

Conducting Effective Due Diligence

OVERVIEW

Introduction to the Fundamentals of Due Diligence

Introduction

What is due diligence?
Why perform due diligence?

Manage Client Risk

Discusses how to manage and minimize risk to a client through learning about the target subject to time and money constraints

Evaluate Transaction

Considers how to obtain and evaluate the material information about the target.

Research Target

Discusses how to increase a client's knowledge base about the target.

Limit Liability

Discusses how to limit professional liability.
Explores the duties of confidentiality and competence and discusses how to recognize a conflict of interest.

Duty of Good Faith

Explores sandbagging and the duty of good faith in the due diligence context.
Discusses the Supreme Court decision in *Bhasin*, which recognized a common law duty of honest performance and reasonableness in contract performance.

Buyer and Seller Tips

Explores how the Supreme Court's decision in *Bhasin* has been applied by courts in commercial transactions.
Discusses how to draft a Purchase Agreement in the diligence context.
Provides tips and tricks for acting on behalf of a seller.

Conclusion

Provides an overview of the topics covered in this module.

Process and Plan

Why perform due diligence and overview of the content discussed in the module.

Project Management

Discusses legal project management and Legal Lean Stigma and how to approach the due diligence review from this perspective.

Demonstrates how to use a Gantt Chart to effectively manage the due diligence process.

Discusses the need to define the due diligence process that will be used for review and how to do so.

Explains the aspects of the Mergers and Acquisitions Planning and Budgeting Tool and how to analyze it.

Discusses the role that law firms may play in the transaction.

Preliminary Steps

Discusses the initial steps that should be taken at the commencement of the due diligence review when acting for the buyer or seller.

Explores the difference in the due diligence process when the transaction is a share deal versus an asset deal.

Team and Logistics

Explains how to set the context for the diligence review through the preparation of a Due Diligence Request List.

Discusses what members to include on a due diligence review team.

Virtual Data Rooms

Explores the pros and cons of a Virtual Data Room.

Provides tips and tricks that will make the due diligence process efficient and effective for the client.

Work Product

Discusses the four tiers of work product created by the due diligence review.

Conclusion

Provides an overview of the due diligence process from start to finish.

Corporate Searches

Introduction

Discusses the objectives of corporate searches.

Discusses how the characteristics of the search will determine the type of search to be conducted.

Typical Searches

Explores the standard searches typically performed for an acquisition. These searches fall into two main categories: Searches that address the existence and the name of an entity and security searches.

Transaction Specific Searches

Discusses additional searches that may be conducted outside of the standard searches including, real estate, intellectual property, litigation, taxation, labour and employment and legislative.

Conclusion

Provides an overview of the content discussed in this module.

**Minute Book Review
and Rectification****Introduction**

Provides an overview of the topics to be covered in this module

Purpose of Review

Examines what a corporate minute book is, what it contains, what can be learned from it and why the information is important in terms of completing the transaction.

Key Sections

Examines the sections of the minute book and what they contain.
Considers what one should look for when reviewing materials in the minute book, red flags to watch out for and what to do once the review is complete.

Case Study

Issues in the case study are identified, and how they may be rectified is discussed.
Considers what other approaches can be taken to ensure the transaction closes if there are deficiencies that cannot be corrected.

Conclusion

Reviews the concepts discussed in the module.

**Financial Due
Diligence****Introduction**

Discusses the objectives of conducting financial due diligence, which is to determine: whether the financial representations are true and accurate, the appropriate price to pay, and the critical risk areas (financial areas or concerns that the purchaser should know about before deciding whether to make a purchase).
Explores the structure of the transaction, including the purchaser's motivations and the type of the transaction.
Discusses the asset purchase.

Financial Statements

Reviews financial statements.
Discusses how to read and interpret key financial statements and their respective notes to determine whether financial representations are true and accurate, including identifying gaps in information.

Risk to the Purchaser

Discusses how to evaluate risk to the purchaser in terms of the quality of assets, the liability exposure, the quality of earnings, the working capital, and the impact on the purchase agreement.

Case Study

Examines what reports to request/ produce by accountants.
Discusses how to interpret financial reports produced by accountants.

Discusses how to apply financial information to the deal in question.

Conclusion

Discusses tips and tricks as well as how to work with other parties to the transaction, including accountants already involved in the process.

Contract Review

Introduction

Discusses the importance of confidentiality and solicitor-client privilege in the due diligence review and how to minimize cyber risk relating to confidentiality.

Objectives and Scope

Discusses how to customize the due diligence process to determine the scope and objectives of the review and any standards for materiality.

Discusses the importance of obtaining an understanding of the regulatory environment to allow the purchaser to assess whether the target has complied with applicable laws.

Technical Issues

How to determine what the format of the reports should be.

How to conduct comprehensive reviews of a company's corporate documents, including corporate review and material agreements.

