



This document sets out the process that Newport Capital Group Pty Ltd ("NCG") normally follows in the raising of private equity capital, and lists some of the major questions that have to be addressed in order to achieve a successful financing. The answers to the questions listed are always a function of the client's current circumstances, as well as what currently constitutes "generally accepted standards" for similar transactions. There is however no manual or other document that describes the "correct" answers, since they are part of the larger "fabric" which constitutes the overall transaction. In addition, what constitutes "normal" at any point of time is impacted by the status of the capital markets and whether or not the company is meeting its projections.

The Process

- Evaluate the client's capital needs and timing
- Evaluate client's management team and suggest modifications, if appropriate
- Evaluate or assist in writing the client's business plan
- Prepare a preliminary valuation analysis of the client company to determine possible valuation range
- Assist client in developing a contingency plan
- Prepare Information Memorandum for distribution to potential investors
- Identify list of potential investors, concentrating on those known to have an active interest in the client's industry sector, stage of development and geographical location
- Develop a strategy for gaining access to each investor using available contacts and others who can provide a quality introduction
- Develop a compelling argument for client's growth strategy, management team and upside potential
- Liaise with potential investors and provide additional information as required
- Arrange meetings between potential investors and client
- Assist client in the preparation of presentation to potential investors
- Review investment proposals received and suggest counter proposals and negotiating strategy
- Refine proposed summary of terms to include any issues omitted by investor
- When all investment proposals have been received, determine the most favorable and begin negotiations with investor to maximise value and benefit to the client

- Select final investors and consolidate their various proposals into a single acceptable offer
- Assist client in preparing for and responding to due diligence questions
- Review documents with client's lawyer and negotiate "boiler plate" issues in first draft of documents
- Coordinate with client's lawyers to ensure that all documentation is correct
- Assist client in last minute negotiations and closing process
- Assist client by undertaking research and providing advice and assistance on any issue raised during the whole process.

Typical Questions Raised During the Financing Process

- Should investors sign a non-disclosure agreement prior to receiving a copy of the Information Memorandum? How tough should the agreement be?
- Will potential investors charge the client a commitment fee and when? What is a "fair" or normal fee? Will the fee be refunded if the deal falls through? Under what circumstances?
- What expenses incurred by the investor will be reimbursable by the client?
- If one investor's valuation is significantly higher than the others, but the first investor has less software experience, or is reputed to be more ruthless with non performing management teams, what factors should be considered in deciding which investor to deal with? What provisions should be avoided with the more ruthless investor?
- Is it best to meet all potential investors at the same time, or separately?
- Should terms be negotiated collectively or separately? Is it best for management or an intermediary to negotiate these terms?
- Is it unreasonable for investors to ask for certain representations and warranties? Can these be negotiated or are they standard?
- Is it normal for investors to demand liquidity within a 3 -5 year period and to insist that, if the share valuation is for example, 2 times their cost, that their cost per share should be reduced?
- What is "full ratchet" and "ratchet" anti-dilution protection? How are these differ-



ent from "weighted average" anti-dilution provisions? Should there be a "floor" to such anti-dilution provisions? Should shares reserved for employee stock options be included in these provisions?

- Is it normal for the client to have previously established a pool of un-issued shares to be available to compensate management? If this has not been done previously, can it be done as part of the negotiation process?
 - Should investors be able to elect Directors to represent them? How many is reasonable?
 - Should investors be able to limit or control the issue of new shares in the future? What kinds of controls are normal?
 - Should investors be able to demand a liquidation preference over the common stockholders?
 - Should investors have the right of first refusal with respect to participation in future financing rounds?
- Should investors be able to demand the right to sell a pro rata share of their stock if the founders decide to sell some or all of their shares at a future date?

In Conclusion

Raising outside equity capital is a complex process. The above questions and to all the other questions that inevitably arise are best answered by people who have had experience in dealing with the investment process. NCG can provide the advice and assistance that you need to optimise a transaction.

You are invited to discuss your needs with us.