

# Guide To Due Diligence

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## Step One

### How to Start a Due Diligence

Where do I start? How do I start? These are the common questions especially for those conducting and working on a due diligence exercise for the first time.

To provide you with an overview, this section of the Guide offers you a big picture of the processes and steps involved.

The first step is to identify your due diligence working team. Your team may comprise of:

- (a) merchant banker;
- (b) independent advisor;
- (c) valuation expert in the industry;
- (d) expert valuer to give you a report on the assets;
- (e) reporting accountants;
- (f) legal counsels;
- (g) foreign counsels; and
- (h) key decision makers of your management team.

Upon forming your due diligence working team, you should rightly get the working programme in place. A working programme may be put in place to ensure all participating in the due diligence exercise are looking at the same page.

The work programme sets out for the purpose of the due diligence inquiry and allows the exercise to be conducted systematically by allocating responsibilities to each party forming the working group ("DDWG"). Each member will be responsible for various sections or information given or made, to ensure the information to be obtained, submitted and provided is accurate. One of the main objectives of the due work programme is to ascertain the materiality limit or threshold that will be used throughout the due diligence inquiry. The materiality limit will ensure that no stones are returned particularly on matters which are material for the exercise and

thereafter, the questions raised will be tailored accordingly and compiled in a checklist.

The content of a work programme and the checklist will be discussed at length later in this Guide.

The due diligence's review after having made reasonable enquiries should be able to verify or confirm if:-

1. the statements and information made or given by the company is false or misleading;
2. there were material omission of information which is relevant for it to be included in the same;
3. the completeness of the information provided and accuracy of the representations made by a target company (which is made known to the members of the DDWG or which can be discovered by any of them upon making reasonable inquiries); and
4. there were misleading or deceptive conduct involved and that all statements and information provided appropriately verified an qualified so as not to mislead;

It is essential that a sound system be set up and that there be adequate supervision and management of the due diligence process.

The DDWG should be satisfied with the due diligence conducted. Summarily, it is about asking if:

- i all documents, contracts and material information related and pertinent to the transaction been reviewed;
- ii all pertinent information been disclosed by the target company to the DDWG;
- iii all evidence collating and supporting the warranties and representations of the target company obtained;
- iv all copies of the necessary licences, approvals and consents to conduct business in the country obtained;
- v all indebtedness, encumbrances and guarantees given by the target company highlighted; and
- vi all real properties and all manner of fixed assets identified.

It is also advisable so not to leave out any question or area of concern, the DDWG draws up a checklist and have that checklist ready. The checklist shall set out the scope of the due diligence exercise that will be conducted.

This will allow the due diligence to be conducted systematically. A checklist of the due diligence exercise could be as follows:

- A. Corporate and Statutory Requirements
- B. Accounts
- C. Licences, etc.
- D. Employees
- E. Insurance
- F. Property, Plant, Equipment
- G. Material Contracts
- H. Indebtedness
- I. Financial Assistance
- J. Intellectual Property
- K. Litigation
- L. Environmental
- M. Competition
- N. Taxation
- O. Miscellaneous
- P. Statutory Requirements and

The due diligence checklist is because it is impossible to form a complete picture of the information. Please take notice of the questions are asked and documents reviewed during the due diligence exercise. It is often necessary to ask different questions of different companies. As a result there will be a need to review documents during the course of the due diligence exercise. If a checklist may be required which differ from the standard checklist is useful, you should ensure the pertinent areas are covered.

## Step Two

### Work Programme

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We should always keep in mind during a due diligence review on a target company that we cannot run about aimlessly like a “headless chicken” without focus and direction. It is often forgotten that we have to keep control and act together so that the DDWG operate as a team and realise the objectives of the due diligence review together. However, often a company acquiring another commences a due diligence review without a work programme in place and the members of the DDWG is off doing an independent review without much communication with the other members and the information collated often overlaps or inconsistent. The end result is the acquiring company does not have all the pertinent information in place to make an informed decision in respect of the transaction.

The work programme should set out the following objectives:

1. the constitution of the due diligence working group;
2. the agreement as to the scope of the due diligence inquiry and the due diligence process;
3. the assignment of responsibilities in relation to the due diligence inquiry;
4. the determination of the materiality threshold; and
5. the agreement of the parties as to the documentary and information request list.

A sample work programme is attached in this Guide.

## Step Three

### Checklist

1. The registers' book or records of the target company namely:

#### A. Corporate and Statutory Records

- (a) the register of members or shareholders;
- (b) the register of substantial shareholder;
- (c) the register of transfer;
- (d) the register of directors and secretaries;
- (e) the register of directors' shareholdings'; and
- (f) the register of mortgages,

to confirm the number of members, the composition of the board of directors and their respective shareholdings, if any, the number of mortgages and charges granted by the target company.

2. The statutory records of all documents filed at the registrar of companies by the target company and to name a few:

- (a) the form evidencing the return of allotment of shares is a form which sets out the details of each allotment particularly the numbers of shares allotted, the consideration paid for the allotment and to whom the shares were allotted;
- (b) the form of transfer of securities is a form which sets out the details of share(s) transfer and the consideration paid for that transfer;
- (c) the statement of particulars to be lodged with a charge which is a statement by the target company informing the registrar of companies, that a charge has been created by the target company over its assets to secure the repayment of its own indebtedness or another; and
- (d) the return giving particulars in register of managers and secretaries and changes of particulars which is a form which consist of particulars of the officers of the target company.

3. The minutes of meetings conducted by the shareholders and the directors are usually kept as record and a study of these records would