Discusses the scope and focus of the due diligence review which will vary with each particular transaction.

Document Summary

Explores the basic information that should be included in the document summary, including benefits (what the target gains), termination rights, provisions relating to assignment and change of control, provisions relating to rights of first refusal and rights of first offer, monetary and non-monetary obligations imposed by the company's agreements, and events of default.

Specific Agreements

Discusses examples of issues involved in the review of these types of agreements including pension plans, license agreements, and insurance contracts.

Conclusion

Provides an overview of the topics discussed in this module.

Debt Financing

Debt Financing

Provides an overview of the content to be discussed in this module.

Scope of Review

Considers the scope of the review and the client's needs.

Tools

Discusses the tools available to ensure an effective and diligent process, including checklists and the information certificate.

Target Information

Discusses what information is needed about the target and how to find it.

Document Review

Identifies the financing documents to be reviewed and where to find them. Examines the contents of the documents, including basic provisions and critical terms, and considers how the financing agreements and instruments may be affected by the transaction.

Conclusion

Provides an overview of the topics discussed in this module.

Intellectual Property**Intellectual Property**

Provides an overview of the content to be discussed in this module.

Starting Out

Provides an overview of how to begin a due diligence inquiry.

IP Primer

Reviews the different categories of IP rights, including patents, trademarks, copyright, industrial design, and confidential information.

Nuts and Bolts

Considers frequently encountered problems and gets into the nuts and bolts of a due diligence inquiry with respect to each category of IP assets.

Considerations

Discusses special concerns particular to the purchaser and the seller. Reviews how the results of an IP due diligence inquiry would be reflected in the contractual provisions of the final deal.

Conclusion

Notes the importance of a thorough IP due diligence inquiry.

Environmental Due Diligence**Environmental Due Diligence**

Provides an overview of the content to be discussed in this module.

Why Environmental Due Diligence Matters

Discusses why due diligence is important in the context of the environmental liability regime in Ontario.

Asset Versus Share Transactions

Considers the differences between asset and share transactions and the due diligence required for each step.

Reviewing Environmental Issues and Interpreting Environmental Reports

Identifies the key environmental components in a transaction and what to look for in a due diligence review, including the specific types of reports, and when to

retain an environmental consultant to assist in the process.
Discusses how the risks that are identified can be allocated between the parties.

Conclusion

Provides an overview of the topics discussed in this module.

Employment, Labour and Privacy Law

Labour and Employment

Provides an overview of the content to be discussed in this module.

Introduction

Outlines the importance of understanding the employment and labour aspects of a target business.

What Should be Reviewed

Explores what documents should be reviewed, including various agreements, such as executive employment agreements and collective bargaining agreements, as well as occupational health and safety and workers compensation records.

How Information Should be Reviewed

Considers how information should be reviewed, including how to deal with privacy issues.

Material Issues

Discusses the allocation of employment liabilities between buyer and seller, and review material issues such as changing control provisions, termination provisions, and restrictive covenants as well as misclassification issues.

Examines issues raised by claims against the target including employment class action litigation.

Explores labour relations issues.

Conclusion

Provides an overview of the topics discussed in this module.

Pensions

Definitions

Provides an overview of the terminology of pension plans.

Funding Basics

Discusses how pensions are funded and the implications of a funding surplus or deficit.

Due Diligence

Reviews considerations applicable to due diligence in respect of pension plans.

Examines the target's due diligence obligations.

Examines the purchaser's due diligence obligations and how they are affected by the type of pension plan in issue.

Top Ten List

Discusses the top ten things to consider when conducting due diligence, including practice tips to ensure a comprehensive, organized, and effective process.

Concerns with Structure

Considers how the structure of the transaction will affect the purchaser's and the target's pension obligations in share and asset purchase transactions as well as mergers.

Multi-Employer Plans

Discusses considerations applicable to multi-employer pension plans as opposed to single-employer plans.

Conclusion

Provides an overview of the topics discussed in this module.

**Other Significant
Due Diligence Topics****Other Significant Due Diligence Topics**

Provides an overview of the content to be discussed in this module.

Anti-corruption

Considers anti-corruption due diligence in the context and both Canadian and American legislation.

Privacy

Considers privacy law due diligence in the context of the federal Personal Information Protection and Electronic Documents Act.

Discusses the business transaction exemption to the PIPEDA, which permits the disclosure of personal information if that information is necessary to determine whether to proceed with the transaction or complete it.

Anti-spam

Discusses how to conduct through anti-spam due diligence and how to mitigate cyber-risk.

Foreign Counsel

Discusses how to engage foreign counsel to complete due diligence in other jurisdictions.

Seller Due Diligence

Discusses seller due diligence and considers the benefits of completing due diligence to the seller and the prospective purchaser.

Discusses the risks of seller due diligence.