



Corporate Questionnaire and Instructions:

By Burke Files

This questionnaire is designed for a comprehensive Due Diligence Background Check on a Corporation, LLC Partnership etc.

“Corporation, n. An ingenious device for obtaining individual profit without individual responsibility.”

Ambrose Bierce, *The Devil’s Dictionary*

Corporate Questionnaire and Instructions

This corporate questionnaire can be used both for corporations, sub-chapter S corporations, limited liability companies, limited partnerships, general partnerships, and to some extent, sole proprietorships. This is a questionnaire for the business.

General Information. The general information on the corporation is information that helps us find and identify the corporation. The legal name, stated formation, tax ID numbers, any city, state, county or federal licenses and permits, the dates of incorporation, what type of business this corporation is, what type of business this corporation is engaged in and the identity of any subsidiary corporations. If the company has subsidiary corporations, the questionnaire must be applied to each of the subsidiaries. If the corporation in question is a subsidiary, then the questionnaire must be applied to every sister corporation as well as the parent corporation.

Organizational. A corporation as a legal entity has certain requirements. Those requirements include keeping the articles of incorporation in good standing within the state jurisdiction where it was incorporated, keeping its shareholders’ and directors’ meetings current, and adhering to the bylaws of the corporation. A corporation is not a living, breathing entity, it is the sum total of the efforts of people who work for the corporation. The organizational portion of this questionnaire goes into the status of the enterprise as well as what contingency plans are in place to deal with the loss of key people.

Litigation. All corporations that are active and transacting business will eventually be sued or will have to sue someone else. Some corporations, by the nature of the type of business they conduct, are prone to litigation. In my experience, one of the businesses most prone to litigation is an automobile dealership. Dealers are not particularly liked, and when something goes wrong customers have few reservations about escalating their dispute. From my experience serving on the board of dealership leasing and finance company, it is virtually impossible for a dealership and finance company to escape litigation.

Does litigation indicate a bad company. No, quite to the contrary. An automobile is likely to be the first or second largest investment a person ever makes, and they are less than uniform. Every automobile is unique, even if the year, make, model and color are identical – they’re still different. While a company may do its very best to satisfy the customer, some people are never satisfied. It is important to understand the nature of the company, the nature of the business, and the nature of the litigation. In today’s world, litigation is simply another cost of doing business.

If a business has been involved in either bankruptcy or criminal proceedings, it requires a closer look. If there is criminal litigation, the status of the litigation and the circumstances surrounding the incident that propagated the litigation must be researched. If an individual or corporation has declared bankruptcy, it should be determined whether the collapse resulted from a general business risk, sensitivity to market conditions or a management problem. I have known many successful executives who resisted cutting payroll during an economic crisis. Their motives were truly genuine and caring, but it is almost always an unfortunate decision. In the long run, a bloated payroll leads to bankruptcy and everyone loses, not just a few. Executives are there to make difficult decisions – decisions that affect many lives – and they have to make the right decisions. A bankruptcy requires special attention to the management activity that preceded the filing.

Financial. The financial portion is one of the most important sections of the questionnaire. The enterprise was formed to make money. Companies need to have a current income statement and balance sheet. The accountants and financial experts should be readily available to the investigator, and prepared to answer pointed questions when asked. The questions are fairly self-directing and general in nature. Every enterprise will require inquiries specific to the nature of its business, which obviously cannot be covered in a manual.

Ownership and Securities. This section covers basic information – whether the company is publicly or privately owned, and what securities have been issued. In the process we need a description of the securities, whether they are common shares, different classes of common shares, preferred shares, or debt instruments, who the owners of those instruments are, and what rights are conveyed to the owners of those instruments.

If the company is publicly traded, there is a very specific set of questions dedicated to public companies and those seeking to become public.

Records. Corporate record-keeping is part and parcel of a well-organized, well-run company. Records are essential to understand business activity and should be well-maintained, current and well-protected at all times.

Acknowledgment. The acknowledgment needs to be signed by an officer or director of the corporation that is actively directing its operations. In 99.99 percent of the cases, this is the president along with the chairman. Add as many signature blocks and verifications as you think are necessary to get the proper scope for understanding the operations of the company.

