Due Diligence Guidelines for Financial Advisors

January 2018

|  |
| --- |
| Introduction |

The Office of the Securities and Exchange Commission (the “**SEC Office**”) and the Investment Banking Club have jointly prepared these Due Diligence Guidelines which are intended for use by financial advisors licensed by the SEC Office when conducting due diligence for public limited companies wishing to issue and offer shares for sale through an initial public offering in order to ensure that the due diligence conducted by such financial advisors meets international standards. This will reduce the time for consideration of whether to grant approval, registration statements for the offer for sale of securities and draft prospectus by the SEC Office and expedite the process for the issuance and initial public offering of shares. These Due Diligence Guidelines may not be applicable in their entirety to secondary offerings or public other offerings of shares which are different from initial offerings of shares, and the offering for sale of other types of securities in Thailand.

The SEC Office and the Investment Banking Club are of the view that these Due Diligence Guidelines may be applied only as initial guidelines in conducting due diligence. The Due Diligence Guidelines do not prescribe minimum requirements; financial advisors have the duty to review in-depth information appropriate for each issuer by taking into consideration matters including, without limitation, the size of the business, complexity of circumstances, as well as the relevant context and situation of each issuer, as the details and business description of each issuer are different. This is in order to ensure that the qualifications of a public limited company wishing to issue and offer shares for sale through an initial public offering meet the relevant criteria of the SEC Office and the Stock Exchange of Thailand (the “**SET**”) and that important information is completely, adequately and accurately disclosed in a timely manner in order to enable investors to make informed investment decisions.

Notwithstanding the foregoing, financial advisors should not assume that their compliance with the procedures and steps specified in these Due Diligence Guidelines constitutes complete and adequate performance of their duty to conduct due diligence so that they will not have any legal liability to investors. On the other hand, a financial advisor who has not fully complied with the procedures and steps specified in the Due Diligence Guidelines shall not necessary be considered as not having performed his/her duty to conduct due diligence in accordance with the required standards. The SEC Office will take into consideration the reasons of the financial advisor (after all relevant factors are considered by such financial advisor) in considering whether or not the financial advisor’s deviation from the Due Diligence Guidelines was reasonable or appropriate.

In addition, the Due Diligence Guidelines do not impose enforceable obligations on financial advisors who are members of the Investment Banking Club. To be clear, the Due Diligence Guidelines are not intended for the SEC Office to use as a basis for its inspection of the performance by financial advisors of their duties. Instead, these Due Diligence Guidelines are only intended for financial advisors to use as a manual in providing their services to public limited companies wishing to issue and offer for sale shares in initial public offerings. Each financial advisor may adapt or apply the Due Diligence Guidelines to other functions as they deem appropriate.

The SEC Office, the Investment Banking Club and the Association of Thai Securities Companies hope that these Due Diligence Guidelines for Financial Advisors will be of benefit to financial advisors and related parties in the performance of their duties as advisors to public limited companies wishing to issue and sell securities through initial public offerings.

Investment Banking Club,  
 Association of Thai Securities Companies  
January 2018

**Table of Contents**

Page

Introduction

1. Regulatory Framework 1

2. General Principles 6

3. Recommended Due Diligence Procedures 9

4. Frequently Encountered Issues 21

|  |
| --- |
| **Due Diligence Guidelines** **for Financial Advisors**  **to Public Companies Wishing to Issue and Offer Shares for Sale in Initial Public Offerings** |

**1.** **Regulatory Framework**

**1.1** **The Securities and Exchange Act B.E. 2535 (as amended)**

One of the key objectives of the Securities and Exchange Act B.E. 2535 (as amended, the “**Securities Act**”) is to promote adequate, accurate and proper disclosures by relevant persons to enable investors to make informed investment decisions with regard to the issuance and offer for sale of shares to the public. This is one of the fundamental pillars of the regulatory and supervisory framework of the SEC, which uses a disclosure-based regulatory regime. This objective appears in many Sections of the Securities Act, such as Sections 73, 76 and 82 to 86[[1]](#footnote-2), the violation of which will give rise to the imposition of penalties.

In order to meet the aforementioned objective, Section 65 of the Securities Act provides that the offer for sale of securities to the public or any person may be made only when the registration statement and the draft prospectus (collectively, the “**Filing**”) filed with the SEC Office by the company or owner of the securities have become effective.

Section 82 of the Securities Act further provides that

“in cases where the registration statement and prospectus contain false statements or particulars or fail to disclose material facts that should have been stated therein, any person who purchases securities from the promoters of a public limited company, the company or owner of securities, and such person is still the owner of such securities, who suffers damage from such purchase, shall have the right to claim compensation from the company or the owner of the securities.

…………………………………………………….”

Section 83 of the Securities Act provides that:

“the following individuals shall be jointly liable under Section 82 with the company or the owner of the securities **unless such persons can prove that they were not aware of the facts, or by their positions they could not have been aware of the truthfulness of the information or the failure to disclose the facts required to be stated**:

(1) directors who have the power to bind the company and have signed their names in the registration statement and prospectus;

(2) promoters of a public limited company who signed their names in the registration statement and prospectus;

(3) underwriters, auditors, financial advisors, or property valuers who intentionally or with gross negligence signed their names to certify the information in the registration statement and prospectus.”

Section 84 of the Securities Act provides that:

“The company or the owner of securities and the persons referred to in Section 83 are not liable to pay compensation in accordance with Section 82 in the following cases:

(1) the subscribers knew or should have known that the statements or particulars were false or that there was a failure to disclose material facts required to be stated therein;

(2) damage did not arise from the result of the receipt of false information or the failure to disclose material facts required to be stated therein.”

Section 278 of the Securities Act provides the penal provision of disclosure of false information or incomplete information in the Filing that:

“any person who makes a false statement or conceals a fact which should have been stated in the registration statement or draft prospectus which has been filed in accordance with Section 65 in   
a material respect, shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding two times the price at which all securities were offered for sale by such person but in any case not less than five hundred thousand baht.”

In addition, financial advisors are required to give the following certification in the Form 69-1 of the Registration Statement:

*“As a financial advisor of the securities issuer, I hereby certify that:*

*(1) I have reviewed the information contained in this registration statement, and with due care as a financial advisor, I hereby certify that such information is accurate, complete, and does not contain any false or misleading statement in a material respect or omit any material fact that ought to be declared.*

*(2) I have considered the policy and future business plan of the Company and I am of the view that the assumptions were provided on reasonable grounds and with an adequate and clear explanation for the potential impact on the Company and investors (only applicable if the securities issuer discloses its policy and future business plan in the registration statement)”*

In the event that the financial advisor is partially unable to verify the information contained in the registration statement or suspects that certain information is inaccurate or incomplete, the financial advisor must disclose additional conditions such as:

*“with the exception of the section ……………………….of this registration statement on which I could not provide comment due to ……………… (insufficient information for verification purposes; or directors or executive officers of the securities issuer were uncooperative in verifying the information)”* or

*“with the exception of the statement on page………….., which I consider that it should be replaced with the following statement………………”*

In the event that the financial advisor makes a reference to information prepared by other experts in the registration statement, the following statement must be added:

*“with the exception of section ……………………….of this registration statement in which I have included information prepared by……………………………….. who I consider as having sufficient expertise in this area”*

Considering that disclosure of information is very important in allowing investors to make informed investment decisions, that is, the information disclosed must be complete and accurate and sufficient, and not misleading nor omit any material fact that ought to be declared or contain false statements, it is necessary for the financial advisor to exercise extreme care in carrying out his/her work.

Regardless of the fact that the Securities Act does not expressly set out the criteria for a ‘due diligence defense’ as is the case in other countries, if a financial advisor has conducted a proper and complete due diligence and there is no reason to believe that the prospectus contains false statements or is materially misleading or omits material information that ought to be declared, the financial advisor should be able to use this fact to avoid 3liability under Section 83 of the Securities Act. Notwithstanding the foregoing, consideration of this matter will be on a case-by-case basis and there is currently no Supreme Court precedent in Thailand on this matter.

**1.2** **Regulation of the Stock Exchange of Thailand Re: Listing of Ordinary Shares or Preferred Shares as Listed Securities B.E. 2558 (as amended)**

Clause 19 of the Regulation of the SET, Re: Listing of Ordinary Shares or Preferred Shares as Listed Securities B.E. 2558 (as amended) provides that the applicant who files a listing application to the SET must appoint a financial advisor who is approved by the SEC Office to jointly prepare such listing application. The applicant must also retain a financial advisor for a period of one year continuously from the commencement date of trading of the applicant’s securities on the SET.

Clauses 40 and 41 of the Regulation further provide that such financial advisor must exercise sufficient expertise, competence and due care in performing its work as a professional financial advisor, and specify the key responsibilities of a financial advisor in relation to due diligence to be as follows:

1. A financial advisor has the duty to undertake any act to ensure that the directors and executive officers of the applicant would recognize their duties and responsibilities under the law governing securities and exchange, regulations, rules, notifications, board resolutions, the listing agreement made with the SET, circulars and any procedures to remain listed on the SET.
2. The financial advisor must certify to the SET that the applicant has accurately and completely disclosed all material information in respect of the applicant;
3. The financial advisor must provide its opinion to the SET that the applicant meets all required qualifications suitable to be a listed company on the SET; and
4. The financial advisor must advise the applicant with respect to its compliance with the regulations, rules, notifications, board’s resolutions, listing agreement made with the SET, circulars and any procedures to remain a listed company on the SET; and

If the financial advisor fails to perform abovementioned duties, the SET has the authority to take the following actions: (1) give a warning and instruct the financial advisor to improve the performance of its duties to the SET’s satisfaction; and (2) suspend the status of the financial advisor of such person for a period specified by the SET.

**1.**3 **The Importance of Effective Due Diligence**

Due diligence plays an important role from the outset when a financial advisor begins to evaluate the eligibility for listing of an issuer up to the submission of the application for approval of the offering of shares and the Filing to the SEC Office as well as the application to list the shares on the SET.

