**GOVERNANCE AND BUSINESS INTEGRITY DUE DILIGENCE MONITORING CHECKLIST**



**Introduction**

These checklists support, and should be used in conjunction with, the [Governance & Business Integrity Section](http://toolkit.cdcgroup.com/governance-business). They are intended to provide guidance for fund managers on the potential key governance and business integrity (G&BI) aspects of an investment.

Additionally, [CDC Sector Profiles](http://toolkit.cdcgroup.com/sector-profiles) provide high-level information the key business integrity risks per sector.

**Important**

This checklist provides a generic overview of typical G&BI issues but each investment prospect offers different risks and opportunities based on its specific characteristics and circumstances including the company’s type of activities, scale of operation, technology, location, commitment, capacity and track record.

G&BI risks, impacts and opportunities in a particular company or sector can change over time for a number of reasons (e.g. changes in the applicable laws and regulations, the transition from construction to operational phase, or due to the expansion of the company’s activities or assets). The fund manager should have systems in place to monitor and respond to any changes during the lifetime of the investment.

This checklist is divided into thematic areas. A series of questions is provided which can be used to guide the G&BI due diligence (DD) and in some cases investment monitoring. Hints and tips are also provided so that fund managers can gauge the completeness and quality of responses. Sources of verification and further guidance are also provided.

It is important that the G&BI DD process, like legal or financial DD, is integrated into the wider DD process and is effectively led. It is also important to allow sufficient time for its completion and make sure that staff is aware of the fund manager’s own anti-corruption policies. The results of legal or financial DD may lead to more detailed G&BI enquiries.

Appropriate and detailed DD is important to help a fund manager understand the details of the company they are buying into and to detect any significant issues. Good DD can also be useful when dealing with regulators.

International regulators are taking an increasingly aggressive approach towards enforcement of laws and other regulations. They are also now less concerned about changes in the ownership of a company between an offence being committed and being prosecuted. They are now encouraging two complimentary practices:

* A greater level of self-reporting when wrong doing is discovered.
* Treating the first person to report a problem more favourably.

**Anti-corruption management due diligence (DD)**

It is important that before an investment is made into a company that a fund manager understands the company’s approach to anti-corruption issues and assesses whether management’s commitment to resisting all forms of corruption is genuine, its capacity for doing so and its track record (CCTR) in relation to anti-corruption issues.

More detailed CCTR questions and guidance are also provided in [CDC Guidance: Assessing Company Management’s Commitment, Capacity and Track Record](http://toolkit.cdcgroup.com/esg-in-the-investment-cycle/cdc-guidance/assessing-cctr). The questions below suggest good practices for anti-corruption DD. The list of questions is not intended to be and cannot be definitive as there are too many different types of corruption and too many different types of organisation.