Document Checkoff List. There are many documents that are required to be read (and understood) in any due diligence investigation. The documents most frequently required are on the attached checkoff list. No list can be all-inclusive, and the investigator must consider any special circumstances or risks involved. If the business you are investigating is a refinery, you will need all of the permits with respect to pollution control and EPA compliance. If the company is

involved in importing and exporting, the necessary import/export licenses to transact business need to be included.

At the end, there is an affirmation of corporate information questionnaire. This should be signed and notarized in a number of original duplicates by all of the people who acknowledged and affirmed the corporate individual questionnaire. The several duplicate originals from each individual are needed for, or required by, third parties to disclose information relevant to your investigation.

Corporate Questionnaire

This is a list of questions to be answered in the report to the inquirer, with copies of requested documents to be attached as appendices to the report and organized by section.

1. GENERAL INFORMATION

Legal name of company.

Type of entity – sole proprietorship, general partnership, limited partnership, limited liability company, cell limited liability company, foundation, other, and tax elections.

Tax ID number state.

Tax ID number federal.

Date and place of formation.

Nature of the company business.

Nature of business of parent and subsidiary entities.

Articles of formation for all entities.

Governance documents such as bylaws or operational agreements for all entities.

Records of the meetings for the security holders and guidance bodies for the entities.

Current and past addresses for all entities.

All trade names, brand names and service marks owned and uses.

List all acquisitions and divestures.

City and county permits and licenses.

2. ORGANIZATIONAL

Structure chart of parent and subsidiary entities.

Organization chart of each of the entities.

Records of the meetings for the security holders and guidance bodies for the entities.
Current and past addresses for all entities.

What is the organizational status of the company, and who are the responsible people? (Attach résumés.)

Who are the key persons to the corporation, internal or external? (Attach résumés.)

What is management's plan for dealing with the loss of a key person, for any reason?

What has been the total number of employees, today, one year ago, five years ago?

Is the corporation in good standing? Yes ___ No ___
If no, please explain why?

Have any officers or directors resigned from the company? Why?
Yes ___ No ___

In a merger or acquisition, is it the plan of the current board of directors to maintain or give up control?

What are the board's expectations and conditions?

List all present officers and directors of your company, their current annual salary and other compensation, including all bonuses paid or expected to be paid during the company's current fiscal year, retirement, health, travel, options, and others.

List names, titles, and annual compensation of all salaried employees of your company with salaries greater than \$_____ per year.

List all employment and consulting agreements, and copies of all such agreements.

Are any of the workers of the entities represented by unions? If yes, name the union along with contact information and an assessment of the relationship with the union(s).

List any collective bargaining or other union contracts, if applicable, and copies of all such contracts.

Describe any loans to or from officers, directors, agents or stockholders of the company.

Describe how you recruit new employees, i.e.: advertising, open applications, recruiting and others.

Describe your selection and screening process for all new hires.

Describe inquires into prospective new hires if their spouses or life partners work at competing firms.

Describe any problems with workers' compensation, or any other employment problems concerning compensation, termination of employment, or other reason.

Are there employee benefit plans, pension, retirement, disability, medical, dental, other health, life insurance or other death benefit plans, profit sharing, deferred compensation, stock options, stock purchase, bonus or other incentive plans, vacation benefit plans, severance plans or other employee benefit plans or arrangements?

Yes ___ No ___

If yes, please attach copies.

Does your company lease employees or make use of temporary services? If so, attached those agreements as well as the method used for vetting their workers.

Describe your procedure for the termination of employees and exit interviews.

Please share a copy of your disaster recovery plans.

Please share copies of all anti-money laundering and know your client guidelines

3. REGULATORY MATTERS

Most entities possess operations and professionals that require licensing and permits from a variety of licensing and regulatory bodies.

List licenses held by the company, the licensing body, the status of the licenses, and the annual cost and activities required to maintain these licenses. Attach copies of all licenses.

List all of the employees, direct or leased, that possess licenses, the status of the licenses and the annual costs and activities required to maintain these licenses. Attach copies of all licenses.

List all past investigations and their outcomes, as well as pending investigations by the licensing and regulatory bodies. Also discuss potential outcomes both positive and negative and the resulting costs internal and external such as legal representation and fines.

