

# QUEEN - CITY - LAW

BARRISTERS & SOLICITORS

## Due Diligence Checklist

### 1) General Background / Company Profile

- a) Describe:
  - i) the history of the Company and the Business;
  - ii) the present position of the Company's current business activities; and
  - iii) the position of the Company in the New Zealand market and overseas.
  - iv) Provide details of the Company's current objectives and business plans.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

### 2) Company Structure/Corporate Good Standing

- a) Provide details of:
  - i) the corporate and organisational structure of the Company and the Business including structure charts;
  - ii) the share capital structure of the Company;
  - iii) equity investments of the Company and non equity participations; and
  - iv) all officers of the Company.
- b) Provide copies of the constitutional documents of the Company.
  - i) Provide the original statutory books of the Company including members' registers, directors' registers, minute books, seal registers (if any).
  - ii) Provide details of the Company's professional advisors for the last 5 years (solicitors, accountants, tax advisors, consultants, bankers, auditors etc).
  - iii) Provide copies of any subscription agreements, joint venture agreements, and shareholders' agreements, trust arrangements, partnership arrangements representation agreements or similar affecting the Company, or the Vendor in relation to its shareholding in the Company.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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**3) Management and Control**

- a) Provide details of the management and reporting structures of the Company and the Business.
- b) Provide brief profiles of key managers.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**4) Regulatory Requirements**

- a) Describe the legislative and regulatory framework within which the Company operates.
- b) Provide details of any actual or potential breaches of any of the regulations referred to in 4 (a) and, in addition, any actual or potential breaches of the Commerce Act or the Fair Trading Act or similar legislation in other jurisdictions.
- c) Provide copies of all consents, approvals, licenses, peanuts etc necessary to operate the Business in New Zealand and overseas and all material correspondence in relation to such.
- d) Provide details of any quality control and compliance procedures adopted by the Company e.g. quality control manuals, loss control manuals.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**5) Personnel/Employment**

- a) Provide an overview of the organisational/personnel structure of the Company as it is presently and any changes over the last 5 years identifying key employees.
- b) Provide details of the terms and conditions of employment of all employees, contractors and consultants including any standard terms and conditions and deviations there from for particular employees (and identify each employee's age, benefits and length of service.
- c) Provide details of all superannuation arrangements.
- d) Provide details of all industrial disputes and individual disputes with any employee or past employee.
- e) Provide copies of all ACC and Health and Safety reports and other relevant information regarding ACC and Health and Safety matters.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**6) Trading**

- a) Provide details of:
  - i) the Company's major customers/clients and suppliers (i.e. those whose business is worth [5]% or more of turnover);
  - ii) any special relationships with clients or suppliers;
  - iii) any trade discounts or credit terms provided to clients or by suppliers;
  - iv) outstanding debtors and creditors;
  - v) work in progress; and

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- vi) any outstanding quotations, tenders or contracts submitted or expected to be submitted within the next [6] months.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## **7) Contractual Commitments**

- a) Provide details and copies of:
  - i) all standard forms of client service contracts used by the Company which are still operational;
  - ii) all material contracts to which the Company is a party or which relate to the Business which are worth or have a cost to the Company or any subsidiary of [xxxxx] or more or are for a term of [xx] months or more;
  - iii) any confidentiality agreements or undertakings to which the Company is a party;
  - iv) any agreements for the acquisition or disposal of assets entered into by the Company within the last 5 years and/or under which the Company has ongoing obligations e.g. by way of warranties, indemnities or restraints;
  - v) any unwritten contractual arrangements or partially documented contractual arrangements or proposed contractual arrangements to which the Company is a party or expects to be a party;
  - vi) any related party transactions and arrangements e.g. management agreements or intergroup purchase and supply arrangements to which the Company is a party; and
  - vii) any arrangements or understandings with competitors.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## **8) Litigation**

- a) Provide details of:
  - i) Any threatened or actual disputes, claims or proceedings against the Company or relating to the Business;
  - ii) any threatened or actual disputes, claims or proceedings by the Company;
  - iii) any investigations into the Company's affairs or relating to the Business in the last 5 years; and
  - iv) any significant correspondence with IRD, ACC or other regulatory body.
- b) Describe and review any arrangements, procedures and controls relating to product liability.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## **9) Intellectual Property**

- a) Identify and provide details and copies of all intellectual property owned by the Company or used in relation to the Business.
- b) Provide copies of all licensing, registered user and other agreements relating to or for the use of any such intellectual property.
- c) Describe and review any research and development carried on by the Company.

