

# M&A Due Diligence Readiness Tips

InHouse Connect/Filejet Live Webinar: Deal-Ready Compliance for In-House  
Legal Teams: Best Practices for Leading a Smooth M&A Diligence Process

## 1. Start early. Don't wait until you are ready to sell.

- Diligence readiness largely equals good corporate governance practices, compliance and contract management—all of which should be ongoing.
- Consider setting up an electronic dataroom early using a standard due diligence request list template to save time later.
- The dataroom should be well organized and easy to use. Sloppy datarooms are a red flag to buyers who then often think the governance and practices of the target are also sloppy.

## 2. Organize corporate and financial records. Establish systems to update records.

- Establish or maintain a central repository for all corporate organizational documents and organizational charts.
- Keep board and committee minutes and consents organized and current.
- Keep capitalization table and equity ledgers current.
- Review the contract management system and confirm that contracts are accessible and complete and that you are able to locate all material contracts.
- Compile internal policies and other compliance documents.
- Confirm that all other documents that will be reviewed by the buyer are up to date, complete and accessible.
- Develop a simple system to audit and keep documents updated.
- Flag any highly sensitive diligence materials (e.g., trade secrets, pricing info, etc.). Consider whether those materials should be provided later in the diligence process or be made available under strict conditions or to a smaller group (e.g., lawyers only).

### 3. Organize a team and point people.

- Identify the internal and external deal team. Determine what outside help will be needed (e.g., bankers, lawyers, accountants, PR).
- Determine who will be in the know and establish expectations for confidentiality.
- Determine the role of each person on the deal team generally and in respect of diligence. Confirm that each person understands their role and the importance of prompt responses.
- Determine who will be the point person for each area to be covered in diligence (e.g., financial statements, material contracts, IP, employment issues, real estate, insurance, litigation, etc.).
- Have an internal kick-off meeting (including outside advisors) to get everyone on the same page.
- Speak with one voice. When interacting with someone outside of your organization, the point person for a particular area should be the spokesperson or should be involved. Inconsistencies in responses will reduce trust.
- Coordinate talking points on sensitive topics.

### 4. Organizer Identify liabilities/problem spots early.

- Audit all material contracts or spot check them. Flag change of control and consent clauses and other obligations that may cause delays or financial impact.
- Verify permits, HR and regulatory compliance and IP ownership.
- Conduct internal review of environmental compliance, data privacy, cyber security, employment practices and any industry specific regulations.
- Determine whether new financials will need to be prepared (carve out financials, audited financials, pro forma financials, etc.) or whether the financials will need to be reviewed by the outside accountants. If so, understand how this will impact timing.

- Determine whether there are any industry, regulatory or macro changes on the horizon that will affect your business. If so, discuss how these will be addressed if they materialize. The buyer will ask and may reduce their estimate of the value of the company if they don't like the answers.
- Discuss potential problems with legal counsel as early as possible.
- Do not wait for the other side to uncover issues in diligence. Dealing with liabilities early gives you more negotiating leverage and creates trust/goodwill.
- Use the metrics from the electronic dataroom to see where buyers are spending their time. Anticipate buyer concerns based on their diligence activity.
- If possible, mitigate liabilities before the sale process begins—to the extent possible, address litigation, tax issues, regulatory matters, labor and employment matters, etc.
- Save time later by keeping a list of material disclosures or issues identified during the diligence process and confirm that these are reflected in the disclosure schedules.

## 5. Keep ordinary course operations on track. Delegate!

- Buying or selling a company can cause substantial disruption to your day-to-day business. On the sell side, this can impact the purchase price you will receive.
- Mitigate disruption and resource constraints by prioritizing high value workstreams and by delegating, including to outside bankers and lawyers. Confirm management (and possibly the board) agree with the diligence priorities.
- Bankers can set up and manage dataroom and diligence logs and serve as the point of contact for follow up diligence requests and questions during the diligence process.
- Set up process for responding to ongoing diligence requests/questions to maintain momentum.

## 6. Prep for management diligence call.

- Ask for appropriate lead time before scheduling management diligence call.
- Get questions for management diligence call in advance.
- If possible, do a trial run diligence call with your team, including bankers, outside counsel and other outside advisors.

## 7. Timeline.

- Establish a realistic transaction and diligence timeline that is socialized with all parties.
- If exclusivity is granted, use the exclusivity expiration date as a target deadline and work backwards.
- If representation and warranty insurance is being obtained, factor the underwriting process into the timeline.