| **Topic to be assessed** | **Discussion points/questions** | **Verification and information sources** | **Hints and tips** |
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| **Pre deal Screening** | * Open source searches. | Review/consult:   * Internet search engines such as Google and proprietary databases such as WorldCheck or Dow Jones Factiva to undertake a detailed review of publically available information before committing substantial time and resources to the DD phase of a project. | * Such a review may help shape DD enquiries or indicate where it is necessary to instruct third party professionals to undertake integrity research. * Care is needed when reviewing the results of internet searches as the source of the information behind an article, the care with which it was put together and the motivations of the author may not be clear. |
| **Risk profile** | * Is the company active in countries where corruption is prevalent? * Does the company operate in sectors known to be prone to bribery? * Are the competitors of the company suspected of actively using bribery in the company’s markets? * Is company dependent on large contracts? * Is company dependent on government contracts? * Is company dependent on licences or permits issued by government agencies? * Is the company dependent on agents or intermediaries/brokers for business? * Does the company understand and document where its corruption risks occur? * Does the structure and business model of company allow for the adequate control of all its operations? * How does the company’s Board/senior management demonstrate a credible commitment to an anti-corruption culture? | Hold meetings with:   * Senior management. * Responsible officer. * Other employees (where relevant).   Review/consult:   * Independent risk reviews such as those by Transparency International or the World Bank should be consulted. * Confirm where the company’s operations are located. * Lists of customers and suppliers to understand their details, such as where they are located and why. * Legal DD. | * Meet senior management to assess how relevant anti-corruption issues are for the company and how management communicate them to staff. * It is important that the results of this part of the DD process are considered alongside and compliment, other DD results for example:   + Legal and financial DD.   + Commercial and management DD.   + The results of informal referencing. * Local trade associations and industry contacts may be able to provide insight in to how easy it is to do business with a government department. * Review the list of customers and confirm whether they were introduced by third parties or commercial agents. * Legal DD (should include a list of the important licences or permits that the company requires to operate). |
| **Written procedures** | * Is there a formal written anti-corruption policy (‘policy’)? * If so, when was the policy last approved by the company’s Board or governing body? * If there is no formal anti-corruption policy how does the company set out its anti- corruption policy, procedures and expectations? * Is bribery and corruption defined and explicitly prohibited in such documents? * Does the definition include facilitation or speed payments? * Do the policy/company documents make it clear that there will be no adverse consequences for employees for not paying or receiving a bribe? * Do the policy/company documents confirm that others will not be asked to make or receive corrupt payments on the company’s behalf? * Do the policy/company documents set out the company’s approach to the payment of expenses of, or by, third parties? * Do the policy/company documents make clear the company’s policy on making political and charitable contributions of cash, resources or time? * Do the policy/company documents cover conflicts of interest? * Are the policy/company documents clear and unambiguous in describing the company’s approach? | Review:   * A copy of any policies, which may be contained in a free standing document, in a code of conduct, a code of ethics or an employee handbook. * If there is no policy, obtain and review copies of company documents that set out the company’s anti-bribery and corruption policies, procedures and expectations. * Board minutes. | * Companies may set out their procedures and practices in a variety of ways. * If there is no policy, obtain and review copies of company documents that set out the company’s anti-bribery and corruption policies, procedures and expectations. * Review Board minutes to confirm when any policy or other relevant company document was last reviewed and approved. |
| **Responsible officer** | * Does the policy/company documents provide for the appointment of a Director with seniority (or someone with suitable authority) to take responsibility for anti-corruption issues? * Does the policy/company documents describe:   + Who the Director reports to?   + The regular reports they should provide? * Do the policy/company documents require the production of an annual report prepared by the responsible officer analysing the effectiveness and application of the policy/company documents for submission to the Board of Directors/governing body? * Do the policy/company documents require that this report be sent to the fund manager?   + When was the last report prepared?   + Have the Board of Directors/governing body considered the report? * Review the quality of any reporting to the Board of Directors about corruption issues: * Where problems are/were noted are/were they followed up in a timely manner? * Have any issues been appropriately reported? | Review:   * Board minutes. * Annual report prepared by the responsible officer. | * Review copies of Board minutes to confirm who was appointed to the Board, when they were appointed, how frequently they report to the Board and whether and how any corruption issues have been reported and dealt with * It will be necessary to consider whether the ‘responsible officer’ has the necessary training and experience to effectively carry out this role. It would be reasonable to expect that this responsible officer is from an operational or legal role at the company rather than an administrative one, such as a Human Resources professional. * Consideration will also need to be given as to whether the responsible officer has the time to properly act as a local anti-corruption champion and whether they are subject to any conflicts of interest. |
