

PREPARING YOUR BUSINESS FOR FUNDRAISING

PRE-INVESTMENT LEGAL CHECKLIST

An investor will want a range of financial, commercial and legal information about your business, before deciding how much to invest, and on what terms. This checklist helps you prepare for the legal part of that process. If done in good time, and kept up to date, it will give you the opportunity to identify and deal with any potential problems before they are found by investors and used against you to drive a harder bargain.

OWNERSHIP

- Can you find all of the registers (directors, shareholders, PSCs etc) which you are required by law to keep? Are they up to date? Do they show the ownership structure you expect?
- Have you made all the filings you are required to make at Companies House? Are there any discrepancies between those filings and the Statutory Books?
- Have options been granted to anyone, to allow them to acquire shares in the company in any circumstances?
- Are there restrictions on bringing in new shareholders – e.g. do existing shareholders have veto rights? If so, will they consent?
- Is there a Shareholders' Agreement in place which the new Investor(s) will be required to agree to? Or will the existing shareholders agree to sign up to a Shareholders' Agreement if required by the Investor?

LICENCES AND CONSENTS

- Are any licences or other consents (including governmental and regulatory) required to carry on the business?
- Do you have all of those licences and consents?
- Are any of them due to be renewed shortly? If so, are you confident that they will be renewed?

LOANS AND DEBTS

- Does the company have any loan facilities or arrangements available to it (whether or not it owes any money under them)?
- Has any security been given by the company (e.g. fixed or floating charges) or by any of its owners (personal guarantees)?

LITIGATION

- Has anyone made, or threatened to make, any claim against the company? Do you know of any reason why any claim might be made?
- Has the company made, or are you thinking of making, a claim against any other company or person?

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CONTRACTS

- Does the company have written agreements with all of its suppliers and customers/clients? Do you have copies of all of those contracts?
- Are there any “change of control” clauses in any of those contracts (i.e. will anyone be able to terminate their contract if there is a significant new investor)?
- Does the company deal with customers on its own standard terms? If so, do these comply with any consumer protection requirements? Do they contain any risks for the company (e.g. long warranty periods or money-back guarantees)?
- Does the company have any agents or distributors, or any co-operation or strategic alliance agreements with anyone? If so, do you have written contracts for all of these?
- Does the company do business with any company or person outside the UK?

EMPLOYEES

- Do all employees (including you, if you take a salary from the business) have a written contract with the company?
- What benefits are provided to employees? (e.g. private health insurance, death in service or accident insurance, and/or long-term disability schemes)
- Are any other benefits normally provided, even if not written into formal contracts (e.g. bonuses)?
- What pension arrangements have been made for employees? Are there any special arrangements for senior employees/directors?

INTELLECTUAL PROPERTY RIGHTS

- What intellectual property rights does the business use? (e.g. copyrights, database rights, designs, patents and trade marks or service marks, software)
- Does the company own all of this intellectual property, or is any of it in your own name?
- Is any of the intellectual property (e.g. software) licensed from someone else? What agreements are in place covering software and IT the company uses, including for its website? Has it developed (or commissioned anyone else to develop) any bespoke software and, if so, who owns the rights to that?
- If you have hired any consultants or agencies to produce materials/branding, did they assign the intellectual property rights in that material to the company?
- Can/should any of the intellectual property be registered?
- Is all “know-how” written down? Has it all been kept confidential, and is there a “non-disclosure agreement” (“NDA”) in place with anyone who has been given access?
- Do you know of any other business which uses any branding that may be similar to yours?

ASSETS

- Does the company own (or have the legal right to use) all of the assets which the business needs? Be particularly careful if any of the assets are owned by you personally.
- Do you have copies of the documents proving that the company has those rights? Are any of them close to expiry?

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DATA PROTECTION

- What personal information does the company hold or use? (e.g about customers/clients, potential customers/clients or employees)
- Does the company have all necessary consents, registrations, and permissions to process and use that data?
- Does the company transfer any personal data to other organisations located outside the UK or the EEA? If so, what safeguards are in place for any such transfers?
- Does the company have a privacy notice and an internal privacy policy that its staff must adhere to?

INSURANCE

- Does the company have all of the insurance it is legally obliged to have (e.g. employers' liability)?
- Does the company have any other insurance policies (e.g. directors' and officers' liability ("D&O" insurance)?
- Have any insurance claims been made recently?

REAL ESTATE

- What premises are used by the business? Do you have all of the title documents? Is there a mortgage?
- Are any leases nearing expiry?
- Have you complied with any restrictions as to the use of the premises?
- How does the business dispose of any waste? If the business includes any manufacturing and/or production, are there any environmental concerns?

GRANTS

- Has the company received any grant, allowance, aid or subsidy from anybody relating to the business? In what circumstances might these have to be repaid?

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