As referred to in Clause 1.1 above, in an initial public offering of shares (or an “**IPO**”), the Filing is the principal document which the SEC Office and the SET will use when assessing the eligibility for listing of a public limited company issuer or applicant, as the case may be , as well as the important document on which public investors will base their investment decision. As a result, it is necessary for the financial advisor to undertake a thorough check and review that the contents of the Filing do not contain any false or misleading statements or material misstatement or omit any material information prior to its submission to the SEC Office. If necessary, a financial advisor may consider requesting assistance from other advisors or experts in the preparation of the Filing. An effective due diligence process is therefore essential, particularly if the financial advisor or any other relevant party wishes to defend itself against allegations of acting with gross negligence to avoid liability under Sections 83 and 278 of the Securities Act. In other jurisdictions, financial advisors or any other relevant party may raise a defense to deny liability on the basis of effective due diligence (commonly known as the ‘Due Diligence Defense’). In addition, an effective due diligence process will also help financial advisors to identify issues and concerns that must be addressed and, as appropriate, highlighted to the SEC Office or the SET.

**1.4 The Scope of** **Due Diligence**

A financial advisor must exercise its own discretion in considering what investigations of facts or what actions are necessary to enable it to comply with obligations imposed on it under the Securities Act and the relevant laws and notifications applicable at such time. In doing so, the financial advisor must take into consideration the context and circumstances. A financial advisor must also ensure that its officers understand the aforementioned roles, obligations and responsibilities of the financial advisor, as well as put in place an appropriate internal control system to ensure that junior officers who are involved in the due diligence process are under an appropriate level of supervision by senior officers.

The scope of conduct for proper due diligence by a financial advisor may vary between transactions. The financial advisor must exercise its reasonable judgment, applying professional standard, to determine what investigations of facts or steps are necessary in relation to a particular public limited company issuer, in addition to the principles specified in these Due Diligence Guidelines, by taking into considerationthe context and circumstances.

In addition, in defining the scope of due diligence, others factors such as the public limited company issuer and the persons who must be investigated in the due diligence process, the nature of the shares, the industry and the business, and the country in which the public limited company issuer operates its business must be taken into consideration.

**1.5 Appropriate Approach under the Due Diligence Guidelines**

The Investment Banking Club recognizes that it is difficult to provide a precise definition of “conducting reasonable due diligence”, particularly in the absence of clear judicial determination and specific criteria for this matter in Thailand. These Due Diligence Guidelines thus seek to put in place broad guidelines and principles which financial advisors should take into consideration when conducting their due diligence. Further, in offerings involving international distribution concurrently with a domestic offering, financial advisors (and underwriters) will have to consider global market practice and standards, as well as considerations under applicable securities laws. In addition, financial advisors should always be mindful that a reasonable inquiry might dictate that other inquiries should be undertaken with respect to any aspect of due diligence, according to the circumstances of any given case (including for the purposes of resolving any issues or concerns raised or discovered in the due diligence process). Financial advisors should not use these Due Diligence Guidelines as a standard for due diligence in general without regard to the context and circumstances.

The Due Diligence Guidelines are divided into two inter-related sections:

* **General Principles** – this section sets out the broad principles based on which a due diligence process should be conducted. The Due Diligence Guidelines identify general principles covering the following four areas:

(1) Procedures and Preparation of Working Papers

(2) Checking and Verification

(3) Overall control of the due diligence process; and

(4) The appointment of and reliance on advisors and experts.

* **Recommended Due Diligence Procedures** – this section sets out the inquiries which financial advisors would normally carry out when acting as financial advisor in an IPO (being specific inquiries covering three broad areas, namely, (i) the management, directors and controlling shareholders of the public limited company issuer, (ii) the nature and type of the business of the public limited company issuer and (iii) the expert sections of the Filing).

Financial advisors should note that compliance with these recommended Due Diligence Procedures by itself may not be sufficient. In the course of carrying out such inquiries, financial advisors must consider carefully whether other inquiries should be made to ensure accurate and complete disclosure in the Filing and that the information contained in the Filing is not false or misleading and does not omit any material fact that ought to be declared.

**2.** **Section** 1**: General Principles - Proper Due Diligence**

In an IPO, every financial advisor is responsible for carrying out “reasonable due diligence” in the course of the preparation of the Filing for submission to the SEC Office and the SET for the offering of newly-issued shares to the public, and for the listing of the shares on the SET.

The SEC Office and the Investment Banking Club have prepared these Due Diligence Guidelines by taking into consideration the level of skill and experience expected of a competent financial advisor in general. In any event, a financial advisor should not base its determination of the scope and extent of due diligence (including the necessity for the appointment of experts) on a cost-benefit analysis alone. As a matter of practice, the scope and extent of a due diligence to be considered by a financial advisor should generally be to obtain sufficient information to enable reasonable conclusions to be drawn on all issues contained within the Filing. Where the financial advisor becomes aware of information which may indicate potential issues and concerns in the context of the IPO, the financial advisor should consider adjusting the scope of the due diligence to ensure that these issues and concerns are properly addressed. The financial advisor may seek an opinion from its legal counsel if it deems it necessary to reach a conclusion on the issues and obtain complete disclosure of information in the Filing.

In addition, the financial advisor should complete all proper due diligence on the issuer prior to submission of the Filing to the SEC Office, except for matters that by their nature are not material and can be dealt with at a later date, and which do not affect the criteria on issuing and offering shares for sale and information disclosure.

**2.1 Principles**

**2.1.1 Procedure and Preparation of Working Papers:** The due diligence process should be properly structured and documented.

**Notes:**

1. At the outset, the financial advisor (with the assistance of legal counsel, if the financial advisor considers it appropriate) should brief, or arrange for the public limited company issuer’s legal counsel to brief, the issuer, its directors and management and selling shareholder(s) (if any) on their duties, responsibilities and liabilities in connection with the IPO. This would include, for example, the duties of listed companies, their boards of directors and executive officers under the Securities Act, liabilities which may arise from disclosure of information which is incomplete, inaccurate, false, misleading or which omits any material fact that ought to be disclosed, report of securities holdings, and any other matters as the legal counsel deems appropriate. In addition, the financial advisor should explain, or arrange for the public limited company issuer’s legal counsel to explain, the due diligence process intended to be carried out, with particular emphasis on the need for the public limited company issuer to provide the financial advisor with its full cooperation and leave the financial advisor free to carry out the investigations and reviews.
2. The financial advisor should exercise its discretion appropriately to determine the scope and extent of the due diligence exercise as well as what steps are appropriate for each public limited company issuer, taking into consideration the context and circumstances. The financial advisor should also consider appropriate due diligence procedures as well as agree with the other advisors involved in the preparation of the Filing on the scope and extent of the due diligence in relation to the public limited company issuer.

In doing so, the financial advisor should consider the appropriate length of time for the conduct of proper due diligence, taking into account, without limitation, the size of the public limited company issuer and its group, the extent of its operations (including the geographical reach of its business and operations and whether these are located in emerging or developing markets), the complexity of the group (as to its group structure and nature of business and whether the business of the public limited company issuer is in a special expertise or restricted industry), the need for restructuring pre-IPO and the examination of transactions with interested person and potential conflicts of interest.

The financial advisor should work closely with the public limited company issuer and consult with the other advisors to the IPO (where necessary) as regards the appropriate scope and extent of the due diligence process (including in the case of any significant change to any initially agreed scope and extent).

1. The financial advisor should put in place an appropriate document retention policy which shall include which due diligence checking and verification will be documented and shall also follow up on compliance with the policy. In determining the policy, the financial advisor should take into account both the objectives of establishing a due diligence defense to prevent liability for the financial advisor, as well as satisfying its obligation as an entity licensed by the SEC Office. Information set out in the Filing must be appropriately verified and signed-off by the parties responsible for the disclosures. In addition, key working papers and correspondence such as documents submitted to the SEC Office and the SET, as well as any correspondence between the financial advisor and these agencies should also be kept so that there is a paper trail showing the work done.
2. The financial advisor should require the public limited company issuer, its directors and management as well as the selling shareholder(s) (if any) to participate and cooperate in the due diligence process and to respond fully, accurately and properly to enquiries made by various parties involved in the preparation of the Filing.

**2.1.2 Checking and Verification:** In the event of reasonable doubt, the financial advisor should (in certain cases, with the assistance of the other professional advisors) review and verify material information or representations made by the public limited company issuer, its directors, management and/or the selling shareholder(s) (if any). In the case of material information or representations made by its directors, executive officers and/or the selling shareholder(s) (if any), the financial advisor should arrange that such persons prepare the declaration forms and curricula vitae as described in Clause 3.1 - Management, Directors, and Controlling Shareholders in these Guidelines for checking and verification purposes.

Furthermore, with respect to certain businesses which rely on the specific qualifications of directors and/or executive officers, the financial advisor should check to ensure whether those directors and executive officers are fully qualified as prescribed by the relevant laws. For example, in the case of a medical facility, the Medical Facilities Act B.E. 2541 provides that an applicant for a license to operate a medical facility must not be currently operating another medical facility, while in the case of a financial institution business, the Financial Institution Business Act B.E. 2551 provides that the directors, managers, or persons with managing power or advisors of financial institutions must be first approved by the Bank of Thailand, etc.

**Notes:**

1. In the event of any reasonable doubt in conducting due diligence, the financial advisor should not accept at face value the accuracy and completeness of all statements and representations made, or other information given, by the public limited company issuer, its directors, management and/or the selling shareholder(s) (if any) (as well as their respective advisors). To the extent reasonable and where practicable, the financial advisor should carry out, or request the other advisors to carry out, checking and verification of those statements, representations or information, and where reasonably appropriate, require such checking and verification to be carried out by additional independent advisors, auditors or experts.
2. In the event of any reasonable doubt, the financial advisor may also consider carrying out checking and verification through interviews (such as interviews with directors and management of the public limited company issuer, key employees of the public limited company issuer and its principal subsidiaries, independent auditors and internal bookkeepers of the public limited company issuer and its principal subsidiaries as well as their key customers, suppliers and distributors) that would enable the financial advisor to make an independent assessment of the matters in respect of which such interviews are conducted.
3. Other independent checking and verification would include, where appropriate, on-site visits and background independent checking on the public limited company issuer, its group of companies (in accordance with the information in the Filing), directors, management and controlling shareholders to check whether the public limited company issuer is appropriately qualified in accordance with the relevant criteria of the SEC Office and the SET.