| **Associates – group companies** | * Do the policy/company documents require that associates – e.g. those in the same group as the company - comply with it? | * Obtain a copy of the group structure chart. * Discuss how corporate anti-corruption policies, practices and procedures are adopted by group companies with the company’s senior management. | * Associates located at the periphery of the group operations can be more vulnerable to corruption than those at the centre if policies are not properly communicated throughout the group. |
| **Suppliers and purchasers** | * Do the policy/company documents provide for a risk assessment of each supplier and customer so that relevant additional anti-corruption questions or enquiries can be undertaken? * Do the policy/company documents seek to ensure that suppliers and purchasers (including advisors) adopt the same standards of conduct as a condition of doing business with the company? * Are suitable anti-corruption representations and covenants included in contracts? * Has the company ceased to deal with any supplier or customer because of concerns over corruption?   *Note – the policy/company documents will need to recognise the relative buying powers of the suppliers and purchasers*. | Hold meetings with:   * Senior management. * Responsible officer. * Other employees (where relevant).   Review:   * Any process flow diagrams or any procurement or sales procedures. * A sample of the major contracts with suppliers and customers. * Board minutes. | * This could form a part of the legal DD process. * Discuss with the senior management how they ensure that bribes are not paid or received by company employees to obtain business or provide a reward for good services. * Assess whether procedures deal with the management of corruption issues. * Review a sample of the major contracts with suppliers and customers to understand whether anti-corruption representations are included. * Board minutes – review the Board minutes of the company to confirm whether any supplier or customer has been dropped for concerns over corruption. |
| **Communication and training** | * How are the policy/company documents:   + Communicated internally (are they made available to all staff)?   + Communicated externally? * Is there an explicit commitment to training on anti-corruption issues? * When was anti-corruption training last delivered? Is refresher training provided on an appropriate basis? * Is the training relevant for the company’s operations? * Does the company publish its anti-corruption policy/company documents on its website (if it has one)? | Hold meetings with:   * Senior management. * Responsible officer. * Other employees (where relevant).   Review:   * Training plans, materials and records. * Obtain details of any new employee induction process. * Website: review the company’s website for a copy or summary of the anti-corruption policy/company documents. | * Discuss with the senior management of company how they ensure that any anti-corruption policies are appropriately communicated to staff and third parties. * There is no one right way to communicate a policy. Within an organisation working around desks and on computers it may be sufficient to send a copy of the policy/company documents by email or to make it available via an intranet. In small organisations employees may be used to looking at a notice Board for important information. In all cases it must be clear that the message has the blessing of the firm’s senior management. * Training should be relevant to the company rather than generic if it is to be seen as credible. Caution should be exercised if the training appears only to consist of a consultant’s standard presentation. * Frequency: training need not necessarily be repeated on an annual basis – it should be provided as often as is relevant for the firm’s staff. For example, the leader of a sales force is likely to require more anti-corruption training than a firm’s receptionist. |
| **Employment rights** | * Does the policy or documents supporting the employment contract make it clear that any breach of the policy/company documents may amount to serious misconduct potentially leading to dismissal? * Are the policy/company documents effectively incorporated into the contracts of employment for staff? | Hold meetings with:   * Senior management. * Human Resources (HR) staff. * Other employees (where relevant).   Review:   * Contracts of employment. * List of disciplinary actions that have been taken against staff for a breach of the anti-corruption policy. | * Discuss with the senior management of the company how they enforce the policy with staff and whether they have the right to terminate a person’s employment for a breach of it. * Review contracts of employment to understand how the terms of the policy are enforced. * It is clearly necessary for an employer to have the right to dismiss or otherwise discipline staff who breach its anti- corruption policy. |
