THE VENTURE CAPITAL

DUE DILIGENCE QUESTIONNAIRE

edda

Overview

The purpose of this document is to provide a structured and comprehensive list of elements VCs consider during the due diligence phase.

Although VCs and Angels take different approaches when it comes to due diligence, this document is also beneficial for individuals who are planning to become Angel Investors. The VC Due Diligence Questionnaire in this document should not be considered as a completely exhaustive list or absolutely mandatory step-by-step guidelines that all Founders must follow nor a set of guidelines Investors have to adopt mandatorily. The data has been compiled from various sources such as disclosures by VCs, books and/or blogs written by VCs, UK Business Angel Association and Academic research papers. Edda is not a legal Firm and the information provided here does not substitute a legal attorney's advice. The due diligence questions in this document can differ from VCs to VCs and also differ with respect to the stage and type of the startup that is being considered for investment. Hence, the questionnaire provided in this document should not be considered completely exhaustive.

Introduction 03

The VC Due Diligence Process

The VC Due-Diligence Questionnaire

General Company Information 10

Company Information

Information about Company's Activities

Competitor information

Contracts, Agreements and Commitments

Accounting and Finance 16

Accounting Information

Borrowing and Liabilities

Acquisitions and Divestments

Asset Information 20

General Asset Information

Intellectual Property

Employment Information 23

Employment Policies

Pension Information

Information about Directors

Risk and Compliance 28

Compliance Information

Regulatory Information

Insurance Information

Data Protection

Information Technology

ESG

Introduction

Due diligence is one of the core processes of the venture capital investment stage where investors evaluate the suitability of an investment for funding. This is also when VCs request a variety of legal documents from founders.

The primary objective of the due diligence process is to mitigate investment risks by gaining an in-depth understanding of the business of the company under consideration for funding.

The importance of the due diligence process can be illustrated by the Hitsgalore incident.

In February 1998, California-based online advertising company, Hitsgalore.com went public. Its market value had shot up from $53 million to nearly $1 billion. At that time, its shares were trading around $20 per share. Before the IPO, the management of the company had assured SEC that there were no lawsuits nor any previous enquiries against any of the employees of the company.

However, in May 1999, a disclosure was made regarding the founder that he was accused by the government for cheating customers in his previous job. When this news came out, the share price plummeted to $9.44 per share, its lowest being $8.56 per share. The company had lost more than $525 million of its market value.

The Hitsgalore incident is one of the many incidents that shows the importance of due diligence process. In the following pages, you will find an overview of the VC investment process focusing on the internal flow of information leading to the two phases of due diligence. Following that, we have provided a brief list of due diligence questionnaire which VCs send to founders or management of a startup that is under consideration for investment.

The VC Due Diligence Process

VCs generate deals directly through investment proposals submitted to them directly by the founders of the company or indirectly such as through referrals from founders they have worked with, consultants, investment bankers and brokers.

All the proposals go through an initial screening where VCs eliminate potential investments based on incompatibility with their investment thesis, geography and stage of development. In addition to the above mentioned factors, VCs also consider governmental factors i.e. unwanted influence of government in investment process (an important factor VCs in emerging and Eastern European economies consider). The figure below shows comprehensive pointers VCs use during the screening phase.

QUESTIONNAIRE: SERIES A B2B SAAS

Business Factors

Stage of Business	Series A
Revenue Status	Post Revenue
Business Model	Completely defined
Market Size (Unit Terms)	$1B+
Historical Growth	25% QoQ
Patent	Yes or Patent Pending
Difficulty of Imitation	Difficult
Moat	Strong

Risk Factors

Industry Risk	Low/Moderate
Execution Risk	Low/Moderate
Legal Risk	Low
Dilution Risk	Low
Regulatory Risk	Low
Team Risk	Low
PR Risk	Low

Financial Factors

Revenue	$1M+
Projected 5 Year Revenue	$15M+
Pre-Money Valuation	Less than $20M
Revenue/Valuation Multiple	Less than 10x
Projected Return	4x+
Runway	12 Months+
Gross Margin	50%+
Capex Requirement	Low to Moderate
Cashflow Positive	Yes
Future Cash Requirement	Low to Moderate

Team Factors

Vision of Team	Strong
Track Record of Team	Proven
Founder/Management Leadership	Strong
Technical Team	Strong
Sales Team	Strong

Strategic Factors

Industry Focus	Aligned with investment focus
Go-to-Market Strategy	Strong
Business-focused	Yes for VCs focused on B2B
Consumer-focused	Cies
Board Seat	Yes for VCs focused on B2C
10% Equity	Cies
Prominent Investor	Yes (No for minority investors)

