

ADDRESSING UNKNOWN LEGAL ISSUES IN M&A DUE DILIGENCE



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Activity in the M&A market has been on an upward trend the past two years, evidenced in particular by a growing volume of mega-mergers. As always when the market heats up, competition for the best deals compresses the time available to perform adequate due diligence.

While dealmakers are often confident their transactions will prove a winner, many would acknowledge the lingering unease that often settles in as the deal nears its close. Our recent survey of many of the nation's top dealmakers affirms these conclusions.

We commissioned SourceMedia Research/Mergers & Acquisitions to ask 255 senior dealmakers the issues typically mitigated by due diligence that nonetheless make them uneasy when closing the deal. “Financial and accounting errors” unsurprisingly took the top spot given the bottom line impact of an erroneous number or hastily placed decimal point. More than one-quarter (27.8 percent) of the respondents selected this choice as their number one concern.

What was rather surprising was that nearly as many dealmakers (21.6 percent) in the survey selected “unknown legal issues” as their primary concern. Despite thorough due diligence, there nonetheless remained enduring concerns over the possibility of a legacy liability or a legal obligation that somehow escaped scrutiny in the rush to close the deal.

Certainly, this apprehension among so many dealmakers would appear to argue for more than adequate legal due diligence both before and after the deal closes. The latter is especially important for complex compliance and operational reasons. There are numerous, critical post-merger steps that companies must address to ensure full legal compliance at the local, state, national, and global levels. Mistakes can result in fines, penalties, a loss of status and even business closure. Complicating this picture is that the law firms engaged in the initial due diligence typically have moved on to the next deal, leaving the acquirer to handle these issues directly.

The survey underscores other concerns that affect the post-transaction environment. For instance, more than 16 percent of respondents cited “operational problems” as their primary source of uneasiness when closing the transaction. Few people would disagree that post-merger integration is a determining factor in the ultimate success or failure of an M&A transaction. Similarly, the 8.6 percent of respondents naming “regulatory hurdles” as their top concern is strong evidence underlying the challenges in complying with current and evolving regulations.

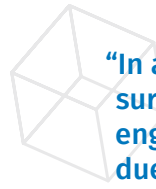
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In all cases, to reduce the element of surprise, it is recommended that dealmakers engage a provider for thorough and timely due diligence services. Equally important is to secure a provider that can offer consistent services, working directly with the law firms during the deal process and assisting the acquirer with its post-close needs. As the dealmakers in the survey are well aware, the difference between a good investment and a bad one can be a single piece of critical but overlooked information.

LEARN MORE

CT provides comprehensive, end-to-end due diligence services that begin in the earliest stages of an M&A transaction and continue on to ensure post-integration success and assured compliance.

Learn more about how CT can provide support for every stage of the deal, from [due diligence](#), to closing, to ongoing compliance.



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