| **Gifts policy** | * Does the company have a gifts/corporate entertaining policy? * Do the policy/company documents: * Require that gifts over a nominated value be approved by senior management? * Require that a record of such gifts be retained? * Cover gifts and hospitality given as well as received? * Are reports on gifts received and given regularly sent to the company’s governing body? | Hold meetings with:   * Senior management. * Responsible officer. * Other employees (where relevant).   Review:   * Records of gifts and hospitality given and received. * Board minutes. | * Discuss with the senior management of the company how they monitor the giving and receipt of gifts and corporate hospitality. * The giving and receipt of gifts is an area where employees might feel there is ambiguity, particularly in jurisdictions with a culture of gift-giving. The policy documents and training programmes should give clear guidance on how employees should handle ethical dilemmas in this area. * review copies of the Board minutes to confirm that the Board considers the giving and receipt of gifts on a regular basis |
| **Previous incidents** | * Does the company keep a record of previous instances or allegations of corruption? * Do any of them relate to senior management at the company? | Hold meetings with:   * Senior management. * Responsible officer.   Review/consult:   * Internet search engines such as Google and proprietary databases such as WorldCheck or Dow Jones Factiva to undertake a detailed review of publically available information before committing substantial time and resources to the DD phase of a project. | * Discuss with the senior management of the company whether there have been any instances of corruption in the past and how the company managed them. * When faced with a firm operating in a sector known to pose a high risk of corruption, e.g. because of a reliance upon government contracts or permits, a fund manager may want to carefully consider any lack of previous incidents. Is this evidence of a poor compliance culture? * If there have been any previous incidents then fund managers will need to consider their own obligations if they become aware of them. Local legal advice should be sought before discussing incidents with company management. |
| **Records** | * Are record-keeping procedures clearly set out? * Have such procedures been audited to ensure that they are effective? | Hold meetings with:   * Senior management. * Responsible officer.   Review:   * Records listed in the’ hints and tips’ box.   . | * A company should seek to keep records or copies of:   + Previous versions of anti-corruption policies   + Previous versions of employment contracts.   + Training delivered and attendance records   + Gifts and hospitality given an received   + Compliance issues and how they were managed   + Any report to law enforcement agencies   + Contracts with suppliers and customers   + Bank statements   + Board minutes |
| **Government reporting** | * Is there a local authority that should be notified if there is a suspicion of bribery and corruption? * Do the policy/company documents make a provision for reporting to the relevant local authority? | Hold meetings with:   * Senior management. * Responsible officer. * Review any notifications that have been made to the relevant local law enforcement authority. | * Discuss with the senior management whether there are any local legal obligations to report knowledge or suspicions of corruption to law enforcement authorities. * A review of local legal requirements could form part of the legal DD process. * A failure to report an issue may lead to an on-going liability for the company. |
| **Best practice guidelines** | * Does the company use any of the best practice guidelines, e.g. Transparency International (TI) publications? | Hold meetings with:   * Senior management. * Responsible officer. | * Discuss with the senior management of the company whether they are familiar with, or use, any publications such as those produced by Transparency International in their attempts to combat the threat of corruption in their day- to-day operations. |
| **Internal auditors** | * Does the company retain an internal audit function? * When did that function last review the operational effectiveness of the company’s anti-bribery and corruption systems? * Were there any material findings arising out of that review? | Hold meetings with:   * Senior management. * Internal auditors.   Review:   * Internal audit reports. | * Discuss with the senior management of the company how any internal audit reports are prepared and who receives and considers them. * Fund managers should bear in mind that corruption issues may be picked up during reviews across a variety of areas including:   + Procurement and Sales processes   + Bank reconciliations   + Payment authorisation   + Staff expenses management |
| **External auditors** | * Is a review of the operational effectiveness of the company’s anti-bribery and corruption systems a part of the external audit firm? * Have management letters to the Board/governing body of the company highlighted any anti-corruption concerns? * What steps have been taken to manage those concerns? | Hold meetings with:   * Senior management. * Company’s external auditors.   Review:   * Management letters provided by the auditor to the company. | * Discuss with the senior management of the company what, if any, anti-corruption checks are incorporated into any external audit firm’s work. * Discuss with the company’s external auditors their approach to audits at the company and the scope of their work. * External auditors may be reluctant to include anti-corruption issues in their audit work. |