The proposals that pass the initial screening are assigned to members of the VC firm which consists of a "deal promoter" or "deal leader" (usually a senior VC) and one or two other members. **The deal team now investigates the viability of the investment to identify deal breakers.** Analysis focusing on key areas such as product, management team, IRR, business model, market, competition and finance is carried out using the available information and the knowledge base of VC. This is a straightforward exercise for the VCs. The deal team also meets with the Founders or the management for a preliminary discussion. Internally, the VCs prepare the "minutes" of deal meeting where they record the outcomes of each meeting. Post this meeting, the VCs prepare an internal document/preliminary deal memorandum. This document consists of an evaluation done by the VCs on the following fronts:

1. Quality and potential of the management team

2. Projected growth and size of company's target market segment/s

3. Company's ability to sustain its competitive advantage

4. Potential risks and company's risk management policies

5. Company's financial projections

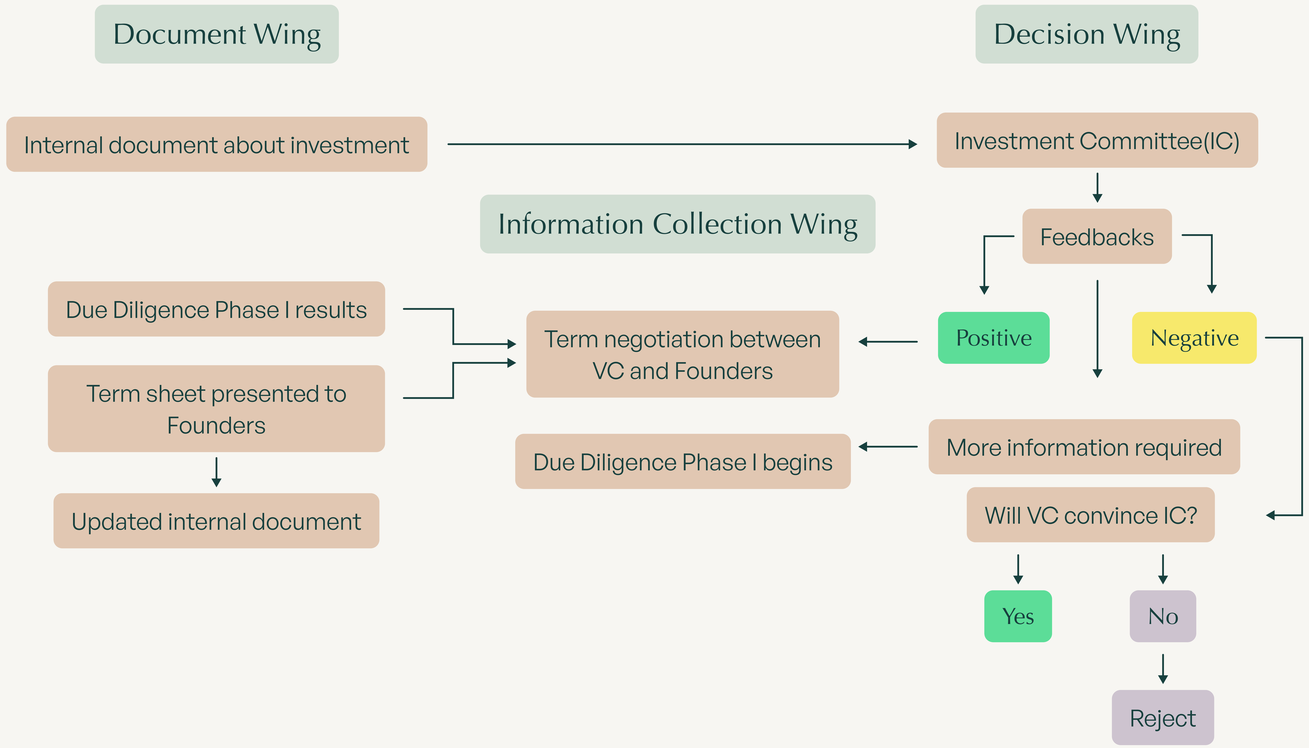
6. Potential to liquidate the investment within 3-5 years

Now, the firm sends this internal document to the investment committee and/or the supervisory board. The investment committee is an internal decision-making unit of the VC firm, while the supervisory board consists of representatives of limited partners. For some VC firms, the supervisory board might have decision-making powers, while for others, it doesn't.