**2.1.3 Overall Control of the Due Diligence Process:** Although the public limited company issuer, its directors, management, selling shareholder(s) (if any) and various other related parties, remain responsible for the accuracy and completeness of information contained in the Filing, the financial advisor should be closely involved in, and take responsibility for, a due diligence process that is considered reasonable and appropriate in the context of the particular IPO. The financial advisor may consult other professional advisors as to the appropriate scope of the due diligence process for each particular public limited company issuer.

In addition, the financial advisor’s role is to ensure proper dissemination of information regarding the due diligence exercise among the parties involved (where relevant), to co-ordinate and ensure the parties involved have the opportunity to make reasonable inquiries, to evaluate whether the inquiries are reasonable in the circumstances, and to ensure that, if required, other enquiries and investigations are made. While it is generally accepted that the performance of these duties by the financial advisor may not be at the level of expertise of specific professional advisors in those particular cases, the financial advisor nevertheless has the duty to exercise its reasonable discretion in doing so.

**Notes:**

(a) While the financial advisor is entitled to delegate certain aspects of the due diligence to other advisors and experts involved in the preparation of the Filing, the financial advisor must continue to be closely involved in and take overall control and responsibility for the due diligence process.

(b) The financial advisor should ensure that all material information and findings are disseminated to the relevant parties involved in the due diligence in order for any conclusions reached by the other advisors to be based as far as possible on the same background and information.

**2.1.4** **Appointment of and Reliance on Advisors and Experts:** The financial advisor should advise the public limited company issuer on the choice of appropriately qualified and experienced advisors (including but not limited to legal counsel) and experts (including but not limited to property valuers and industry experts) to whom any aspect of the due diligence would be delegated, in respect of areas beyond the expertise of the financial advisor.

**Notes:**

1. The financial advisor should be involved in the appointment and selection of advisors and experts by the public limited company issuer. Where such advisors or experts have already been engaged prior to the appointment of the financial advisor, the financial advisor should nonetheless consider the suitability of those advisors and experts and advise the public limited company issuer accordingly as appropriate and necessary.
2. If the financial advisor is involved in the selection and appointment of advisors and experts, the financial advisor should verify that the advisor or expert is suitably qualified and experienced and has the capability to perform the scope of work for which it is to be engaged.

The financial advisor should take into consideration the track record and specific experience (including prior experience in listing of securities on the SET) of the relevant advisor or expert when considering its suitability.

In the case of property valuers, the financial advisor should take into consideration whether the valuers are included in the list of valuers authorized to act as property valuers and principal valuers for capital markets transactions, or are reputable valuers accepted in the industry who have the necessary experience and track record to provide impartial and robust valuations.

In the case of foreign legal counsel, the financial advisor should note whether such foreign legal counsel is ranked by organizations which rank the expertise of law firms such as Chambers & Partners, IFLR or the Legal 500, etc. and whether or not the foreign legal counsel has experience in Thailand so as to be able to give appropriate advice to the public limited company issuer.

In the case of other advisors, the financial advisor should take into consideration whether an advisor or expert has an appropriate and sufficient track record and specific experience to act as an advisor. In addition, the financial advisor may interview such advisor in relation to the scope of work for which the advisor is being engaged in support of its decision-making.[[2]](#footnote-3)

1. The financial advisor should consider the independence of the advisor or expert.   
   In the case of reasonable doubt, the financial advisor should check to ensure that the advisor or expert does not have any interest (direct or indirect) in the transaction and where necessary and reasonable, the financial advisor should obtain written confirmation from the advisor or expert that they do not have any such interest (direct or indirect). Where the advisor or expert has material interests (direct or indirect) in connection with any transactions with the public limited company issuer outside the scope of its appointment for the IPO and listing on the SET, the financial advisor should discuss with the expert as appropriate in order to assess whether such interest would affect the independence and objectivity of the expert.
2. If the financial advisor is involved in the selection and appointment of advisors and experts, the financial advisor should review and discuss the terms of reference of experts with the relevant expert from the outset. The terms of reference must be appropriate and the financial advisor must exercise due care in considering whether or not the scope of work under the terms of reference to be undertaken by the expert and the resources to be applied by the expert to the engagement are appropriate to achieve the objective of the expert’s engagement.

**3. Section 2:** **Recommended Due Diligence Procedures**

These recommended Due Diligence Procedures cover three broad aspects of due diligence in the context of an IPO, namely:

1. Management, directors and controlling shareholders of the public limited company issuer;

2. Business of the public limited company issuer[[3]](#footnote-4); and

3. Expert sections[[4]](#footnote-5) of the Filing..

**3.1 Management, Directors and Controlling Shareholders**

The financial advisor should provide advice to the public limited company issuer regarding the qualifications of its existing directors and the executive officers in managing the business of the public limited company issuer, as appropriate, so that the issuer can to consider whether those individuals are suitable.

In respect of the chief financial officer, the financial advisor should consider if he/she has the relevant qualifications as required by law.

In the event of any reasonable doubt, the financial advisor should also assess the characteristics and integrity of the directors, the executive officers and the controlling shareholders   
(if an individual, and, if a corporate shareholder, then the management of such corporate shareholder). In making this assessment, there should not be any matter that could lead the financial advisor to believe that the directors, the executive officers or the controlling shareholders lack those characteristics and integrity.

The financial advisor should also consider the qualifications of each independent director taking into account their experience and other relevant and appropriate factors.

As part of the review, the financial advisor should have the following information:

* *Particulars of Directors and Executive Officers*.The financial advisor should arrange to obtain declaration forms and the curricula vitae of the directors, executive officers and controlling shareholders. The declaration forms and curricula vitae should set out their material particulars (including nationality, citizenship, former names and aliases) and their directorships held at present and in the 5 years prior to the submission of the Filing. Their past experience and occupation/vocations should also be included, as well as the particulars of qualifications and prohibited characteristics of directors and executive officers as prescribed by law. With respect to the controlling shareholders, the declaration forms may only require information on ‘conflicts of interest’.

Documentations on educational and professional qualifications which are material to the business of the public limited company issuer and the scope of the duties of the directors and executive officers, in case of reasonable doubt, should be verified to establish that they are authentic, correct, and reliable.

In addition, the financial advisor should inform the directors and executive officers of the purpose of the declaration of information in the declaration forms and their cooperation in providing information in such declaration forms.

* *Experience, Character and Integrity of Directors and Executive Officers.* Where it is deemed necessary, the financial advisor may interview the directors and executive officers to ascertain their relevant experience and expertise. If, after the interview, the financial advisor is of the view that the directors and executive officers are lacking in certain areas of expertise which are necessary, the financial advisor may give advice as appropriate, such as to engage independent advisors or procure additional working teams, etc.
* *Independent Directors.* The financial advisor should interview the independent directors to assess their suitability, taking into account relevant experience, industry knowledge, professional qualifications and other relevant factors such as whether they have any connection to the chief executive officer or major shareholders holding at least 10% of the shares of the public limited company issuer or the public limited company issuer itself. Connections may include considering whether there is any payment or benefit involved between them, the number of other listed companies in which each independent director acts as an independent director, and whether the independent director possesses all requirements for establishing ‘independence’ under the applicable law (in the event where an independent director also acts as a member of the audit committee, the financial advisor must also check whether he/she possesses the required qualifications under the law to be   
  a member of the audit committee). Additionally, in assessing the suitability of the independent directors, the financial advisor should also focus on board composition in accordance with the Code of Good Corporate Governance.
* *Background Searches.* Where reasonably appropriate, the financial advisor should conduct public searches on the directors and executive officers, such as searches on Bloomberg, Reuters or Google, etc.

In the event of reasonable doubt, the financial advisor should conduct reference checking with the parties unrelated to the public limited company issuer, the directors and executive officers. Such checks would include, where appropriate, checks with affiliates or network partners of the financial advisor who have presence in the jurisdictions in which the public limited company issuer has operations.

* *Directors’ Training.* For public limited company issuers seeking to list their shares on the SET, the financial advisor must arrange for all directors to undergo appropriate training which includes, for instance, a briefing by legal counsel on the roles, duties and responsibilities of directors of a company listed on the SET, including the Code of Good Corporate Governance.
* *Review of Steps and Procedures for Appointment of Directors or Executive Officers.* The financial advisor should rely on the assistance of legal counsel in accordance with an appropriate scope of work in reviewing the steps and procedures for the appointment of directors or executive officers of the public limited company issuer (or a person having equivalent authority) and determining the authority and responsibilities of directors or executive officers.
* *Recent Resignation or Change of Management, Directors, and Controlling Shareholders.* Upon their occurrence, the financial advisor should consider whether there are any indications of the reasons behind recent resignations or changes in the management, directors, and controlling shareholders which give rise to questions regarding the public limited company issuer or the conduct or attitude of the existing management, directors and controlling shareholders.

In practice, in reviewing the abovementioned recent resignations or changes, the financial advisor should conduct a review of internal documentation of the public limited company issuer for at least the past year, such as the shareholders’ register, minutes of the board of directors’ meetings and the shareholders’ meetings, as well as publicly available corporate documents, such as the list of shareholders and the affidavit, etc.

**3.2 Business of the Public Limited Company Issuer**

Based on reasonable due diligence principles, the financial advisor should achieve   
a thorough understanding of the public limited company issuer and its business, including recent major developments relating to it, and gain an understanding of the industry in which it operates. Additionally, the financial advisor should, possibly with the assistance of other advisors (including, but not limited to, the auditor and legal counsel), carry out inspections and make enquiries as are reasonable in the circumstances to satisfy itself that the information contained in the Filing is true in all material respects and does not omit any material fact, the omission of which would render any statement or opinion set out in the Filing misleading. In respect of the expert section of the Filing, the financial advisor should raise enquires in order to ensure that there is reason to believe the expert’s opinion.[[5]](#footnote-6) The reasonable scope of inspection and enquiries should include but should not be limited to the following (as appropriate):

(a) *Use of Proceeds.* Assessing whether the proposed use of the proceeds of the IPO as disclosed in the Filing is consistent with the public limited company issuer’s future plans, business strategy and objectives.

(b) *Production Facilities, Properties, and Material Assets.* On-site visits to key production facilities, properties, and material assets (which may include inventory and biological assets such as livestock and crops) of the public limited company issuer (whether owned or leased) to carry out a physical inspection.