**Whistleblower Management**

Whistleblowers are an important source of information about problems at a portfolio company. Employees may know of corrupt payments being made or poor working practices because they impact upon their day-to-day work. It is important therefore that mechanisms exist which allow employees to report malpractice to their employer in a safe manner and secure in the knowledge that they will not be harassed as a result.

Some large PE firms have established dedicated ‘whistleblower’ hotlines which employees of portfolio companies can use to report concerns when they believe that reporting to their employer may either not lead to an independent review of their concerns, or may result in their being harassed.

Whistleblower policies, procedures and practices should always be considered alongside ‘grievance’ mechanisms and the DD process should take this in to account.

| **Topic to be assessed** | **Discussion points/questions** | **Verification and information sources** | **Hints and tips** |
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| **Whistleblowing - employees** | * Does the company have formal policy/company documents designed to encourage employees to report instances of bribery and corruption and other corporate wrongdoing? * When were the policy/company documents last approved by the company’s Board or governing body? * When was the policy/company documents last reviewed? * Is whistleblowing defined? * Do the policy/company documents make it clear that any attempt to harass or discriminate against an employee responsible for such a report will be regarded as serious misconduct? * Do the policy/company documents make it clear that there will be no adverse consequences for employees who make a whistleblower report? * Do the policy/company documents set out how whistleblowing concerns will be dealt with and by whom? * Have there been any whistleblowing concerns notified to the company? How have they been dealt with? | Hold meetings with:   * Senior management. * Responsible officer. * Relevant employees.   Review:   * Policy/company documents. These may be contained in a free standing document, or in a code of conduct, code of ethics or employee handbook. * Board minutes to confirm when the policy/company documents was last reviewed and approved. | * Discuss with the senior management of company their approach to whistleblower reports |
| **Whistleblowing – third parties** | * Does the company encourage third parties to inform it of any bribes sought, received or paid or other corporate malpractices? * Does the policy set out how such whistleblowing concerns will be dealt with and by whom? * Have there been any such whistleblowing concerns notified to the company? | See above |  |
| **Responsible officer** | * Do the policy/company documents provide for the appointment of a Director with seniority (or someone with suitable authority) to take responsibility for whistleblower issues?   + Who does the Director report to?   + What regular reports should they provide? * Do the policy/company documents require the production of an annual report analysing the effectiveness and application of the policy/company documents that is prepared by the responsible officer policy for submission to the Board of Directors/governing body? * Is there are requirement that the report be sent to the fund manager?   + When was the last report prepared?   + Have the Board of Directors/governing body considered the report? * Review the quality of any reporting to the Board of Directors about corruption issues: * Where problems are noted are they followed up in a timely manner? * Have any issues been appropriately reported? | See above. |  |
| **Associates – group companies** | * Does the policy/company documents require that associates (e.g. those in the same group as the company - comply with it?) | Review:   * Group structure chart.   Hold meetings with:   * Senior management. * Responsible officer. * Relevant employees. | * Discuss with the company’s senior management how a corporate anti-corruption policy/company documents is adopted by group companies. * Associates located at the periphery of the group operations can be more vulnerable to corruption than the centre if policies are not properly communicated throughout the group. |
