# THIS IS ONE EXAMPLE OF A DUE DILIGENCE CHECKLIST, WHICH WE ARE PROVIDING FOR EDUCATIONAL PURPOSES. YOU SHOULD NOT USE THIS DOCUMENT FOR DIY LAWYERING OR RELY ON THIS SAMPLE DOCUMENT OR OUR COMMENTS TO IT AS ANY TYPE OF LEGAL OR OTHER PROFESSIONAL ADVICE. BRAATEN WOODS, LLC IS NOT A LAW FIRM AND YOU ARE NOT OUR CLIENT. KNOW WHEN TO HIRE A GOOD LAWYER.

# SAMPLE DUE DILIGENCE CHECKLIST

Due diligence allows you to learn about a target before finalizing a transaction—it is key to a successful merger or acquisition. It is equally important that you give thought to the information you will need to make a proper investigation. In order to do that, it is helpful to create and research a comprehensive due diligence checklist before starting in on the transaction.

The following due diligence checklist is not an exhaustive list. It is a guide to help you focus in on important issues common to a variety of transactions. Due diligence checklists will vary considerably from industry to industry and deal to deal. And for that reason, there will be things on this list that will not apply to certain transactions. There may also be important considerations when conducting due diligence in a particular industry or type of deal that are not on this general list. Consider the questions on this list, your answers will help guide you, get you started, and keep you organized.

Every company is different and every M&A deal is different. Accordingly, every due diligence checklist should be well-tailored to the deal. Keep that in mind as you go through this due diligence checklist and learn from it.

