stakeholders including (debtor, creditor, amount, interest rate and date of maturity, including factoring, leasing and sales and lease back business, credit agreements, given warranties and guarantees, patronage explanations, licenses and so forth
- List of accounts in bank and other institution which includes the balance
- Describe capital expatriation strategy
- List off-balance, sheet items and other reserves and assets relevant (reducing the risk of splitting the company or over-, undervaluation)

## D. Public Concessions and Investment Agreements

- List of any investment agreement or other governmental authorizations, approvals, licenses, permits, franchises, certificates, registrations, concessions, exemptions, etc. (without building and environmental matters), required for the company to conduct its business and copies of all such approvals, etc., granted to the company with respect to its operations that are currently valid or pending renewal
- Documentation with respect to the company or its operations relating to compliance with health, data protection, labour safety and antitrust laws, etc., and petitions and/or correspondences to the competent governmental authorities
- Information about necessary authorizations, etc., which have not or not yet been granted
- Description of expected amendments regarding granted authorizations, etc., or about new authorizations requirements

## E. Employees

- Describe the rights and limitations of a foreign investor to transfer its board, higher management and regular employees in to the state. This includes the obligations an investor has to register every employee (if so)
- Model employment agreement, freelance and process description of employment process (addressing legal risk of non-skilled labour) including employment benefits (salary, bonuses, etc.) for the enterprise and the essential holding companies; contracts with freelances
- Employment agreements with board of directors and higher management
- Overview of pension fund, social insurance and other similar obligations of the company with regard to employees and other subordinates
- Arrangements about reimbursement dependent on turnover and/or dependent on profit, bonuses and shares in profits
- List of all company arrangements with unions and similar organisation
- Any staff reduction plans
- Overview of company disputes among the company and employees in last (up to three) to business years

## F. Tax

- Explain the tax system under the relevant jurisdiction. Include the consequence of failed taxes for transferred and domestic monetary benefit.
- List of all concessions, agreements, other documents and laws that provide a tax exemption clause for the current business (this includes freezing or stabilization clauses under an international treaty or foreign investment protection act)
- All domestic, district and municipal tax, as well as, if applicable, foreign tax returns (income and capital tax, payroll taxes and social security, dividend withholding tax, security issue, VAT) of the current and the last three business years
- Reports, assessments and bills for last (up to five) business years as well as other documents concerning procedures according to tax law or knowledge for the enterprise or the holding companies
- All internal or external fiscal audits initiated, undertaken and announced since (up to five) or currently under completion (with indication of the contested positions)
- All correspondence with the tax authorities since (up to five). This may include tax rulings and applications as well as other off shore practices
- List of all taxes due or provisioned for as of end of fiscal year (latest possible date)
- All tax indemnification, tax sharing, or tax allocation agreements between the company and any other entity of the group, and statement setting forth how such agreements were carried out for the past five years
- Information about future tax planning strategies
- Information about untaxed hidden (inner) reserves

## G. Intellectual and Commercial Protective Rights

- List licences, trademarks, patents, copyrights and similar registrations, including duration, protective circumference and representation and the value in accordance with the company's valuation
- Overview of current and future research programs and developing programs including forecasts on costs and success

## H. Real Property and Leases

- Describe the real estate property law in the relevant jurisdiction. Include the procedure to buy property and the protection guaranteed.
- List of real property (owned or leased) used in the company's business since up to five years, including location, size, description of each parcel, use (e.g., plant, offices, etc.)
- Excerpt from the public repository (if existing) relating to all real estate owned in any manner whatsoever by the company with description of all mortgages, liens, pledges, security interests, charges, or other inconveniences to which any property is subject, and investment and maintenance needs for the next five years
- All issued or pending building permits with regard to the owned real estate
- All surveys, plans, estimates, etc. with regard to the owned real estate, established since 5years
- All purchase, lease and any other material agreements with regard to the used real property
- All purchase, lease and any other material agreements with regard to the owned real property
- Statement whether or not the transaction contemplated is subject to a permit requirement with respect to real estate matters

## I. Personal Property and Leases

- Describe obligations to import property in relevant jurisdiction
- List of important fixed assets, machinery, and equipment, including automobiles (owned or leased) of the company, giving for each material asset or group of assets: date of purchase, purchase price, manufacturer/supplier, depreciation reserve, method of depreciation, estimated remaining useful life, suitability for use, insured value, estimated value, any transfer restrictions (pledge, liens, retention rights, reserve of ownership, etc.)
- All purchase, lease and any other material agreements (e.g., security agreements) with regard to the used personal properties
- All purchase, lease and any other material agreements (e.g., security agreements) with regard to the owned personal properties

