



# Legal Bulletin

**Legal Due Diligence in M&A Transactions -  
Managing Risk Before the Deal is Done**

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In this issue of the Legal Business Solutions Bulletin, we focus on legal due diligence as a cornerstone of successful M&A transactions. As deal activity continues to increase across key sectors, legal due diligence has become a critical strategic intelligence tool which is useful in identifying deal-breakers, quantifying risk, shaping transaction structures and informing negotiation strategy. It also allows both buyers and sellers in M&A transactions to assess their expectations and confirm that the deal meets their intended value. Overall, legal due diligence remains an effective method for managing unforeseen circumstances.

This bulletin provides a practical overview of the role and process of legal due diligence in M&A transactions and highlights key areas of focus for businesses and investors.



## What is legal due diligence?

Legal due diligence is a structured review of a target company's legal affairs carried out to assess its compliance, status, liabilities, and the risk profile associated with the transaction that the prospective buyer will potentially acquire. While the exact scope depends on the industry and deal structure, the review typically covers corporate structure and governance; regulatory compliance; commercial contracts; employment; litigation; Environmental, Social, and Governance (ESG); health, safety and data protection; assets and securities; and intellectual property.

## The role of legal due diligence in M&A transactions

Legal due diligence plays a strategic role throughout the transaction lifecycle:

- a. Understanding the business:** It reveals the business structure, operations, and value drivers.
- b. Identifying and allocating risk:** It surfaces liabilities and compliance gaps, guiding negotiations on warranties, indemnities, and price adjustments.
- c. Transaction structuring:** It informs the deal structure such as whether to pursue a share or asset purchase, carve-outs, or conditional completions.
- d. Negotiation leverage:** Legal due diligence shapes deal terms, limitation of liability, and disclosure mechanisms.

- e. **Regulatory strategy:** It highlights approvals, licensing, and foreign investment requirements early to prevent delays.
- f. **Post-completion planning:** It guides remediation, compliance upgrades, and operational alignment.

By conducting legal due diligence, participants in a deal can make better decisions, assess the robustness of business operations, and avoid complications during integration.

### Buyer-side vs seller-side legal due diligence

Legal due diligence serves different strategic purposes depending on which side of the transaction it supports.

Buyer-side legal due diligence is a risk and value protection exercise. It identifies legal and regulatory exposures, tests the strength of material contracts and assets, and informs pricing, deal structure, and the negotiation of warranties and indemnities among other aspects of a transaction.

On the other hand, seller-side (vendor) legal due diligence is a deal-readiness tool. It enables early identification and remediation of issues, strengthens documentation, and allows a seller to manage disclosures and reduce last-minute price renegotiations. It is particularly effective in competitive auction processes, where preparation and information control enhance deal certainty and value.

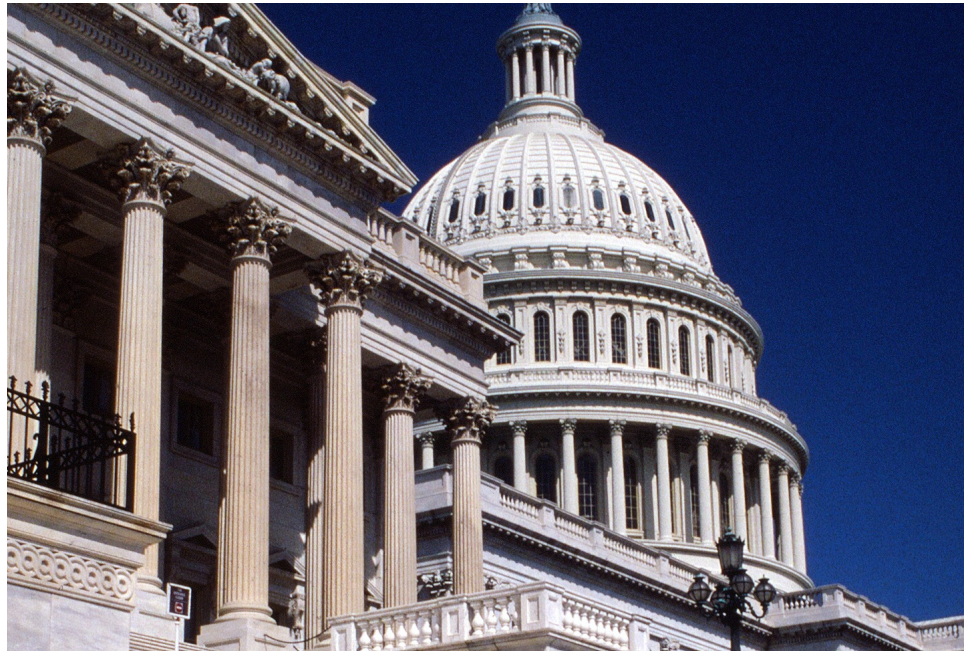
### The legal due diligence process

The legal due diligence process typically begins with defining the scope of review based on the nature of the transaction, the sector involved, and the buyer's risk appetite. This is followed by a review of information provided by the target company, usually through a data room (physical or virtual), covering the areas highlighted above. Key risks and issues identified are analyzed for materiality and commercial impact on the transaction, and these are summarized in a due diligence report which then informs transaction structuring, negotiations, and the allocation of risk through warranties, indemnities, and conditions precedent.