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**Due Diligence CHECKList**

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| GETTING STARTED |
| * Read the Letter of Intent.
* What is the structure of the deal? Is it a stock purchase, asset purchase, or a merger?
* What type of entity is the target?
* Any publicly available information on the target?
* What industry does the target operate in? What kind of business is it?
* Any background material available?
* Any particular issues your client wants you to focus on? Any threshold information the client wants to know before moving ahead with the deal?
* Do you have access to the seller? Can you communicate with the seller directly or do you need to go through an investment bank, broker, or attorney?
 |
| **STAY ORGANIZED** |
| * How is the due diligence being made available?
* If due diligence is available on an electronic data site, how do you get access? How do you share access?
* Did you create a due diligence index of documents?
* Are the documents organized in folders and clearly labeled?
* Have any third-party consultants been engaged?
* Do you have a system in place for tracking reviewed documents and who is responsible for reviewing?
* Do you have all required contact information for buyer, seller, and third-party consultants?
 |
| **EYES ON THE DEAL** |
| * Anything that could delay or stop the transaction?
* Any consents or notices required for the transaction?
* Any restrictions affecting the proposed financing of the transaction?
* Any previously unknown liabilities or contingent liabilities?
* Any issues affecting the target’s ability to operate its business in the ordinary course?
* Anything that will get in the way of the buyer’s business plans for the target?
* Any of the target’s assets going away or not included?
 |
| **OPERATIONS** |
| * Interview management and other key personnel to obtain an understanding of operations?
* Lines of products and services?
* Where is the concentration of customer risks?
* Major categories of costs of products and services and their components?
* Significant third-party vendors and suppliers?
* Target’s markets and market segments?
* Total market size for major products and market forecasts?
* Major competitors and competing products or services?
* Existing marketing strategy and any contemplated changes?
* Geographic expansion opportunities or new product or service development?
* Gross margins for each product or service line?
* Production capacities and current utilization of capacity?
* Understanding of product and service pricing and methodology?
* Target’s collections processes?
* Review warranties applicable to products or services?
* Target’s largest customers and their value to the target?
* Status of the relationships with major suppliers and vendors?
* Current officers and directors and other key employees?
* Any officers and directors and other key employees who have recently resigned or been terminated?
* Employee turnover statistics?
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| **ORganization AND GOVERNING documents** |
| * Who owns the target’s equity?
* Which equity holder(s) have control of the target?
* Classes of equity and corresponding rights?
* Any subsidiaries?
* How much equity is outstanding? How much is authorized? Is there room for further issuances?
* Any votes or consents required for the transaction?
* What actions require consent of equity holders (or applicable governing body)?
* Any transfer restrictions on equity? Pre-emptive rights in future issuances?
* How are dividends or distributions made?
* Who has authority to sign documents on the target’s behalf?
* Any restrictions on the ability of the target to borrow money or secure debt?
* Are there any anti-takeover defenses?
* Do any equity holders have special rights to elect or remove directors?
 |
| **CONTRACTS** |
| * Significant customer and supplier contracts?
* Any contract provisions that could impact the transaction or the target?
* Who are the parties?
* Have you reviewed for any change of control provisions?
* Any restrictive covenants?
* Are the contracts assignable?
* Relevant termination or expiration dates?
* Relevant terms or durations? Automatic renewals?
* How are contracts terminated?
* Do you understand the basic economics of the contracts?
* Any provision that provides special benefits to the other party?
* Any contracts currently in breach?
* Any notices that a contract will not be renewed?
* What are the outstanding obligations?
* What is the survival period for any representations and warranties?
* Any claims for indemnification?
 |
| **FINANCES** |
| * Outstanding debt?
* Interest rates?
* Maturity?
* Mechanics and timing for prepayment? Prepayment penalty?
* Who are the parties?
* Any contingent obligations or guarantees?
* Any third-party guarantees by third parties?
* Is the debt secured?
* Any liens on the target or its assets?
* Have any equity or notes of the target been pledged?
* Can financing arrangements remain in place? Can additional money be borrowed?
* Do you have the latest available financial statements? Do they reconcile?
* Significant accounting policies, methods, and principles? Any recorded changes in such things? Why?
* Any letters from target’s outside tax advisors or accountants?
* Unusual trends and fluctuations in income and expenses?
* Seasonality of revenue, gross margins, EBITDA, as well as working capital?
* Do you understand the target’s revenue recognition policies and issues?
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| **litigation** |
| * Any claims currently pending? How many?
* Do you have sufficient information on all pending claims?
* Do you need to have a litigator review any of the materials?
* Are the pending claims covered by insurance? If so, what is the deductible?
* What is the estimate of damages?
* What is the current status of each claim?
* What is the likelihood of success on the merits?
* Were there any large claims paid out in the past?
* What kinds of claims or litigation is the target business typically a party to?
* What is the average amount of damages?
* Are most claims settled or litigated? What is the typical size of a settlement?
* Are there any settlement agreements or court decrees with ongoing obligations? If so, what are they and when do they terminate?
 |
| **REAL PROPERTY** |
| * Address and description for each office, manufacturing, or other facility maintained by the target?
* Any deeds for owned real estate?
* Any contracts for the purchase, sale, or lease of real property?
* Any mortgages, liens, pledges, or encumbrances?
* Any other agreements affecting real property?
* Certificates of occupancy?
* Any engineering reports or studies regarding any facility?
* Security deposits?
* Easements and rights-of-way?
* Zoning status or variances?
* Estoppel certificate from landlord with respect to any significant leased real property?
 |
| **INTELLECTUAL PROPERTY** |
| * What technology, inventions, patents, patent applications, utility models, designs, trademarks, service marks, trade names, and copyrights are owned or utilized by the target?
* If any of the foregoing are not owned by the target, what is the nature of the right, license, or interest of the target?
* Any new products, technologies, or processes currently under development?
* Any significant computer software used by the target?
* How is the assignment of intellectual property and confidentiality involving employees and other third-parties handled?
 |
| **PermitS** |
| * What permits are required?
* What permits does the target currently hold? Are all required permits currently held?
* What agencies are the permits with?
* When do the permits expire? How are they renewed?
* What regulations govern the permits?
* Any change of control provisions in the permits or in the applicable regulations? If so, does the transaction constitute a change of control?
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