

DUE DILIGENCE CHECKLIST

for

SME

	Priority	Requested	Available	Reviewed	Remarks
A. Legal Section					
I. Principles under Company Law					
1. General					
1.1. Certified current excerpt from the commercial register of the company together with applications not yet entered in the commercial register					
1.2. List of all establishments of the company including branch establishments (land and premises) with exact address					
1.3. Shareholders' agreement in the version most recently submitted to the commercial register or the current version of the shareholders' agreement, if different from the version submitted to the commercial register					
1.4. All shareholder decisions and/or shareholders' meeting minutes from the last three years					
1.5. Supervisory board, administrative board or similar body					
a) Proof or documentation on the establishment [of the company], unless already provided for in the shareholders' agreement					
b) Addendum of the internal rules of procedure of this board					
c) List of the current members (if necessary indications on the requirements under the law on co-determination)					
d) Account of the guaranteed compensations					
e) Minutes of decisions made in the last five years					
f) Meeting minutes of the last five years					
1.6. Internal rules of procedure for management					
2. The founding process of the company					
2.1. Notarized Memorandum or Articles of Association (shareholders' decision to set up the company) and certificates concerning shareholders' decisions made since the founding of the company which changed the articles of association, including those which have not yet been submitted to the commercial register					
2.2. In the case of foundation of the company with non-cash capital contribution:					
a) Copy of the contribution agreement(s)					
b) Copy of the take-over declarations of the shareholder(s)					
c) Copy of the certificate of value of contributions					
3. Changes to the capital of the company since its foundation					
3.1. If the capital is increased with contributions in cash, the following must be submitted					
a) Resolution to increase the share capital					
b) Take-over declarations(s) of the (new or old) shareholders					
c) Proof of the amount, form and time of the contribution					
3.2. If the capital is increased with non-cash capital contributions the following must be submitted					
a) Resolution to increase the share capital					
b) Take-over declarations(s) of the (new or old) shareholders					
c) contribution agreements					
d) report on the foundation of the company by non-cash capital contribution					

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e) proof submitted to the commercial register of the value of the non-cash capital contribution (certificate of value of contributions					
3.3. Reductions of capital					

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<u>4. Reorganisations of the company since its foundation</u>					
4.1. In the case of enterprises merged with the company					
a) Resolutions of the companies involved authorizing the merger					
b) Merger agreement					
c) Merger report of the companies involved					
d) auditor's report by the auditor appointed to examine the merger					
e) entries in the commercial register					
4.2. In the case of the demerger of a branch of the company					
a) Resolutions of the companies involved authorizing the demerger					
b) Demerger and take-over agreement					
c) Demerger report of the companies involved					
d) entries in the commercial register					
4.3. In the case of the spin-off of a branch of the company					
a) Copy of the agreement concerning the transfer of assets					
b) entries in the commercial register					
4.4. In the case of a change of the legal form					
a) resolution authorizing the transformation					
b) Report on the transformation					
c) entries in the commercial register					
<u>5. Structures holding shares in the company</u>					
5.1. List of current shareholders (owners of company shares)					
5.2. Closed chain of company share transfers from the moment of the company foundation up to the acquisition by the current shareholders					
a) Notarized certificates of the company share transfer agreements					
b) resolutions of approval of the shareholders' meeting					
c) If pro-rata shares [shares which are split up when a shareholder sells part of his/her interest in the GmbH]: Copy of the respective declaration of consent of the company					
5.3. Agreements regarding the reasons for silent partnerships as well as the granting of [profit] participation and usufructuary rights					
5.4. Agreements concerning rights of pre-emption on shares					
5.5. Other agreements, e.g.					
a) agreements binding shareholders to exercise his voting right in a prescribed manner					
b) levies of execution, pledges, assignments for security (purposes) and other burdens on shares					
c) documents concerning the repurchase and redemption of shares					
d) restraints on sale and disposal					
<u>6. Company agreements with the shareholders and associated enterprises</u>					