Diligence Phase I

The primary focus of investment committee and board is to provide their views regarding the concept of business, the industry and share their concerns.

The concerns are updated by VCs in their internal document. The moment VCs and the committee are satisfied, VCs begin the first phase of due diligence. The figure below maps out the decision process leading to due diligence Phase I.



Concept adopted from: The VC process in Emerging Markets (2007) by Dark Klonowski

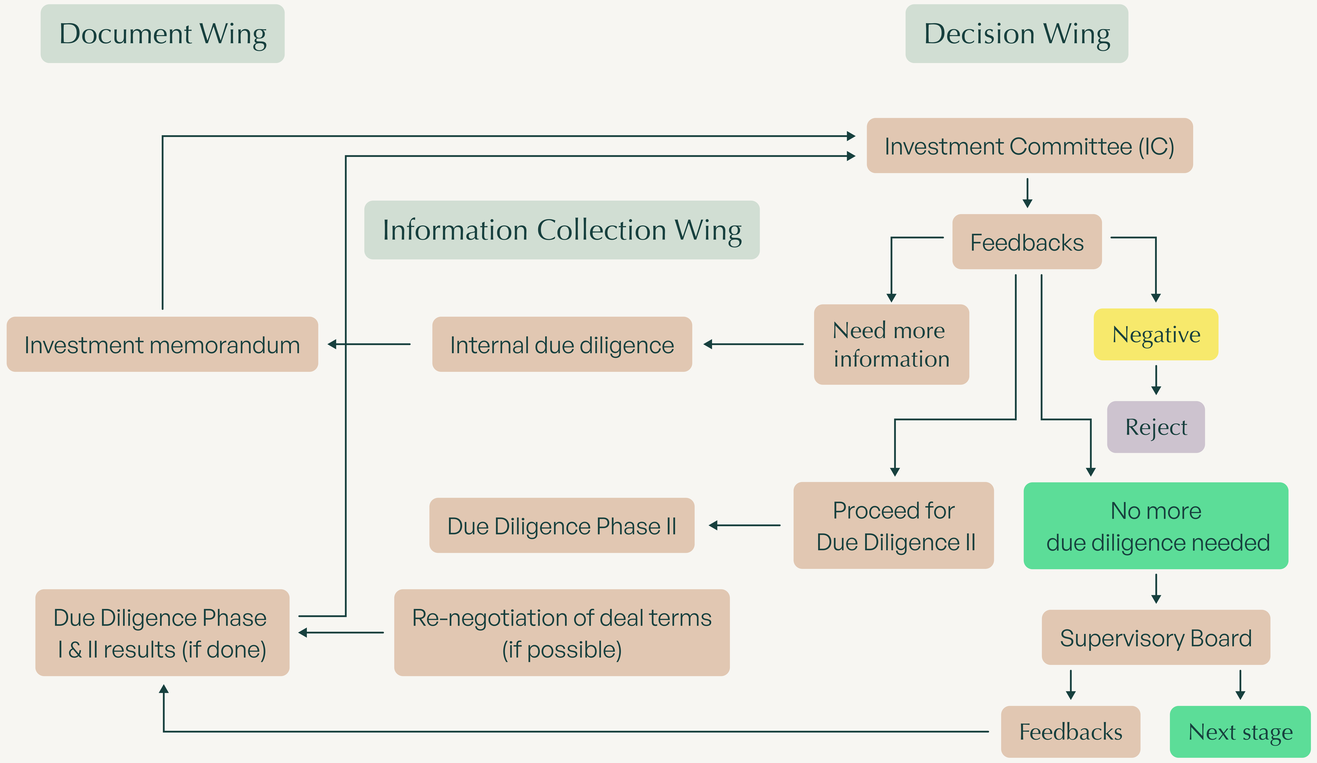
Diligence Phase II

VCs draft a due diligence questionnaire and send it to the entrepreneurs or the management of the company. The entrepreneurs are expected to provide written answers and documents to VCs during the subsequent meetings. VCs then start discussing about the deal terms. At this point the VC firm has not incurred any additional costs.

Internally, VCs continue the process of redrafting the commercial and deal-related issues. This list becomes the basis for the second phase of due diligence. VCs summarize the findings of first phase of due diligence in a memorandum called deal memorandum/deal qualification memorandum or investment memorandum. This differs from firm to firm, but ultimately it consists of similar types of concerns.

