

Incorporating Compliance into Due Diligence

Questions to ask to understand what you're buying

With temptations to cut corners high in a downturn, it is more important than ever to consider a target's compliance risks and controls as part of due diligence. Doing so can help you limit inherited liabilities as well as future exposures. This is particularly true if the target is in high-risk markets and/or highly competitive industries. Moreover, an effective look at a compliance program often can help narrow the scope and cost of due diligence, while giving you a better assessment of the likely cost of compliance requirements post integration.

Issues You Should Explore

Here are five issues you should look at in conducting due diligence to avoid compliance surprises and understand weaknesses that will need to be corrected in the future.

Is the compliance program state-of-the-art and up-to-date? Look carefully at the target's compliance program. Are there sufficient resources, with authority and access to top executives or the Board? Review compliance risk assessment processes, manuals and audit reports to assess the program's likely effectiveness.

What is the target's risk profile? Consider: 1) the nature of the target's business and industry, 2) the nature of the jurisdictions in which it operates, 3) how it conducts business (e.g., does it use intermediaries, consultants, third parties, joint venture partners) and 4) the profile of its customers.

Is there a culture of compliance? Does the target encourage a compliance mindset? Does management regularly stress the importance of compliance? Is compliance training tailored to prioritized risks? Is there a hotline to report suspected violations? How often is it used? To what result?

Is there a strong control environment? Ask about the control framework, e.g., questionnaires and surveys, used to control risks deemed likely to occur or to result in costly penalties. Who sees the results? (It may be necessary to expand due diligence in high risk areas after reviewing monitoring reports.)

Are any investigations currently under way? Get reports on any ongoing investigations. Consider the cost of: 1) dealing with any pending or ongoing investigations, 2) ceasing certain business practices resulting in reduced revenues, 3) acquiring the target without regulatory consents, and 4) upgrading the target's compliance culture.

Recent Work

Here are some of the areas where we have advised clients on compliance issues:

- Codes of conduct
- Communications
- Risk assessment
- Program development
- Training programs
- Controls and monitoring
- Third-party compliance
- Internal investigations
- Privacy and data collection
- Government investigations
- Reporting and remediation

This is one of many ideas on ways to govern, manage, operate and finance your business. If you would like to review additional ideas, visit the Supporting Your Business section on www.bakermckenzie.com. The site is updated regularly, so visit often.

Our experience and service advantages

Global perspective, practical insights. We bring to due diligence a global perspective on compliance requirements across business functions and markets and a practical understanding of the cultural and social contexts in which compliance issues arise all over the world. We have helped major companies design, implement and enforce global programs and have acted as prosecutors in important compliance enforcement actions. So we offer insights into major risks as well as the reliability of various compliance approaches, enabling us to help clients more accurately price potential acquisitions and assess merger partners.

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