4. INTELLECTUAL PROPERTY AND CRITICAL INFORMATION

Seventy-five percent or more of the value in a modern company is intellectual property and critical information (IPCI). This section addresses IPCI.

Please provide a list of the following:

Patents, with number and expiration date and status as well as all jurisdictions where the patent has been filed.

Trademarks with number, expiration date, and status as well as all jurisdictions where the trademark has been filed.

Service marks with number, expiration date, and status as well as all jurisdictions where the service mark has been filed.

Trade secrets – with a list of what they are (without disclosure of actual secrets).

Copyrights – a list with expirations, and discussion of how these rights were created and how they have been protected.

A list of all critical information. This is information you would not want your competitor to have such as business plans, marketing plans, lists of suppliers, customers, employees and other information.

Please supply your IPCI asset elements registry.

Who in your company is charged with the responsibility for assembling the IPCI asset elements registry?

Do your employment agreements clearly list the company's IPCI and how it may or may not be disclosed? If so please provide the sample paragraph in the employment agreement.

Do agreements with third parties clearly list the company's IPCI and how it may or may not be disclosed? If so please provide a sample paragraph to these agreements.

Do the agreements with both employees and third parties clearly state that all work product generated is the property of the company?

What disclosures or compromises of company IPCI have occurred?

Do you have IPCI defense insurance?

Please describe your operations security (OPSEC) program and those who are responsible for the OPSEC program.

What training have the employees had on IPCI and OPSEC?

5. LITIGATION

Is there any present or pending litigation on behalf of, or against the corporation?

If yes, briefly describe. Yes ___ No ___

Have any of the officers or directors of the entity been involved in any of the following legal proceedings:

A petition under the federal bankruptcy laws or any insolvency filed by or against you, or a receiver, fiscal agent or similar officer appointed by a court for your business or property, or any partnership in which you were a general partner within two years prior to the time of such filing, or any corporation or business association of which you were an executive officer within two years prior to the time of filing?

Yes ___ No ___

Have you ever been convicted in a criminal proceeding or are you presently the subject of a pending criminal proceeding (excluding traffic offenses and other minor offenses)?

Yes ___ No ___

Have you been the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining you from, or otherwise limiting the following activities:

(A.) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the U.S. Commodity Futures Trading Commission; an associated person of any of the foregoing, or as an investment advisor, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of an investment company, bank savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity?

Yes ___ No ___

(B.) Engaging in any type of business practice?

Yes ___ No ___

(C.) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of federal or state securities laws or federal commodities laws or those of any other nation?

Yes ___ No ___

Were you the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring, suspending or otherwise limiting for more than 60 days the right to engage in any activity described in paragraphs A, B or C above, or to be associated with persons engaged in any such activity?

Yes ___ No ___

Were you found by a court of competent jurisdiction in a civil action or by the Securities and Exchange Commission to have violated any federal or state securities law, and the judgment in such action or finding by the commission has not been subsequently reversed, suspended or vacated?

Yes ___ No ___

Were you found by a court of competent jurisdiction in a civil action or by the Commodities Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action and finding by the Commodities Futures Trading Commission has not been subsequently reversed, suspended, or vacated?

Yes ___ No ___

If any of the answers to the preceding question are "yes," please explain; giving the case name, number and court of jurisdiction wherever located.

Are you, or any corporate officers, directors or affiliates of the company currently involved in any Securities and Exchange Commission's formal or informal inquiries, investigations, hearings, temporary or permanent injunctions?

Yes ___ No ___

If yes, please explain

Describe any disputes which could lead to financial or legal impediments in the operation of the company.

6. FINANCIAL

Are all tax filings and payments current? Yes ___ No ___
If no, please explain why?

Please list all accountants for the corporation along with contact information.

Does the company have any usable tax losses? Yes ___ No ___
If so, how much and explain?

Is there a list of customers, dealers, distributors, employees, friends, relatives or others who are most likely to invest in your firm?
Yes ___ No ___

Describe all encumbrances, mortgages, liens, etc. on any of your company's assets.

Describe all insurance policies that cover fire, liability, directors and officers' liabilities, and any other insurance which your company maintains, including the name of the insurer, the nature of the coverage, the risks covered, the amount of coverage, the appropriate deductible, term of the coverage, and the annual premium.

