



Investment Bankers

BUYER DUE DILIGENCE CHECKLIST

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PREPARING FOR PURCHASE OF A COMPANY THE DUE DILIGENCE CHECKLIST

The buying company is like the purchase of any other asset. As a potential Buyer, you will look into all aspects of the business. This is called due diligence. It can be a lengthy and expensive process. The motivated Seller, therefore, can help expedite the process by providing you with the materials and information that you need to perform due diligence. A lack of cooperation can signal undisclosed problems and in turn you will have to reconsider purchase of the asset. Openness on the part of the Seller while reassuring, does not automatically mean that the purchase of this business is the right choice. You still need to perform the due diligence process, and confirm for yourself that the claims made by the Seller are accurate.

The following is a checklist for aiding the due diligence process. These points are a minimum. The serious Buyer must also investigate the technology, product, and other marketing areas. This checklist is a guideline to the basic issues.

The Due Diligence Checklist

- General Corporate Materials**
 - Articles of incorporation
 - Business licenses
 - By-laws
 - Minutes of permanent committees of the boards
 - Minutes of shareholders' meeting Minutes of boards of directors
 - Other corporate or business documents

- Organization**
 - Capital Stock
 - Agreements relating to the purchase, sale or issuance of securities
 - Agreements relating to voting of securities
 - Securities duly authorized and outstanding
 - Consent decrees and injunctions
 - List of regions in which the company is operating (*e.g.* list of locations of warehouses and sales offices by region)

- Management structure
- Officer and director lists
- Potential litigation
- Non compete agreements with current and prior employers
- Shareholder lists and stock transfer records

Compliance with Laws

- Citations and notices received from government agencies
- Compliance with ADA regulations
- Compliance with EPA regulations
- Government permits and consents
- Pending investigations and governmental proceedings
- Reports to and correspondence with government agencies

Potential Problems

- Liens, suits and judgments
- Litigation and claims settled or concluded
- Litigation and claims threatened or pending

Personnel

- Consulting contracts
- Contracts with unions
- Employee benefit plans, pension, profit sharing, stock purchase, stock ownership and stock option plans, or other defined contribution plans whether voluntary or involuntary
- Employment contracts and severance arrangements
- Key-man insurance policies with company as named beneficiary
- Loans and guarantees to directors, officers or employees (recourse vs. non-recourse, collateral pledged, and other transactions with stockholders, directors)

Real Property

- Deeds

- Leases of real property
- Liens and other encumbrances

Other Property

- Conditional sale and installment sale agreements (equipment, buildings other assets)
- Equipment leases
- Financing leases, and sale and lease-back agreements
- Insurance policies
- Liens and mortgages held
- Material contracts and agreements
- Patents, trademarks, and other intangible assets registered and unregistered

Financing

- Credit agreements and indentures
- Loans and guarantees of third-party obligations
- Stock purchase or subscription agreements
- Registration rights agreements

Other Agreements

- Acquisition or divestiture of significant assets or operations
- Advertising agreements
- Commission, brokerage, and agency agreements
- Construction agreements and performance guarantees
- Contracts beyond the ordinary course of business
- License agreements
- Management, service and consulting agreements
- Marketing agreements
- Non competition, confidentiality and nondisclosure agreements
- Purchase and requirements contracts
- Supply agreements

Financial information

- Accounts receivable analysis and aging
- Audited financial statements
- Back orders that are firm commitments, not soft or cancelable orders
- Capital expenditure plans
- Cash flow and working capital analysis
- Correspondence with independent public accountant
- Inventory valuation and pricing policies
- Interim financial statements
- Reports, studies and business plans prepared by management on the company's business or financial condition
- Reports, studies and business plans prepared by outside consultants on the company's business or financial condition
- Reports and materials prepared for the Board of Directors or BOD Committee

Tax Issues

- Federal, state and local Tax returns
- Audit adjustments proposed by the IRS or state agencies for audited years
- Sales, use and franchise tax reports