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6.1. List of all companies associated with the company, which have a legal relationship with the latter					
6.2. Agreements concerning the granting of shareholders' loans or loans from associated companies of the shareholders, indicating the interest rate, the initial amount and the amount on the reporting date, the reimbursement and the securities					
6.3. Agreements concerning the designation of securities by shareholders or companies associated with the latter for obligations of the company towards third parties, e.g. letters of support, suretyships, declarations of subordination)					
6.4. Agreement concerning the granting of loans by the company to shareholders or to companies associated with the latter, indicating the interest rate, the initial amount and the amount on the reporting date, the reimbursement and the securities					
6.5. Agreements concerning the designation of securities by shareholders or companies associated with the latter for obligations of the shareholders towards third parties.					
6.6. Profit and loss transfer and domination agreements					
6.7. Other agreements, e.g.					
- exemption from this ban of shareholders who are subject to [have signed] a legally binding non-competition clause (e.g. leading or managerial shareholders)					
- agreements made by the company with shareholders (e.g. corporate documents, management contracts					
6.8. Agreements concerning the company or the shareholder relationship made between the shareholders or with third parties					
6.9. Contracts with persons close to the shareholders or with companies, in which persons close to the shareholders have substantial holdings either directly or indirectly					
II. Contractual relationships with third parties					
1. <u>Industrial property rights, copyrights and rights to use such rights</u>					
1.1. Establishment of third-party <u>patents issued</u> to to the company or, if used by the company, issued to the shareholders, together with the respective license agreements					
1.2. Compilation of the trademarks entered for or by the company, <u>unless</u> they have <u>already</u> been entered under the intangible assets					
1.3. License agreements concerning licenses granted <u>to third parties</u> and other rights to use patents and trademarks					
1.4. Composition of the internet domains entered for the company					
1.5. Know-how agreements with third parties					
1.6. Proceedings for breach of third-party patents, trademarks etc. by the company					
2. <u>Other intangible rights</u>					
e.g. software licence agreements					
3. <u>Lease and tenancy agreements for real property and equivalent rights</u>					
3.1. (Sub) lease and tenancy agreements on business premises and land used by the company.					

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3.2. Sublease agreements for granting the right of use to third parties					
<u>4. Lease and leasing agreements for other tangible materials</u>					
- List, indicating the object, party to the contract, term (start and finish) and the annual net payment amount					
<u>5. Service contracts and similar contracts</u>					
- Compilation of contracts which exceed a yearly amount of [25] thousand Euros or which have a period of notice of over 12 months, e.g. service and maintenance contracts, surveillance contracts, franchise contracts, consultancy and development contracts					
<u>6. Further significant contractual relationships</u>					
a) organizations					
b) cooperation agreements, joint ventures, consortiums					
<u>7. Insurance policies</u>					
7.1. List of insurance policies taken out by the Company (excluding insurance policies for company cars) indicating the insurer, the risks covered, the insurance sum and the premiums					
7.2. List of the insurance claims asserted in the last five years					
7.3. Insurance reports on the claims history since the start of the contract					
7.4. Refusal of proposals or the termination of existing insurance policies by an insurer in the last five years					
7.5. List of uncovered risks					
<u>8. Relationships under labour law</u>					
8.1. Employees					
8.1.1. List of all employees (including managerial employees), indicating the name, age, year of recruitment, function and gross salary in the last full calendar year; divided according to white-collar workers and labourers					
8.1.2. Average number of staff on sick leave, frequency of accidents and other periods of absence in the past three years					
8.1.3. List of (so-called 'fictitious) subcontractor and part-time employees to control compliance with income tax liabilities					
8.1.4. List of temporary workers employed					
8.1.5. Agreement to safeguard jobs in the event of rationalization					
8.2. Collective labour law					
8.2.1. Indication of the employers' association to which the company belongs					
8.2.2. Presentation of all applicable collective labour agreements					
8.2.3. Presentation of all currently applicable works council agreements and internal regulations (plant regulations and company practices)					
8.3. Pay system					
8.3.1. List of the current total wages and salaries according to groups of employees, indicating the periodic time when wage increases are made					
8.3.2. Internal salary increase guidelines					
8.3.3. Employee share ownership plan					
8.4. Employment contracts					
8.4.1. Sample contract for the various employee groups					

