BMA ADVOGADOS

Risk Oriented Legal Due Diligence: Strategy Beyond the Checklist

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Topics

Corporate and M&A BMA Review Due Diligence

Two common perceptions tend to shape how due diligence is understood in the corporate context. The first relates to the stage preceding a transaction, in which the company and its shareholders review contracts, processes, workflows, and internal policies. This phase represents a valuable opportunity to identify weaknesses, correct inconsistencies, and organize information that, in the ordinary course of business, often receives limited attention.

The second perception focuses on law firms and audit firms acting as advisors to the prospective buyer, typically associated with extensive checklists, questionnaires, and successive requests for clarification aimed at conducting the review. While these perceptions are not entirely unfounded, neither do they fully capture the nature or the potential of the due diligence process.

The traditional legal due diligence process—largely centered on document review and the use of checklists—is both important and necessary, but it cannot stand alone. An effective due diligence exercise begins with a careful understanding of the business and the transaction being contemplated. That understanding should then guide the analysis by organizing and cross-checking verifiable information in light of the strength and reliability of the available evidence.

The primary objective of due diligence is to identify transaction-related constraints and to map the target company's risks, contingencies, and liabilities. This stage in the transaction is essential, as it provides the buyer with the foundation for informed decision-making, including the structuring of representations and warranties, indemnification mechanisms, insurance coverage, and, ultimately, transaction pricing. It is often at this point that contingencies take concrete shape for the first time. Even where certain exposures are already known to the parties, only the structured organization of information and a critical review of the relevant documents allow their true scope and impact to be properly understood. In this way, due diligence gives form to what was previously diffuse, transforming operational and legal weaknesses into identifiable exposures that can be assessed and addressed.

For this reason, legal due diligence should not be conducted in isolation, but instead as part of the transaction as a whole and coordinated with the other workstreams involved, particularly the financial, accounting, and operational teams. Legal contingencies are rarely purely legal: they shape financial assumptions, influence economic projections, and affect how the transaction's value is perceived. An integrated approach makes it possible to assess whether a given exposure calls for specific contractual protections, structural adjustments, or a reassessment of the deal's underlying assumptions. Due diligence does more than reveal contingencies: it ensures they are properly understood, measured, and consciously reflected in the structuring of the transaction.

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