

ALLEN & OVERY

Readying your business for a funding round

2020

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A capital raise is an important event for any company. Ensuring that the transaction runs smoothly while not unduly distracting management is critical to achieving the best value for the company and its stakeholders. Forward planning and preparation are key to achieving not only this, but also in helping to begin negotiations with potential investors in as strong a position as possible.

Set out below are common areas which scaling companies no matter their stage of development should keep in mind when preparing for a funding round.

Contracts

- Keep a list of your top ten customer/ supplier contracts by value
- Know what the confidentiality and indemnity provisions are in these contracts
- Record whether the company has entered into any standalone confidentiality agreements or indemnities
- Record whether any contracts contain unusual or onerous terms or provisions which may be triggered by the proposed financing (eg change of control provisions)

Intellectual property (IP)

- Maintain a database of the company's registered IP, eg patents and trade-marks
- Make sure that employees/contractors have assigned to the company in their contracts (or in a standalone agreement) any IP rights over which they may have a claim
- Know the details of contracts under which the company licenses IP to or from any third parties

Employees

- Make sure that the company has a standard form contract for employees and contractors
- Have you checked that your employment contracts for key employees include tightly drafted non-compete clauses?
- Keep the company staff handbook up to date and make sure employees are complying with it

Incentives

- Maintain an up-to-date register of options
- Keep options documentation, including plan rules and records of grants, filed centrally
- Would the proposed transaction crystallise employee option arrangements under the option plan terms?

Shareholders

- What shares has the company issued, of what class, and when? Make sure this is accurately recorded on the share register
- File records at Companies House, ensure share certificates have been issued and you have the correct contact details for shareholders for when it comes to signing documents

Directors

- Make sure that the company directors are recorded accurately at Companies House and on the register of directors
- Check that the company keeps accurate minutes of board meetings which should be stored centrally at the company's offices



YOUR KEY CONTACTS



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Company constitutional documents

- Are there any restrictions in the company's articles of association on issuances of new shares?
- Is there a shareholders' agreement to which the company is a party which contains restrictions on issuances of new shares?
- Do any of the constitutional documents give rise to a requirement to obtain any consents? If so, what is the timetable for obtaining them?

Data protection

- Does your company process personal data?
- If it does, inform the relevant individuals (eg employees) and check that data security policies are in place. Note if any personal data is transferred abroad or outside the EEA
- Register with the Information Commissioner's Office, if required

Financing

- What terms of your financing documents might be triggered by the fundraising?
- Bank consent to vary loan agreement terms might be needed, or a loan agreement might automatically terminate upon completion of the transaction
- Make sure you have a clear list of all of the company's trade creditors and amounts owing
- Is there any intra-group debt or overdraft facility?

Tax

- Make sure the company's tax filings are in order and up to date
- Keep a record of any correspondence with HMRC

Regulatory

- To the extent the company's business or operations are subject to regulation, do you have copies of all relevant licences and permits together with important correspondence with relevant regulatory bodies?
- If you have received professional advice on the regulatory obligations of the business (eg from legal counsel) are you able to provide that advice? Note that it is important to consider questions of legal privilege before disclosing any legal advice

Other points to consider

Litigation

- Is the company currently being sued or is a dispute pending or threatened?

Premises

- Keep documents of title and leases filed centrally

Insurance

- Ensure the company has directors' and officers' indemnity insurance and general insurance policies in place

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