| **Communication and training** | * How are the policy/company documents:   + Communicated internally and how is it made available to staff?   + Communicated externally? * Is there an explicit commitment to training on whistleblower issues? * When was whistleblower training last delivered? Is refresher training provided on an appropriate basis? * Review a sample of that training. Is it relevant for the company’s operations? * Does the company publish its whistleblower policy/company documents on its website (if it has one?) | Hold meetings with:   * Senior management. * Responsible officer. * HR staff. * Other employees (where relevant).   Review:   * Training plans, materials and records. * Obtain details of any new employee induction process. * Website: review the company’s website for a copy or summary of the whistleblower policy/company documents. | * Discuss with the senior management of company how they ensure that any pro whistleblower policies are appropriately communicated to staff and third parties. * There is no one right way for communicating a policy/company documents. Within an organisation working around desks and on computers it may be sufficient to send a copy of the policy/company documents by email or to make it available via an intranet. In small organisations employees may be used to looking at a noticeboard for important information. In all events it must be clear that the messages are endorsed by the firm’s senior management * Training should be relevant to the company rather than generic if it is to be seen as credible. Caution should be exercised if the training appears to be a consultant’s standard presentation. * Frequency: training need not necessarily be repeated on an annual basis – it should be provided as often as is relevant for the firm’s staff. The leader of a sales force is likely to require more anti-corruption training that a firm’s receptionist. |
| **Employment rights** | * Do the policy/company documents or documents supporting the employment contract make it clear that any breach of the policy/company documents may amount to serious misconduct potentially leading to dismissal? * Are the policy/company documents effectively incorporated into the contracts of employment for staff? | Hold meetings with:   * Senior management. * Human Resources (HR) staff. * Other employees (where relevant).   Review:   * Contracts of employment. * List of disciplinary actions that have been taken against staff for a breach of the anti-corruption policy. | * Discuss with the senior management of the company how they enforce the policy with staff and whether they have the right to terminate a person’s employment for a breach of it. * Review contracts of employment to understand how the terms of the policy are enforced. * It is clearly necessary for an employer to have the right to dismiss or otherwise discipline staff who breach the company’s policy. |
| **Previous incidents** | * Does the company keep a record of whistleblower reports? Review any such records. * Do any of them relate to senior management at the company? | Hold meetings with:   * Senior management. * Responsible officer.   Review/consult:  Internet search engines such as Google and proprietary databases such as WorldCheck or Dow Jones Factiva to undertake a detailed review of publically available information before committing substantial time and resources to the DD phase of a project. | * Discuss with the senior management of company whether there have been any whistleblower reports in the past and how company managed them. * When faced with a firm operating in a sector known to pose a high risk of corruption, e.g. because of a reliance on government contracts or permits, a fund manager may want to consider carefully any lack of previous incidents. * If there have been any previous incidents then fund managers will need to consider their own obligations if they in turn become aware of them. Local legal advice should be sought before discussing incidents with company’s management. |
| **Records** | * Are record-keeping procedures clearly set out? * Have such procedures been audited to ensure that they are effective? | Review:   * Relevant records. | * Discuss with the senior management of the company what records they keep of whistleblower reports and the action subsequently taken. |
| **Internal auditors** | * Does the company retain an internal audit function? * When did that function last review the operational effectiveness of the company’s whistleblower systems? * Were there any material findings arising out of that review? | Hold meetings with:   * Senior management. * Internal auditors.   Review:   * Internal audit reports. | * Discuss with the senior management of company how any internal audit reports are prepared and who receives and considers them. * Fund managers should bear in mind that whistleblower issues may be picked up during reviews across a variety of areas including:   + Procurement and sales processes.   + Bank reconciliations   + Payment authorisation   + Staff expenses management. |

