

Due Diligence check list to Form 900 AICC

The following check list contain the typical, itself in the Due Diligence process to putting questions¹. In particular the technological Due Diligence is strongly covered to the isolated case and should be always sketched by branch experts carried out.

A. Juridical Due Diligence

I. Company documents

1. Commercial register extracts of the newest date for the company (in the following always including essential holding companies), when required inspection in the commercial register and the commercial register acts
2. Topical statutes and/or social contracts of the newest date (including agreed, but not yet registered or moved changes)
3. Overview about the capital structure, in particular different juridical arrangement of stocks or shares, privileges for single companions, drawn, but not yet registered increases of capital, capital lowering and other the capital structure and the rights from shares with rights of third parties
4. Names of the companions and height of the participation held by them; representation and development of the participation relations, complete proof of transference of the shares
5. Existing or planned employee participation models
6. Payable exchange contracts and other contracts between the society and her companions within a period - with Ltd - from six months after foundation (veiled material foundation)
7. Observance of the post foundation rules by a PLC (after the country law) for acquisition contracts during the first two years after registration with which the consideration exceeds the tenth part of the capital
8. About general (at arm's length) achievement contracts and supply agreements going out arrangements and legal relationships between the company and the holding companies or between these societies and her companions, in particular also so far them do not arise immediately from the statute and the commercial register, as for example result payment contracts, arrangements about right to vote connections, delegation rights in the supervisory board, trust contracts, contracts about quiet societies, under participation, documents about repurchase / collection of shares, society advances, hypothecation from shares and similar the rights of the companions touching arrangements
9. Arrangements about the position of securities by the enterprise for obligations of third
10. Decisions and protocols of the well-arranged and extraordinary companion's meetings during last (up to three) business years as well as all decisions about capital measures
11. Protocols (including the presentations) from meetings of the management as well as decisive-authorized committees or advisory boards during last (up to three) business years
12. Topical versions of the agenda of the management or other organs, including all committees authorized to the decision and advisory boards of the enterprise.
13. Representation of a group structure from juridical view, in particular group connections in form updated in each case as well as from organizational view, in particular overview about personnel interweaving (occupation of the board of directors and the supervisory board, personal equality, actual group), organisation overview about the structure of the enterprise including titles, function and area of responsibility of the upper management (boards of directors, managers, leading employees)

II. Contracts and arrangements

1. Contracts about joint undertaking (joint-venture), co-operative agreements and study groups (including statute and social contracts), Consortia contracts etc., provided that these are not grasped with the society-juridical bases
2. List of all indirect and immediate society-juridical participation and under participation of the society in other societies under information of the circumference of the participation and the capital structure including quiet participation and other advances
3. Essential contracts with great suppliers and great customers or main business partners as well as other essential contracts with suppliers and customers which go out the frame of the usual business concern, in particular licence agreements
4. Obligations of society-juridical kind to the payment of capital, entering of capital participation, essential cooperation communities and study groups last (up to five) business years, including in connection with such measures of other obligations to be undertaken or assumed

5. (Provided that does not grasp under the society-juridical bases:) all contracts (including presently during negotiations of located contracts) about the acquisition or sales or restrictions of the acquisition or the sales of essential holding companies, companies or scopes of business
6. Competition-limiting arrangements
7. Contracts with appointed dealers, representatives, distributors
8. Other shows the essential contracts whose object lie beyond the usual business concern or the atypical disadvantageous conditions for the enterprise or contains liability risks
9. List and description of all guarantees and liability, assents no matter what kind which are connected with the takeover of enterprise or of third companies

III. Liabilities

1. List all essential information to medium-term and long-term liabilities with information of debtor, believer, amount, interest rate and date of maturity, including Factoring, leasing as well as Sale and lease back business, credit agreements and in connection with credit agreements to given guarantees, guarantees, patronage explanations, protection rights of all kind
2. Bank accounts and information of the balances
3. Representation of the currency management
4. Description of all not balanced obligations (off balance, sheet items) which can have essential financial consequences on the enterprise, the group all together or a holding company

IV. Working-juridical and contract of employment-(proof of juridical problems)

1. Pattern of employment contracts of the workers and employee as well as description of the achievement structure (salary, bonuses, etc.) for the enterprise and the essential holding companies; contracts with freelancer
2. Employment contracts of the managers / boards of directors
3. Overview about existing old-age pension and other social achievements
4. Arrangements about reimbursement dependent on turnover and/or dependent on profit, bonuses and shares in profits
5. List of all company arrangements valid nowadays and wage agreements
6. Documents about any staff reduction plans
7. Description of discussions pertaining to labour law in last (up to three) to business years