Before commencing the second phase of due diligence, the VCs negotiate the deal terms and prepare a term sheet, which is then signed. The signed document is then presented to the investment committee and/or supervisory board. At the same time, VCs prepare a budget for the second phase of due diligence which is external due diligence. The figure below provides a snapshot of internal processes and second phase of due diligence.

The second phase of due diligence focuses on three key areas: legal, accounting and environmental. The legal due diligence focuses on audit of the investment's assets, agreements with suppliers, consumers and other financial institutions. Due diligence focuses on the accounting norms (US GAAP or IFS), historical financial data of the last 12 or 18 months, analysis of off-balance sheet liabilities such as internal loans or tax considerations and an analysis of the internal accounting process of the investment. Environment-related factors have a more profound importance for manufacturing companies and the due diligence related to environment factors is mostly about the waste management policies.



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The VC Due-Diligence Questionnaire

The VC Due-Diligence Questionnaire is divided into **five main sections**:

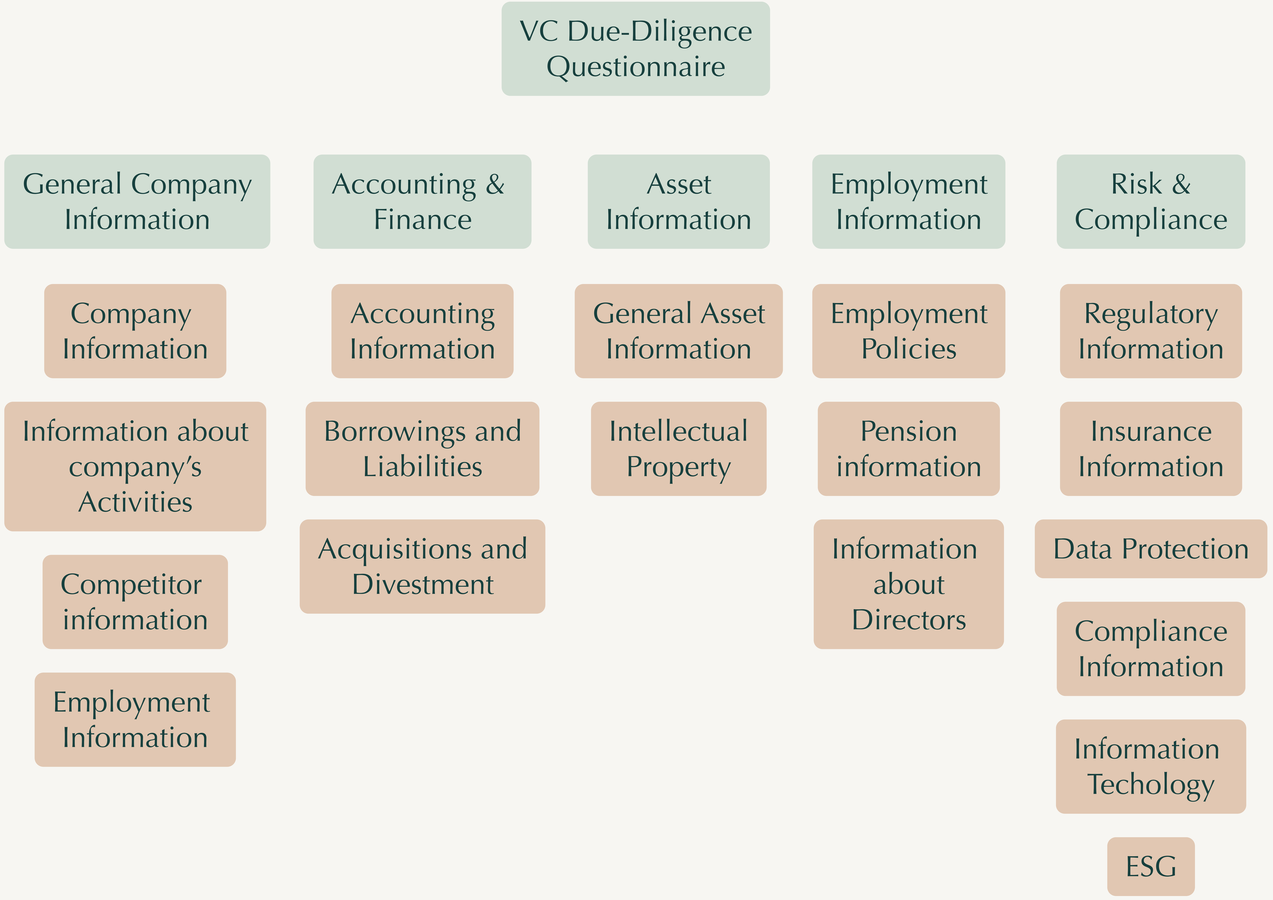
1. **General Company Information:** This section contains questions related to general information about the company, its activities, agreements and commitments, and information about competitors.