The financial advisor should engage local legal counsel to verify whether the public limited company issuer has ownership of the land and buildings and assets which are material to its business, whether all approvals have been obtained to build and operate the material production facilities and/or to possess or operate the assets, whether the nature and purpose of use of the building and production facilities comply with the zoning requirements as prescribed by law, whether there are any risks to the operation and expansion of the business in the future, and whether there is any purchase or lease of land from a major shareholder, director or executive officers and if so whether the price and terms of such transaction are on an arm’s length basis.

In addition, the involvement of independent advisors, investigators or experts, including legal counsel, in such review could be considered, where reasonable and appropriate to do so.

In determining whether a production facility, property or asset is material, the financial advisor may consider the following factors:

* whether the production facility, property or asset represents   
  a material component in the public limited company issuer’s balance sheet;
* whether the production facility, property or asset contributes to   
  a material portion of the public limited company issuer’s revenue;
* whether the production facility, property or asset is subject to any encumbrance that may materially and adversely impact the public limited company issuer’s operations;
* whether the production facility, property or asset has any potential defects that may materially and adversely impact the public limited company issuer’s operations, or that may have a material and adverse impact on the environment; and
* whether the production facility, property or asset has material potential for   
  re-development.

With respect to on-site visits to key production facilities, properties and material assets of the public limited company issuer, the financial advisor should also consider the disclosure of information related to fixed assets in the accounting report or the financial statements prepared by the auditor.

Note: Without limiting the generality of the guidance set out in paragraph (b) above, it is not intended that this be an audit. The objective of ‘physical inspection’ in the Due Diligence Guidelines is for the financial advisor to visit the site of the asset in order to see, in person, that the production facility exists, and to see that it materially meets the description provided to the financial advisor.

(c) *Production method and process and value chain of the industry sector.* The financial advisor should understand the production method, process and quality control procedures, and review the changes to the production capacity over the past year. The financial advisor should understand the value chain context in which the public limited company issuer operates.

(d) *Major Suppliers and Customers.* The financial advisor should assess whether the public limited company issuer is materially dependent on any particular supplier or customer or groups of suppliers or customers as specified in the registration statement for offering securities. The financial advisor should take into consideration the following factors with respect to the past three years:

* Compare the proportion (by Baht value) of purchases from   
  a particular supplier or group of suppliers with total purchases of the public limited company issuer – whether they exceed 30 per cent of the total purchases of the public limited company issuer; and
* Compare the proportion (by Baht value) of sales to a particular customer or group of customers with total sales of the public limited company issuer – whether they exceed 30 per cent of the total sales of the public limited company issuer.

In the event that the public limited company issuer has a material dependency on a particular supplier or customer or group of customers or suppliers, the financial advisor should, where it is necessary and reasonable, also interview such customers and suppliers of the public limited company issuer. If it is not possible to interview such suppliers or customers, for example because they are located abroad, the financial advisor may take other actions in place of an interview.

The financial advisor should assess whether the directors, management, controlling shareholders and their relevant persons have received any benefit from or have any interest in and/or involvement with any supplier and customer of the public limited company issuer. The financial advisor should also consider the supplier selection and comparison process (if any).

In addition, the financial advisor should also review the process of issuing orders for sales and purchases, such as whether they are done through long- term contracts and whether the prices are comparable to prices of the sales and purchases of the public limited company issuer to and from other parties. The financial advisor should also review the public limited company issuer’s distribution and marketing network and plans by conducting interviews with key distributors.

(e) *Material contracts with customers and suppliers and other material agreements.* The financial advisor should ascertain whether there are any material contracts between customers, suppliers and the public limited company issuer by considering the commercial aspects of all such material customers/supplier contracts to which the public limited company issuer is a party. In respect of material customer/supplier contracts which have or would have a material impact on the financial position of the public limited company issuer, or which are complex or give rise to questions, the financial advisor should consider obtaining opinions from legal counsel to confirm that such contracts are legal, binding and enforceable against the parties.

The financial advisor should ascertain whether there are any material agreements containing provisions which may result in a material adverse impact on the public limited company issuer’s business (such as provisions in favour of the controlling shareholder(s)) and, if so, to make an assessment of the impact of such provisions.

(f) *Related Party Transaction****.*** The financial advisor should exercise due care in ascertaining whether there are or will be related party transactions between the public limited company issuer and interested persons. Besides relying on the disclosures to be made by the directors, management and controlling shareholders in their respective declaration forms, the financial advisor should discuss with the auditor its findings with respect to related party transactions, as well as with the directors, the management and the controlling shareholders on the entering into of those related party transactions.

The financial advisor should also review the basis of pricing and the terms in the related party transactions to determine whether they are on an arm’s length basis. This is particularly important where the related party transactions are recurrent in nature. An independent financial advisor to provide an opinion on the appropriateness of the related party transactions should be appointed if necessary.

(g) *Material litigation and other legal proceedings.* Where there is current or threatened material litigation or other legal proceedings involving the public limited company issuer, the financial advisor should, together with the relevant advisors, review and ascertain the commercial and financial implications arising from such material litigation or other legal proceedings.   
In addition, if it is deemed necessary and reasonable, the financial advisor should have the public limited company issuer conduct public searches (for example, from the database of the court of jurisdiction where the principal office of the public limited company issuer is located) as evidence for the financial advisor of any civil and criminal actions taken or judgments ordered against the issuer. Where there is any such material litigation, judgment or order, the financial advisor should obtain a summary of the case and, where possible, a legal opinion on the merit and impact of the public limited company issuer’s case from the legal counsel acting for the public limited company issuer in respect of that litigation. Accordingly, the financial advisor may exercise its discretion on the magnitude and significance of such cases for the issuer as it deems appropriate.

Where there are material allegations/ complaints against the public limited company issuer, directors, executive officers and/or controlling shareholders, the financial advisor should investigate all such allegations/complaints.

The financial advisor should examine whether the public limited company issuer has complied with all applicable laws and regulations. In the event of non-compliance with the applicable laws and regulations (whether repeated or not) which may result in a material adverse impact on the public limited company issuer’s financial status and/ or operating results, the financial advisor should examine whether the public limited company issuer has procedures in place to prevent the repetition of such non-compliance. In addition, the involvement of independent advisors, investigators or experts, including legal counsel, in such examination could be considered, where reasonable and appropriate to do so.

In the case where the public limited company issuer has material business operations located abroad and engagement of foreign legal counsel is required to conduct due diligence, the financial advisor should procure that the due diligence conducted by the foreign legal counsel covers important issues in the overseas business operation, such as relevant licenses, ownership of or rights in material assets, compliance with important laws in that country, material impact on the business operations resulting from non-compliance in that country, and legal obligations under material agreements, etc.

The financial advisor should also review adverse findings by regulatory authorities arising from audits or inspections of the public limited company issuer by such authorities.

(h) *Analysis of impact of any legislation/ regulation on business.* In respect of any legislation or regulation or proposed legislation or regulation (which is publicly available) and which, in the judgment of the public limited company issuer or the financial advisor may materially affect the public limited company issuer’s operations, the financial advisor should consider, with the assistance of legal counsel (if necessary), the implications of such legislation or regulation and carry out an analysis of the business impact of such legislation or regulation.

Apart from local legislation and regulation, such legislation and regulation may also include those originating from overseas or used among jurisdictions relating to the public limited company issuer’s business.

In addition, the financial advisor should carry out, with the assistance of legal counsel, such due diligence as is necessary to establish whether the public limited company issuer has obtained all key regulatory approvals and licenses required to conduct its business activities. Where any key regulatory approvals and licenses are pending, the involvement of independent advisors, investigators or experts, including legal counsel, in such due diligence could be considered, where reasonable and appropriate to do so.

(i) *Analysis of impact of any economic or political conditions on business.* In respect of any economic or political conditions (including any international sanctions which may affect the public limited company issuer) which in the judgment of the financial advisor may materially affect the public limited company issuer’s operations, the financial advisor should discuss the current or future impact of such economic or political conditions on its business with the public limited company issuer’s management.

(j) *Industry in which the* *public limited company issuer operates.* The financial advisor should review the industry in which the public limited company issuer operates or will principally operate its business, including trends, geographical area and competition within that industry segment. In conducting the review, the financial advisor may take into account relevant material, such as trade publications, government statistics and industry/ research reports or interviews with industry specialists and the involvement of independent advisors, investigators or experts, including industry experts, where reasonable and appropriate to do so.

(k) *Loans, borrowings, guarantees and contingent liabilities.*  The financial advisor should review the public limited company issuer’s loans, borrowings, guarantees, and contingent liabilities as presented in its financial statements and discuss any material changes since the date of the most recent audited financial statements with the public limited company issuer’s management.

In addition, the financial advisor should review such documents to understand if they contain any conditions which refer to the shareholding interests of any controlling shareholder of the public limited company issuer, or which place restrictions on any change-in-control of the public limited company issuer.

In addition, the financial advisor should make an assessment as to whether the public limited company issuer’s operations are substantially funded by bank borrowings or shareholders’ loans. The financial advisor should ascertain whether the issuer has in place adequate bank facilities or undertakings from substantial shareholders to continue to provide financial supports.

If the public limited company issuer’s operations are substantially funded by shareholders’ loans, the financial advisor should ascertain whether it has encountered difficulties in procuring bank loans. To the extent appropriate, the financial advisor should enlist the assistance of the auditor and legal counsel and the involvement of the issuer’s chief financial officer when conducting the review.

(l) *Research and development activities.* The financial advisor should review the research and development activities of the public limited company issuer.

(m) *Intellectual property rights and licensing arrangements.* The financial advisor should ensure that the appropriate public searches (where available) are made to ascertain the public limited company issuer’s ownership of any material intellectual property rights and/ or rights to use any material intellectual property under licensing arrangements.

(n) *Acquisitions and Disposals.* The financial advisor should review all material acquisitions and disposals of the public limited company issuer during the relevant track record period determined by the financial advisor (including those that are proposed or planned). In particular, the rationale for and valuation of the acquisitions or disposals of material assets, as the case may be, and the corresponding impact on the public limited company issuer’s financial status and operating results, should be considered.

(o) *Credit Policy.* The financial advisor should review the public limited company issuer’s credit policy, including its credit approval process, trade debtors ageing report and policy for provision for doubtful debts and bad debts. To the extent appropriate, the financial advisor should enlist the assistance of the auditor when conducting the review.

