Organizing a Data Room

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July 2015

Virtual data rooms are used for many purposes, but attorneys mostly encounter them in business financings and M&A deals.

"Preparing a Business for a Financing or Sale" in the July 2015 edition of NWLawyer discusses some reasons why in-house counsel and outside business counsel should learn how to set up a data room. The material below covers some additional thoughts on organizing a data room.

Although organizing a data room requires understanding a company’s business model, industry, structure and legal and regulatory environment, the following template is probably a good starting point for most companies:
Structure

- Like any type of filing system, a data room should be organized into tiers of folders that logically guide users to the information they need.
- **Top Level Folders.** The first step is to establish a company's top level folders. In the example above, they are:
  - Contracts
  - Corporate Governance
  - Claims, Disputes and Litigation
  - Finance
  - Government and Regulatory
  - Human Resources
  - Intellectual Property
  - Marketing, Brand and Product
  - Technology

- Whatever categories and terms are used, this should be a fairly small number of intuitive, general folders that together cover the entire business.
- At each tier in the data room, it's helpful to keep the number of folders limited so all folders in a tier can be viewed quickly at once, even if that means listing two or three loosely related items in one folder, like "Claims, Disputes and Litigation."

**Second and Third Tier Folders** - Business and industry-specific drivers play a greater role in informing a company's second, third and fourth tiers of data room folders. Here are a few specific examples and suggestions.

- For larger companies, the folders under "Governance" might be a list of entities, such as a holding company, several operating subsidiaries and a series of foreign subsidiaries. Each of these entity folders would have its own sub-folders like the tier 2 governance folders shown in the above template.
• Depending on the circumstances, a “Notes and Borrowings” sub-folder might be necessary, either under “Financings” or as an additional second tier folder under “Finance.”


• Under “Technology,” the folders under “Software” might include “Proprietary Software,” “Third Party Licensed Software” and “Open Source Software.”

**General Tips, Trips and Traps**

• It’s important to consider confidentiality obligations before uploading sensitive contracts, employment documents and intellectual property to a data room. Some information cannot be shared with third parties without permission, even if the third party has signed an NDA.

• Always use the data room platform’s administrative privilege management features to control user access to the most sensitive documents and to timely terminate access.

• Use anonymized due diligence lists from financings and M&A deals to check a data room for completeness.

• Get subject matter expert help in designing folders and sub-folders for complex areas like patents, technology, tax, regulatory, audits and certifications.

**Summary**

There’s no single right way to organize a data room. Start with a template like the one above and tailor the data room’s folder system to the company’s circumstances. When the lawyers, investment bankers and others working on a deal don’t have a lot of questions about where to find things, it’s working.