2. **Accounting and Finance:** This section comprises of questions pertaining to accounting, borrowing and liabilities, acquisitions and divestments.

3. **Asset Information:** This section consists of questions about general asset information along with questions about intellectual property.

4. **Employment Information:** This section is about employment, pension and information about the Directors of the company.

5. **Risk and Compliance:** The last section contains information about compliance, regulation, insurance, data protection, ESG and information technology.



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General Company Information 10
Accounting and Finance 16
Asset Information 20
Employment Information 23
Risk and Compliance 28

Company Information

1. Provide the full name, place and date of incorporation, registration number and registered office.

2. Provide copies (if any) of resolutions passed by the shareholder.

3. Provide a certificate of incorporation and (if applicable) certificate of change of name along with articles of association.

4. Provide details about the issued shared capital and a copy of statutory books, meeting minute books and list of registered members.

5. Provide copies of any agreements where third party consent is required for any transaction.

6. Provide details about any repurchase and redemption of company's shares.

7. Provide a list along with contact details of all directors, company secretaries and anyone who has representation rights such as power of attorney.

8. Provide a confirmation that there are no current agreements pertaining to disposal, voting or acquisition of company's shares (issues or unissued) or securities.

9. Provide complete details about the total authorised and issued share capital detailing classes and number of shares and specifying whether the shares are paid in full or in part.

10. Provide details about any capital changes in the company from the date of incorporation.

11. Provide details (with documents) of options, warrants, security or any other right pertaining to the share capital.

12. Provide details of any company shares issued to third parties or any security given over any company asset to third parties. Also provide information about any charge or debenture that is affecting company's assets.

13. Detail any intra-group transfer apart from arm's length price.

Information About Company's Activities

1. Describe or provide a list of the company's main activities.

2. Provide a list of countries in which the company operates.

3. Provide a list of activities which are outside of the country in which the company is incorporated.

4. Provide a list of activities which the company does besides its main activities.

5. Provide a list of all partnerships, associations or companies in which the company holds shares. Also provide complete particulars of capital, percentage of capital held and copies of all documents pertaining to respective agreements.

6. Provide a list of any trade associations the company is a member of.

Competitor Information

1. Provide a list with details of the competitors of the company.

2. Provide a list of any agreements (legally enforceable) or arrangement that might restrict the Company's activities in any jurisdiction.

3. Have there been any formal complaints or situations where the company was involved with any investigations with any office regulating Fair Trading or Fair Competition? If yes, then provide details.

4. Provide details (if any) of any arrangements or agreements the company has with any dealer, supplier or an intermediary pertaining to allocation of customer territory or restrictions on resale.

Contracts, Agreements and Commitments

1. Provide copies of all contracts of sale of any product/service where the that take more than six months to be completed. Also provide details of any discounts.

2. Describe the credit agreements (including copies) the company has with respect to its clients where the clients take more than 30 days to make the payment. Also list the circumstances and types of discount provided.

3. Describe the agreements the company has entered into which cannot be terminated without a notice period that is less than a month and which cannot be broken without the company paying any compensation.

4. Provide a copy of all licenses, distribution agreements possessed by the company.

5. Provide a list of agreements (including copies) that require validation for a third party to be executed.

6. Provide a list of arrangements (including copies), which when terminated can change the control of the company. Also specify whether third-party consent is required for such termination.

7. Provide a list of arrangements (including copies), which when terminated can cause a significant monetary impact on the company.

Contracts, Agreements and Commitments

8. Provide copies of contracts that are currently being negotiated by the company that are of material nature. The contracts under consideration can be either made by or proposed to the company.

9. Describe the contracts whether written or unwritten that can restrict the activities of the company.

10. Provide the standard form of contracts or standard form of terms and agreements used by the company in carrying out its activities.

11. Provide a list of customers that accounted for more than 5% of company's total revenue in the preceding year along with the percentage contribution and copies of contracts with such customers.

12. Provide a list of suppliers that accounted for more than 5% of company's goods in the preceding year along with the percentage contribution and copies of contracts with such suppliers.

13. Provide a list of contracts with suppliers or customers that are going to end within the next year.

14. Are there any material contracts that are not part of any contract asked above? If yes, then provide a copy of such contract.

