Due Diligence in M&A: What Buyers Are Really Looking For

In a private merger or acquisition, “due diligence” is the investigation a buyer performs before committing to buy a business. It is not just a box-checking exercise or a hunt for bad news. Done correctly, diligence helps the buyer understand what it is buying, whether the price makes sense, what risks come with the business, what approvals are needed, and what has to happen after closing for the business to keep operating smoothly. In extreme cases, diligence can kill a deal. More often, it shapes the purchase price, the representations and warranties, indemnification rights, closing conditions, and the post-closing operational or integration plan.

The basic goals are practical. A buyer wants to confirm that the seller actually owns the stock or assets being sold, identify liabilities or risks, validate the value of the business, learn how the business operates, spot barriers to closing, and determine whether extra documents or consents are needed. In an asset purchase, diligence may focus only on the specific assets and liabilities being acquired or those not to be acquired. In a stock purchase or merger, the buyer usually needs to understand the entire company because it is stepping into the whole business, including many liabilities that may not be obvious at first.

The scope of diligence depends on the deal. A chemical manufacturer may require heavy environmental review. A regulated business may require a deeper compliance review. A company with foreign operations may require anti-bribery and corruption diligence, including Foreign Corrupt Practices Act issues. If the buyer and seller are competitors, antitrust concerns may limit access to sensitive information like pricing, customer names, or strategic plans. In those situations, lawyers may need to review certain materials without sharing the details directly with the business team. Cost and timing also matter; buyers often start with the most important issues and expand the review as the likelihood of closing increases.

A good diligence process starts with organization. Before diving into documents, the buyer and its counsel should agree on the budget, scope, deadline, reporting format, key business concerns, outside specialists needed, and any “deal breakers.” The team often includes corporate lawyers, business people, accountants, tax advisors, and specialists in areas like employment, benefits, real estate, intellectual property, environmental law, insurance, and regulatory compliance. Someone needs to coordinate the process, track requests, route documents to the right reviewers, and make sure important findings are communicated quickly.

The buyer usually sends a diligence request list organized by topic. That list should be broad enough to capture the important documents but tailored enough that the seller understands what is being requested. A generic request for "all material contracts" may be too vague because the seller and buyer may disagree about what is "material." Most diligence materials are shared through an online data room to which the seller will upload required information, and the buyer's team should track what has been provided, what is missing, and what has been added later. Poor organization wastes time and increases the risk that key issues are missed.

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The documents reviewed depend on the business, but several categories show up in almost every deal. Organizational documents reveal ownership, voting rights, transfer restrictions, stockholder approvals, board approval requirements, subsidiaries, equity rights, and unusual governance provisions. Contracts show the company's revenue, supply chain, customer commitments, pricing, termination rights, exclusivity, non-competes, most-favored-nation clauses, assignment restrictions, and change-of-control rights. Finance documents reveal debt, liens, guarantees, maturity dates, prepayment penalties, restrictive covenants, and whether lender consent is needed. Litigation materials show pending claims, historical disputes, potential damages, settlement patterns, and recurring risk areas. Specialist diligence may be needed for tax, employees, benefits, IP, real estate, environmental matters, insurance, and regulatory compliance.

One of the most important diligence issues is whether key contracts can move with the deal. Anti-assignment provisions may require third-party consent in asset acquisitions and certain stock purchase or merger structures. Stock acquisitions and some reverse triangular mergers may avoid assignment problems unless the contract also has a change-of-control clause, but state law and contract language matter. Change-of-control provisions can be hidden in assignment, termination, or consent sections, and they may give the other party consent rights, termination rights, or payment rights if ownership changes. Missing one of these provisions can create a closing delay or, worse, leave the buyer without a contract it assumed was part of the business.

Diligence findings directly affect the deal. If the buyer discovers an unexpected liability, it may reduce the purchase price or require a special indemnity. If a permit or customer contract is essential, the buyer may require a specific representation, warranty, covenant, or closing condition. If real estate title defects exist, the seller may need to fix them before closing. If disclosure schedules conflict with the data room, the parties may need to revise them. And if the issue is serious enough—like discovering that the supply contracts the buyer wanted are not actually binding, the buyer may walk away.

Diligence also affects post-closing rights. Sellers may argue that if the buyer knew about a problem before closing, the buyer should not be able to sue later for breach of a representation or warranty. Buyers often resist that position and may seek a "pro-sandbagging" provision preserving their rights even if they learned of the breach before closing. Sellers may seek the opposite. Because this issue can depend on governing law and contract language, it should be addressed directly rather than assumed.

The end product may be a short call, an email summary, or a full diligence report, depending on the deal. Either way, the most useful diligence reports are clear, practical, and focused on what matters: key risks, required consents, price issues, closing blockers, contract protections, and integration steps. For private equity buyers, this process is often even more intensive because they may be using significant leverage, may be less able to absorb operational surprises, and may need to confirm that payroll, IT, accounting, and other back-office functions will work after closing.

Due diligence is how a buyer turns uncertainty into deal terms. It tells the buyer whether to proceed, what to pay, what protections to demand, what consents to obtain, and how to prepare for Day 1 after closing. A well-run diligence process does not just identify problems; it gives the buyer a roadmap for buying the business intelligently.

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