V. Civil disputes and administrative procedures

1. List and summary of all present and menacing active processes and passive processes, administrative procedures or arbitration procedures with a quarrel value from in each case more than 50,000 or from basic meaning as well as the essential judicial decisions etc. last (up to two) business years
2. List and summary of all essential penal procedures and breach of the law procedures against organs and/or employees in cartel-juridical, juridical on the stock exchange or economic-juridical problems
3. List and summary of discussions (floating or threateningly) with authorities, in particular tax authorities, environmental authorities and competitive authorities
4. Listing of possible risks of an essential restriction of the business activity because of offence against laws or editions

VI. Taxes

1. Reports of the auditors 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
2. Tax returns and answer for last (up to three) years

VII. Industrial property and similar rights

1. Installation of all existing licences, brands, patents and similar registrations, protective duration, protective circumference and representation of her meaning for the enterprise
2. Overview about essential research programs and developing programs including projected costs and prospects of success

VIII. Property

1. Overview about essential property and place of Operation
2. Overview about essential Rent one or leasehold properties and leasing properties which matter to the continuation of the business activity of the enterprise, and relevant contract situation

IX. Impact on the environment

1. List and description (summary) of all known or predictable, essential environmental loads (air, ground, water), all essential environmental loads certificate and essential environmental studies
2. Environmental-judicial orders or objections

X. Assurances

1. Overview about the existing assurances, as far as these are for the continuation of the business concern of the enterprise of essential meaning
2. Installation of the risks not covered by assurances
3. Installation of all stamped insured events in last (up to three) to business years with a damage height more than EUR/USD 250.000.-

XI. Sundries

1. ISO certificates
2. Reports and analyses of management consultants about the enterprise or a holding company
3. For the business concern necessary public law permissions, approvals, trade registrations and trade permissions
4. Trade-judicial orders and/or objections

B. Financial Due Diligence**I. Chartered accountant's reports and interim reports; budget and plans**

1. Annual accounts, position reports and/or exam reports for last (up to three) business years
2. Description and analyses of essential changes of the financial statement

II. Finance and business accountancy

1. Investment plan
2. Topical operational account documents and profit and loss calculation
3. Calculation pattern for the inquiry of the retail prices
4. Inventory of the material capital assets with assessment
5. Planned measures to the check creditworthiness of the customer
6. Overview about the existing loan lines
7. Structure of the necessary prevention of risk in the balance

C. Business Due Diligence**I. Economic bases**

1. Explanation of the product program
2. Transferability of the commercial model on the foreign country
3. List of the suppliers with whom one has already come for the completion of the contract and which products / services are marketed

II. Market and competitors

1. Listing of the essential competitors
2. Product advantages of the enterprise towards competitors
3. Respected volume of the market in Europe and relevant acceptance in the business plan

III. Distribution

1. Essential distribution rails and distribution capacities; height of the selling costs
2. Comparison of the organisation of the distribution of competitors
3. Feasibility of the turnovers planned in the business plan
4. Actual customer list and acquisition list with evaluation of the plausibility of the successful acquisition

IV. Staff

1. Organisation chart
2. Overview about areas of responsibility and qualification of the employees
3. Essential creation parameters of the contracts of the board of directors

V. Enterprise planning / business plan

Essential acceptances by installation (list) of the business plan and examination of her plausibility

D. Technological Due Diligence

I. Commercial Rights

1. Vulnerability of the commercial rights of the enterprise by third (cf. on top already part AVII)
2. Judgement of the innovation degree of the technology and the competition situation
3. Security of the secrecy of available know-how
4. Protection of trade marks of all stamping commercial names in the essential markets

II. Technology and know-how (particular in the IT area)

1. IT architecture of the solution
2. Communication interfaces (inside / externally)
3. Security draught (certificates, firewall, recovery systems)
4. Security of the transactions
5. Service-level-agreements / Quality of service
6. System capacity / scalability
7. Business protocols (" traceability from business deals ")
8. Kind of the Application of server as well as the developing surroundings

III. Research and development

1. Present and planned costs for research and development
2. Conformance to international standards or industrial standards
3. Quality of the documentation
4. Perhaps available limits (user's figures, data bank dimensions etc.)
5. Existing and planned cooperation's with research and development with other persons or companies