

'Due diligence' review can eliminate surprises

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The Record

Q. How can an effective due diligence review assist a purchaser in properly evaluating a business to be acquired?

Whether the purchase and sale of a business is structured as an asset sale, a stock sale or a merger, prior to closing a purchaser should conduct an independent investigation of the business to learn as much about it as possible. This process is commonly known as "due diligence."

Due diligence consists of a review of the day-to-day operations of the business and the underlying agreements and arrangements that the purchaser will be buying. Performing as much due diligence as possible will give a purchaser an in-depth understanding of the business and, if done correctly, should uncover any issues that will need to be addressed before the purchase and sale is consummated. For instance, a proper due diligence review should disclose, among other things: whether the assets of the business are subject to any liens of third parties, and the extent of any contingent liabilities that the purchaser may be assuming.

An attorney can prepare a due-diligence checklist tailored to the specifics of a particular transaction. It will include all of the documents and other information that the purchaser is requesting to review prior to closing. In most instances that includes: major contracts and employment agreements; financial statements and other similar financial records of the business; customer, vendor and client lists (along with sale and purchase reports); and

licenses, permits and approvals necessary to operate the business.

A thorough due-diligence review will help in preventing any unwanted surprises after closing.

Before you agree to buy a business, contact an attorney to discuss how the due-diligence process can aid in the pre-closing evaluation of the potential acquisition.

Roger Iorio is an associate in the corporate department of Cole, Schotz, Meisel, Forman & Leonard PA, the largest law firm in Bergen County. He can be reached at 201-525-6312 or riorio@coleschotz.com. This information is not intended as legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of a client.

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