



THE LEGAL CHECKLIST

Are most business leaders enthusiastic at the prospect of paying for someone to review all of their corporate records as part of a legal audit? The probable answer: No! For most, this may feel like a legal colonoscopy. Having a consultant or—ugh—a corporate lawyer comb through corporate records looking for instances of missing documentation, human resources concerns, IP deficiencies, is often shifted to the bottom of the to-do list. Then when a critical deal presents itself, there is a frantic rush to close a sale or financing. The deal-driven urgency may leave the company with little time to fix gaps that may exist.

Identifying gaps in documentation or other concerns as a matter of course, before any urgent closing date is on the table, is the intelligent, cost-effective approach. Even better, a pro-active leader undoubtedly puts his or her company in a stronger leverage position, regardless of the nature of the deal. Fixing concerns such as uncertain or incomplete stock ownership records or questions pertaining to licensing rights to a company's core IP in advance of a deal will help minimize or prevent weakened negotiation leverage, pricing issues, and potential indemnity or holdback concerns as parties move toward a closing.

For example, a buyer or a third party making an investment in the company may discover in the course of due diligence that there are disputed or unclear claims regarding stock ownership. In that case, the stockholders with disputed claims may be difficult to locate on short notice. Another important issue is that stockholders may be emboldened to take aggressive positions regarding their equity ownership given the time pressure on the company and its reduced bargaining position.

Another frequent issue that the buyer or potential investor may discover is that there are open questions regarding whether the company has the IP ownership or IP protection it purports to have. This situation arises in many situations, such as when third parties who helped develop the company's product did not sign agreements with the proper assignment of IP provisions. This also arises when the company is using a third party's IP under an informal arrangement or a poorly written and ambiguous license agreement.

In these stock ownership and IP ownership issues, and in many cases when the company has not proactively addressed issues of vulnerability, the consequences to the company can be severe. The less drastic outcome is that the transaction closing is significantly delayed, and the buyer or investor may demand a price or company value reduction or a holdback. The more drastic outcome is that the buyer or investor walks away from the transaction.



Just as a medical colonoscopy has clear benefits to the patient, proactive lawyering can have a comparable positive effect. It may not be pleasant, but a company will likely discover potential areas of concern early. This allows a company to address them before they grow into problems that are expensive or impossible to fix.

As we noted in our February 2014 newsletter, a due diligence checklist for a specific deal must vary depending upon the nature of the transaction. We are always available to help tailor specific due diligence checklists for your particular deal. Nevertheless, as a service to our clients, we are pleased to offer a free Legal Checklist that a company can use to assist in the review of its records, preferably with the support of counsel. [The Legal Checklist can be downloaded here.](#)

We believe that this Legal Checklist can be useful to a company before undertaking any equity or debt financing, joint venture, company sale, or M&A activity. Of course, we recommend periodically using the Legal Checklist to help give your company comfort that its legal affairs are in order, event absent an upcoming deal.

We hope you find this useful.

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