**Corporate Governance Management**

A proper understanding of a company’s existing corporate governance structures will help a fund manager identify where improvements may be appropriate. Private Equity investments typically come with a range of investor protections which are frequently aligned with changes to corporate governance structures. For example, the appointment of an independent non-executive member to the Board or the creation of an Audit Committee. Some of the biggest opportunities for change come as family companies seek to make generational changes and to professionalise.

| **Topic to be assessed** | **Discussion points/questions** | **Verification and information sources** | **Hints and tips** |
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| **Commitment to Corporate Governance (CG).**  Key Risk: The company and its shareholders have not demonstrated a commitment to implementing high quality CG policies and practices. | * Does the company have a charter or articles of incorporation according to local legislation, with provisions on:   + the protection of shareholder rights and the equitable treatment of shareholders;   + distribution of authority between the Annual General Meeting of shareholders, the Board of Directors and executive bodies; and   + Information disclosure and transparency of the company's activities? * Are the Board of Directors and the senior management familiar with any voluntary code of CG for the country (if such a code exists)? To what extent does the company comply with the provisions of this code? How is this compliance disclosed? * Does the company have a CG code and/or policies? What are the procedures for monitoring compliance with these? Who does the monitoring? * Does the company disclose the extent to which it is complying with its CG policies and procedures? * Does the company have a code of ethics? * Does the company have a designated officer responsible for ensuring compliance with the company’s CG Policies and code of ethics? * Does the management/Board of Directors approve an annual calendar of corporate events (Board meeting, shareholders meetings, etc?) | Hold meetings with:   * Senior management.   Review:   * Corporate governance code and policies and codes of ethics etc. * Annual calendar. * Audited accounts. | * Discuss with the senior management of the company what they understand to be good corporate governance practices and how they are implemented e.g. the appointment of a Company Secretary. * Discuss with them how they evidence a commitment to sound corporate governance practices. * Legal DD will obtain copies of many of these documents, e.g. articles of association or other documents created during the incorporation of the company and be able to advise on whether there are any such voluntary codes. |
| **Board structure and role**  The risk that the Board does not act independently of the executive management of the company and always in the best interests of the company. | * How is the composition of the Board of Directors determined? * How many of the Board are Executive Directors and how many are Non-Executive? * Is there an independent Chairman of the Board? * Are there any shareholder agreements, provisions of the company’s charter, or informal understandings that specify which shareholders appoint Directors? * How are any independent Directors selected? How, if at all, does the company define ‘independent’ Director? * What is understood as the role of the Board of Directors vis-à-vis management, particularly with respect to the following?   + Setting the strategy and vision of the company.   + Selection and compensation of the CEO and senior management.   + Risk management, oversight of internal controls, external audit and preparation of financial statements.   + Major capital expenditures and large-value transactions. * Does the Board of Directors review material transactions that involve conflicts of interest and related parties? * Does the company have a formal or informal succession plan for its current CEO? How much longer does the current CEO intend to remain in this position? | Hold meetings with:   * Chairman of the Board. * Other Board members (as appropriate).   Review:   * Board minutes and papers and documents illustrating the constitution of the company. * Composition of the Board of Directors and understand how its members were selected. * Succession plan that has been created. | * Discuss with the Chairman of the Board, how the Board is structured and its role is communicated to its members. * Legal DD will capture much of this information and the local legal advisors will be able to provide a legal structure diagram and answer questions about shareholder agreements. |
| **Directors**  The risk that the Directors of the company are not competent to fulfil their duties as Directors. | * How does the current mix of skills/experience on the Board of Directors serve the company’s interests? * Are Directors appointed on the basis of a clear job description which identifies a required background and expertise? * Does the company offer induction and/or regular training to members of the Board? * Does the Board of Directors conduct self-evaluations or other reviews of its effectiveness? * How and when such reviews are conducted and with whom are the results shared? * Has any of the Board of Directors ever been sanctioned for violating any of his/her duties? * How often is the Board of Directors elected? Are there a maximum number of terms that a Director can serve? | Hold meetings with:   * Chairman of the Board. * Other Board members (as appropriate).   Review:   * CV’s/biographies of the Directors and their job descriptions. * Induction materials provided to the Directors. * Performance evaluations. * Succession plans made by the company to refresh the composition of the Board. | * Discuss with the Chairman of the Board how Board members are recruited, trained and assessed. * It is likely that when investing in family companies many of these features will be absent. * Where a controlling stake in a company is being acquired many of the Directors may also be shareholders and may be exiting the company. DD may need therefore to be shortened. |
