

M&A Due Diligence Checklist

When preparing for an M&A transaction, a due diligence checklist informs the conversation, swiftly identifies any impediments to the transaction, and allows stakeholders to focus on strategy, structure, and deal execution. This checklist provides examples of information commonly required for M&A deal execution.

| Topic | Category | Examples |
|-------------------------------------|---|--|
| Seller Entity Information | Organization, Governance, and Good Standing | <ul style="list-style-type: none"> ✓ Articles of organization; by-laws; operating agreements; shareholder agreements ✓ Identify shareholders, directors, and officers ✓ Minute books ✓ Communications with shareholders ✓ List of business names and business locations ✓ Issued and applied permits and business licenses (USA and international) ✓ Corporate policies and procedures (if not already requested below) |
| | Ownership and Control; Change of Control Restrictions | <ul style="list-style-type: none"> ✓ Capitalization tables ✓ Outstanding shares, convertible securities, options, warrants ✓ Dividend/distribution policies ✓ Voting agreements ✓ Transfer restrictions ✓ Preemptive rights ✓ Consent requirements ✓ Related-party transactions ✓ Merger or reorganization agreements |
| | Subsidiaries, Affiliates, and Joint Ventures | <ul style="list-style-type: none"> ✓ Entity organization chart and descriptions for all related entities ✓ Gather the information listed above for all related entities |
| Seller Financial Information | Assets and Operations | <ul style="list-style-type: none"> ✓ Financial statements and projections ✓ Sales and revenue ✓ Cost analyses; balance sheet ✓ Budgets; cash flow ✓ Debt schedules ✓ Loan, financing, and security agreements (including collateral and liens); payments and defaults ✓ Bankruptcy or insolvency ✓ Auditor reports ✓ Internal control procedures ✓ Bank and investment accounts ✓ Owned and leased real estate ✓ Inventory/Valuations ✓ Manufacturing (owned and outsourced) <ul style="list-style-type: none"> —Sites —Products produced —Capacity ✓ Equipment and other tangible assets ✓ Intangible assets (including goodwill; customer lists; software and intellectual property rights) |

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| Seller Financial Information <i>(continued)</i> | Taxes | <ul style="list-style-type: none"> ✓ Identify all locations where taxes paid ✓ State, federal, international tax returns ✓ Payroll taxes ✓ Sales taxes ✓ Accruals, withholding and FICA ✓ Correspondence with taxing authorities |
| | Commercial Contracts | <ul style="list-style-type: none"> ✓ Purchase or sale of substantial assets ✓ Distributor; franchise; VAR ✓ Supply agreements ✓ Sales agreements ✓ Customer agreements ✓ Electronic marketplace agreements ✓ R&D; development or acquisition of technology ✓ Leases; rental agreements ✓ IT support; telecommunications; web development ✓ Data processing and storage; cloud computing ✓ Marketing and advertising ✓ Suppliers or customers outside the USA ✓ Current form agreements (sales; PO; invoices) |
| | Business Protection/Restrictions | <ul style="list-style-type: none"> ✓ Non-competition; non-solicitation ✓ Non-disclosure; confidentiality ✓ Exclusivity ✓ Indemnity agreements ✓ Guarantees |
| Contracts and Commitments | Insurance | <ul style="list-style-type: none"> ✓ General commercial liability ✓ Professional liability ✓ Casualty ✓ Product liability ✓ Workers compensation ✓ D&O ✓ Employment practices ✓ Summary of claims made |
| | Communication with Government or Regulatory Agencies | <ul style="list-style-type: none"> ✓ Consents/Approvals to do business ✓ Government contracts ✓ Inquiries, notices, reports, or correspondence ✓ Import/Export – restrictions or exemptions granted or denied |
| | Pending or Threatened Actions; Identified Liabilities | <ul style="list-style-type: none"> ✓ Inquiries into products or business practices by persons or agencies such as FDA/FTC including consumer protection/DOJ/OSHA/EPA/DOL including ADA compliance |
| Government; Compliance with Law | Regulatory Compliance Reports and Policies (Non-Employment) | <ul style="list-style-type: none"> ✓ Studies or data on compliance efforts such as EPA prevention and remediation safety ✓ Policies and other materials documenting: <ul style="list-style-type: none"> —Compliance with regulatory agency rules —ESG —Privacy |