General Company Information 10
Accounting and Finance 16
Asset Information 20
Employment Information 23
Risk and Compliance 28

Accounting Information

1. Provide a copy of all management accounts since the day the company started operating.

2. Specify which accounting standard is being used (US GAAP, IFS) and state whether there has been any change in the adopted accounting standard.

3. Provide a copy of the last audited accounts of the company and the previous sets of audited accounts.

4. Provide details about any change in accounting reference since the starting date of accounts.

Borrowing and Liabilities

1. Provide names and contact details of company's bankers.

2. Provide details of all accounts held by company along with the current overdraft or any borrowing.

3. Provide details about company's debt securities along with mortgages and any property belonging to the company that has been used as a collateral. Include copies of all relevant certificates.

4. Provide details of any loans given to the company by any third-party including loans given by any person or entity associated with directors or shareholders of the company.

5. Provide copies of budgets, financial forecasts for the last five financial years.

6. Provide copies of any grants received or applied by the company in the past five years. Also include details about whether the company has to make any future payments for the received grants.

7. Provide copies of all credit sales, hire purchase agreements, leasing and/or rental contracts.

8. Provide details of any off-balance sheet commitments of the company.

9. Provide details of any guarantees, indemnities or sureties given in favor of the company.

10. Provide details of all distributions paid and declared by the company since the date of last accounting audit.

11. Provide details about the capital commitments and capital expenditure.

12. Provide details of the company’s debt schedule.

Acquisitions and Divestments

1. Provide details about any liabilities or potential liabilities outstanding or arising from any acquisition or divestment agreement.

2. Provide details about any reorganization that will be carried out in the next twelve months.

3. Provide details about previous reorganizations (if any) that have taken place in the past.

4. Provide details about any contracts to acquire or divest using company shares or any other shares in the last five years.

General Company Information 10
Accounting and Finance 16
Asset Information 20
Employment Information 23
Risk and Compliance 28

General Asset Information

1. Provide details about all machinery, plants and equipment owned by the company. Also provide the annual maintenance contracts or arrangement for all of them.

2. Provide details about the assets owned by the company but currently not in its possession.

3. Provide details of any stock of goods that are damaged or obsolete.

4. Provide details of all assets that were acquired and disposed of by the company in the past five years.

5. Provide details of all assets that the company uses but is not its legal or beneficial owner.

6. Provide official copies of any property formerly owned, used or occupied by the company or real estates which can be a liability for the company.

7. Provide official copies of registered titles and documents mentioning the unregistered titles with respect to company's real estate ownership.

8. Provide details of changes in the real estate ownership of the company or the changes in which the company used its real estate assets.

9. Detail any contingent liabilities with respect to any real estate or interest in land (even if not owned by the company). Include any residual liability on a property formerly owned by the company.

10. Provide details of all rent, service charge or any other monetary sum paid by the company in terms of lease or license pertaining to any real estate asset owned or used by the company.

11. Provide details of any or all permission or planning notices given or received by the company with regards to its properties.

Intellectual Property

1. Provide details of company's Intellectual Property Rights (IPR) and include copies of relevant documents, chain of titles, copyright protection and a revenue breakdown illustrating the percentage of revenue earned via such IPR in the past five financial years.

2. Describe how the decisions pertaining to exploitation of company's IPR are made.

3. Provide details of all patents, trade marks, registered designs, property rights owned or used by the company other than the one disclosed in the initial company IPR. Also include a list of any applications or registrations made for new IPR.

4. Mention the people of the company that look after the company's IPR.

5. Have there been any dispute between the persons looking after the Company's IPR regarding the rights or any other facts? Mention any legal proceedings ongoing or in the past.

6. Provide details of all IPR that are used by the company but not owned by the company. Include copies of licenses to use such IPR.

7. Provide details of any know-how that is of confidential nature and is used by the company and which is subject to a third-party and the third-party has the right to deny that the company uses such know-how.

8. Provide details of any complaints, disputes or objections, claims filed regarding the IPR of the company or any such complaints, disputes or objections filed by the company for IPR.

9. Have there been any disputes or alleged infringement between the company and third party concerning the IPR used and owned by the company? If yes, provide details.

10. Provide details of the application process for the registration of an IPR.

11. Provide copies of all agreements in which the company is licensing its IPR to third- parties.

General Company Information 10
Accounting and Finance 16
Asset Information 20
Employment Information 23
Risk and Compliance 28

Employment Information

1. Provide an organizational chart and list of all employees. Include part time employees and employees in overseas offices.

