

What documents should be in a virtual data room?

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What to save in the virtual dataroom

On November 16, 2017, we published a post about online data rooms, [Four Reasons You Should Set Up Your Dataroom Already Today](#), that was greatly appreciated. As mentioned in the blog, there are many checklists to be found on the Internet that can be adapted to fit your need. But, how do I know which ones are really good and what documents are actually necessary? This was an immediate question we got after we posted that blog.

The lists you will find on web will vary in length and detail. It's tempting to disqualify the lengthy lists thinking that they don't apply to my organization. That conclusion might be risky though. Or, it depends on what your immediate needs are, i.e. if you're pre-emptively creating a data room for future prospective investors you have more time to adapt the structure as time passes and additional material documents also pass your hands than if you've already signed a NDA to show/look at a data room and you have the scope of the letter of intent at hand. In the latter case, depending on the interest of the buyer/seller, a lot of documents might automatically be disqualified as not needed for the purpose. The documents may also vary depending on where in the world you're located, or where your buyer/seller is located.

Regardless of the purpose – the earlier you start a data room, the easier it is to maintain one. The better maintained your data room is, the faster and less painful the due diligence is. A great data room tells investors that you value and respect the investor's time. Please note though that it might not be appropriate to share your entire data room as-is to a potential buyer/investor. Evaluate each situation before granting access to the data

room. Sensitive information and trade secrets could be part of a material document but not intended for everybody's eyes.

I've been part of a couple of transactions, both on the larger side as well as some smaller ones, both on the buyer side as well as on the seller side. In the cases where both seller and buyer use investment bankers to assist in the process and neither seller nor buyer are on the verge of bankruptcy the process of setting up the data room is often smooth, even if a neat and tidy data room obviously saves you a lot of time and has many other benefits. If you're setting up the data room yourself start organizing your data room according to extensive data room lists and let all main functions within your organization have a saying about the outlined documents and ask them to add on any material documents that relate to their functions. The same goes with the data room lists that are set up by external advisors, let all functions read through the entire list before the gathering commences. One of the most important take-aways from my experience with working with data room lists is that extensive knowledge about the business the buyer/seller is in is crucial to build a relevant data room, or there is a risk that you overlook important documents, even if the data room is staged by an investment banker. Sometimes, confidentiality aspects makes it impossible to involve everyone in the company in the data room process – perhaps there are only a few people within the organization that even knows the company is on the market. In such cases, you will be extra glad you prepared your data room long in advance, before a deal was even on the table, when you could still involve everyone you needed without raising questions or concerns.

The right list for your data room

So, back to finding the right list for your data room. Start with a long list. Read it through and think of what documents are material to your company's past and future, and also what documents are generally material considering the business you are operating in. Think of the list as a dynamic tool to continuously identify the most important documents for your company's future. During my last due diligence, I used an extensive list put together by Richard D. Harroch, who is a Managing Director and Global Head of M&A at VantagePoint Capital Partners, a large venture capital fund in the San Francisco area. His focus is on investing in Internet and digital media companies, and he was the founder of several Internet

companies. The list below is shared courtesy of Mr. Harroch and was first published on allbusiness.com and is a great starting point for any company who wants to start building an online data room, <https://www.allbusiness.com/importance-online-data-rooms-in-mergers-and-acquisitions-107473-1.html>.