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8.4.2. Contracts of employment of all managing directors and of those employees, whose annual remuneration					
8.4.3. Agreements with employees for further employee benefits (e.g. health, accident and life insurance) or ancillary agreements (e.g. company car, profit and performance-related bonus)					
8.4.4. Agreements with employees who establish legal consequences in the take-over of the company through a new shareholder					
8.5. Pension commitments					
8.5.1. Sample of pension commitments towards employees who have already retired and towards currently employed persons and/or company pension arrangements applicable to the latter (collective and individual commitments)					
8.5.2. List of employees who have already retired, who have claims or entitlements from a pension commitment, indicating age and seniority					
8.5.3. List of the currently employed persons, for whom a pension commitment has been made and/or for whom a company pension arrangement is applicable, indicating any vested pension rights which have already accrued					
8.5.4. Indications of the backup of pension commitments (direct insurance policies, reserves etc.)					
8.5.5. Agreements on early retirement, part-time work in the period prior to retirement, record of hours worked etc.					
8.6. Miscellaneous					
8.6.1. List of all current pending or imminent disputes as well as any disputes settled in the last three years					
8.6.2. List of any employees who have already retired (including the age and seniority), who still have claims against the company (in addition to pension claims), in particular on the basis of a settlement agreement or social compensation plan					
8.6.3. Account of breaches against provisions of labour law					
8.6.4. Information on any planned short-time employment (e.g. planned duration)					
III. Relations governed by public law					
1. Compilation of all public promotions and allowances obtained or applied for in the last five years, as far as there are conditional or unconditional repayment requirements					
2. Indication of any public authority investments which have already been made, are being made currently or have been announced, which will lead to a cost burden for the company B. local improvement assessments for road construction)					
3. Restrictions under competition law and notifications to the Federal Cartel Office etc.					
4. List of the audits performed by the social security authorities (BfA [Bundesversicherungsanstalt für Angestellte - Federal Insurance Office for Salaried Employees], health insurance fund etc.) B. and other institutions (e.g. trade associations) in the past three years, with an enclosure indicating the findings of the audit					

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IV. Legal disputes					
1. List of any current or imminent legal disputes, arbitration proceedings, governmental proceedings under civil law, public law or other disputes (e.g. under competition law), which are of substantial importance for the company - in any case for a amount in dispute of over 25 thousand Euros, in which the Company is or is likely to be either actively or passively involved (unless included in those named above), including disagreements with shareholders who have left the company, including proceedings which have already been concluded, which still result or may result in liabilities for the Company, indicating the opposing party, the amount in dispute and the matter in dispute.					
2. List of all criminal proceedings and regulatory offence procedures against the Company and its organs or employees, as far as these are connected with the business operations.					
3. List of all concluded proceedings, arbitration proceedings and administrative proceedings of the past three years, if the amount in dispute exceeded 25 thousand Euros, or if (in particular in the event of proceedings under administrative law) the matter was of substantial importance for the company					
V. Reorganization					
1. All agreements with creditors, employees (including managerial employees) and shareholders in connection with the reorganization					
2. List of all payment liabilities (regardless whether they are dependent on profit), in particular from improvement agreements, indicating the amount, the due date, the receiver/beneficiary and the interest rate from the due date.					
3. Extension agreements with suppliers or banks as well as any supplementary correspondence					
VI. Other					
1. Contracts including pre-emptive rights, from which the Company incurs liabilities of over 25 thousand Euros net in individual cases or which lie outside the usual business volume of the Company, unless already included in the above indications					
2. Contracts which have not yet been fulfilled, including pre-emptive rights for the divestiture of real property or equivalent rights and other substantial operational bases for which the liability exceeds 50 thousand Euros on an individual basis and 50 thousand Euros in total.					
3. Contracts which establish a legal consequence upon acquisition of the Company by a shareholder or upon acquisition of a shareholding in the company (so-called Change-of-Control clauses)					
4. Indication of the termination (by the company or by the party to the contract) of any contracts mentioned in this list.					
5. List of all bad debts and losses in value (in particular from supplies) exceeding 25 thousand Euros, which are not visible in the last financial statements, as well as a list of customers, who are over three months behind with payments of 25 thousand Euros respectively.					