2. Provide copies of all job contracts and contact details of all employees. Also include details about any increase in bonus/remuneration/pension benefit provided.

3. Provide a list along with contact details of all contractors, consultants, agents that work for the company. Also detail their remuneration and provide a copy of their contract agreement.

4. Have there been any disciplinary actions taken against any employee? If yes, provide details.

5. Are the employees of the company part of any trade union, staff association or any worker's representation body? If yes, provide details including copies of agreements or arrangements.

6. Provide copies of all contracts/agreements signed with agents and state whether there has been any change in the terms of the contract or agreement.

7. Provide a copy of the standard form of contract used by the company and a copy of the disciplinary rules or procedures used by the company.

8. Provide details along with copies of any employee stock option plans, profit sharing plans, bonus, commission or any other benefit the company is providing to its directors as well as employees.

Employment Information

9. Provide details of all perks/benefits the company will provide to its employees such as company car, life insurance and health insurance.

10. Provide details of any loans or guarantees made by the company for or on behalf of any of its employees.

11. Provide details about any compensation payment or any redundancy payment the company made or has the provision to make to its former employees or the next kin/dependent of former employees. Disclose details of payments made in such a case in the past twelve months.

12. Provide details of any agreements with the directors or employees of the company where they get paid for losing their job in the event of the company getting acquired.

13. Provide details of any former employee whose termination or resignation led the company to lose any customer/supplier contracts or led to a decrease in revenue. Specify the circumstances of the termination/resignation and state whether the former employee has now joined a competitor firm.

14. Provide details of all offers of employment currently sent out by the company which are accepted/not yet accepted.

15. Provide details of all notices of termination given by the company to its employees/ contractors/consultants.

16. Provide details of any employment disputes the company currently has or had in the past twelve months involving the directors or senior management of the company.

Pension Information

1. Provide details about pension policies including copies of pension booklets given to employees, the trust deeds and rules, names of present trustees and actuary, current rate of employer and employee's contribution, insurance premiums, taxes and expenses paid.

2. Provide contracting certificate as per the relevant pension scheme laws applicable to the country the company operates in.

3. Provide the names of all members of the pension scheme and those who would become members in the next six months.

4. Provide details of unapproved pension arrangements granted to the employees.

5. Provide a list of all employees that are not participating in the pension scheme. Also disclose whether the company has facilitated access to an alternate scheme.

6. Are the trustees of the company in compliance with the relevant pension scheme acts?

7. Provide details (if any) of whistle-blowing reports submitted to the pension regulator.

8. Provide details of any former pension scheme the company provided to its employees.

9. Does the company have any liability regarding financial support or has received any contribution notice?

10. Provide details of any dispute, claim or litigation made in reference to payment/provision of pension.

Information about Directors

1. Provide copies of all employment contracts and agreements with directors of the company including details of any change in the terms of the contract.

2. Have any of the directors of the company ever filed for bankruptcy, have any outstanding convictions or ever held any government position? If yes, provide details.

3. Did any of the directors have any material interest in any business that filed for bankruptcy or been under investigation in the past twelve months? If yes, provide details.

4. Are there any directors, employees or majority shareholders who have taken an interest in a business that is in direct competition with the company? If yes, provide details.

5. Provide copies of all contracts signed with directors, employees and other shareholders.

General Company Information 10
Accounting and Finance 16
Asset Information 20
Employment Information 23
Risk and Compliance 28

Compliance Information

1. Describe the events, acts or circumstances or omissions that might make the company non-compliant with any law, regulation pertaining to health and safety of workers, environment or asset that the company uses.

2. Provide a confirmation along with copies of registration of the company as per the relevant company's Registration Act of the country in which the company is registered.

3. Confirm that no officer or employee has ever failed to perform any statutory duty with respect to the company.

4. Are there any disputes or potential disputes with existing employees, customers, suppliers? If yes, provide details of past disputes along with the remedial action taken by the company.

5. Provide details of any pending, actual or threatened litigation, arbitration or an assertion on the company that any of its employees or the company itself is non- compliant to any of the laws or regulations it is subject to. Include details of any such incidents in the past along with the remedial action.

6. Provide details about any judgements that can affect either the company or its assets.

Regulatory Information

1. Provide details about all regulatory bodies the company is subject to.

2. Describe the situations where any of the company's permits or licenses can be suspended, revoked or not renewed.

3. Provide copies of all licenses, approvals, permits, certificates, authorizations, any application of registration or declarations obtained by the company or applied by the company (even the ones the company applied but didn't obtain).

