

M&A SELLER DUE DILIGENCE CHECKLIST

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FINANCIAL DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to finance that a seller might request from a buyer.

FINANCIAL	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
General expenses				
Profit margins				
Where revenue comes from				
Profits increasing or decreasing				
List of creditors and debtors				
Assumption of debt obligations				
Financial resources available for operations during the transition				
Financial resources available to cover transaction-related costs				
Conditions on assets and liens				
Problems with all existing contracts				
Litigation risks				
List of required capital expenditures and investments				
Deferred capital expenses				
Accuracy of future projections				
Uncommon revenue recognition issues that impact the company or industry				
AR Aging				
Other AR issues				

Quality of earnings report				
Unedited financial statements with comparable statements for the last year				
EBITDA and adjustments				
Financial statements from the last 3-5 years				
Margin statements				
List of one-time expenses				
Future budgets				
AP schedule				
Documentation of accounting procedures				
Cash flow and cash management techniques				
Existing short- and long-term debt				
Interest rates on existing debt				
Ability to service existing debt				
Ability to secure more financing				
Shareholder value analysis				
Compatibility audit				
Reconciliation audit				
Fixed and variable costs				

TECHNOLOGY & IP DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to technology and intellectual property that a seller might request from a buyer.

TECH & IP	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
IT costs				
IT upgrades needed				
Documentation of disaster recovery plans				
Domain names owned or used				
Patents held (both foreign and domestic)				
Trademarks and service marks held				
Copyrighted material used or owned				
IP protection processes, including standard agreements with employees, ex-employees, and consultants				
Any exceptions to standard IP protection agreements				
Trade secrets and steps to protect them				
Current IP litigation				
Trademark disputes that are in process				
Which software titles are critical to standard ops, and licenses for that software				
How open source software is used				
Odd or unusual escrow arrangements				
Research and development budget and plans				
Pending patent applications				
Pending patents clearance documents				

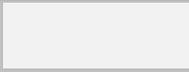
Identities provided to or obtained from third parties for IP				
Liens on IP				
Exclusive tech licenses that have been issued to third parties				

CUSTOMER / SALES / SUPPLIERS DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to customers, sales, and suppliers that a seller might request from a buyer.

CUSTOMER / SALES / SUPPLIERS	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
Issues that may cause customers to leave (including the potential buyer)				
Top customers and revenues				
Customer satisfaction				
List of customers lost within 3-5 years				
Customer credit policies				
Customer backlog				
Order book				
Concentration risks				
Sales pipeline				
Supply chain				
Warranty issues				
Sales terms and policies				
Levels of exchanges and refunds				
Sales compensation				
Seasonality of revenue				
Key suppliers				
Breakdown of cost of goods sold				
Product development expense				

Supplier service agreements and insurance coverage



STRATEGIC FIT CHECKLIST

This checklist contains documents and information related to the strategic fit of the deal that a seller might request from a buyer.

STRATEGIC FIT	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
Fit based on business realities or expectations				
Are target company's products complementary to buyer's products?				
Length and cost of integration process				
Cost savings and other synergies that may occur after integration				
Will marginal costs will rise after integration?				
Possible revenue enhancements after integration				
Retention plan for key staff members				

MATERIAL CONTRACTS DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to technology and material contracts that a seller might request from a buyer.

MATERIAL CONTRACTS	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
Why is the owner selling?				
Have there been any previous attempts to sell?				
Has the company merged with or acquired other companies?				
Contracts with customers and suppliers				
Contracts that involve payments exceeding a material dollar amount				
Equipment owned or leased				
Contracts that, if terminated, would bring about a material adverse effect on the company				
List of parties that have to approve material contracts following a shift in control or assignment				
Contracts or agreements that impose competition restrictions on the company (or the buyer) in lines of business, in a geographic region, or with another person				
Credit agreements, guaranties, and loans				
Distribution, sales agency, dealer, or advertising agreements				
Equity finance agreements				
Exclusivity agreements				
Franchise agreements				
Indemnification agreements				
License agreements				
Limited liability company/operating agreements				

Partnership/joint venture agreements				
Power of attorney agreements				
Real estate leases/purchase agreements				
Settlement agreements				
Union contracts/collective bargaining agreements				

EMPLOYMENT / MANAGEMENT DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to employees and management that a seller might request from a buyer.

