



DEAL CHECKLIST

Acquisition of Private Company

I. Accounting and Financial

1. Coordinate with internal accounting staff and outside auditors.
2. Address any updates to financial statements.
3. Coordinate wire transfer procedures.
4. Coordinate investment of proceeds from sale.
5. Assist in developing responses to Buyer requests, if any, for more detailed financials.
6. Carefully review seller's financial statements.
7. Proper accounting treatment and revenue recognition by seller?
8. Audited financial statements and auditor reports available?
9. Auditor management letters available?
10. Asset review.
11. Liabilities review.
12. Accounts receivable review.
13. Accounts payable review.
14. Inventory review.
15. Cash position and requirements review.
16. Loan review.
17. Unfunded pension cost review.
18. Contingent liabilities review.
19. Prospective financial information:
 - a. Earnings projection.

- b. Projection of cash requirements.
- c. Projected financial statements.
- d. Underlying assumptions and key factors.
- e. Capital and operating budgets.
- f. Long-term plans.

II. **Agreement Preparation**

- 1. Confidentiality Agreements
- 2. Asset or Stock Sale Agreement
- 3. Assignment & Assumption Agreements
- 4. Real Estate Purchase Agreements (if not included in the main Agreement)
- 5. Environmental Agreement (if not included in the main Sale Agreement)
- 6. Bills of Sale (and other instruments of transfer)
- 7. Schedules to Agreements
- 8. Opinions of Counsel
- 9. Officer's Certificate
- 10. Compliance Certificates
- 11. Develop appropriate purchase price adjustment mechanism, if necessary
- 12. Determine Position on Key Points:
 - a. Representations and warranties
 - b. Scope of indemnification: cap/time to assert/basket
 - c. Liabilities to be retained/assumed by buyer
 - d. Conditions to closing
 - e. Damages clause in the event of failure of buyer to close
 - f. Treatment of employees & benefit plans
 - g. Pre-closing restrictive covenants of seller
 - h. Covenants of buyer (such as access to records)
 - i. Post-closing transition

- j. As-is sale with all faults? – disclaimers of representations or warranties?
- k. Assumption by buyer of designated existing contracts (service as well as sales).
- l. Buyer's cooperation if seller intends to complete transaction as part of a tax free exchange.
- m. Risk of loss prior to closing (casualty, condemnation) – materiality standard.
- n. Consents and approvals of third parties
- o. Proration and allocation of closing costs: transfer taxes, escrow fees, title insurance premiums, recording fees.
- p. Assumption by buyer of various deferred obligations?
- q. Arbitration clause.
- r. Non-compete provision.
- s. Supply agreements.

III. **Antitrust and Regulatory**

1. Determine permitted scope of disclosure of information to competitors
2. Determine allocation of antitrust risk, including seller positions in the event of 2nd request under HSR Act or injunction. Payment from bidder if anti-trust problem forces cancellation?
3. Analyze scope of any antitrust issues with various bidders
4. Prepare Hart-Scott-Rodino filings if thresholds are met
5. Be prepared to respond to requests for additional information re: Hart-Scott-Rodino filings
6. Review Hart-Scott-Rodino filings from buyers
7. Address Exon-Florio issues if any foreign bidders
8. Address Department of Commerce filings if any foreign bidders.

IV. **Asset Schedules**

1. Detailed listing of assets vs. descriptive approach?
2. Determine which assets are subject to liens
3. Determine which assets are leased or licensed

4. Coordinate obtaining consents to assignment of leased and licensed assets
5. Determine seller position re: costs of obtaining consents
6. Determine seller position if consents not obtained.

V. **Confidentiality Agreements**

1. Prepare form of Confidentiality Agreement
2. Determine which points seller or buyer will be flexible on:
 - a. Term of confidentiality obligations
 - b. Term of standstill
 - c. Non-solicitation of employees
 - d. Venue for disputes
 - e. Changes to standstill
 - f. Oral disclosures
3. Ensure that Confidentiality Agreement fully executed prior to providing information
4. Prepare log of information and documents provided to buyer

VI. **Coordination with Customers & Vendors**

1. Determine what notices to give to customers
2. Determine what notices to give to vendors
3. Determine whether any new agreements needed

VII. **Data Room**

If a data room is to be established containing information of the seller, consider the following issues:

1. Determine location of Data Room
2. Establish procedures for bidders reviewing information in the Data Room
3. Establish procedures re: copying of information
4. Determine which documents to include in Data Room
5. Analyze if any documents need to be excluded because of antitrust, confidentiality or attorney-client privilege issues

VIII. **Due Diligence**

In connection with a potential acquisition transaction, the following materials or information relating to the target company and any subsidiaries (together, the "Company") are typically requested.

1. **Corporate Documents of the Company and Subsidiaries**

- a. Articles of Incorporation and all amendments thereto.
- b. Bylaws and all amendments thereto.
- c. Minutes of all Board of Directors, committee and shareholders meetings and all consents to actions without meeting.
- d. List of states and jurisdictions in which qualified to do business and in which the Company has offices, holds property or conducts business.
- e. Material information or documents furnished to shareholders and to directors during the last two years.
- f. Most recently obtained good standing certificates for all states and jurisdictions where the Company is qualified to do business.

2. **Previous Issuances of Securities**

- a. All applications and permits for issuance/transfer of securities.
- b. Sample copy of stock certificates, warrants and options.
- c. Stockholder information, indicating number of shares held, dates of issuance, and consideration paid.
- d. All stock option, stock purchase and other employee benefit plans and forms of agreements.
- e. List of any outstanding stock options and warrants.
- f. Any voting trust agreements, buy/sell agreements, stockholder agreements, warrant agreements, proxies, or right of first refusal agreements.
- g. Any registration rights or pre-emptive rights agreements.
- h. Powers of attorney on any matter.
- i. Convertible debt instruments.
- j. Other contracts, arrangements, or public or private documents or commitments relating to the stock of the Company.
- k. Any debt arrangements, guarantees or indemnification between officers, directors or the shareholder and the Company.

3. **Material Contracts and Agreements**

- a. List of banks or other lenders with whom Company has a financial relationship (briefly describe nature of relationship - lines of credit, equipment lessor, etc.).
- b. Credit agreements, debt instruments, security agreements, mortgages, financial or performance guaranties, indemnifications, liens, equipment leases or other agreements evidencing outstanding loans to which the Company is a party or was a party within the past two years.
- c. All material correspondence with lenders during the last three years, including all compliance reports submitted by the Company or its accountants.
- d. List of major clients and their locations.
- e. Any other material contracts.

4. **Litigation**

- a. Copies of any pleadings or correspondence for pending or prior lawsuits involving the Company or the Founders.
- b. Summary of disputes with suppliers, competitors, or customers.
- c. Correspondence with auditor or accountant regarding threatened or pending litigation, assessment or claims.
- d. Decrees, orders or judgments of courts or governmental agencies.
- e. Settlement documentation.

5. **Employees and Related Parties**

- a. A management organization chart and biographical information.
- b. Summary of any labor disputes.
- c. Correspondence, memoranda or notes concerning pending or threatened labor stoppage.
- d. List of negotiations with any group seeking to become the bargaining unit for any employees.
- e. All employment and consulting agreements, loan agreements and documents relating to...