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| Government; Compliance with Law <i>(continued)</i> | Privacy and Data Security | <ul style="list-style-type: none"> ✓ Identify type of information collected and business purpose ✓ Identify USA and international privacy regulations that apply such as FTC/TCPA/COPPA/CAN-SPAM; HIPAA; GLBA; GDPR; state ✓ Identify security standards and procedures required and implemented (examples are HITECH; PCI-DSS; ISO/IEC; NIST) ✓ Data security breaches or cyberattack |
| | Intellectual Property | <p>Owned and Licensed IP (Worldwide)</p> <ul style="list-style-type: none"> ✓ Patents ✓ Trademarks and Service marks ✓ Copyrights ✓ Know-how; trade secrets ✓ Internet domain names ✓ Invention disclosure and assignment agreements ✓ Royalty agreements ✓ Legal opinions or common interest agreements related to any of the above <hr/> <p>Software</p> <ul style="list-style-type: none"> ✓ Software inventory (owned and licensed) <ul style="list-style-type: none"> —Object code and source code —Open-source software —APIs —Mobile apps —Social media plug-ins ✓ Operating systems ✓ Data bases ✓ SaaS; CRM; accounting; reporting and similar platforms used by the business |
| Litigation | Commercial | <ul style="list-style-type: none"> ✓ All pending and threatened cases (including demand letters) ✓ Infringement actions ✓ Settled litigation and judgments ✓ Damages; payment schedules |
| | Government | <ul style="list-style-type: none"> ✓ See government/compliance with law above ✓ Consent decrees or orders |
| | Consumer/ Class Action | <ul style="list-style-type: none"> ✓ Product liability ✓ Deceptive trade practices ✓ Shareholder actions |
| | Employee | <ul style="list-style-type: none"> ✓ See personnel litigation/claims below |
| Products and Services | Offerings | <ul style="list-style-type: none"> ✓ List of products and services offered ✓ List of products and services under development |
| | Warranties | <ul style="list-style-type: none"> ✓ Recalls and product liability claims ✓ Warranties offered in contracts, sales literature, websites, in practice ✓ Material warranty claims made/paid |
| Business and Competitive Intelligence | | <ul style="list-style-type: none"> ✓ Top selling products/services ✓ Largest customers ✓ Largest suppliers ✓ Major competitors for each business segment and for top-selling product/services |

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| Personnel and Benefits | Personnel and Policies | <ul style="list-style-type: none"> ✓ HR organization chart ✓ List of employees (full time; part time; seasonal): <ul style="list-style-type: none"> —Offer letters, employment agreements, personnel files, employment classifications, and compensation and benefits ✓ List of independent contractors and sales agents; applicable agreements ✓ Job descriptions ✓ Employee handbooks ✓ HR policies: <ul style="list-style-type: none"> —Leave and time off, anti-harassment and non-discrimination, affirmative action, timekeeping and pay, and safety and health |
| | Compensation | <ul style="list-style-type: none"> ✓ Executive and non-executive (total) ✓ Salary and hourly rates and ranges for each position ✓ Aggregate total compensation for executives, employees, and contractors |
| | Benefits | <ul style="list-style-type: none"> ✓ Copies of all plans and trust agreements <ul style="list-style-type: none"> —Pension/401(K), profit sharing, bonus, stock option, deferred compensation, severance, and health and welfare ✓ Summary plan descriptions ✓ IRS determination letters and annual documentation (for qualified plans) ✓ Plan accrual, funding, and claim information |
| | Workers Compensation | <ul style="list-style-type: none"> ✓ Program description ✓ Claims history ✓ Pending claims/hearings |
| | OSHA | <ul style="list-style-type: none"> ✓ Examinations ✓ Reports ✓ Complaints |
| | Unemployment | <ul style="list-style-type: none"> ✓ Claims history ✓ Litigation/DOL inquiries |
| | Collective Bargaining | <ul style="list-style-type: none"> ✓ Copies of agreements, plans, and trusts ✓ Labor disputes ✓ Organizational efforts |
| | Personnel Litigation/Claims | <ul style="list-style-type: none"> ✓ Wage and hour ✓ FMLA ✓ Harassment/Discrimination ✓ Wrongful termination ✓ Whistle-blower |

Deal parties should consult with their M&A advisors and counsel for specific due diligence requirements related to their deal.

Learn more about how SRS Acquiom can help streamline your M&A Deals →