List all banks and other financial institutions with which your company has bank accounts, and list all representatives of your company who are authorized to act or deal in connection with those accounts.

State the representatives of your company who work with these institutions.

Describe any pending tax audits or results of any closed tax audits.

List all intellectual property such as copyrights, trademarks, patents, trade secrets, and rights of similar effect used in connection with your company's business, and supply copies of all documentation of any of these items.

List and provide copies of all material contracts, options, deeds, agreements, guarantees and other arrangements of a contractual nature exceeding \$10,000 which your company is a party to.

List and provide copies of all permits, authorizations and other governmental orders applicable to the operation of your company's business, safety, environmental, building, zoning, health and others.

Describe any contingent liabilities applicable to your company.

Provide the fiscal year of the company, including all subsidiaries.

List all creditors, secured and unsecured, of the company over \$2,000, including names, addresses and telephone numbers, along with an aging of the debt.

State the net before taxes for the last fiscal year, and attach statements of operations concerning all revenue-generating properties, with profit and loss statements.

7. OWNERSHIP & SECURITIES

If interested in becoming a public company, what is the shareholder of record date to be?

What is the total number of shareholders?

In how many states is stockholder distribution?

In what city and state is the greatest concentration of shareholders?

Please list the stock transfer agent(s), with address and contact information.

Please explain how you perceive market-making activity in your company stock taking. Identify who your market makers will be, who the main supporters of your market will be, whether you plan to hire a public relations firm to assist in those activities on a full-time basis, and what trading range you would realistically like to see your stock at in the next year, two years, three years, and show your plan to accomplish these goals.

List all stockholders and option holders of your company, setting forth shares of stock or options owned by each of them, and, in case of option-holders and holders of convertible preferred stock, the number of shares of common stock which the holders have a right to acquire.

A description of any proposed use of proceeds/assets (approximately \$ _____ immediately, and approximately \$ _____ through the exercising of all warrants of the candidate.

Is the company prepared to provide an audited financial statement prior to the post effective amendment filing of any outstanding warrants with the Securities and Exchange Commission?

Is public status the result of a merger or acquisition? Yes ___ No ___
If yes, between what companies? Explain.

What was the merger date?

What was the date of public offering?

What was the type of public offering?

Who was the underwriter?

Who was the investment banker?

Under what form were the securities registered?

What was the initial selling price?

What is the highest price at which the stock has traded?

What is the lowest price at which the stock has traded?

What is the current price at which the stock is trading?

Have the securities been registered with the Securities and Exchange Commission in the states where traded? Yes ___ No ___

If no, what exemption from SEC registration is being relied upon?

Are there stock warrants outstanding? Yes ___ No ___
If yes, state the class, type, terms of exercise and expiration dates.

Is the company listed and current in its listing information, with any registered manual such as Moody's Investors Service, Standard & Poor's, Value Line, Walker's Manual, Fitch, Dun and Bradstreet, others?

When were the securities last active in trading?

What are the total number of authorized but unissued treasury shares?

What are the total number of free trading shares currently issued and outstanding?

When was the last annual report released?

What are the total number of shares optioned or escrowed?

Are there certified statements available? Yes ___ No ___
If yes, what is the most current date?

What are the classes of stock authorized?

Is the stock assessable or non-assessable?

What is the par value of the stock?

What is the total number of shares authorized?

What is the number of shares issued and outstanding?

8. RECORDS

Do you have the following corporate records:

- | | | |
|--|---------|--------|
| Stock certificate books and stubs; | Yes ___ | No ___ |
| Stock ledger journal; | Yes ___ | No ___ |
| Shareholder list; | Yes ___ | No ___ |
| Financial accounting records and ledgers; | Yes ___ | No ___ |
| Corporate minutes (complete and current); | Yes ___ | No ___ |
| Brief history of company; | Yes ___ | No ___ |
| Bylaws of the corporation; | Yes ___ | No ___ |
| Certificate of good standing; | Yes ___ | No ___ |
| Articles of incorporation; | Yes ___ | No ___ |
| Canceled stock certificates for the past; | Yes ___ | No ___ |
| The corporate seal; | Yes ___ | No ___ |
| Records of any amendments; | Yes ___ | No ___ |
| Attorneys' opinions of the status of the corporation, assets, debts, public offerings, and ability of shares to trade; | Yes ___ | No ___ |
| Securities Exchange Commission correspondence and file. | Yes ___ | No ___ |
| Are any stock certificate books lost? | Yes ___ | No ___ |
| Is there any danger of forged stock certificates showing up? | Yes ___ | No ___ |
| Are the stock records complete and up to date? | Yes ___ | No ___ |
| What was the date of the last shareholders meeting? | | |
| What was the date of the last board of directors meeting? | | |
| Has the board been active? | Yes ___ | No ___ |

