



Due Diligence on Submarine Cable Systems

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Due Diligence – key considerations

The Key Commercial Contracts

- IRUs purchased
- IRUs sold (including pre-sales)
- Consortium / Joint Build Agreements
- The Supply Contract
- Landing Party Agreements
- Maintenance Arrangements
- Permits / Licences

Key Commercial Contracts

IRUs

- For **IRUs purchased** – check any ongoing obligations (eg O&M), change of control
 - What happens on insolvency of a party that has sold an IRU? – “IRU” is just a contract
 - Security – needs identifiable assets to be valid (so ok for a specific fibre pair?)
 - Different if joining C&MA / JBA – see next slide
- For **IRUs sold**
 - money (mostly) already received – later termination risk may not matter;
 - most favoured customer provisions complied with?
 - Rights of first refusal?
 - If a pre-sale – is the customer credit-worthy?

Key Commercial Contracts

C&MA / JBA

- Allocation of costs and (if relevant) capacity –
 - Can be very complex on systems with branches not everybody uses all the time
- Can rights be assigned?
- How does governance / **voting** work? This could be significant especially if one party has “super-majority”
- How can you enforce against consortium members who are in breach?

Key Commercial Contracts

Supply Contracts

- Performance Bond / PCG
- Milestones / LDs
- Billing and liability for other consortium members
- Retention payments on supply contracts for cables past RFS may still be due
- Ongoing projects – risk of changes in cost or timing
- Warranty terms appropriate – including “pattern of failure” risk?

Key Commercial Contracts

Other Contracts

- LPAs
 - Backhaul – FRAND terms
 - “Open Access”
 - Co-lo / hosting, cross-connect
 - Licences / permits
- Maintenance
 - Regional arrangement – NB if you join you can't leave until decommissioning
 - Will have KPIs but aggregate liability to *all* owners is capped
 - Bespoke maintenance arrangement is more flexible

Thank you

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