



## COURTING LEGAL BUSINESS RELATIONS

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At the beginning of any relationship, it is important to know the other party(ies) involved. While in our small twin island nation where “everybody know everybody” that is fairly easy to achieve in our personal relationships, in our business relationships, greater caution and discretion is advisable.

In this Article, we identify certain basic documents that you should request of your counterpart from the outset of any business relationship and which you would want to keep current throughout the life of that relationship.

### Where your counterpart is an individual...

In business relationships where the counterpart is an individual, it would be important to receive and retain from that individual, copies of his/her photo identification and a proof of address (typically in the form of utility bill or bank statement).

Depending on the nature of the transaction, including the significance of the business/transaction (and particularly if the proposed relationship includes an obligation on the counterpart to pay money), there may be value in requesting a job letter or a written reference from the counterpart’s bankers or attorneys at law to get comfort surrounding the counterpart’s reliability and reputation.

### Where your counterpart is a company...

In the case of companies, attention needs to be given to both the company itself and the person(s) representing the company.

In the first instance, the corporate existence and good standing of the company should be verified. This can be done by requesting that the company produce its certificate and articles of incorporation, its by-laws, its latest annual filings and any notices of change filed after the company’s last annual return (such as a notice of change of directors or secretary).

Depending on the nature of the proposed relationship and transaction with the company, additional due diligence may be required into the company’s good standing, including carrying out a review of the company’s file maintained by the Companies Registry to verify that the company is not subject to any winding-up proceedings and that its assets are not subject to any charges.

In circumstances where the transaction falls within the “ordinary course” of the company’s business, it may not be necessary to require evidence of the authority of the company to enter the particular transaction. However, in circumstances where the transaction is one which may be outside of the “ordinary course” of business, a careful review of the company’s articles and by-laws may provide insight on the requisite approvals to permit such a transaction. Typically, it would be prudent in such instances to request evidence from the company of its directors’ approval of the transaction. Shareholder approval might also be required in certain circumstances, such as e.g. if a shareholders agreement among the company’s shareholders (notice of the existence of which should be filed in the companies registry) reserves certain matters to shareholder approval; if the company’s directors might be conflicted or have an interest in the particular transaction or if a substantial proportion of the company’s assets are being sold.

With respect to any person who purports to represent and act on behalf of the company, it would be important to verify the identity of the person (by obtaining from the person the same documents mentioned above with respect to individuals). It would be equally important to verify the capacity in which such person represents the company (e.g. as a director, chief executive officer or other officer) and that he/she is duly authorised by the company to transact business on its behalf. Such evidence might be in the form of a letter on the company’s letterhead certifying the position of the person in the company.

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