

Not Boring: Gary M. Lawrence's DUE DILIGENCE IN BUSINESS TRANSACTIONS

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I doubt that most lawyers, accountants or businesspeople regard “due diligence” as an enthralling topic. I know I don’t. Yet, the recent two-volume book by Gary M. Lawrence, *DUE DILIGENCE IN BUSINESS TRANSACTIONS*, published by Law Journal Press, is an impressive piece of work that I didn’t find boring at all. Part of the reason, I suspect, is that the “due diligence” moniker is usually reserved for dusty back rooms and junior associates. This topic is a kind of poor stepchild. As a result, it often doesn’t get a thorough or strategic treatment. Clearly, it should. It’s an important topic.

This book was originally published in 1994, but has been updated or republished annually since then. The 2005 edition in two compression-bound volumes includes a huge compendium of information, much of which (I confess) was new and different to me. I suspect that results not from my own failings (though there are many), but rather from the comprehensive nature of this two-volume work. All but the most seasoned acquisition professionals will find some topics addressed in this book that he or she has never considered.

The author starts with some basics about the due diligence process, the transactions where due diligence is needed, basic terminology and the various standards that apply in conducting any due diligence review. The first chapter includes all this information and more, summarizing the various substantive matters (such as financial matters, litigation, environmental, licensing, employee and employee benefits and so on).

Chapter 2 turns to what may be an academic topic for some, dealing with the genesis of due diligence requirements, and the case law, Securities Act and Securities Exchange Act origins of the due diligence concept. Chapter 3 assembles a multi-disciplinary due diligence team, which takes a structured approach to the process. Chapter 4 then turns to the scope of due diligence review, and the assembly (and use and misuse) of a data room.

Plethora of Forms, and More

Each of these chapters contains helpful forms. Apart from the forms one would expect to see (such as due diligence questionnaires and checklists), a wealth of forms take an almost and second-by-second tour through the due diligence process. Frankly, experienced lawyers are likely to find some of the forms unhelpful or maybe a bit silly. For example, there are memos to employees, memos to use as document requests, and so on. On the whole, though, I was happy to skip over the few forms that I thought were unhelpful, and instead to focus on the dozens and dozens (if not hundreds) of forms that sparked some interest and made me think: “Hey, this would be an easier and more organized approach to handling this issue.”

Volume 2 of this set starts with Chapter 6 on company interviews and director, officer, shareholder and investor questionnaires. As you might expect, this chapter is heavily loaded with detailed questionnaires and checklists. Since having this many different forms can be a bit daunting, it’s nice that the author has clearly labeled everything, and tailored the questionnaires to be suitable for directors and officers, for nonemployee directors, for five-percent shareholders and so on. There are even some abbreviated questionnaires that are specifically designed for smaller transactions where the last decimal point need not be checked.

Chapter 7 deals with company records, and the forms and discussion here are nicely broken down among corporate items (such as minute books, resolutions, *etc.*), partnership documents and LLC documents. Then, company records are classified based on buy side and sell side representations. Even though some of these points may seem obvious, the volume of material that the author addresses is truly staggering. The author shows a reasoned and methodical approach to due diligence, which is clearly appropriate and, for more ad hoc practitioners, will be a breath of fresh air.

Chapter 8 deals with environmental due diligence; Chapter 9 with real and personal property due diligence; Chapter 10 with reviews of debt instruments; and then Chapter 11 turns to employee benefits and labor matters. I think Chapter 11 is a key chapter, since employee benefits and related matters often consume a great deal of time and can be a bit blinding. Interestingly, the author splits off as a separate chapter (Chapter 11A) immigration due diligence. As someone who rarely sees immigration issues, I found this especially helpful. After all, particularly in technology companies today, one sometimes feels that you need an immigration lawyer at your side to decipher various visas and the immigration status of employees.

The last four chapters of the books are Chapter 12, *Due Diligence Investigations and International Transactions*; Chapter 13, *Intellectual Property Due Diligence*; Chapter 14, *Insurance and Liability Coverage*; and Chapter 15, *Due Diligence Considerations in Light of Heightened National Security*. I think Chapters 12 and 15 are quite important, even though they may not apply to many transactions. The international chapter (Chapter 12) gives an overview of issues that might be considered, what it's like to represent companies doing business overseas, or non-U.S. businesses doing work in the United States. Methodology is considered, various U.S. restrictions (including Department of Commerce issues), and a good deal more. Significantly, the Foreign Corrupt Practices Act is addressed, and there are even guidelines for foreign local counsel.

Chapter 13 deals with the intellectual property process. Like the immigration chapter, I find the chapter on IP a real godsend. It is generally geared for someone who is a neophyte when it comes to IP issues. Here again, there is a helpful compendium of forms, guidelines and checklists. Chapter 14 regarding insurance is certainly not the most exciting of topics. Still, I found the risk evaluation information pretty helpful.

The End

That brings us to the last chapter, Chapter 15, dealing with due diligence considerations in light of heightened national security. I certainly wouldn't have thought of including this topic, but I think it is useful, dealing particularly with transactions involving foreign investors. I expect that someone involved in a significant transaction that has these components would probably need to search further than this chapter. Still, it alerted me to a number of things I had no idea about concerning security clearance issues, import and export compliance, determining what constitutes a threat to national security (and why it matters in the context of a corporate deal), anti-boycott and embargo issues, violations of sanctions and so on.

I plan to look to this set by Gary Lawrence from now on. When I do, it will make my own due diligence work a lot easier.

The set is available for \$249 from Law Journal Press (www.lawcatalog.com or by calling (800) 603-6571).

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