

Pre-Contract Enquiries

for private company acquisitions and mergers

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Introduction

Prior to the acquisition of the share capital of a company, the purchaser will need some preliminary information about the business to be acquired.

This document sets out a checklist of all the items that, in most situations, are required. It is merely illustrative and may not apply in every instance nor may it be complete. In those cases where documents are mentioned, accurate and up to date copies of those documents should be requested.

It should be noted that all references to "the Company" include references to its subsidiaries (if any). The directors' approval under paragraph 15 requires the signature of the person making the replies to these Pre-Contract Enquiries.

1. Incorporation and Statutory Matters

- The current Memorandum and Articles of Association of the Company (with any amending resolutions).
- Copy of Certificate of Incorporation and any certificate on change of name of the Company.
- Registered office and other trade addresses.
- Third party consent to change of ownership (eg. shareholders, OFT).
- The place where the statutory registers may be inspected.

2. Accounts

- The last three years' audited accounts of the Company including accounts to the last year-end date, whether finalised or not.
- The current accounting reference date of the Company and any changes which have been made within the last three years.
- The management accounts for the last 15 months.
- Details of proposed changes to the draft accounts.

3. Share Capital

- The authorised and issued share capital of the Company together with names and addresses of all registered shareholders in the Company, showing numbers of shares held and whether held beneficially or otherwise.

4. Management

- Names and addresses of all directors and the secretary of the Company, stating job title, responsibility and any other directorships.
- Service Agreements of directors and key personnel.
- Length of Service of directors and key personnel.

5. Employees

- All Service Agreements of employees whose employment is not terminable on one months' notice or less.
- The standard terms and conditions of employment given to employees.
- Any arrangements made with employees with regard to the use of company cars and/or private cars.
- Trade Union membership.
- Any share option, share incentive or profit sharing (including profit related pay) arrangements, with details of all outstanding entitlements.
- Any agreements with trade unions or employee associations.
- Any standard disciplinary procedures which are in force.
- Any disciplinary procedures already started.
- All outstanding or anticipated claims to industrial tribunals by employees for re-engagement and/or compensation in respect of dismissal or redundancy.
- Any applications to tribunals that are anticipated with reference to discrimination under the Sex Discrimination Act or the Equal Pay Acts.



6. Subsidiaries

- All subsidiaries of the Company, and interests in other companies, together with particulars of shareholdings.

7. Finance

- Name and address of all banks in which the Company has an account.
- Details or copies of all guarantees or indemnities given by or in respect of the Company and by directors, including intra-group or associated or connected-party arrangements.
- Loans made to or by the Company including all inter-company loans and indebtedness.
- Any contract by the Company to take or grant loans exceeding £1,000 (or whatever relevant figure is appropriate).
- Any mortgage, charge or debenture over any of the assets of the Company.

8. Properties

- A schedule of the property and land owned by the Company with a short description. All leases, tenancies or licences held, or granted by, the Company and authority to inspect the title deeds of all of the Company's properties (the description should include the size of properties, capacity occupied, planning permissions, tenure etc).

9. Trading Matters

- All agreements in connection with the Company's business which cannot be **terminated on three months' notice** without payment of compensation.
- Any credit arrangements, in favour of a customer of the Company, granting more than thirty days' terms of payment or providing for special discounts.
- Any contracts for the sale or supply of stock or any products or equipment, or the provision of any service, by the Company which have more than six months unexpired or exceeding £1,000 in value (or whatever relevant figure is appropriate).
- All standard terms of purchase or sale, or terms of business.
- Any hire purchase, rental leasing and like agreements granted by the Company or to which it is subject.
- All licence, agency and distribution agreements, agreements of one year's duration or more and material supply agreements.

- Any business or trading names and any registrations under the Trade Marks Act.
- All current insurances, detailing the date of the last renewal, the next renewal dates, annual premiums, the amount of cover, the property covered, the nature of the cover and the name of the insurance company together with details of any claims within the last three years whether paid or outstanding.
- All motor vehicles owned or hired by the Company.
- All patents, registered designs and other industrial or intellectual property rights owned or used by the Company and all relevant licences and sub-licences.
- Any licences under the Consumer Credit Act 1974 or other statutory authority.
- Plant and Machinery and Office Equipment:
 - List of main items, cost and book value
 - Capacity occupied/used
 - Details of assets not owned (both finance and operating leases)
- Any registrations under the Data Protection Act 1984.
- Particulars of any covenants or restrictions which operate in respect of the Company's activities.
- Capital commitments.
- Contingent Liabilities.

10. Litigation

- Any existing and/or pending arbitration and/or litigation with amounts involved.
- Any judgements affecting the Company.
- Any general or special provision made by the Company in relation to the recovery of outstanding book debts.

11. Taxation

- All agreements with the Inland Revenue and copies of the tax computations of the Company for the last 7 years.
- Any corporation tax outstanding and due to the Inland Revenue.
- Any deferred taxation provision, including any rollover relief claimed in respect of corporation tax on capital gains.
- Any tax clearances obtained and any tax indemnities taken.

- Any Treasury consents under Income and Corporation Taxes Act 1988, s765 within the last three years.
- All correspondence with the Inland Revenue concerning shortfall assessments or apportionment of income.
- PAYE position - details of recent audit results.
- Particulars of the Company's VAT registration number and address of the local VAT office concerned.
- VAT inspections - details of recent VAT inspections.
- Capital Gains Tax position (assets rolled over/base cost etc).
- The name and address and reference number of HM Inspector of Taxes for the Company's tax affairs for:
 - a) PAYE
 - b) Corporation Tax

12. Pensions

- Name or short description of scheme.
- Funding assumptions:
 - Annual salary progression
 - Assumed annual increase in value of scheme assets
 - Controlled funding rate
- Copy of last actuarial report
- Members - number, average age and average remuneration of:
 - Male members
 - Female members.
- Copy of Trust instruments and rules (incorporating all amendments to date).
- Details of current benefits.
- Is the scheme an exempt approved scheme as defined in the Finance Act 1970 s21 (1)?
- Contracting-Out - Is there a Contracting-out Certificate issued under the Social Security Pensions Act 1975, s31 in respect of any employments to which the scheme relates?

13. Sales

- Principal customers and volume for last three years.
- Product and stock group analysis.
- Marketing and pricing policies.
- Market share - now/aimed for.
- Any exclusive products/processes/services (if so, what is position on patents/royalties etc).

14. Stock (Inventories)

- A copy of the auditors' working papers relating to their audit work and report upon the stock of the Company, its method of valuation and approach to maintenance of stock records.
- As regards suppliers of stock, the names (or reference numbers for later identification) of the 20 main suppliers showing the stock supplied by each of them as a percentage of the total purchases of stock of the Company, in monetary terms.
- An explanation of the Company's buying policy and arrangements for forward contracting for purchase of stock whether to ensure continuity of supply or otherwise.

15. Directors' Approval

- The directors' warranty that they** have used their best endeavours to make these replies correct and complete so far as they ought reasonably to be aware and to acknowledge that such warranty will be a condition of the Agreement for the sale and purchase of shares in the Company.
- A certified copy of a resolution of the board of directors of the Company in approval and confirmation of the replies as here stated and of the proposed sale of shares in the Company.
- Signature of person making above replies.

Further Information

This guide is for general interest - it is always essential to take advice on specific issues. We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

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