



Conducting Due Diligence

The objective of due diligence is to ensure the buyer obtains all the material facts required to make a fully informed assessment of the company while not unduly disrupting the seller's business. The process involves verifying that the financial and operational information provided is accurate within a reasonable degree of tolerance to the buyer. Due to serious concerns about confidentiality, disruption of current and future business and time & expense, in depth DD is generally conducted after a contingent agreement or non-binding letter of intent is in place and earnest money has been provided. Earnest money is refunded if one or more contingencies cited are not met, or if due diligence uncovers material facts in dispute with the prior representations on which an offer was based.

While it is imperative to develop a list of items required for DD, it is equally important to have a plan and process for completing DD within a reasonable timeframe. The lists of items are deal dependent and will be based on the type, size and complexity of the business being purchased. These lists can be easily acquired from your advisor or on the Internet.

Below is a sample of the elements that should be considered when preparing a plan. As with any plan, it will need to be modified for your specific deal.

1. **Develop a DD timeline:** A lot of time and money can be wasted unless both parties are in agreement about the timeframe and deliverables. A decision roadmap should be important to both the buyer and seller in every transaction.
2. **Develop list of information needed:** These lists are easily acquired from advisory professionals or on the Internet.
3. **Identify transaction-oriented advisors:** These are advisors who spend the majority of their time helping clients buy, sell or merge businesses.
4. **Schedule DD kick-off meeting with Seller:** This meeting should mark the beginning of DD where the plan/process are discussed and agreed to by all parties. Specific dates should be assigned to the major tasks and all contingencies should have an expected completion date.
5. **Conduct weekly conference calls:** These meetings are a great way to keep all the parties on task and continue to build the relationships. Along the way contingencies should be cleared and the DD schedule should be modified, as needed.
6. **Clear contingencies, as satisfied:** A common adage is that time kills deals. Clearing contingencies is one of the best methods to keep momentum in the deal. Momentum generates goodwill between the parties and this comes in handy when tough issues need to be handled.
7. **Negotiate and secure third-party contracts/agreements:** At the appropriate time, there should be a plan to approach, negotiate and finalize the details of any third party contracts, such as; property leases, equipment leases, service plans,.... This should be the last set of contingencies to tackle.
8. **Attorney phase:** Once the business terms and contingencies have been satisfied the time is right to have your attorney prepare final documents. You should meet with your attorney well in advance of this step so that he or she knows what is being contemplated, but refrain from spending lots of money on legal documentation until you are certain you are going to buy the business.
9. **Post-transition plan:** This all important step is either glossed over or worse, completely ignored. Just prior to closing, the buyer and seller should have a meeting(s) to design a 90 to 180 day ramp-up plan. A good plan contemplates how the new owner will be introduced and the important tasks during transition. It should ensure that there is minimal disruption to the operations and a smooth transition for employees, clients and vendors.

Lastly, it is important to keep in mind that no business is perfect. It is not uncommon for buyers to find some inconsistencies or anomalies and these should be questioned and understood. If the information turns out to be structural or material then you may consider either canceling the deal or renegotiating based on the new facts. However, be careful not to over-react and assume that any deviation is a deal-killer. Oftentimes any differences can be explained with thoughtful communication between all the parties.

Chicagoland Sunbelt is a Business Brokerage firm that focuses solely on helping people buy and sell businesses. We are also a proud member partner of Sunbelt Midwest, which has offices in Minnesota, Wisconsin and Illinois.

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