1. Basic Corporate Documents

- Certificate of Incorporation and Amendments thereto
- Corporate Bylaws and Amendments thereto
- List of Subsidiaries and ownership percentage
- Subsidiary Certificates and Bylaws
- Shareholder Minutes and Consents
- Business Licenses
- Business Permits
- Board Committee Minutes and Consents
- List of jurisdictions where Company is qualified to do business, owns or leases real property, or is otherwise operating
- Good standing certificate in jurisdiction of incorporation
- Franchise tax board certificate in jurisdiction of incorporation
- List of current officers and directors

2. Capital Stock and Other Securities

- Shareholder List (name, amount, date of issuance, consideration received, common or preferred, etc.)
- Optionholder List (name, amount of options, date of grant, vesting schedule)

- Warrantholder List
- Cap Table
- Convertible Note Register
- Stock Purchase Agreements
- Voting Agreements
- Registration Rights Agreements
- Management Rights Agreements
- Stock Option Agreements
- Stockholder Agreements
- Stock Certificates
- Proxies
- Buy-Sell Agreements
- Securities law filings and permits
- Recap and organization documents, including reincorporations
- Disclosure documents used in private placements of company securities
- Term sheets signed in connection with prior securities issuances

3. Financial and Tax Matters

- Audited Financial Statements
- Unaudited Financial Statements
- Monthly Financials
- Quarterly Financials
- Letters from Auditors

- Projections and Assumptions/Operating Plans (current)
- Federal Income Tax Returns
- State Income Tax Returns
- Foreign Income Tax Returns
- Other Tax Returns/Filings
- Reassessment or deficiency or audit notices
- Banking Accounts and Signatories
- Loans and Promissory Notes
- Capital Leases
- Security Agreements
- Accounts Receivable Aging Schedule
- Accounts Payable Schedule
- Description of any changes to accounting methods or principles
- 409A Valuations
- Guarantees
- Bridge Financings
- Inventories: (i) inventory summary by major product as of most recent practicable date; (ii) schedule of consigned inventory; (iii) copies of the Company's policies for providing for obsolete and slow-moving inventory and summary of obsolescence write-offs and provisions for slow-moving inventory for the last year; and (iv) description of the Company's methods of inventory control
- Schedule of material prepaid expenses and "other assets" as of most recent practicable date
- Schedule of property, plant and equipment, and accumulated depreciation broken down into category (i.e., land, buildings, equipment, etc.) for the last

year (indicating beginning balances, additions (or provisions), retirements, and ending balances

- Cash flow and working capital analysis as of most recent practicable date
- Pricing policies, including commission and rate schedules
- Product return rate analysis for last fiscal year and current fiscal year to date
- Capital expenditure programs for last and current fiscal year
- List and copies of all tax sharing and transfer pricing agreements currently in effect (if there are no written transfer pricing agreements, explain the transfer pricing methodology used between affiliated entities)
- Schedule of the amount, origin, and status of any U.S. net operating losses or credit carryforwards (including information on any ownership changes or other events to date which might affect such items)
- Copy of most recently filed Form 5500 for 401(k) plan
- Agreements waiving statutes of limitation or extending the time during which suit might be brought with respect to taxes
- Correspondence regarding any tax liens

4. Property and Assets

- Schedule and summary of all owned real property
- Schedule and summary of all leased property
- Real property mortgage and loan documents
- Security agreements, pledges, and encumbrances on assets
- List of material personal property assets
- Documents relating to any environmental matters concerning leased or owned property
- Real property leases and amendments and consents related thereto

- Personal property leases and amendments

5. Intellectual Property (IP)

- Summary of Patents and Patent Applications
- Patent Applications
- Patents Issued
- Summary of contracts where Company IP is licensed to a third party, and actual contracts
- Software License Agreements summary
- Software License Agreements
- Employee Non-Disclosure and Proprietary Inventions Assignment Agreements
- Consultant Non-Disclosure and Proprietary Inventions Assignment Agreements
- IP litigation summary
- IP litigation case filings
- Claims or communications against the Company for IP infringement
- Claims or communications against third parties for IP infringement
- List of open source software used
- Trademarks
- Service marks
- Technology license agreements
- IP transfer or sale agreements
- IP escrow agreements

- Third party non-disclosure or confidentiality agreements (consider redaction of names)
- Internal policies to protect IP
- List of registered copyrights
- List of domain names, with expiration dates
- Schedule of mask work registrations and applications
- Clinical trial information (for biotech companies)