(p) *Labour relations.* The financial advisor should review the labour relations of the public limited company issuer, including matters, such as whether labour disputes have resulted in disruptions to production or services provided by the public limited company issuer, general level of staff turnover and terms of collective agreements entered into with trade unions (if any).

(q) *Quality Control.* The financial advisor should review the public limited company issuer’s quality control process and procedures. ISO certification and quality assurance certifications should be verified against source documents.

(r) *Internal Controls.* The financial advisor should also discuss with the directors and executive officers the steps taken to ensure the adequacy and appropriateness of internal controls, addressing financial, operating, and compliance risks of the public limited company issuer group as well as other key risk areas, which may include examining both the strictness of the internal control system and the conduct of staff and management in compliance with those internal controls. The directors and management may consider commissioning an internal control audit by a third party professional firm and/ or putting in place an internal audit function to provide assurance on the adequacy of internal controls as well as provide advice regarding conduct in compliance with guidelines in order to ensure the adequacy of the internal control system.

The financial advisor should note that the public limited company issuer is required to rectify all material weaknesses of the internal control system prior to the submission of the Filing.

In addition, the financial advisor must discuss with the internal control inspector to ensure that: (1) the public limited company issuer has rectified the material weaknesses of the internal controls (as raised in the management letter issued by the internal control inspector relating to the weaknesses in the internal control system); and/ or (2) the weaknesses of the internal control system pending rectification are not material issues which will materially affect the management or the preparation of financial statements of the public limited company issuer, as the case may be.

(s) *Employment contracts and incentive and benefit programs.* The financial advisor should, as far as practicable, review the key management employment contracts, especially whether these contracts include golden parachute payments, incentive and benefit programs (both existing and proposed), including any pension or retirement plans, employee welfare benefit plans and share option schemes.

If there are golden parachute payments, the financial advisor should ensure that such payments are disclosed and shall have obtained the approval of the public limited company issuer’s shareholders.

If practicable, the financial advisor should, in addition, carry out due diligence to confirm that the compensation of the board and management are in line with market practice (in the event that the financial advisor has information on market practice in the relevant industry).

(t) *Conflicts of interest.* The financial advisor should procure that suitably qualified experts or advisors (e.g., external legal counsel) explain to the public limited company issuer, its directors and executive officers what would amount to conflicts of interest or potential conflicts of interest, as well as the importance of resolving any existing or potential conflicts of interests. The financial advisor, together with the other advisors, should determine if any conflicts of interests or potential conflicts of interest may arise based on the information and disclosures made available in the course of due diligence.

The financial advisor should review the steps taken by the public limited company issuer to resolve or mitigate any adverse impact of conflicts of interest and be satisfied that those steps were undertaken in good faith (*bona fide*).

(u) *Analysis of the financial performance and position.* The financial advisor should discuss with the directors and the management of the public limited company issuer the financial figures disclosed in the Filing with a view to preparing a management discussion and analysis for disclosure to investors.

The financial advisor should consider any findings of the auditor on the consistency of the figures disclosed to the financial advisor with the audited financial statements and audit reports.

The financial advisor should also discuss with the auditor its audit process and internal control findings, as well as whether there are any unusual accounting treatments (after taking into consideration relevant factors, including the accounting treatments adopted and practiced by other public limited company issuers in the same industry) and, in consultation with the auditor, consider if disclosure in the Filing is necessary.

(v) *Financial health of the public limited company issuer.*  The financial advisor should discuss with the directors and the management the public limited company issuer’s sufficiency of financial resources (including cash deposits) in the light of its projection of profits and cash flow for the current financial year and the next financial period, and assess the financial health of the public limited company issuer’s business competitors in the same industry as well as the vulnerabilities and sustainability of the public limited company issuer’s business.

The factors that the financial advisor should consider when assessing the public limited company issuer’s financial health include, among others, past and completed orders against current order book, industry trends and their impact on demand and supply dynamics and pricing, feedback from major customers, suppliers and management and whether new capacity will change current pricing and cost structures.

The financial advisor should consider whether the disclosures made to them with respect to the public limited company issuer’s cash deposits and other related disclosures in the accounts or financial statements reported on by the auditor are consistent with their observations from their discussions with the directors and the executive officers of the public limited company issuer.   
The financial advisor, when reviewing the public limited company issuer’s cash deposits, should enquire whether there are any restrictions on remittances of cash from its overseas subsidiaries to the relevant holding company, and whether there are any charges or encumbrances on such cash deposits and whether these are consistent with any restrictions and charges that are disclosed in the audited financial statements.

When reviewing projection of profits and cash flow, the financial advisor should also consider, where appropriate, undertaking a review with the directors and the management of the issuer of a board’s internal memorandum setting out the aforesaid projection of profits and cash flow and discussing the assumptions of such projections used to ensure that a reasonable basis for the projection of profits and cash flow was used.

The financial advisor should further discuss the existing working capital and cash flow position with the public limited company issuer. The financial advisor should also consider whether the financial ratios of the public limited company issuer are in line with industry norms and, if not, whether there are any relevant factors that may explain such deviation.

(w) *Profitability and sustainability.* The financial advisor should consider the profitability and the competitive advantages of the public limited company issuer that will support the sustainability of the business. The financial advisor should also review the prospects of the business to assess the viability of the business.

The financial advisor should seek to understand the profit drivers and costs drivers of the business of the public limited company issuer.

(x) *Taxation.* The financial advisor should conduct routine enquiries of the public limited company issuer’s executive officers (including its senior financial officers), external auditors and tax advisors (if any), aiming to identify any material issues which may warrant further enquiries and to ascertain the following to the extent a prudent person who is a non-expert is reasonably able to do so:

* whether all material tax liabilities and resolutions have been identified by the public limited company issuer;
* whether taxes due have been paid;
* whether current and deferred tax payments have been provided for;
* whether the public limited company issuer’s tax position has been adequately disclosed in the Filing; and
* whether the amounts of taxable income and revenue/cost declared to the relevant tax authorities in the tax filings are consistent with the public limited company issuer’s audited financial statements and whether the amounts of taxation paid by it as disclosed in the Filing may indicate any irregularities.

In conducting such enquiries, the financial advisor may request for initial documentary information for its preliminary investigation, such as:

* + the latest tax returns and other tax filing documents;
  + list of open tax years;
  + tax audit or investigation report (if any);
  + details of any material disputes with tax authorities; and
  + material fines and surcharges.

If such enquiries indicate any potential tax issues, the financial advisor should consider requesting the public limited company issuer to appoint a tax consultant to assess an impact of such issue and to provide solution, particularly if any material tax issues arose from the aforementioned enquiries and review.

(y) *Risk Management.* The financial advisor should assess any risks to which the public limited company issuer may be subject, such as financial, interest rate or commodities hedging risks, with the input of the public limited company issuer and/ or the assistance of other relevant advisors. Where necessary, the financial advisor should procure that the public limited company issuer puts in place risk management policies in writing and reviews the appropriateness of the policies adopted or to be adopted for the mitigation of such risks.

(z) *Restructuring Exercise.* The financial advisor should review the entire restructuring exercise and the steps to be taken in the restructuring (including the obtainment of any key regulatory approvals and licenses and/ or completion of any key registrations and/ or filings with the relevant authorities in relation to the restructuring exercise) and ensure that the restructuring exercise does not breach any relevant law. The financial advisor should conduct such due diligence with the assistance of the relevant advisors (including legal counsel).

(aa) *Corporate Structure and Ownership.* The financial advisor should, together with the relevant advisors, review the corporate structure of the public limited company issuer to find out any peculiarities in the corporate structure which does not reflect an appropriate reporting process and line of authority or whether the structure is highly complex. This is to ensure that the corporate structure of the public limited company issuer is in compliance with the relevant laws and regulations within which the public limited company issuer operates.

The financial advisor should assess whether the group structure is unnecessarily complex such that it could raise suspicion regarding the legitimacy of its activities, for example, if there is any difficulty in determining the organization or individual owner and/or person with controlling power of the public limited company issuer. The financial advisor should also consider if there are significant subsidiaries located in or having operations in non-home country jurisdictions that do not appear to have any clear commercial purpose.

(bb) *Anti-Money Laundering (“AML”) and Countering Financial Terrorism (“CFT”)*. The financial advisor should inspect whether the activities and operations of the public limited company issuer and its subsidiaries, its affiliated companies and the directors, officers and employees of the public limited company issuer involve AML and CFT due diligence and procedures, as well as review lists and information provided by the relevant authorities in Thailand for the purposes of determining if there are any money laundering or terrorism financing risks in relation to the public limited company issuer. The financial advisor must furnish, without delay, at the request of the SEC Office or the SET, any information obtained from its review or conduct of such AML and CFT due diligence.

(cc) *Territories involved.* The financial advisor should seek to understand the business operations of the public limited company issuer in overseas territories and the economic and business environment of such territories. If the overseas territory involved is regarded as a high risk area (for example, where there is political instability, a weak legal framework and/or the existence of a culture of bribery), the financial advisor should assess if such on-going business operation in such territory will impact the general reputation of the public limited company issuer group.

**3.3 Expert Sections of the Filing**

While the financial advisor is not expected and would normally not be equipped to ascertain the correctness of the expert sections of the Filing, in particular, as to whether the conclusions or opinions arrived at by the experts are correct, the financial advisor should exercise due care in ensuring that when it seeks to rely on such conclusions or opinions, such reliance is reasonable in the circumstances and that there are no reasonable grounds to believe that that the information in the advisor’s and/ or expert’s opinion/report is untrue, misleading or contains any material omission. Accordingly, the financial advisor should take the following measures before agreeing to the inclusion of an expert section in the Filing:

(a) In the event of reasonable doubt, the financial advisor should review the expert’s report or opinion and actively raise queries on any problem areas with the expert where there are indications of inadequacy or unreliability in the expert’s opinion/report. In reviewing the expert’s report or opinion, the financial advisor should also look out for any material discrepancy or inconsistency with the information and disclosures provided to the financial advisor by the public limited company issuer or the information obtained, or findings made, by the financial advisor in the course of its due diligence.