EMPLOYEE / MANAGEMENT	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
Organization chart and biographical information for management				
Officer, director, key employee, and related party employment, consulting, and loan agreements, and documents pertaining to additional transactions with those parties				
Officer, director, and key employee compensation schedule for the three fiscal years; salary, bonuses, and non-cash recompense (e.g., car or property usage) as separate line items				
Employment guides and protocols				
Employee count, including current employees, vacant positions, anyone due for retirement, and those who have resigned but not yet left				
Key personnel gained as part of merger				
Agreements or incentive arrangements for key employees who will remain with the buyer				
The likelihood of layoffs and severance due to the acquisition				
Existing operational redundancies, and difficulty of eliminating them				
All nondisclosure, non-competition, and non-solicitation agreements between the company and employees				
Current issues, like alleged wrongful termination, harassment, discrimination, or other legal cases pending with current or former employee				
How the company treats personnel as independent contractors compared to employees				
Criminal proceedings or notable civil litigation against any key employees or managers				
Copies of pensions, profit shares, deferred compensation, retirement plans, and other employee benefits				

Information about severance/termination pay, sick leave, vacation balances, loans, credit extensions, loan guarantees, relocation or educational assistance, tuition, workers' compensation, executive compensation, fringe benefits, or other benefits				
Annual leave, sick leave, and other forms of leave policies				
Information on any ESOP, and schedule of grants				
Verification of observance with IRS section 409A issued with stock options				
Summary of incentive plans or bonus plans for management not noted in the IRS 409A verification, and for other modes of non-cash management compensation				
The likelihood of needing to comply with IRS section 280G (golden parachute) regulations as related to potential acquisitions				
Three years of actuary reports				
Summary of labor conflict				
Information on any pending threatened labor stoppage				
Information concerning past labor stoppages				

LITIGATION / LEGAL DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to litigation and legal issues that a seller might request from a buyer.

LITIGATION / LEGAL	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
Filed and pending litigation, along with total complaints and pleadings				
Threatened or pending claims facing the company				
Pending or threatened governmental (SEC, FTC, FDA, etc.) proceedings against the company				
Settled litigation, including terms of the settlements				
Matters in arbitration				
Consent decrees, judgments, injunctions, or orders				
Insurance covering claims, along with notices to insurers				
Attorney letters to auditors				
Civil litigation				
Compliance and regulatory matters				
Criminal law				
Human rights				

TAXES DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to taxation that a seller might request from a buyer.

TAXES	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
The last five years' federal, state, local, income, sales, and other tax returns, plus any international returns filed				
Copies of correspondence or notices from foreign, federal, state, or local taxing authority for filed tax returns, along with failure to file notices				
Correspondence with tax authorities				
Out-of-the-ordinary correspondence with tax agencies				
Government audits				
IRS Form 5500 for 401(k)s				
Settlement documents from the IRS or other taxing institutions				
Agreements on tax sharing or transfer pricing				
Agreements that waive or change the statute of limitations on taxes				
Net operational losses or credit carryforwards				
Effects of changes in control on the availability of carryforwards				

ANTITRUST AND REGULATORY DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to antitrust and regulatory issues that a seller might request from a buyer.

ANTITRUST AND REGULATORY	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
If the buyer competes with the target company, plans to understand and work around limitations imposed on the scope or timing of diligence findings				
For companies in an industry where regulatory approval of an acquisition is required, understand the process of seeking and obtaining approval				
Confirm the company's involvement in antitrust or regulatory inquiries or investigations				
How could consolidation in the company's industry impact the regulatory approval?				
Scope of antitrust issues				
How to address issues required in preparing a Hart-Scott-Rodino filing (if needed) and how to respond to any requests from the DOJ or FTC				
Determine if Exon-Florio Amendment is relevant (for deals involving national security or foreign investments)				
For a buyer that is a foreign entity, what Department of Commerce issues may arise				

INSURANCE DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to insurance that a seller might request from a buyer.

INSURANCE	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
Self-insurance arrangements				
Umbrella policies				
Car insurance				
D&O/key person insurance				
E&O insurance				
Employee liability insurance				
General liability insurance				
Health insurance				
Intellectual property insurance				
Worker's compensation insurance				

GENERAL CORPORATE MATTERS CHECKLIST

This checklist contains documents and information related to general corporate matters that a seller might request from a buyer.

GENERAL CORPORATE MATTERS	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
Charter documents, such as certificate of incorporation and bylaws				
Subsidiaries lists, including charter documents				
Certificates of good standing and tax authority (if applicable)				
Jurisdictions where the company and its subsidiaries conduct business				
Onsite reviews with business owner				
List of current officers and directors				
List of all security holders (common, preferred, options, warrants)				
Stock option agreements and plans, including standard documents and deviations				
Stock sale agreements				
Stock appreciation plans and related grants				
Agreements that grant restricted stock options				
Stockholder and voting agreements				
Preemptive, registration, redemption, or co-sale rights related to stocks				
Who are the stock owners?				
Agreements restricting cash dividend payments				
Warrant agreements				
Proof that securities were legally issued, including applicable blue sky laws				
Business plan and strategic goals				

Complexity of company				
Recapitalization/restructuring documents				
Cost and process of merging with subsidiaries				
Products and services offered				
Market analysis				
Online presence				
Minutes of stockholders' meetings				
Minutes of board of directors and board committee meetings				

ENVIRONMENTAL ISSUES CHECKLIST

This checklist contains documents and information related to environmental issues that a seller might request from a buyer.