6. Material Agreements

- Summary of Material Agreements
- Summary of agreements needing consent in the event of change in control
- Material Sales Agreements
- Intellectual Property Agreements (see Section 5)
- Distribution Agreements
- Partnership or Joint Venture Agreements
- Leases (see Section 4)
- Non-Competition Agreements
- Employment Agreements
- Change in Control Agreements
- Inter-company agreements
- Agency agreements
- Prior M&A agreements
- Investment Banker engagement letters

- Indemnification Agreements
- Loan or Credit Agreements
- Mortgages
- Privacy Policy
- Terms of Web Site Use Agreement
- Other material agreements

7. Customers, Sales, and Marketing

- List of customers and key metric information
- Form of Sales Agreement
- Accounts Receivable summary
- Sales Commission Plan
- Sales allowances and return policies
- Reseller information
- Credit and collection policies and processes
- Backlog
- Sales projections and assumptions
- List of products and summary
- Product road maps
- Marketing materials and sales literature
- Product campaigns and launches (summary)
- Industry and analyst reports

8. Suppliers and Manufacturers

- List of key suppliers and products supplied
- Supplier agreements
- Original Equipment Manufacturer (OEM) agreements
- List of key manufacturers and manufacturing summaries
- Manufacturing agreements

9. Customer and Product Support

- Customer satisfaction surveys
- Current sales brochures

10. Regulatory Matters

- Government permits
- Notices of violations from governmental or regulatory bodies
- Government licenses
- OSHA, EPA, ERISA, COBRA, FLSA, EEOC, NLRB, etc., notices

11. Litigation/Disputes

- Summary of any litigation or arbitration matters
- Copies of all litigation complaints
- Copies of all arbitration filings

- List of all orders, writs, decrees, injunctions, judgments, or rulings by any court or agency
- Documents related to any threatened litigation, arbitration, or governmental action
- Environmental claims and actions
- Copies of lawyers' letters to auditors
- Past settlement agreements

12. Insurance

- Summary of all insurance policies
- Copy of directors and officers liability insurance (D&O) policies
- Copy of liability policies
- Copy of key person insurance policies
- Copy of workers' compensation policies
- Other insurance policies
- Insurance claims pending
- Description of any self-insurance programs or captive insurance programs

13. HR/Employees/Consultants

- List of all employees by title, salary, commission, options, non-cash compensation, bonus, date of hire, severance obligations
- Organization chart
- Employment agreements

- Standard offer letter to employees
- Non-competition and non-solicitation agreements
- Benefit plan summary
- 401(k) plan
- Health and medical plan
- Life insurance plan
- Dental plan
- Retirement plan
- Disability plan
- Vision plan
- Childcare plan
- Other benefit plans
- Employee handbook
- Employee policies not reflected in handbook
- Collective bargaining agreements
- Bonus plans
- Profit-sharing plan
- Incentive plans
- Change in control plans or agreements
- Stock option or restricted stock plan
- Listing of consultants and independent contractors and summary of arrangements
- Consulting and independent contractor agreements
- Severance plans

- Description of any pending or threatened labor or employment disputes or work stoppages during the last three years

14. Press and PR

- Press releases
- Newspaper articles
- Analyst reviews

15. Related Party Transactions

- Written agreements (and description of oral arrangements) between the Company and any current or former stockholder, officer, director, or employee of the Company
- Description of any direct or indirect interest of any stockholder, officer, director, or employee of the Company in any corporation or business that competes with, conducts any business similar to, or has any present (or contemplated) arrangement or agreement with (whether as a customer or supplier) (i) the Company or (ii) the acquirer
- Documents not covered by the above relating to agreements of the Company in which either current or former stockholders, officers, directors, or employees of the Company are or were materially interested
- List identifying any stockholders, officers, directors, or employees of the company who have an interest in any of the assets of the Company