

# Legal Due Diligence

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## What Is Legal Due Diligence?

Legal due diligence is an essential process in business transactions. It enables all parties involved to systematically identify and assess legal risks or issues that may affect a transaction — whether by changing the valuation, presenting obstacles serious enough to derail a deal entirely (also known as a dealbreaker), or revealing operational restrictions that could impact the business going forward.

In practice, legal due diligence is most commonly conducted in two contexts:

### M&A

#### Mergers & Acquisitions (M&A)

The most frequent use case. The buyer engages legal counsel to conduct a thorough review of the target company prior to closing — whether the transaction involves an acquisition of business assets or a share purchase — to verify that what is being acquired carries the expected value and legal standing. The findings are then used to negotiate price, shape transactional conditions, or, where material issues are discovered, serve as grounds for terminating the deal.

### IPO

#### Initial Public Offerings (IPO)

A company preparing to list on a stock exchange is required to undertake proper due diligence as part of preparing the filing submitted to the Securities and Exchange Commission (SEC). Because an IPO involves offering shares to the general public on a broad scale, rigorous legal review is essential to protect prospective investors and ensure that all disclosures are accurate, complete, and defensible.

## Scope of Review

### 01 Constitutional Documents

This covers the certificate of business registration, memorandum of association, articles of association, share register book, shareholders' meeting resolutions, and etc. **Common issues include** articles of association that conflict with applicable law, resolutions approved without a proper quorum or vote, and shareholding structures or transfer restrictions that could create obstacles to a change of ownership.

### 02 Permits and Licenses

The review examines the company's principal business licenses as well as any additional licenses required by law. **Issues frequently encountered include** expired licenses or those pending renewal, and license conditions that are tied to specific individuals or existing shareholders — meaning they may not be transferable upon a change of control.

### 03 Assets

The review covers ownership and title of all material assets, including land, buildings, machinery, and intellectual property such as trademarks, patents, and copyrights. **Common findings include** assets encumbered by mortgages or pledges, and business-critical assets held in the name of individual shareholders rather than the company itself.

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## 04 Litigation

This involves identifying all pending legal proceedings in which the company is a party — particularly as a defendant — including claims from creditors, labor disputes, and regulatory enforcement actions. The outcome of such proceedings can materially affect the company's value or its ability to continue operations.

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## 05 Material Agreements

A review of key commercial contracts including agreements with major customers, suppliers, business partners, and financial institutes. **Frequently identified issues include** change of control clauses that entitle counterparties to terminate or renegotiate upon a change in shareholding, Technical Defaults such as breaches of financial covenants (e.g. D/E ratio maintenance), and provisions requiring third-party consent before the transaction can be completed.

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## 06 Employment

An examination of employment agreements for executives and employees to assess compliance with applicable labor laws, covering matters such as working hours, leave and holiday entitlements. This review also identifies potentially unfair contract terms — for example, non-disclosure and non-compete obligations of an unreasonably long duration that may unduly restrict an employee's career in the future.

## Conclusion

Legal due diligence is a critical tool in any form of business transaction. It enables parties to identify and evaluate legal risks and issues that may affect the deal — whether by altering its value, introducing dealbreakers, or uncovering restrictions on future business operations.