


LEGAL AND FINANCIAL DUE DILIGENCE ARE PRIMARY CONCERNS OF M&A DEALMAKERS



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In closing a merger or an acquisition, failure to have all the ducks lined up in a row, every scrap of information on the risks and opportunities the transaction presents, is dangerous. This explains the mounting stress that dealmakers experience as the days near the signing.

In this compressed due diligence timeframe, the fear that something crucial will fall through the cracks is ever more possible. When a particularly critical element does not receive the important attention it requires, the post-transaction value of the combined organizations is at risk. While the overarching objective of due diligence is to lift every stone to see what lurks underneath, some stones are more significant than others.

To get a keener sense of which due diligence issues concern acquirers most, we recently asked digital media company SourceMedia to survey 255 senior dealmakers. The respondents included a broad mix of Managing Directors, Partners, Principals, CEOs, CFOs, and COOs from diverse industries, including manufacturing, financial services, and healthcare, among others.

The outcome: Legal and Financial due diligence carry virtually equal weight in their litany of worries. More than one-quarter (27.8 percent) of the dealmakers selected the Financial and Accounting Errors option as their number one concern, followed by more than one-fifth (21.6 percent) who chose the Unknown Legal Issues option.

It is not all that surprising that dealmakers are concerned about an accounting error undermining the appreciated value of the M&A transaction. However, the choice of Unknown Legal Issues over more traditionally highlighted due diligence concerns like Regulatory Hurdles (8.6 percent), Issues Regarding Ownership and Value of Intellectual Property (6.7 percent), and Valuation Errors (6.3 percent) gives pause for deeper consideration.

Why do unknown legal issues create such disquiet among dealmakers? One reason may be the rapidly changing global legal and regulatory landscape, which increases the risk of overlooking new and evolving laws. Another possible reason is hidden liabilities—legal risks that the successor company inherits once the transaction closes.

Any hidden liability, whether unintentional or designed to hide important business information, is a cause for alarm. For one thing, if the target company has acquired numerous businesses through the years, identifying and mitigating these varying organizations' legal risks can be daunting. In some cases, the legacy liabilities may extend back several decades—as is often the case with [environmental exposures](#). Even the liabilities for a target-acquired company that no longer exists legally linger on, and in these cases unraveling the trail of

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ownership and accountability can be problematic. Meticulous [legal due diligence](#) up front can shed light on such exposures early enough to address within the deal framework, before the complications compound.

Dealmakers that fail to appreciate and evaluate these unknown legal threats can end up with a less valuable acquisition. A legacy environmental exposure, for instance, can cause severe post-transaction financial and reputational repercussions undermining the perceived value of the transaction, in addition to affect the present and future value of the acquirer.

Because of this possibly dire outcome, it is advisable for acquiring companies to seek M&A due diligence services from an organization that provides comprehensive [identification and management of legal issues](#)—before, during and after the close of the transaction. As with any deal, it's better to sit at the negotiating table with all the details in hand.



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