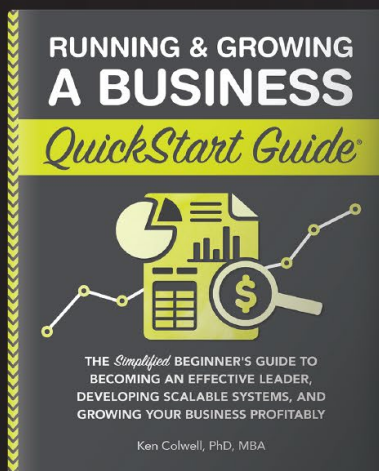

Essential Due Diligence Checklist

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ESSENTIAL DUE DILLIGENCE CHECKLIST

In terms of acquisition, due diligence plays a critical role. Make sure you share a common set of values, a common perspective that is going to endure when the new entity is formed. When entrepreneurs give that the short shrift, it rarely ends well. Due diligence is more than reviewing tax filings for the past five years or chitchatting with the other company's CEO. You must really dig into that issue of culture. Talk to employees, not just the CEO, and figure out if they will fit in well with your goals. Also, keep in mind that cultural problems can emerge with other forms of expansion apart from acquisitions.

Use this checklist as a guide for your due diligence regarding potential transactions.

NOTE



This is an exhaustive list, but not all items may be relevant to a particular transaction. However, it pays to be as thorough as possible during the due diligence process.

Corporate Documents of the Company and Subsidiaries

- a. LLC Operating Agreement or 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 the Company is qualified to do business or in which the Company has offices, holds property, has employees, 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
- g. Convertible debt instruments
- h. Other contracts, arrangements, or public or private documents or commitments relating to the stock of the Company
- i. Any debt arrangements, guarantees or indemnification between officers, directors or the shareholders and the Company

Material Contracts and Agreements

- a. All customer agreements
- b. Key vendor agreements
- c. Related party/3rd Party Distribution/Commission/Revenue Share agreements
- d. List of banks or other lenders with whom Company has a financial relationship (briefly describe nature of relationship - lines of credit, equipment lessor, etc)
- e. 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

- f. All material correspondence with lenders during the last three years, including all compliance reports submitted by the Company or its accountants
- g. List of major clients and their locations
- h. Any other material contracts

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

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 employment disputes
- d. All employment and severance agreements, non-compete/confidentiality agreements, consulting agreements, loan agreements and documents relating to other transactions with officers, directors, key employees, and related parties
- e. Schedule of all compensation owed to officers, directors, key employees and independent contractors for salaries, benefits (including, but not limited to incentive compensation, retirement benefits, paid time off and any other compensation related liability, whether funded or unfunded)
- f. Schedule of all compensation paid to officers, directors, and key employees for the most recent fiscal year showing separately salary, bonuses, and non-cash compensation (i.e. use of cars, property, etc.)
- g. Summary of employee benefits and copies of any pension, profit sharing, deferred compensation, and retirement plans
- h. Summary of management incentive or bonus plans not included in above, as well as other non-cash forms of compensation
- i. Confidentiality agreements with employees
- j. Description of all related party transactions which have occurred during the last three years (and any currently proposed transaction) and all agreements relating thereto

Financial Information

- a. Detailed listing of assets, identifying any assets that are subject to liens, or are leased or licensed, including any assets that are not recorded on the balance sheet
- b. Accounts receivable aging by customer
- c. List of payments for past three years by vendor
- d. Audited financial statements since inception (unaudited if audited financials are unavailable) in compliance with US Generally Accepted Accounting Principles
- e. Quarterly income statements for the last two years and the current year (to date)
- f. Financial or operating budgets or projections

- g. Business plan and other documents describing the current and/or expected business of the Company including all material marketing studies, consulting studies or reports prepared by the Company
- h. A description of all changes in accounting methods or principles during the last three fiscal years
- i. Any documents relating to material write-downs or write-offs other than in the ordinary course
- j. Revenue, gross margin and average selling price by product or service
- k. Management letters or special reports by auditors and any responses thereto for the last three fiscal years
- l. Letters of counsel to the Company delivered to auditors for the last three fiscal years
- m. Breakdown of G&A expenses for the last two years
- n. Copies of any valuations of the Company's stock
- o. Description of all contingent liabilities

Product, Patents, Trademarks and Other Intangible Property

- a. Patent list
- b. Copyright, trademark and service mark list
- c. Licenses, royalty agreements and similar arrangements
- d. Computer software ownership or licenses – including any 3rd party software licenses, including open-source or private
- e. Technical and product training documentation.
- f. Listing of planned product improvements and development plans
- g. List of system enhancements / bug fixes made in the last year
- h. Description of development methodology, testing and release cadence
- i. Describe the process for managing errors and enhancement requests.
- j. Describe process for managing existing development support / new developer onboarding
- k. Describe process for end user support and release communication
- l. Documents pertaining to proprietary technology purchased, developed, or owned by the Company, including any copyright or patent filings, including but not limited to information confirming that the Company's systems, software, and technology are owned solely by the Company and do not infringe on any other party's rights
- m. Architectural diagram with a brief explanation of the deployment model (where it is hosted, how clients access the service, multi vs single tenant, etc.)
- n. Listing and description of other intangible assets.

Property

- a. List of real and material personal property owned by the Company
- b. Documents of title, mortgages, deeds of trust and security agreements pertaining to the properties listed above
- c. All outstanding leases with an original term greater than one year for real and personal property to which the Company is either a lessor or lessee

Taxation

- a. Any notice of assessment, revenue agents' reports, etc from federal or state authorities with respect to any currently "open" years
- b. Federal and state income tax returns for the last three years

- c. Evidence of Company being current on payroll withholding taxes, sales tax, unemployment, social security, and other tax payments

Insurance and Liability

- a. Schedule or copies of all material insurance policies of the Company covering property, liabilities, and operations, including product liabilities
- b. Schedule of any other insurance policies in force such as “key man” policies or director indemnification policies
- c. All other relevant documents pertaining to the Company’s insurance and liability exposure, including special reserve funds and accounts

Acquisition, Sale, Partnership or Joint Venture Agreements

- a. All acquisition, partnership, or joint venture agreements
- b. Documents pertaining to potential acquisitions or alliances
- c. Any agreements regarding divestiture or assets

Miscellaneous

- a. Press releases during the last two years
- b. Articles and other pertinent marketing studies or reports relating to the Company or the industry
- c. Information regarding competitors
- d. Customer satisfaction surveys, if any
- e. Current brochures and sales materials describing the Company’s services