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- d) Provide details of any disputes in respect of any such intellectual property together with copies of all relevant correspondence and papers.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

#### **10) Real Property**

- a) Describe and provide details of all real property owned or used by the Company including copies of all title documents, leases, licences, rent review deeds, variation documents and any other agreements relating to title to such properties.
- b) Provide details of the following matters in respect of each property:
- i) details of compliance with the Building Act and other relevant legislation;
  - ii) copies of any planning applications made, granted, refused;
  - iii) copies of all valuations of the property carried out within the last [x] years;
  - iv) in the case of leases/licences, any consents change of control provisions and other onerous provisions -term, next rent review date and similar; and
  - v) details in respect of any other matter likely to be of relevance to a prospective purchaser of the property.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

#### **11) Borrowings/Security**

- a) Provide details of:
- i) all borrowings, credit lines, overdraft and other facilities and outstanding liabilities provided to and owing by (as the case may be) the Company by any bank, other third party or related party;
  - ii) all bank accounts of the Company including details of the signatories;
  - iii) any defaults by the Company in respect of any such borrowings, liabilities or agreements.
- b) Provide copies of all loan agreements, charges, mortgages, debentures, guarantees and similar agreements together with relevant correspondence relating to the Company or the Business including parent or related company guarantees and similar.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

#### **12) Assets**

- a) Provide lists of:
- i) all [material] plant and equipment and fixed assets by category and location owned by the Company or used in relation to the Business; and
  - ii) all material chattels owned by the Company or used in relation to the Business (including motor vehicles).
- b) Provide copies of:

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- i) all documents of title to all material assets of the Company (being assets worth \$[ ] or more or material to the running of the Business); and
- ii) any asset registers maintained by the Company.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**13) Insurance**

- a) Provide copies of all current insurance policies taken out by the Company or relating to the Business.
- b) Confirm and provide evidence that all insurance policy premiums are paid to date.
- c) Provide details of any significant insurance claims made during the last 5 years, any outstanding insurance claims and any disputes in respect of any such claim.
- d) Describe the transferability of all insurance policies.
- e) Provide copies of all insurance reports obtained and audits and analyses carried out, during the last [2] years.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**14) Environmental Issues**

- a) Review compliance with relevant environmental legislation and provide details and copies of relevant correspondence relating to any actual or anticipated noncompliance with any such legislation.
- b) Provide copies of all resource consents, obtained by or relied upon by the Company, together with details and copies of relevant correspondence of any pending applications for any such consents.
- c) Provide copies of any environmental management plans, opinions or audit reports or similar.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**15) Related Party Transactions**

- a) Provide details of all related party transactions or arrangements to which the Company is a party.
- b) Identify and review any areas where a related party transaction or arrangement is to continue following the sale of the Company or the Business.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**16) Tax**

- a) Provide details of the principal tax accounting methods adopted by the Company.

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- b) Provide income tax returns, work sheets and audit papers for the last five financial years.
- c) Provide a reconciliation of financial profit/loss to taxable profit/loss for the last five years;
- d) Provide details of the differences between financial carrying value and tax value of the assets and liabilities.
- e) Provide details of all income tax provisions, current and deferred, for the last five financial years.
- f) Provide GST returns, FBT returns, land tax returns, PAYE reconciliation statements and resident-withholding tax reconciliation statements for the last five years.
- g) Provide copies of all income tax, GST, FBT, land tax and other tax assessments for the last five years.
- h) Provide copies of all significant correspondence with the Inland Revenue Department and the Accident Compensation Corporation.
- i) Provide details of any investigations in the past 7 years in relation to:
  - i) Income Tax;
  - ii) FBT;
  - iii) GST; and
  - iv) ACC;
  - v) (If there have been investigations provide details of issues raised and conclusions reached.)