The financial advisor should also review the assumptions on which the expert’s report or opinion is based, by taking into account, as appropriate, the financial advisor’s understanding and knowledge of the public limited company issuer, its business and industry sector, geographical areas/ jurisdictions of operations, and business plans, and assess whether the assumptions are fair and reasonable. The financial advisor should also review the qualifications made in the expert’s report or opinion. The financial advisor should discuss with the expert the basis for using such assumptions or making such qualifications as appropriate. Should any such assumption or qualification be atypical of those normally found in other experts’ reports or opinions, the financial advisor should satisfy itself that there is a reasonable basis for the same.

All material issues and concerns of the financial advisor in relation to the expert’s report or opinion should be highlighted to the SEC Office. Where the expert’s opinion or report is qualified, the financial advisor should assess whether such qualification is required to be clearly disclosed in the Filing. If necessary, the financial advisor may consult with legal counsel to ensure its proper disclosure.

(b) Where the expert has relied on the findings or opinions of another expert, the financial advisor, as appropriate, should discuss with the expert and the public limited company issuer in order to assess whether that other expert possesses the requisite qualifications and expertise and that such reliance on another expert is within the realm of applicable standards and practices used during the previous three accounting periods.

---------------------------------------------------------------

|  |
| --- |
| **Due Diligence Handbook for Financial Advisors Frequently Encountered Issues** |

The financial advisor shall conduct due diligence to ascertain that there are no problems in respect of the following issues:

**1. The organizational structure of the company is clear, fair, and does not cause conflicts of interest;**

**2. In the case that there are related party transactions between the company and persons with potential conflicts of interest, such transactions shall not constitute a channel for the transfer of benefits;**

**3. The internal control system of the company is sufficient and efficient; and**

**4. The financial statements are in compliance with accounting standards, and there are no grounds to believe that any creative accounting practice was used.**

Remarks:

In this document, “*company /companies*” refers to companies that have filed an application and their material subsidiaries/associated companies, e.g., the subsidiaries/ associated companies whose income constitutes more than ten percent of the total income according to the consolidated financial statements.

|  |
| --- |
| **1. The organizational structure of the company is clear, fair, and does not cause conflicts of interest** |

Consideration shall be given to the following four key issues at a minimum:

**1.1 Persons with potential conflicts of interest do not engage in a business that is in competition with the business operated by the company;**

**1.2 Persons with potential conflicts of interest are not parties to related party transactions/ do not have the opportunity to enter into related party transactions with the company, or if such transactions do occur, adequate measures for preventing conflicts of interest are in place;**

**1.3 The company is not dependent on the business of persons with potential conflicts of interest, for example:**

* no dependence in the form of a value chain; and
* no shared use of core resources such as buildings or machinery.

**1.4 If the company undergoes corporate restructuring in order to eliminate conflicts of interest whereby:**

* the executive officers / major shareholders of the company sell their shares held in a company with conflicts of interest to a third person; or
* the executive officers of the company resign from office as directors/ executive officers of a company with conflicts of interest, the financial advisor must ensure that the corporate restructuring is a true transaction.

**In order to ensure that the due diligence addresses the above four key issues, the following checklist may be used as a procedural guideline:**

| **Method** | **Checked** | **Issues (as attached)** | |
| --- | --- | --- | --- |
| **N** | **Y** |
| **1. Check the names of the persons with potential conflicts of interest**  **1.1** **Obtain a list of shareholders, executive officers, close relatives of the major shareholders and executive officers of the company and of the related companies with conflicts of interest with the company.** The relevant parties must provide written certification.  Remark:  Close relatives means (1) legally registered husband – wife; and (2) father, mother, siblings and children, including the spouses of the children.  **1.2** **If the list of the major shareholders does not show  the names of the true shareholders, e.g., nominee accounts / holding companies are indicated:**   * The company must specify the names of the ultimate shareholders of those shareholders as well as the main business in which the ultimate shareholder is engaged. The company shall provide written certification of this information and should also have documents and evidence in support of such certification.   **1.3** **Cross-check the information in (1.1) – (1.2) against the information in the MOC database / BOL corpus and other databases**, for example, information from google searches, to see if there are other persons with conflicts of interest.  Remark:  “MOC database” means the database of the Ministry of Commerce.  “BOL corpus” means the Business Online database.  **1.4** **Check the shareholders’ agreements entered into between the shareholders of the company**   * Ask the company and/or ensure that the company checks whether its shareholders have executed a shareholders’ agreement. The company must provide written certification of this information and should also have documents and evidence in support of such certification. If a shareholders’ agreement was executed, the financial advisor should analyze the management authority over the company, e.g. determining which shareholder group has the true management authority over the company, and which shareholders will coordinate their votes with other specific shareholders.   **1.5** **Cross-check the shareholding structure and any change of the executive officers of the company and the juristic persons with potential conflicts of interest with the company,** against the information in the BOL corpus/ MOC database during at least the last accounting year and most recent accounting period, as well as against the information in the notes to the financial statements under “Investment Capital and Related Party Transactions” during at least the past three accounting years and the most recent accounting period to analyze whether there are potential conflicts of interest. If there are any particular doubts, or if factors that may impact the accuracy and completeness of the filing are found, e.g., a change of the shareholders that may affect the disclosure of the ultimate shareholders or a record of the share-base payment in the financial statements, the financial advisor may consider information from other periods preceding the time periods listed above.  Moreover, in the case of the elimination of conflicts of interest by means of the sale of shares to third parties, the financial advisor should review the share transfer instrument and the share register to ensure that the shares have actually been transferred and the payment for the price of the shares has been duly made in accordance with the change.  In the case of a change in the executive officers, the financial advisor should review the evidence of the resignation, e.g., the resignation letter and the minutes of the relevant board of directors’ meeting (if any).  **1.6** **Review / analyze the list of the key business partners of the company to check whether any of them have potential conflicts of interest with the company.** Examples of business partners are:   * The ten biggest clients/ suppliers * The ten biggest distributors/ agents * The first ten major creditors/ debtors * Key contractual parties that have an impact on the operations of the company or those involved in transactions with a value of more than ten percent of the company’s income, expenses or assets, as the case may be. These may be contractual parties to, for example, asset lease agreements, service provision/utilization agreements, trade agreements, loan/guarantee agreements, technology assistance agreements or share purchase agreements of the group companies by the major shareholders/ executive officers.   **Moreover, in the case that there is any transaction which contains special trade terms that differ from those applicable to general clients of the company, an in-depth analysis should be conducted to determine whether those business partners have potential conflicts of interest with the company. In certain cases, such as in the case that the company has many small business partners, the financial advisor should expand the parameters of the checking procedure. In addition, if it is found that a business partner entered into a transaction which was under unusual terms, whether on a single occasion in the past or recently and the size of the transaction was significant, the financial advisor should conduct an in-depth analysis to ensure that such transaction does not materially impact the company or its financial statements.**  **2. Check the business independency of the company, based on nature of dependency, for example:**   * Recurrent related party transactions; * Transactions which are considered sizeable when compared to the company or a person with potential conflicts of interest; or * Purchase of essential raw materials for the production process from persons with potential conflicts of interest.   If it is found that the company and its related companies are materially dependent on one another, the company may consider undergoing a corporate restructuring to eliminate conflicts of interest by means of merging the companies which are dependent on the company’s business with the company’s group.  **3. If the company undergoes corporate restructuring to eliminate conflicts of interest, the financial advisor must verify that this process is a true transaction and that the conflicts of interest were eliminated as a result of the process. For example:**  (a) Ask about the reasons for the sale / resignation and consider whether those grounds are reasonable;  (b) Ask who bought the shares from the person, and in what business the buyer previously engaged, and whether there is any connection (e.g., an employee or executive officer of a group company of the company’s major shareholders’/ executives officer group). The financial advisor shall also ask whether actual payments were made, and to whom they were made, and request for documents in support of those claims in order to verify the facts. For example:   * If the buyer is a juristic person: check the history of any change to the shareholders and executive officers of the buyer to determine whether there are persons who are related to persons with potential conflicts of interest. * Check all relevant documents such as the sales and purchase agreements, evidence of payments etc.   (c) If, after the corporate restructuring in order to eliminate conflicts of interest, any of the following information is found, the financial advisor should question that the transaction may not have been a true transaction. The financial advisor must then expand the parameters of the checking and verification procedure to prove whether the company’s corporate restructuring was actually for the purpose of eliminating conflicts of interest.   * The address/ phone number of the company which was sold off is still the same as that of the company. * The company which was sold off and the company continue to enter into related party transactions or business transactions that involve unusual pricing / trade terms / provision of assistance. * The major shareholders’ shareholding proportion is high but they are not executive officers of the company. * If the issue of conflicts of interest was resolved by means of individuals resigning from their position as the company’s executive officers, check to determine whether those persons still have controlling power over the company, e.g., acting as the company’s legal counsel or being sub-authorized to sign his/her name on behalf of the board of directors of the company (acting as a shadow director). |  |  |  |

|  |
| --- |
| **2. In the case that there are related party transactions with persons with potential conflicts of interest, such transactions shall not constitute a channel for the transfer of benefits** |

As a minimum requirement, the three key issues that must be taken into consideration are:

**2.1 The pricing and terms of the related party transactions are in accordance with those applicable to normal transactions in the market (for example, goods which are commodities with underlying market prices) or transactions entered into with third parties.**

**2.2 Related party transactions are necessary, reasonable and in the best interests of the company. For example, the company must not give financial support, whether in the form of granting loans or guarantees, to persons with conflicts of interest, which will result in the company’s loss of benefits.**

**2.3 Measures for preventing conflicts of interest must be clear, adequate and fair. The company must have clear approval procedures, a checks and balances system, as well as efficient checking and verification.**