4. Provide details along with copies of any relevant documents about any non-compliance condition pertaining to permit. Include details about any failure of the company to remedy a non-compliance action.

Insurance Information

1. Provide copies of all insurance policies take for or out by the company and receipts of all paid premiums.

2. Provide a history of any claim made on any insurance policy or any outstanding claims.

3. Provide details of any withdrawal or refusal of insurance cover in the past five years.

4. Describe the situations where a claim under an insurance policy can be made in the next twelve months about which the insurer is not notified about.

Data protection

1. Has the company carried out any processing of personal data according to the relevant data protection laws (GDPR, Data Protection Act 2018 for UK) applicable to the company? If yes, provide copies of data protection notification certificates.

2. Does the company use any data pertaining to any minors?

3. Is the company compliant with the latest data protection acts?

4. Does the company employ any third-party to process personal data? If yes, provide copies of contracts with such third-parties and show whether the contract is compliant with the applicable data protection acts.

Information Technology

1. Provide details of all computer software and hardware used by the company. Include details about software licenses or mention the owner of the software.

2. Provide details of information backup and security in the event of a system shutdown. Also include details of the disaster recovery.

3. Provide copies of all licenses and equipment owned by the company with respect to the hardware and software used by the company.

4. Provide a copy of all software and hardware maintenance contracts signed by the company.

5. Does the company have any copyright of any software that it uses? If yes, provide details.

6. Provide details of any copyright owned by the company in its websites.

7. Provide details of any source code, software developed or owned by the company and the date of its creation.

8. Describe the circumstances in which the company might lose its access to its softwares or hardwares.

9. Provide details (if any) of any past dispute or ongoing dispute with respect to the usage of the company's IT infrastructure with any third-party.

10. Provide details of domain names registered in the name of the company including details of the email provider used by the company. Include copies of agreements pertaining to hosting, maintenance and operation of websites.

ESG

1. Provide copies of all environmental, health and safety related policies and procedures of the company.

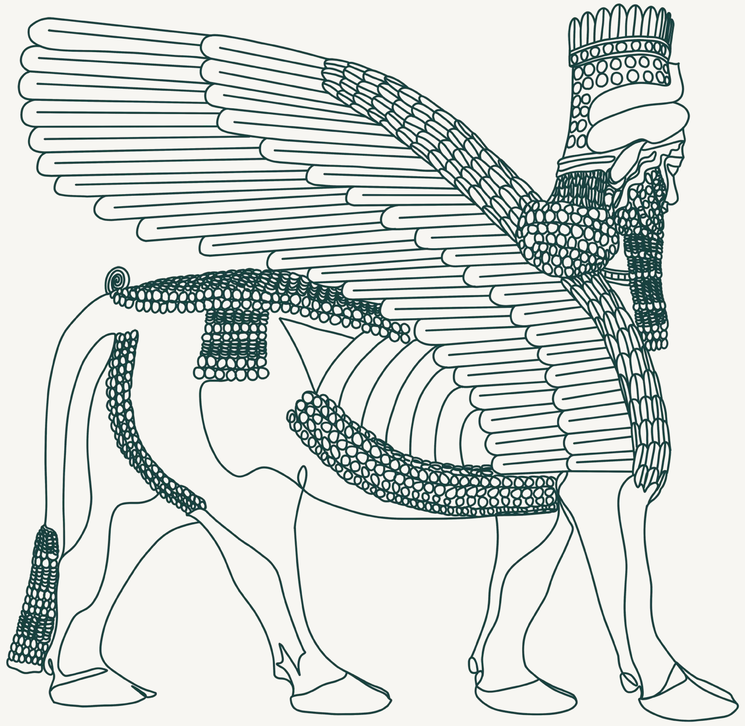
2. Detail any health and safety related risk assessments carried out by the company including copies of all permits, logbooks, records.

3. Provide copies of any assessments or reports pertaining to any environmental liability for the company. Include copies health and safety compliance documents and any previous environmental audits carried out on or on behalf of the company in the last five years.

4. Has there been any communication between the company and the Health and Safety Executive or any relevant authority in the past? If yes, provide a document of this communication.

5. Provide details of any construction work that is being undertaken for any of the properties of the company. Include copies of all documentation related to this construction with approvals and provisions.

6. Has the company received or given any notice from the regulating Environmental Agency regarding non-compliance with respect to the sites, properties currently as well as formerly used by the company? If yes, provide details of the proceedings.



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