

Startup and Investor Services

Due Diligence Checklist

OVERVIEW

In short, due diligence is an investigation of your company by investors to affirm their confidence in putting their money into your company. Keep in mind that at this point, the only things that the investors know about you are captured in emails, pitch decks, presentations and conversations. The reality is much of the communication has been more pitching than anything.

The due diligence process usually arrives at the term sheet phase and is one of the final steps before investors actually give you their money, pending a satisfactory due diligence investigation. Don't take this the wrong way. Investors need actual legal proof of what you have shared with them and they need a deeper look into your company to ensure the validity of what you have said. Remember, they must be sure that your company can create the \$1B+ return they need to satisfy their portfolio and ultimately, their LPs.

Below, we are going to highlight some of the major ticket items that are typically included in the due diligence process. It behooves you to organize your deal room in a similar fashion to the organization of the items below as such allows for a smooth deal transition and also postures the company as organized.

CHECKLIST

Before we get deep in our discussion, let's first start off with an example and some key terms that will help us navigate our analysis.

CORPORATE DOCUMENTS

- Articles of Incorporation (also known as the Charter)
- Bylaws and Operating Agreements
- Board of Directors Meeting Minutes + Board Consents
- Stockholder Meeting Minutes + Stockholder Consents
- All Documents Furnished to Shareholders and Directors
- Stockholder Agreements (right of first refusal agreements, waivers, side letters, etc.)
- Material Agreements (the bounds of these agreements are usually defined in negotiations; leases, purchasing agreements, equipment rentals, etc. are pretty typical)
- Due Diligence Memo

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CAPITALIZATION

- Pro Forma Capitalization Table (as known as the “Pro Forma”) including:
 - All Issued and Outstanding Stock
 - All Options
 - All Warrants
 - All Convertible Securities
 - All SAFEs
 - All Equity Contemplated in Approved Plans (EIQ, etc.)
 - All Promised Equity
 - All Reserved Stock

PERSONNEL

- List of Company Directors
- List of Company Officers
- List of Employees
- List of Consultants and Advisors
- Employment Agreements
- Confidentiality Agreements
- 401(k) Plans
- Stock Plans (including equity incentive plans)
- Consulting Agreements
- Benefits Programs (medical, insurance, discounts, partnerships etc.)

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SECURITIES

- Blue Sky
- Bad Actor Questionnaire
- Accredited Investor Questionnaire
- Qualified Small Business Stock (QSBS) Checklist (this is becoming a trend in VC financing though not all term sheets may require QSBS qualification)
- Copies of Stock Certificates, Warrants and Option Agreements
- Complete Stockholder Contact Information
- All Stock-Related Programs (equity incentive plan, vesting schedules, etc.)
- All Stock-Related Exchanges (equity grants, stock purchase agreements, etc.)
- Classifications of Stock Exchanges (ISO, NSO, etc.)

GOOD STANDING

- Federal and State Tax Returns for the Last Three Years
- Details of All Government Tax Audits
- Certificate of Good Standing with IRS and State

INTELLECTUAL PROPERTY

- List of All Intellectual Property Owned (patents, trademarks, copyrights, trade secrets, domains, etc.) with any descriptive identifiers (e.g. patent numbers, etc.)
- License Agreements in which Company is Licensor or Licensee
- IP Assignment Agreements in which Company is Assignor or Assignee
- Communications regarding IP disputes (cease and desist letters, USPTO correspondence, IP claims against the company etc.)
- IP Sales in which Company was Purchaser or Seller

GOVERNMENTAL REGULATIONS

- All Permits, Licenses, Certificates or Other Authorizations from all Local, State, and Federal Authorities
- Reports made to Government Authorities
- Detail of All Inquiries Made by Local, State or Federal Authorities

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FINANCIAL INFORMATION

- Audited Financial Statements
 - Income Statements
 - Balance Sheets
 - Cash Flow Statements
- All Debt (liens, equipment leases, mortgages, outstanding loans, etc.)
- Budgets
- Financial Projections

LITIGATION

- Descriptions of All Past, Current, or Potential Litigation including Potential Damages
- All Settlement Documentation

CONCLUSION

As you can see, there is a lot to maintain and keep track of before investors seal the deal on the term sheet. Maintaining good corporate hygiene and keeping files organized is key to your success.

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Our Startup & Investor Services team has decades of experience assisting startups to optimize their fundraising potential and develop their businesses as we continually build next generation services and tools to grow amazing companies.

The caliber of our connections to capital is strong and current, and our team is constantly in the market, meeting with investors to know the latest trends and specific investment criteria. To this end, we created the [Perkins Coie Investor Network](#) so our early-stage clients can get broad access to the investment community. This proprietary network was developed to profile active investors to better understand investment preferences and identify potential client synergies.

As companies gain quality advice to grow their businesses and the investment community receives high-quality deal flow, our goal is simple: **to provide valuable advice and connections to help our early-stage companies innovate and grow.**

If you have any questions about our services, please contact one of our Startup & Investor Services Directors –

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