## J. Insurance

- Schedule of all insurance policies relating to the company's business, assets, properties or personnel giving name of insurance company, policy

number, risks covered, extent of coverage, appraisal value of covered property, term of coverage, termination provisions, annual premium, and amount of premiums prepaid or unpaid. Provide all such policies

- Schedule of all insurance claims in excess of CHF 50.000 currently pending or settled since 3 years
- Correspondence about requests to conclude insurance contracts which have been rejected by the insurance company since 3 years
- List of any insurance coverage denied or insurance arrangement terminated, since 3 years, and details thereof
- Schedule of potential insurance claims in an amount of CHF 10.000 or more

#### **K. Investigations, Litigation, and Arbitration**

- List and summary of current and future civil, criminal or administrative disputes (arbitration or/and litigation) and menaces in which the company has any party, a representative a witness or similar position in connection with its business last (up to two) business years
- List and summary of current and future menaces against organs or/and employees concerning any breach of law or contract in accordance with its business, including any trust proceedings, juridical on the stock exchange or economic-juridical problems
- List and summary of discussions (floating or threateningly) with authorities, in particular tax authorities, environmental authorities and competitive authorities
- Listing of possible risks of an essential restriction of the business activity because of offence against laws or edictions

### **V. Environmental, Social and Security Due Diligence**

#### **A. Performance Requirements (Impact)**

- Describe performance requirements of an investor under international, domestic, and soft law attached to the business plan
- List obligations under international agreements and other permits, authorizations, decrees, etc. concerning environmental matters, particularly in connection with sewage, soil conservation including residual pollution, tank installations, waste fumes, storage and transportation of hazardous substances, radioactivity, waste disposal as well as social and security obligations
- List contracts with public authorities, international organisations, non-governmental organisations and other partners requiring environmental guidelines of the company and other current or planned regulations
- Describe current and planned internal regulations, certification and other measures to mitigate risk

#### **B. Environmental Matters**

- List of the environmentally relevant plants, manufacturing locations and processes used since 10 years
- All permits, authorizations, decrees, etc. concerning environmental matters, particularly in connection with sewage, soil conservation including residual pollution, tank installations, waste fumes, storage and transportation of hazardous substances, radioactivity, waste disposal
- Applications, reports, communications filed or given by the company to any environmental agency
- Any records reflecting existing or probable environmental risks, including risks arising from the previous users of the sites and real estate used by the company, with all reports, analysis, or studies prepared by the company or third parties about environmental risks and counter-measures
- Documents about planned or current and since 5 years executed measures to reduce energy and noxious emissions
- List of any breach of any environmental regulation since 10 years
- Environmental guidelines of the company

#### **C. Security Matters**

- List and description (summary) of all known or predictable, essential risks attached to the business, security to protect employees, facilities (including plants) and warehouses and sheds
- List partners able to mitigate security risk

#### **D. Insurance Matters**

See above (Overview about the existing assurances, as far as these are for the continuation of the business concern of the enterprise of essential meaning; Assessment of uncovered incidents and risk (including political risk); and, List

of all covered events in last (up to three) business years with a damage height more than USD 50,000.

### **VI. Compliance, Governance and Integrity Analysis**

Outline the risk attached to compliance and integrity. This includes an assessment in accordance with the intended impact

#### **A. Company structure**

- Describe the identity of the company and its business background and activities
- Describe its ownership (including indications of state ownership). This may include its connections to public authorities, international organisations and non-governmental organisations
- Describe current and planned internal regulations, certification and other measures to mitigate risk

#### **B. Process and Production Method**

- Describe the production method under the business plan
- Describe the risk attached to the production method
- Describe partnerships in connections to public authorities, international organisations and non-governmental organisations to assess the process
- Describe current and planned internal regulations, certification and other measures to mitigate risk

#### **C. Supplied Material (Input)**

- Describe the identity of the suppliers and their obligations towards the business
- Describe current and planned internal regulations, certification and other measures to mitigate risk attached to the land and suppliers

#### **D. Product (Output)**

- Describe the product produced under the business
- Describe the method to assess the quality
- Describe current and planned internal regulations, certification and other measures to mitigate risk attached to the product

### **VII. Technological Due Diligence**

#### **A. IP Protection Strategy**

- Vulnerability of the enterprise IP structure
- Degree of innovation and advanced technology implemented (as opposed to competitors)
- Protection of trade secrecy strategy
- Trademarks, copyrights and patent protection of essential business brands

#### **B. Know-How Management Plan**

- Computed and enterprise relation management solutions
- Internal and external interface and communication management
- Cloud, network, computer and software security (certificates, firewall, recovery systems)
- Transaction and communication security
- Inspections, service level and quality insurance agreements
- System capacity and potential of scale (scalability)
- Recordings, protocols and e-signs to evidence transactions (e-commerce)
- Development environment and know-how management databases

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