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6. List of all powers of attorney issued by the Company, which currently exist or which were only cancelled during the past year; any powers of representation which are visible from the commercial register should not be indicated					
VII. Business operations					
1. Organization chart					
Company structure, indicating the division/department head and the numbers of employees					
2. Essential software					
Description of software which is essential to provide the services					
a) self-devised software					
b) licensed software (licence conditions)					
3. Business registration and permit, if necessary special government permits to carry out the of the business operations and/or the production or sale of products of the company B. (e.g. special opening times, sale and distribution of alcohol, nightwork, processing of dangerous materials, immissions)					
4. Indication of the company equipment which are subject to authorization and presentation of the notice of approval, indicating whether the required terms conditions have been complied with.					
5. Overview of the authorizations which may be imminently withdrawn, cancelled, removed or which may not be extended, as well as the appeal against decisions by the company itself or by third parties					
6. Documentation regarding the fulfilment of customer-specific requirements for quality assurance and quality standards (e.g. ISO 9001 et seq.)					
VIII. Purchase and distribution					
1. <u>Contracts with suppliers</u>					
1.1. List of the Company's most important suppliers as well as suppliers, which represent the only sources of supply, indicating the sales amount					
1.2. General terms and conditions of the supplier and general terms and conditions of the Company					
1.3. Individual agreements with suppliers, e.g. B.					
a) Framework agreements					
b) territory protection agreement, ban on competition					
c) minimum purchase quantities, purchase agreements, contractual penalty clauses					
d) Term and/or termination of contract					
e) Assignments of claim					
2. <u>Contracts with customers</u>					
2.1. List of the most important customers as well as customers who are the sole customers for a particular product					
2.2. General terms and conditions of the customer, general terms and conditions of the company					
2.3. Individual agreements, e.g.					
a) Service contracts (if necessary, provide sample)					
b) Development contracts (if necessary, provide sample)					
c) Framework agreements					

	Priority	Requested	Available	Reviewed	Remarks
d) Minimum purchase volumes, purchase agreements, bonus(es), discount(s)					
e) payment targets, assignments of claim					
f) territory protection agreements, bans on competition					
2.4. Overview of any warranty claims asserted or threatened in the last three years, which refer to goods produced or distributed by the Company and exceed 25 thousand Euros in each individual case and 25 thousand Euros in total.					
2.5. Agreements with sales representatives, dealers and similar sales partners, with a period of notice of over three months and/or which can lead to claims to compensation in the event of termination.					
2.6. List of the top 10 development and manufacturing customers for each of the past three years and the turnover in each year.					
IX. Environmental protection					
1. Burdens for the environment (air, water, earth, noise etc.)					
a) Indication as to whether such burdens are caused currently or have been caused in the past by the business operations or					
b) List of all damages ascertained by the authorities or by the company					
c) Indication of elimination costs (invoices, credit notes)					
2. List of all governmental permits, approvals and requirements, which concern this area					
3. Compilation of all directives or complaints made in the past three years under industrial or environmental law, from public authorities or third parties, as well as proof that they have been settled; most recent inspection report of the trade supervisory centre as well as proposals and enquiries from the past three years					

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B. Financial section					
I. Finance					
1. Annual financial statements of the Company (including the balance sheet, the profit and loss account plus the appendix), in addition to a warehouse report from management and an audit report by the auditor of annual accounts for the last full five financial years of the Company					
2. Loan agreements of all types including the granting or mere tolerance of availment of loans					
3. Clarification of liabilities, where applicable					
4. Agreements for the transfer of title of ownership as a security, for the assignment of claims as security for a loan, surety-, guarantee- and debt deferral agreements, levies of execution and pledges as well as similar security interests vis-à-vis third parties, with the exception of reservations of title of suppliers which are customary in the trade and legal liens					
5. Factoring agreements					
6. List of the bank accounts of the Company indication the signatory powers and the balances as per [DATE]					
7. List of rate-hedging transactions or other "off-balance-sheet-transactions" (futures, swaps etc.)					
8. Security interests in the above meaning in third-party assets, which were ordered in favour of the Company					
9. Requests for the opening of composition, bankruptcy or insolvency proceedings for the assets of the Company, also indicating the destiny thereof					
10. Documentation concerning the cash-management and/or cash-pooling system					
II. Plant and equipment of the Company					
1. General					
1.1. Plant overview of the investments indicating the current investments in the ownership of the Company, for which securities have been ordered for third parties (including equipment, in which the current suppliers reserve rights of title, as far as the purchase price liability, which is still open, has been disclosed in the last audited financial statements) and indicating the equipment which is only leased, rented or otherwise used (access list as per [31.07.2004])					
1.2. List of equipment which are not fit to be used or in a proper working condition					
2. Intangible assets					
(only specify if not already included in A. II.)					
2.1. List and proof of ownership indicating the factual and geographical scope and also the length of protection for					
a) industrial property rights (patents, utility models, trademarks)					
b) Copyrights					
c) Other property rights					
2.2. In the case of patents and trademarks acquired from third parties: documents regarding the acquisition and transfer as well as proof that the transfer has been entered in the registers					
2.3. Proceedings for breach of company patents and trademarks by third parties					