ENVIRONMENTAL ISSUES	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
Environmental records, audits, and reports for owned or leased property				
Environmental permits and licenses				
Environmental litigation, claims, investigations				
Correspondence, bulletins, and files for EPA, state, or local regulatory agencies				
Records from public agency's investigations of the company's properties about environmental concerns				
Contractual obligations to environmental issues				
Hazardous substances used in operations				
Petroleum products used on the company's premises (excluding vehicles)				
Asbestos on the company's property				
Any Superfund exposure				
Evidence that disposal methods are in sync with current regulations and guidelines				
Continuing environmental liabilities				

RELATED PARTY TRANSACTIONS CHECKLIST

This checklist contains documents and information addressing related party transactions that a seller might request from a buyer. These checklists strive to cover mergers and acquisitions in general, but they may not include some documents and information that are specific to particular fields, and others that may not apply to all deals. Buyers should review the list and add or delete as needed.

RELATED PARTY TRANSACTIONS	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
Has any officer, director, stockholder, or employee had direct or indirect interest in a business that competes or does any business with the company?				
Has any officer, director, stockholder, or employee had a direct or indirect interest in real estate, intellectual property, personal property, etc., of the company?				
Citations and notices issued by any government agency				
Pending or potential investigations or government proceedings				
Reports to and communication with an agency, including FDA, USDA, EPA, and OSHA				
Certification of compliance with regulatory standards of the company				
Reports on costs of regulatory compliance				
Problems with regulatory compliance				
Permits and licenses necessary to perform the operations of the company or its subsidiaries				
Information on any canceled or terminated permits or licenses				
Exemptions from any permit or license requirement				
LLC or partnership agreements				
Copy of all guarantees to which the company is a party				

PROPERTY DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to property ownership and leases that a seller might request from a buyer.

PROPERTY	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
Deeds				
Deeds of trust and mortgages				
Conditional sale agreements				
Title reports				
Financing leases and sale and leaseback agreements				
Operating leases				
Leases of real property				
Other interests in real property				
Production-related matters				
List the company's notable subcontractors and the total cost of the business activity and the kinds of services or products provided				
List the company's key suppliers and the type and amount of products procured from each year to date, the most recent complete fiscal years, and if the supplier is the only source of those products				
List monthly manufacturing summaries, with product breakdowns				
Inventory report copies				
Backlogs detailing customers, products, and the requested vs. scheduled shipping dates				
Supplies or materials used to manufacture or cultivate products that may face stock shortages now or in the future				
Information about backlogs and plant operation levels				

Service contract forms and contracts and programs with any service providers				
Research and development, manufacturing, testing related agreements and arrangements				
Fixed assets and locations (with physical verification if possible)				
Sales and purchases of major capital equipment during the last three to five years				
Use permits for assets				
Operational assets				

MARKETING DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to marketing that a seller might request from a buyer.

MARKETING	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
Standard sales forms and literature, such price lists, catalogs, and purchase orders				
Sales representative, agency, distributor, and franchise agreements				
Other agreements pertaining to the company's marketing				
Information on markets the company pursues or plans to pursue				
Press releases about the company, and any partnership or joint effort where the company or a subsidiary is involved				
Marketing costs				

COMPETITIVE LANDSCAPE DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to the competitive landscape that a seller might request from a buyer.

COMPETITIVE LANDSCAPE	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
The company's key competitors, both current and anticipated				
Current or future technologies that might make the current manufacturing processes or technology obsolete				
Compare the company's products and technologies to competitors' products and technologies, including their advantages and disadvantages				

ONLINE DATA ROOM DUE DILIGENCE CHECKLIST

This checklist contains documents and information related to the online data room setup that a seller might request from a buyer.

ONLINE DATA ROOM	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
The target company should open up the online data room to the buyer as early in the process as possible (at the latest, when the letter of intent is signed).				
The data room should be organized to match the due diligence checklist to allow cross-referencing of documents.				
The data room should have a logical structure and a full text search function.				
New documents added to the data room should be marked and/or generate email notifications.				
The data room should permit bookmarking documents.				
The buyer should be able to print (unless security concerns preclude doing so).				

DISCLOSURE SCHEDULE CHECKLIST

This checklist contains documents and information related to the disclosure schedule that a seller might request from a buyer.

DISCLOSURE SCHEDULE	OWNER	COMPLETE?	DATE OF COMPLETION	NOTES
The disclosure schedule should match what's laid out in the acquisition agreement.				
The disclosure schedule should include all material contracts and amendments.				
All contracts in the disclosure schedule should be added to the data room.				
List all significant contracts impacted by a change in control, as well as the time the counterparties will agree to the changes in control.				
Analyze contracts for issues based on the acquisition.				
All patents (both issued and pending) should be listed.				
Analyze potential issues with any litigation.				
How will liens be dealt with?				
List unorthodox employment agreements and severance arrangements.				
List outstanding capital stock, options, and warrants.				
List material items in the disclosure schedule that are not consistent with statements made previously by or on behalf of the company.				
Look for conflicting items in the disclosure schedule.				

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