With recent advancement in technology tools, legal due diligence processes have become significantly faster and more efficient. Advanced tools such as artificial intelligence, machine learning algorithms, and natural language processing now allow investigators to review large volumes of contracts, financial documents, and corporate records in a fraction of the time previously required.

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These technologies help uncover potential issues like undisclosed liabilities, compliance risks, disputes, or regulatory violations that could have unforeseen financial consequences on transactions.

### **Red flag vs detailed legal due diligence**

Parties should always consider the nature of the legal due diligence approach itself—whether to employ a red flag assessment or a comprehensive review.

A red flag due diligence is an “exceptions-only” review. It focuses solely on material risks that could derail a transaction or affect its valuation, helping identify potential deal-breakers early. This approach is ideal for scenarios demanding rapid decision-making or when transaction resources are constrained.

A comprehensive legal due diligence affords a detailed and descriptive evaluation of both the risks and the standard legal operational information of the target. This approach is integral for thorough risk mitigation, and it provides a potential buyer with a roadmap for use well after closing the transaction.

In order to determine which approach works best, parties to a transaction must assess their risk appetite and

the necessity to delve into intricate legal parameters.

### **Common pitfalls in legal due diligence**

There are several pitfalls in legal due diligence that can materially undermine its effectiveness and impact on the transaction. One of the most common pitfalls is treating legal due diligence as a box-ticking exercise rather than a substantive assessment of legal, regulatory, and commercial risks. This often results in late engagement of legal advisers, limiting the opportunity to identify and address material issues, remedy compliance gaps, or adjust transaction terms in response to identified risks. By the time key issues surface, there may be insufficient leverage to negotiate appropriate protections.

Another significant pitfall is the failure to give sufficient attention to regulatory, ESG and compliance considerations. In regulated sectors, incomplete mapping of licensing requirements, merger control obligations, sanctions exposure, data protection compliance, or governance weaknesses can give rise to hidden liabilities. These risks frequently crystallise post-completion and may result in fines, operational restrictions, reputational harm, or litigation.

Equally problematic is the failure to translate due diligence findings into transaction documentation. Where identified risks are not reflected in representations and warranties, indemnities, conditions precedent, or pricing adjustments, buyers may forfeit negotiation leverage and remain exposed to liabilities that could otherwise have been mitigated contractually.

### Sample case study summary

A widely discussed example that illustrates the challenges of legal due diligence in large-scale financial transactions was where a major multinational bank acquired a large European bank group. The transaction was intended to expand the acquirer's global footprint and diversify its services. However, post-acquisition developments revealed significant contingent liabilities and contractual obligations within the target group's portfolio. Additionally, the target's complex legal and operational structures presented hurdles that were not fully identified during the pre-deal phase.

A subsequent independent regulatory report concluded that the due diligence performed by the acquiring institution was insufficient in both scope and depth, particularly given the scale and complexity of the risks involved.

While it is difficult to speculate with certainty, this case suggests that a more exhaustive legal due diligence process might have helped to better anticipate or mitigate some of the post-acquisition challenges. Ultimately, each transaction is unique, and the effectiveness of due diligence will always depend on the circumstances and information available at the time.

### Key takeaway

Legal due diligence must operate as a forward-looking risk allocation

tool. When conducted early, comprehensively, and in close integration with transaction structuring and drafting, it enables parties to price risk accurately, negotiate effectively and avoid post-completion disputes.

When undertaken too late, too narrowly or without integration into transaction documentation, it may identify risk but fail to prevent it.

The way forward for businesses and investors

To maximize value and manage risk effectively in M&A transactions, businesses should:

- a. Plan for legal and regulatory requirements early;
- b. Conduct tailored and comprehensive legal due diligence;
- c. Use due diligence findings strategically in negotiations;
- d. Structure transactions to address identified risks; and
- e. Prepare for post-completion compliance and integration;

Completing an M&A transaction before securing the necessary competition approvals, commonly referred to as "gun-jumping", can carry legal risks. Businesses may face substantial fines, regulatory sanctions, and in extreme cases, the transaction could be partially or fully unwound. Early engagement with regulators is therefore critical to ensure compliance, avoid penalties, and protect the deal's value and integrity. For more information on merger control please refer to our [legal bulletin on "Merger thresholds in Kenyan Competition Law"](#).

Should you require support in conducting legal due diligence in M&A processes our team would be pleased to assist.

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