**In order to ensure that the due diligence addresses the above three key issues, the following checklist may be used as a procedural guideline:**

| **Method** | **Checked** | **Issues (as attached)** | |
| --- | --- | --- | --- |
| **N** | **Y** |
| **1.** **Compile all related party transactions between the company and persons with potential conflicts of interest in Item 1 during the past accounting year and most recent accounting period. Check the completeness of the financial statements and determine the probability of occurrence of related party transactions.**   * Determine whether they are recurrent/one-time transactions * Determine whether they are normal or unusual transactions   If unusual transactions are found, e.g., the company enters into an agreement accepting management/ advisory/ marketing and R&D assistance from its parent company at a very high fee, the financial advisor shall expand the parameters of the checking and verification procedure and conduct a more in-depth analysis by taking the necessity and reasonableness of the transaction into consideration. Moreover, if related party transactions under unusual terms exist that may have an impact on the recording of income in the current year and the most recent accounting period, the financial advisor may consider information from other periods preceding the time periods listed above.  **2. Check whether the pricing and terms and conditions were in accordance with those applicable to normal transactions in the market or transactions with third parties. For example:**   * Conduct random checks on the invoices by comparing the prices/payment terms and conditions to determine whether they differ from those applicable to normal customers/ industry information. The pricing and terms and conditions used as a reference shall only be reliable if obtained from a substantial number of transactions that are sufficiently high in value.   Moreover, checks can be conducted by comparing the total number of transactions and the terms and conditions with those entered into with third parties (if any). In this regard, the information from the auditor that reviewed the transactions and relevant invoices may also be used.   * Example of a vague pricing policy: “the price shall be as agreed upon by the parties” * Example of a clear pricing policy: “the price shall be the same as that applicable to other customers”   **3. Check the provision of financial support**   * No financial support is given to persons with potential conflicts of interest, with the exception of the provision of financial assistance proportionately in accordance with the shareholding proportion of such persons with potential conflicts of interest.   **4. If a person with potential conflicts of interest has the potential to enter into a related party transaction with the company, even if no related party transaction has taken place up to the present for any reason whatsoever, e.g., such person is in the process of constructing a factory/ business rehabilitation:**   * Ask the management about the measures for the prevention of conflicts of interests in the case that related party transactions occur in the future, and disclose this information to investors.   **5. Review the Work Flow Manual and internal audit report/ minutes of the audit committee’s meeting/ board of directors’ meeting to check the procedures in respect of entering into related party transactions. In addition, interview the executive directors, audit committee members, and internal audit staff and conduct a random check to determine whether those prescribed procedures are duly complied with.**  **6. Determine clear and efficient auditing procedures**   * Interested persons shall not be authorized to approve of the transactions * The opinion of the person approving a transaction, as well as a clear statement of the necessity and reasonableness of the transaction, is recorded in writing * A pre- and post-audit system is established by the audit committee   **7. If an appraised value is used, check whether the appraisal company/companies and lead appraiser(s) are on the SEC’s list of approved valuers.**  **8. In the case of material asset acquisition transactions, e.g., purchasing land at a significantly high price, check whether such asset acquisition is a transaction with a person with potential conflicts of interest. For example, review the details at the back of the land title deed to determine whether:**   * Any executive officer/ major shareholder temporarily acquired the asset for a short period of time before re-selling the same to the company. Determine whether this constitutes grounds to suspect that the executive officer/ major shareholder deliberately purchased the asset prior to its acquisition by the company, and re-sold the same to the company at a higher price than the original purchase price. * A third party temporarily acquired the asset for a short period of time before re-selling the same to the company. Determine whether this constitutes grounds to suspect that such party is related to a person with potential conflicts of interest, and that the above act was taken to avoid the company’s land acquisition constituting a transaction involving a person with a conflict of interest, and thus being an attempt to evade compliance with the requirement for engaging an independent valuer to prepare an appraisal report.   If there are any doubts in relation to the above matters, the parameters of the checking and verification process should be expanded. If, having considered the information, the acquisition involves a person with potential conflicts of interest, the company shall ensure that the value of the asset is appraised by an appraisal company and lead appraiser whose names are in the SEC’s approved list of valuers. |  |  |  |

|  |
| --- |
| **3. Internal Control System** |

As a minimum requirement, the following two key issues should be taken into consideration:

**3.1 The internal control system is adequate and efficient; and**

**3.2 There is a check and balance system for management control, a clear separation of duties and authorities of staff in writing, and all staff comply with the specified scope of authority.**

**Consideration of the internal control system under this section also includes the consideration of the internal control system of all subsidiaries (a) contributing to at least 30 percent (pro rate not required) of the company’s total income according to the consolidated financial statements and (b) assets, liabilities, shareholders’ equity, profits or losses that are material to the company.**

**In order to ensure that the due diligence addresses the above two key issues, the following checklist may be used as a procedural guideline:**

| **Method** | **Checked** | **Issue (as attached)** | |
| --- | --- | --- | --- |
| **N** | **Y** |
| **1. Checking for the defects in the internal control system**  **1.1 Ask the internal audit department, audit committee and internal auditor about the adequacy and efficiency of the internal control system.** In doing so, also inquire about the issue of whether the company is in compliance with the established internal control system. The five components of the internal control system comprise the following:   * Control Environment: All personnel in the organization recognize the necessity and importance of internal control and have a sound understanding of their own role and scope of authority, duties and responsibilities. * Risk Assessment: Risk assessment procedures are established and implemented in order to determine internal controls or measures which are appropriate and which effectively manage those risks. * Control Activity: Compliance with the policies and work procedures in respect of internal control, as well as all specified control activities in all respects, i.e., the approval of the delegation of the auditing authority, reconciliation of the review results, protection and care-taking of the assets, and separation of authority and duties. * Information & Communication: Sound internal control of Information & Communication is only possible if financial news and information, as well as other news in relation to the operations of the organization, are compiled and clarifications on those matters are given to the organization’s internal personnel as well as to others not being a part of the organization. * Monitoring: Methods for monitoring are put in place to ensure that all work procedures are duly complied with, and work procedures are modified to be appropriate for the current situation.   **1.2 Check the adequacy and efficiency of the internal control system by reviewing the following documents:**   * M/L of the auditor; * Audit report of the internal audit department; * Minutes of the meetings of the audit committee; * Minutes of the meetings of the board of directors; * Report of the external advisor; and * Quality assessment report from various organizations (if any).   **Based on (1.1) and (1.2), if any defects are found, conduct a more in-depth check to determine when and how the company will remedy the defect.**  **1.3 In the case that the auditor places emphasis on the use of substantive tests without assessing the internal control system of the company, this may be indicative of an inadequate internal control system.**   * Check to ascertain that the company has an adequate and efficient internal control system. An independent expert may be engaged to assess the internal control system.   **1.4 In the case that the company has recently established a new internal control system or made changes to its existing internal control system:**   * Ensure that the company has acted in accordance with its new system for a certain period of time (at least three months) and that an independent expert assesses the company’s internal control system.   **2. Check to determine whether the management control system of the company has established approval authorities (for the financial approval limits) and a clear and reasonable separation of authority and duties, and whether a checks and balances system is in place.**  **2.1 There is a clear separation of the management authority and the financial approval limit in respect of the approval authority is reasonable.**   * Management authority is separated into the following four areas as a minimum: (a) approval authority; (b) bookkeeping; (c) overseeing of assets; and (d) auditing. * The financial approval limit assigned to each individual with approval authority is not unreasonably higher than what is necessary for the business considering the company’s income/ assets/ shareholders’ equity. * In the case of the approval of large transactions, the board of directors shall have the authority to approve such transactions, whereby interested directors shall not be entitled to vote.   **2.2 There are cross-checking procedures in place which are conducted by an independent cross-checker**   * The cross-checker shall not be a person who is related to, or who has joint benefits with, or who is a family member of a person who is involved with such matter, e.g., the cross-checker is not the spouse, parent, or child of such a person. * Audit committee members should not be authorized to sign their names to bind the company. * Special attention should be paid in the case of a family business in which the majority of the board members are family members of the major shareholders or where the managing director (MD) and chief financial officer (CFO) are members of the major shareholder’s family. Advise the company that it should have a comprehensive internal control and checks and balances system which includes, for example, the following requirements: * The chairman of the board of directors and the MD should not be the same person. * Particular emphasis should be given to cross-checking and the performance of duties by the audit committee and the internal audit department. For example: * The internal audit department must review all material and large transactions. * In the case of transactions with persons with potential conflicts of interest, the person authorized to approve those transactions shall not be a person who has interests in the transaction being considered. * A report on transactions with persons with potential conflicts of interest shall be prepared and submitted to the audit committee for acknowledgment on a regular basis, e.g., every quarter. * Be particularly stringent in respect of the delegation of the authority to approve various transactions and the financial approval limit.   **3. The audit committee members are independent, in compliance with the criteria prescribed by the SEC Office, and possess the knowledge and competence to protect the minority shareholders, and directly report to the board of directors.**   * Check the independence of the audit committee members against the information in the MOC database/ BOL corpus, as well as against the information under “Related Party Transactions” in the notes to the financial statements. * Interview the audit committee members to determine whether they possess the required knowledge, competence and understanding for safeguarding the interests of the minority shareholders, e.g., whether they are able to recognize the problems in the internal control system that requires rectification.   **4. There are independent internal auditors, regardless whether they are in-house or outsourced staff, who possess the required knowledge and competence, directly report to the audit committee, and who regularly audit compliance with the internal control system of the company.** |  |  |  |

|  |
| --- |
| **4. Financial Statements** |

As a minimum requirement, the following two key issues should be taken into consideration:

**4.1 The financial statements are correct, and in compliance with the accounting standards, and there are no suspicions of creative accounting practices; and**