## 8. NDA.

- Make sure the NDA has been signed before providing diligence access.
- If highly sensitive information is being made available to a smaller group, sign up for a separate clean team NDA.

## Legal Governance & Compliance Additions

### 1. Corporate Governance & Entity Management

- **Confirm Legal Entity Structure:** Review and confirm the legal structure across jurisdictions (parent/subsidiary, domestic/foreign). Ensure good standing status in each jurisdiction (e.g., Secretary of State certificates).
- **Clean Up Past Board/Stockholder Actions:** Legal team should review historical actions for missing or improperly executed consents, approvals, or filings.
- **Check for Foreign Ownership/Control:** This may raise CFIUS (Committee on Foreign Investment in the U.S.) concerns for buyers, particularly in tech or defense sectors.

### 2. Compliance Program Maturity

- **Evaluate and Document Compliance Program:** Ensure you can demonstrate existence of a functioning compliance program (training logs, whistleblower reporting structure, compliance audits, etc.).
- **Update and Centralize Policies:** Collect and verify current versions of all key internal policies (Code of Conduct, Anti-Corruption, Data Privacy, Insider Trading, Document Retention, etc.).
- **Check Employee Compliance Training Records:** Ensure up-to-date participation in mandatory training (e.g., sexual harassment, data protection, FCPA).

### 3. Risk & Regulatory Readiness

- **Conduct Sanctions and Export Control Risk Review:** Ensure your products, customers, and geographies don't trigger ITAR, EAR, OFAC, or similar international trade compliance issues.
- **Perform Anti-Corruption and Bribery Risk Review:** Especially important if you operate in high-risk jurisdictions. Review payments to intermediaries, gifts, and hospitality policies.
- **Document Industry-Specific Licenses or Certifications:** Buyers will expect to see valid and transferable licenses (healthcare, fintech, transportation, etc.).

### 4. Contractual and Disclosure Obligations

- **Flag MFN, Exclusivity, and Non-compete Clauses:** These provisions in commercial contracts may affect sale or valuation.
- **Review and Identify Assignability and Change of Control Clauses:** Internal legal should summarize and flag which contracts will require consent or notice upon a change in ownership.
- **Litigation Disclosure Protocol:** Formalize the process of disclosing current/pending litigation, arbitration, or government investigations, with summaries prepared by legal.

## 5. Intellectual Property (IP) Ownership

- **Confirm IP Assignments from Employees & Contractors:** Double-check that all IP creators have signed assignment agreements and that IP is owned by the company.
- **Review Open Source Software Use:** Verify compliance with open-source licenses; identify any "copyleft" or viral licenses that may raise red flags.
- **Trademark & Patent Status:** Confirm registrations are active and owned by the correct entity; provide summaries of key filings or disputes.

## 6. Data Privacy & Cybersecurity

- **Privacy Compliance Mapping:** Confirm mapping of how personal data is collected, processed, and stored across the organization.
- **GDPR/CCPA/Global Compliance:** Verify required consents, privacy policies, breach protocols, and cross-border data transfer mechanisms.
- **Cybersecurity Protocol Review:** Document internal security policies, incident response plan, and most recent penetration test or security audit results.

## 7. Labor & Employment Compliance

- **Classification Review:** Confirm employee vs. contractor classifications are legally compliant across jurisdictions.
- **Review Key Employment Agreements:** Flag non-competes, severance triggers, change-of-control clauses, and retention bonuses.
- **Collect Historical Claims:** Identify any prior or pending employee-related claims (e.g., wrongful termination, harassment) that could surface in diligence.

## 8. Representation & Warranty (R&W) Insurance Readiness

- **Legal Readiness for R&W Insurance Underwriting:**
  - Legal counsel should prepare a detailed list of "known issues."

- Identify areas where disclosures may need to be tailored for R&W underwriting.
- Understand which risks may be excluded from coverage and where buyers may push for indemnification.

## Suggested Process Enhancements

- **Dataroom Red Flags Review by Legal:** Legal should be tasked with reviewing dataroom before buyer access is granted to ensure sensitive or privileged material is flagged and/or redacted.
- **Legal Review of Buyer Feedback:** Funnel all buyer legal diligence follow-up requests through a single legal contact to ensure consistency and privilege protection.
- **Disclosure Schedules Drafted Early:** Begin drafting disclosure schedules early—even pre-LOI—so red flags are understood and addressed proactively.