YOUR
LEGAL RISK
REPORT
Sample Financing
We are pleased to provide you with your unique legal risk report. It flags some of the legal risks you may be exposed to, based on the answers you gave in the Legal Risk Radar questionnaire.

The report does not purport to list exhaustively all of the legal risks facing your business. However, it points out some of the risks you may want to proactively address and manage.

Many businesses fail to thoroughly map and assess their legal risk profile, to set out a detailed risk strategy and to implement systematic reporting and risk management. Without such measures in place, it is all too easy to lose sight of the bigger picture and of the many interrelated and quietly accumulating legal risks inherent in any business. Legal risk management is the process of actively uncovering and managing these, frequently hidden, risks.

Kromann Reumert has developed a Legal Risk Management process to assist you in managing your risks. Read more about our legal risk management approach in our Insight Legal Risk management – and please do not hesitate to contact us, if you want to discuss how to develop a legal risk management strategy and process for your business.

We sincerely hope this report will help you identify and manage your legal risks – and turn challenges into opportunities!

Arne Møllin Ottesen, Managing Partner

Kromann Reumert provides the Legal Risk Radar as a service and for informational purposes only. Generated on the basis of a limited set of generic questions, the report does not constitute legal advice, nor does it establish any form of attorney-client relationship with our firm. While every effort is made to ensure that the information in the Legal Risk Radar is accurate, it may contain errors or omissions for which we disclaim any and all liability.
Like many other businesses, you face a number of risks that could impact your operations.

These results are only indicative
Financing

Are you aware of the risks and opportunities related to financing?

Like many other businesses, you face a number of risks that could impact your operations.

See details on next pages.
Is your company dependent on financing from banks or other funding sources?

Your answer: Yes

To what degree is your company’s financing built on multiple funding sources to avoid risk exposure on a single or few counterparties?

Your answer: 3 out of 10

During the financial crisis a number of companies got exposed as their only or primary debt provider (bank) suffered from liquidity restraints. Having learned from their bad experiences during the financial crisis, some companies have subsequently mitigated that risk by using multiple (non-connected) debt providers. We generally recommend all companies of a certain size to consider how they can spread the risk, as such concentration risk is not only relevant in case of a new financial crisis, but also in connection with changing market conditions for the business itself or changing risk perceptions of a single lender towards the specific customer or the industry.

The current market offers a number of alternative models for obtaining debt financing – also if your company is not a large international corporation. Now just might be the right time, therefore, to review and reconsider whether the loan book of your company could be optimized from both a cost and risk perspective.

To what degree are the terms and conditions of your existing financing customized to match your company’s strategic plans and reasonably allow for market fluctuations?

Your answer: 8 out of 10

It sounds as if your company has taken a diligent approach in managing its loan portfolio. However, as major structural changes are taking place in the financial markets these years, we generally recommend tracking the trends in the market and considering the funding mix of your loan portfolio.

Current trends in the European market has been for more and more European corporates to prioritize alternative (bilateral) funding sources as a supplement to bank lending or instead of corporate bonds. 2016 market surveys showed that 33% of new funding obtained had been through alternative sources and 48% of all corporates asked expected to increase the share of alternative funding sources in the coming years.

The advantage of such alternative financing has been more flexible terms and lower establishment costs while still offering attractive terms/prices.
Financing

Does your company make use of interest, foreign exchange (Fx) or other derivative products in order to hedge your financial risks?

Your answer: Yes

To what degree have you ensured some level of control with respect to the close-out terms of your derivative agreements and ensured netting across multiple positions?

Your answer: 7 out of 10

Given that there have been significant changes in the approach to close-out terms in recent years and both the market trends and the actual risk-related close-out terms are closely related to not only the company itself, but also the external environment, we recommend that both the actual terms agreed and the market trends are reviewed and considered periodically.

To what extent do your existing derivative agreements carry cross-default provisions towards other derivative positions and your existing loan package?

Your answer: 5 out of 10

Many companies tend to forget that cross default provisions may take other forms than the very straight-forward cross default provisions. In fact many other provisions, including materiality, material adverse change, financial provisions, etc., in finance agreements as well as other commercial contracts may very well have cross defaulting effects.

If any of your loan agreements, derivative agreements, or other financial contracts contain cross default provisions, it will be the lowest common denominator governing whether there will be a default under not only a single agreement, but under all such agreements either containing the direct default provision and a relevant cross default provision. A situation which could itself trigger default provisions under other agreements due to materiality / material adverse effect triggers or other triggers. Bottom line, it is crucial to carefully consider cross default provisions to contain (or mitigate) the risk of potential default snowball effects across your company’s financial agreements (and potentially other agreements, too).

Cross default provisions should be carefully registered in your risk management system / document management system (as should other default provisions which could have cross defaulting effects) in order to provide an overview of the potential consequences and thus for the company to better manage the risk.
Have you implemented a reporting and warning tool to ensure compliance with the covenants in your financial agreements?

Your answer: Yes

Surveys show that a relative large number of companies are at times in default or in technical default, where technical default refers to a situation where the borrower is in fact in non-compliance with its obligations under the loan agreement, but the lender has either not noticed it – or for the time being decided not to react to the non-compliance. If the non-compliance remains a technical default, it will have no immediate consequences, but the borrower runs the risk that the lender may at any time choose to call the default and accelerate the loan, subject to any agreed notification periods and cure mechanism in the loan agreement.

We thus recommend that all borrowers conduct periodic compliance reviews of their loan agreements (and other commercial agreements). Such periodic review should not be based only on compliance with the financial ratios, which are typically fairly straight-forward to check, but should also include a compliance review of the less transparent obligations, e.g. environmental and other compliance obligations, hedge obligations, negative covenants, capex restrictions, cross default provisions across own contracts and obligations and performance/obligations of subsidiaries, associated parties and key counterparties (if caught by the wording of the provisions), etc.

Also, no such review should be merely a snapshot of the current status, but should consider all such obligations and restrictions in light of the planned/contemplated strategic initiatives, the surrounding environment, and the general outlook of the company in order to ensure that any potential/threatening non-compliance in the short- to-mid-term is considered and potentially handled upfront.

To what extent are the relevant stakeholders in your organisation aware of the covenant restrictions in your financial contracts?

Your answer: 8 out of 10

Already by ensuring that all relevant stakeholders are on a current basis informed of the restrictions agreed by the company in its financial contracts and other commercial agreements, you have significantly limited the risk of non-compliance with those obligations. You then need only ensure that any new material obligations are filed and registered in your corporate risk management system / document management system in order to continuously track and manage the risk as a whole – and to ensure that guidelines are set out and updated in order to set out limitations as to what obligations can and cannot be undertaken and what terms of compliance the company as a whole must comply with, including subsidiaries and associated companies, if such parties are also caught by the wording of the provisions in your financial contracts.
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Kromann Reumert’s vision is “We set the standard”. Good is not enough – we want to be the best. We provide value-adding solutions and advice with full involvement and commitment. We get there by focusing on quality, business know-how, spirited teamwork, and credibility.
We are Denmark’s leading law firm, and our offices are located in Copenhagen, Aarhus and London.

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