

*"If opportunity doesn't knock, build a door" –*

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*Milton Berle*

## **LEGAL DUE DILIGENCE - OPEN THE HOOD BEFORE YOU BUY A CAR**

When a company (the "**Acquirer**") plans to purchase another company (the "**Target**"), it is important to research the integrity of the counterparty. A proper legal, operational and financial due diligence will assist the **Acquirer** to assess risks relating to the **Target**.

A due diligence can be compared to the purchase of a second-hand vehicle. You look at the vehicle's service history, mileage, fuel consumption, engine and interior before you decide to purchase it.

A due diligence limits the risks of an acquisition and alerts the **Acquirer** to issues such as outstanding tax debts, the expiry of agreements / permits / licenses, unresolved litigation matters, etc. A comprehensive due diligence investigation is especially important should the **Acquirer** propose to acquire the shares in the **Target**. When acquiring shares, the **Target** is acquired "with ball and all", meaning that the **Acquirer** takes on all the liabilities of the **Target**.

Traditionally a due diligence commences after both parties have signed a 'Letter of Intent'. Because a due diligence is such a thorough process, it is recommended that the **Target** gather all relevant and necessary information / documentation the moment the **Target** begins to market the business. During the due diligence investigation, the **Target** must attempt to continue on with business as usual to ensure continuity and retain satisfied clients.

The extent of the due diligence is based on many factors, including prior experiences, the size of the transaction, likelihood of closing a transaction, tolerance for risk, time constraints, cost factors, and resource availability. It is not possible to learn everything about a new business, but it is important to learn enough for the **Acquirer** to mitigate risks to an acceptable level and make good, informed business decisions before the acquisition.

*Law & Laughter*

Joke: What's the difference between a lawyer and a herd of buffalo?  
Answer: The lawyer charges more