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2.4. List of opposition proceedings and/or revocation procedures, limitations and waivers					
2.5. List of property rights (trademarks) which have been applied for but not yet entered					
2.6. Compilation of (identification) marks and names which are used by the company but have not yet been entered					
2.7. Description of secret know-how					

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C. Tax section					
I. status of the assessment					
(mandatory, including errors)					
1. Audit by the tax authorities					
1.1. Report of the last tax audit as well as remarks concerning current or announced audit by the tax authorities					
1.2. Were the results of the last audit performed by the tax authorities already processed in the annual financial statements?					
1.3. Were the results of the last audit performed by the tax authorities already processed in the annual financial statements?					
2. Tax declarations since the last audit performed by the tax authorities or in the last five years, which have been submitted or processed.					
3. Indication of particular risks: Were tax declarations submitted which deviated from tax guidelines, letters received from the Federal Ministry of Finance [Bundesministerium der Finanzen] or binding information?					
4. Tax decisions since the last audit performed by the tax authorities or in the last five years					
5. List of tax pre-payments for periods which have not yet been assessed and calculation of the provisions for taxation					
II. Communications with the financial authorities					
(mandatory, including errors)					
1. Binding information and the related correspondence with the financial authorities					
2. Current appeals					
3. Pending proceedings before the financial courts					
III. Company – shareholder relations					
(mandatory, including errors)					
1. Employment contracts of shareholders, who work in the company, including changes and additions up to the present date					
2. In the case of profit-sharing agreements: Calculation of the share in profits for the last three years					
3. Do shareholders employed in the company receive benefits which other employees do not receive? (e.g. pension arrangements, company car). How are such benefits treated from a fiscal point of view?					
4. Were profit payouts made from the capital (EK) 04 or from the deposit account pursuant to § 27 Corporation tax law?					
5. Were any contributions or debt relief payments made by the shareholders?					
6. Were any commodities deposited by shareholders (open or hidden)?					
IV. Reorganization of the Company/Group in the past					

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1. Blocked amounts in the case of current-value depreciation depending on dividend distribution: Were shares in corporations acquired in the past ten years by shareholders, who do not have a substantial shareholding or who were resident abroad?					
2. Blanket purchase: Were companies acquired, which presented tax losses carried forward?					
3. Documents concerning substantial structural changes (in particular book valuation or valuation rate) and contributions (in particular substantial operational bases)					
V. Company structure					
1. Fiscal unity					
1.1. Profit transfer agreement: Copy of agreement, proof of entry in commercial register					
1.2. Settlement payments to minority shareholders, if available?					
1.3. Are pre-consolidated results frozen?					
1.4. Has the fiscal group been ended? If so, when and for what reason					
2. Corporate documents: Contractual principles, calculation					
3. Internal transfer prices for other performance allocations with associated companies, determination of the prices					
4. The location in which important administrative decisions are taken					
VI. Particular trade-related risks					
Examples: bribe money, commission, plant construction, bidding transactions					
VII. Income tax					
1. Report on the last audit on income tax performed by the tax authorities as well as remarks on current or announced audits on income tax to be performed by the tax authorities					
2. Who keeps the income tax accounts (is this done internally or externally)?					
3. Were there any fluctuations in the employees (where applicable liability for income tax claims)?					
4. Freelancers (list of all freelancers for the last three years, payment and agreements).					
5. Stock Options					
6. Effects: establishment / assembly or construction					
7. Holiday, business trips, incentive trips					
VIII. Sales tax					
1. Report on VAT – special audits in the last five years as well as remarks on current or announced special audits on VAT					
2. How are imports/exports from/to other countries dealt with?					
3. Are there any pre-tax deductible sales? What methods are used to limit the pre-tax connected with these sales?					
IX. Miscellaneous regarding taxation					
1. Were any hidden profit payouts made?					

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2. Illustration of the breakdown of net worth under corporation tax					
3. Overview of claimed public benefits (special depreciation for wear-and-tear, allowances, etc.)					
4. Write-offs on shareholdings					
5. Current-value depreciations Illustration of current-value depreciation-special depreciation for wear-and-tear and proof of reduction in value					
6. Were licence fees paid (abroad, domestic)?					

info@proventis.com

www.proventis.com

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