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

#### **17) Accounts**

- a) Provide copies of:
  - i) the annual and half yearly accounts (profit and loss and balance sheet) of the Company for each of the last 5 years;
  - ii) all management accounts and reports for the Company for the last [2] years showing results by division and location;
  - iii) any annual or other budgets and projections of revenue, earnings, cash flow for each of the last [2] years;
  - iv) any projections of capital expenditure and non cash deductible items for the next five years; and
  - v) all audit reports prepared during the last 5 years.
- b) Provide details of all accounting policies adopted in the preparation of the Company's accounts referred to in 17.1 above (annual, half yearly accounts, and management accounts and reports) with particular regard to those policies which have been the subject of discussion or dispute with auditors, bankers or others.
- c) Provide details of any dividends paid or received by the Company.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

#### **18) Systems**

- a) Provide details of all accounting and management information systems.
- b) Describe and review, providing full details, financial reporting, budgeting, monthly and other periodic reporting procedures and formats.

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Signature: \_\_\_\_\_

**19) Prospects**

- a) Describe and review:
  - i) the Company's forecasting procedures;
  - ii) the Company's 5 yearly forecast; and
  - iii) the assumptions underlying the forecasts.
- b) Review and compare the difference between forecasted and actual results for last 2 years to date.
- c) Provide details and copies of development and strategic plans include marketing lans and similar.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**20) Unusual Transactions/Events**

- a) Provide details of any transactions entered into or carried out by the Company outside the ordinary course of business in the last 5 years.
- b) Provide details of any event which has or may adversely affect the Business or the Company.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**21) Other Information**

- a) Provide details and copies of relevant documents and correspondence relating to any other matter which is or may be material for the proper evaluation of the financial condition and prospects of the Company or the Business or which may adversely and materially affect the Company or the Business or which would or could be of material importance to a prospective purchaser of the Company or the Business.

*\*The due diligence investigation in relation to this paragraph has been satisfied*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## Miscellaneous

### Points to investigate

- **Goodwill** Most business sales include a goodwill component. The simplest way to describe goodwill is all those aspects of a business such as good location, loyal customers, net profit and market recognition that might take you years to duplicate if you were to start from scratch. If the business has been based around the personality of the owner, what assurance do you have that the goodwill will not disappear with the owner? For example, the contracts the business secures might depend on the close rapport the owner has built up over the years with key customers. Can you depend upon these contracts continuing if you take over?
- **Reputation** Check the reputation of the business. Ask if you can work in, or observe, the business for a few days. Ask to speak to some customers. Ask others about its reputation in the marketplace (be discreet if necessary).
- **Lending and credit terms** Will favourable lending and credit terms continue? For example, the owner may have built up favourable credit terms with key suppliers. Make sure these terms will not be withdrawn.

### Negative signs

These include:

- The vendor explains that the business is better than the figures indicate because of the number of unrecorded 'under the table' transactions. First, there is no way of verifying these claims so they should be disregarded for business valuation purposes. Second, if the vendor has been cheating on taxes, what else might be suspect in the business?
- A sudden surge in sales over the past year or part of a year. Be wary of this, as a tactic used by some vendors when preparing a business for sale is to start putting through the books all the previously unrecorded 'under the table' cash transactions. This can give the false impression that the business is in a strong growth phase.
- The business relies too heavily on one major customer. What happens if this changes? A hundred smaller customers is always better than two or three large customers.
- The lease nearing maturity and the business is heavily dependent on its location for its success.
- A new competitor (such as a chain store) is planning to open nearby.
- Key staff planning to leave. Make sure you can maintain continuity of business expertise.
- The business has too many staff or some are unsuitable. It may prove difficult and expensive to get the staffing to a level that suits you.

Queen City Law
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