**4.2 The accounting staff possess sufficient knowledge and competence.**

**In order to ensure that the due diligence addresses the above two key issues, the following checklist may be used as a procedural guideline:**

| **Method** | **Checked** | **Issue (as attached)** | |
| --- | --- | --- | --- |
| **N** | **Y** |
| **1. The auditor is on the list of approved auditors of the SEC.**  **2. The auditor’s report shall not contain any of the following characteristics:**  (a) A qualified opinion on the financial statements as being non-compliant with the accounting standards;  (b) A disclaimer of opinion on the financial statements; or  (c) An expression of opinion that the auditor’s scope of audit is limited by the executive officers.  **3. The auditor’s report shall not contain any unusual items. In the case that any unusual item is found, a more in-depth review of the matter should be conducted.**  **4. Interview the auditor and the audit committee members about the issues relating to the preparation of the financial statements, the company’s cooperation and the knowledge and competence of the accounting staff, for example:**   * There are no material differences in respect of the issues raised and amounts stated in the financial statements prepared in-house and the audited financial statements; * The company is able to prepare the financial statements within the prescribed timeframe;   **5. If an unusual transaction is found, conduct a more in-depth review of the transactions. Unusual characteristics are for example:**   * There are unusual transactions or figures, or the figures materially differ from those in the previous period; * The company does not disclose the accounts receivable aging report or such disclosure is unclear; * A debtor has a continuing record of unpaid trade accounts receivable with the company but the company continues to sell goods to that particular debtor; * The company does not have an allowance for doubtful accounts even though debts are long overdue; * The allowance for doubtful accounts is insufficient for trade accounts receivable that are overdue by more than one year; * The company does not have an allowance for inventory depreciation in the case of goods that easily become obsolete / outdated; * In the event of corporate restructuring so that all units are under common control, goodwill is recorded as an asset of the company; * In the case of the sale of the core assets in a large transaction, check to determine whether the transaction constitutes a true sale; * The allowance for amortization of assets is excessive; * The figures of the transactions materially differ from those in the previous period, e.g., a material increase in inventory or trade accounts receivable; * The transfer of deferred revenue is a significant amount; * The company has a high shareholding proportion but this is recorded as investment capital in the joint venture companies; * The company acquired assets (e.g., land or buildings) without any plan to use those assets for the business operations of the company; and * The details of the terms / conditions of the agreements are unusual in comparison with other agreements.   If those transactions are materially unusual, the company should be advised to make amendments to the financial statements.  **6. If the financial advisor, after having conducted due diligence, finds that there is any transaction that is not disclosed in the notes to the financial statements, for example:**   * the related party transaction were not fully disclosed or the disclosure of the pricing policies and trade terms is incomplete; * the disclosure of material obligations, e.g., loan guarantee obligations, is incomplete;   The company should be advised to ensure that the disclosure of information in the notes to the financial statements is clearer for the disclosure in the next period. |  |  |  |

**Precautions**

Even though the financial advisor has conducted due diligence in accordance with the above four principles, if the SEC Office finds that:

1. The appraisal of the assets of the company was based on unreasonable pricing assumptions;

2. There are doubts regarding the correctness of the financial statements of the company, for example, in the most recent accounting period prior to the application for approval, the company changed its accounting policies, and such changes potentially facilitate creative accounting practices in respect of income, or sold its assets (e.g., debtors and shares), whereby such sale may not constitute a true transaction;

the SEC Office may request the company to take further acts, for example, to re-appraise the value of the assets, to amend appraisal report, or to amend the financial statements. ***Such requests may cause a delay in the decision-making process.*** Therefore, financial advisors who have questions are advised to recommend the company to make all necessary amendments prior to submitting the request for approval to the SEC Office.

|  |
| --- |
| **Examples of Important Sources of Information for Use in Conducting Due Diligence** |

**1. Interview the executive officers, audit committee members, internal audit department staff members and the auditor;**

**2. Check the information in the following documents for the period of at least one accounting year prior to the current date and in the most recent accounting period:**

2.1 Search engines (e.g., Google or Facebook) or other websites which can be used for searching information;

2.2 Copy of the Memorandum of Association, copy of the company affidavit issued by the Ministry of Commerce, and the Articles of Association of the company;

2.3 List of the shareholders of the company, its subsidiaries and related companies (Form BorOrJor.5);

2.4 Minutes of the following meetings during the past year up to the present:

* Shareholders’ meetings;
* Board of directors’ meetings (including minutes of any meeting involving the delegation of authority);
* Meetings of all subcommittees, e.g., the executive committee, and the audit committee;

2.5 Report of the opinion of legal counsel in respect of litigation; and

2.6 Financial statements of the company and its subsidiaries for the period of at least the past three accounting years and the most recent accounting period;

2.7 Report on the Assessment of the Internal Control System of the company and all subsidiaries with: (a) income constituting at least (pro rating not required) 30 percent of the total income according to the consolidated financial statements; or (b) the size of assets, liabilities, shareholders’ equity, profits or losses that are material to the company. This report may be prepared by an in-house or outsourced internal auditor. This is to ensure that the company and its material subsidiaries have an internal control system that is sufficient and adequate for preparing a report.

2.8 Information is disclosed correctly and credibly;

2.9 Management Letter (M/L) of the auditor;

2.10 Audit plan of the internal auditor;

2.11 Handbook which specifies the scope of authority, duties, and financial approval limit of the executive officers;

2.12 Corporate structure;

2.13 Report of the government agency regulating the company, e.g., audit results conducted by the Bank of Thailand (in the case of financial institutions), including correspondent letters with the regulatory authorities on important matters, e.g., letters from the Revenue Department, the Bank of Thailand (in the case of commercial banks) or the Department of Insurance (in the case of an insurance business), etc.;

2.14 Relevant agreements (if any), e.g., loan agreements, land sale agreements, raw materials sale and purchase agreements, and contingent liabilities of the company; and

2.15 Other news, e.g., news published in printed media.

In this regard, if there are any particular doubts in the course of conducting Due Diligence, or if such doubts may impact the correctness or completeness of the filing, e.g., a change of the shareholders that may affect the disclosure of the ultimate shareholders or the record of the share-base payment in the financial statements, the financial advisor may consider information from other periods preceding the time periods listed above.

|  |
| --- |
| **Preliminary Documents for Due Diligence** |

| **Document Name (of the listed company and its contractual parties)** | **N** | **Y** | **Remarks** |
| --- | --- | --- | --- |
| **Preliminary documents to study are detailed below:**  1. Annual Registration Statement (Form 56-1) (in the case of listed companies);  2. Annual Report;  3. Financial statements of the past three years and of the most recent quarter, including the notes to the financial statements;  4. Updated corporate structure;  5. List of shareholders and/or share register of the past three years;  6. Names of the directors and executive officers;  7. Names of controlling persons certified by the listed company and its contractual party/ parties;  8. Most recent company affidavit, memorandum of association and articles of association of the company;  9. Information on the industry conditions and competitive environment;  10. Other sources of information, for example:  10.1 Research department of a bank, securities company or relevant agencies;  10.2 News published in newspapers/online sources of information;  10.3 Information memoranda submitted to the SEC Office or the SET;  11. Interviews with the management;  12. Most recent management accounts (if any);  13. Internal budget plan (if any);  14. Financial estimates and the underlying assumptions (if any);  15. Feasibility study (if any);  16. Consolidated management accounts (if any) in the case of material corporate restructuring certified by an auditor approved by the SEC Office;  17. Business plan (if any);  18. Aging of inventory/ trade accounts receivable/ trade accounts payable/ unbilled income or billed income;  19. List of new customers with whom material transactions are entered into in each year and the value of the transactions;  20. Customer discount policy;  21. Policy for determining an allowance for inventory depreciation;  22. Policy for determining an allowance for doubtful accounts for the trade accounts receivable;  23. List of customers with a long overdue credit term and/or that have a large outstanding amount due, and the allowance for doubtful accounts of those receivables;  24. Changes in the rules, regulations and political changes in relation to the targets of or industries in which the company or its target companies engage in a business;  25. Licenses and investment promotion certificates and the relevant details and conditions (if any);  26. Documents of pending litigation (if any); and  27. All important agreements. |  |  |  |

Notes: If certain documents are not applicable, the financial advisor should specify that those documents are not available and further information thereon is not required unless the financial advisor considers that those documents are necessary.

1. Section 73: In cases where the SEC Office is of the opinion that the statements or particulars in the registration statement and draft prospectus are incomplete, the SEC Office has the power to order the person who files the registration statement and draft prospectus to file additional information or amend the registration statement and draft prospectus. However, the SEC Office shall not give such an order after the registration statement and draft prospectus have become effective in accordance with Section 67 or Section 68.

   Section 76: After the date on which the registration statement and draft prospectus have become effective, the SEC Office shall have the following powers:

   (1) In cases where the SEC Office finds that the statements or particulars in the registration statement and prospectus are false or fail to disclose material facts that should have been stated therein which may cause damage to the purchasers of securities, the SEC Office has the power to order the suspension of the effectiveness of the registration statement and draft prospectus, and in cases where the offer for sale of securities is given an approval in accordance with Section 32, Section 33 or Section 34, the SEC Office has the power to order the withdrawal of such approval immediately;

   (2) In cases where the SEC Office finds that the statements or particulars in the registration statement and prospectus contain material facts which are incorrect, or there is an event which causes a material change in the information contained in the registration statement and prospectus which may affect the investment-making decisions of the purchasers of securities, the SEC Office has the power to order the temporary suspension of the effectiveness of the registration statement and draft prospectus until   
   a course of action has been taken to make a correction and other action is taken as specified by the SEC Office in order to make public to be aware of the amendment of such information;

   (3) In cases where the SEC Office finds that the statements or particulars in the registration statement and prospectus are incorrect in other aspects, the SEC Office has the power to order the promoters of   
   a public limited company, a company or owner of securities who files the said documents to make corrections.

   The order of the SEC Office under the first paragraph does not affect any act of the promoters of a public limited company, a company or owner of securities undertaken prior to such order and does not affect the rights of any person as provided in Section 82 to claim for compensation.

   Section 82: In cases where the registration statement and prospectus contain false statements or particulars or fail to disclose material facts that should have been stated therein, any person who purchases securities from the promoters of a public limited company, a company or owner of securities, and such person is still the owner of such securities, who suffers damage from such purchase, shall have the right to claim compensation from the company or the owner of the securities.

   The securities purchaser who has a right to claim compensation in accordance with the first paragraph must have purchased the securities before the facts under the first paragraph become apparent. However, the facts must become apparent within one year from the effective date of the registration statement and draft prospectus. [↑](#footnote-ref-2)
2. In the case of the advisors other than legal advisors or property valuers, the financial advisor should acquire information and make inquiries of qualifications of such advisors to the extent practicable. [↑](#footnote-ref-3)
3. The term, “**public limited company issuer**”, as used in this section shall include, where appropriate, the public limited company issuer’s subsidiaries and associated companies which are part of the listing group. [↑](#footnote-ref-4)
4. Any disclosure/write-up in the Filing that is purported to be made on the authority of an expert or purported to be a copy of or an extract from a report, opinion or statement of an expert. For instance, the audited financial statements and valuation reports. [↑](#footnote-ref-5)
5. See Section 2.1.4, “Appointment of and Reliance on Advisors and Experts”. [↑](#footnote-ref-6)