Authorization (Sample)

In accordance with the Privacy Act, Freedom of Information Act, the Fair Credit Reporting Act and other applicable laws, I authorize _____ or its agents to contact orally, or in writing, any third parties to obtain information or analysis which _____ deems necessary and appropriate. I hereby waive any rights or claims I might have against _____ or its agents, as well as any company, agency representatives or other persons providing or analyzing such information and acting with regard to the acquisition, use, retention or disclosure of such information. A photocopy of this authorization shall be as valid as an original.

I understand that a material misstatement or the omission of material facts may give rise to civil and criminal liabilities to the company, its officers and directors. I will notify

_____ of any misstatements of a material fact necessary to make any statements contained herein not misleading.

I confirm, represent and warrant to _____ and its agents, that I have necessary board authority to act for and on behalf of the corporation in making the foregoing statements, and that they, to the best of my knowledge and belief as of the date herein, are correct, and that no statement of fact is omitted from this questionnaire which is necessary in order to make the statements herein not misleading.

Signature

Please print your name

State your title or position

Date

Document Checkoff List

The following documents should accompany this work sheet as backup information to enable processing:

- Certificate of incorporation and amendments.
- Articles of incorporation and amendments.
- Bylaws and amendments.
- Organizational minutes.
- List of shareholders, number of shares held by each and date that shares were issued.
- Corporate and shareholder minute book.
- Résumés or profiles on each director and officer.
- Copies of patents, patent application, trademark registration, trademark application copyrights and any other registered or registration application on IPCI belonging to corporation.
- IPCI assets elements registry.
- Contracts with management (employment agreements, stock options, others).
- Contracts with manufacturers, distributors, affiliates, associates and others.
- Lease agreements for premises occupied by corporation.
- License agreement(s) for the use of any proprietary rights not owned by the corporation.
- All other material contracts.
- Financial statement(s) for the previous three years, if available.
- Literature, catalog sheets, specification sheets, on products/services offered by corporation.
- Test results on any products offered by corporation.

- Copies of all insurance policies carried by corporation, such as liability, key man, health, warranty and others.
- List of any litigation current or pending facing the corporation, whether known, or pending, real or asserted.
- Business plan for corporation to include 36-month sales and profit and loss projection.
- Copies of any and all independent appraisals and/or analysis of business or properties.
- Corporate certificate of good standing.
- Qualification certificate to transact business in any other location.
- All documents that relate to your facilities and properties such as, but not limited to: lease, title, bills of sale, appraisals, environmental studies, others.
- Legal and accounting opinions.

If you have any questions whatsoever, please contact _____ at (XXX) XXX-XXXX.

CORPORATION INFORMATION QUESTIONNAIRE

NAME OF CORPORATION

DATE OF QUESTIONNAIRE

This information provided to:

BLACK AND WHITE, INC.

The data was prepared by: _____

Who serves in the capacity of: _____

With the above - name firm. _____

(Signature of Preparer)

STATEMENT OF PRINCIPAL

I, _____, warrant that the information provided herein is accurate and complete, to the best of my knowledge, and that any material changes in this information will be relayed immediately to the due diligence department of Black and White, Inc. I authorize verification of this information via a background investigation and a credit investigation.

(Signature of Principal)

(Date)

*** THIS FORM MUST BE NOTARIZED**

STATE OF _____

SS.

COUNTY OF _____

On this _____ day of _____, 20 __, before me, _____

the undersigned officer, personally appeared _____

personally known to me to be the same person(s) whose name(s) is (are) signed to the

foregoing instrument, and acknowledged the execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

(Notary Seal)

(Notary Public)
My commission expires:

IMPORTANT: This report, if on a partnership must be signed by a member thereof, an executive if it is a corporation or an empowered member, manager or trustee if another form of association.