| **Board meetings**  The risk that there is an ineffective Board process because there are too few meetings or the papers are delivered late. | * How often does the Board of Directors meet? * Is an agenda prepared and distributed in advance of Board meetings? Are minutes prepared and approved after Board meetings? * Does the company have a corporate secretary? If not, who organises Board meetings? | Hold meetings with:   * Chairman of the Board. * Other Board members (as appropriate). * Senior management.   Review:   * A sample of Board papers and attendance records for the meetings. | * Discuss with the senior management of company how Board meetings are scheduled and papers are prepared. * When conducting DD a fund manager should consider:   + Whether the Board papers were comprehensive without being overly detailed.   + Whether the papers were delivered in sufficient time to allow the Board to consider them properly.   + The risk of absentee Directors. |
| **Board Committees**  The risk that, in the absence of a committee structure, the Board becomes over-loaded with work and fails to address issues in sufficient detail. | * Does the company have Board Committees? If so, how are they established, who sits on them, and how do they function? * When and how do those committees report to the Board? * Are there any committees which are made up of Non-Executive Directors? | See above. | * Discuss with the senior management of company the committee structure that has been put in place at the company and the composition of each committee. * When conducting DD a fund manager should consider: * Whether the Board papers were comprehensive without being overly detailed. * Whether the papers were delivered in sufficient time to allow the Board to consider them properly. * Whether the committee system is being used to restrict discussions of significant points at a Board level. |
| **Minority Shareholders**  The risk that minority shareholders’ rights are inadequate or abused. | * Are there differences between the voting rights and cash flow rights of the company’s various classes of equity and quasi-equity securities (as different from the ‘one share, one vote’ principle)? * Do minority shareholders have any mechanisms to nominate members of the Board of Directors (e.g. cumulative voting, block voting, etc.)? Have such rights been exercised? * Is ultimate beneficial ownership of shares disclosed by controlling shareholders and management? * Are there any minority shareholders protection mechanisms in place? * How will minority shareholders be treated in the event of a change of control of the company (e.g. tag-along rights)? * Does the preparation and calling of annual and extraordinary shareholders meetings enable the participation of all shareholders (i.e. sufficient notice, agenda and supporting materials, proposing agenda items, participation personally or through proxy, the right to ask questions, dissemination of the results of the meeting)? * Has the company ever been subject to investigation into its treatment of shareholders? How have shareholder disputes been resolved? | Hold meetings with:   * Chairman of the Board. * Other Board members (as appropriate). * Senior management.   Review:   * List of shareholders and a copy of the constitutional documents of the company. * Latest audited accounts. * Notice, agenda and minutes of the last two annual meetings of the shareholders (if there have been such meetings). | * Discuss the shareholder base with the senior management of the company. * Confirm by discussion with the Chairman of the Board of Directors whether the company has ever been subject to an investigation in to the treatment of shareholders. * Legal DD and the fund manager’s legal advisors will be well placed to undertake this analysis and to suggest any necessary changes and an appropriate method for driving them. |
| **Transparency and Disclosure**  The company’s financial disclosures are not a relevant, faithful, and timely representation of its economic transactions and resources. | * Are the financial statements prepared in keeping with internationally recognised accounting standards (e.g., IFRS or US GAAP)? * Were there any material re-statements of the company’s financial statements in the past five years? Please specify. * Does the company disclose major transactions, related party transactions, off-balance sheet activities, and other material events? How (e.g., Annual report, website)? * Does the Board of Directors/Audit Committee review key elements of the company’s financial statements? How often? * Does the company have a written information disclosure policy that seeks to make all material information (financial and nonfinancial) fully, timely and equally available to all stakeholders? * If the company is publicly listed: * Are periodic meetings with securities analysts held? * Who participates in such meetings? * Has the regulator or the exchange ever required the company to provide additional information or clarification in the annual report, financial statements or other disclosure? * If so, on what elements? * Has the company ever been sanctioned or censured by the regulator or the exchange for any failure or delay in disclosing required information to the public? * Who are the company’s auditors? | Hold meetings with:   * Senior management. * External auditor.   Review:   * Obtain and review the minutes of any Audit Committee. | * Discuss with the senior management of company the Board’s approach to the disclosure of financial and operational information. * Discuss with the firm’s external auditors whether there have been any reasons to restate the accounts of the company * Financial DD will review the past accounts of the company and comment on the basis on which accounts have been prepared and whether it has been necessary to restate them. |