



Template due diligence document list (M&A transactions)

User notes

This Due Diligence Document List is a list of legal documents for review by potential purchasers of the shares or assets of a target company in a private M&A transaction. In the course of the purchaser's due diligence investigations, additional questions will inevitably arise, but this list is a good starting point.

We have highlighted in this list the sections which should be deleted if the transaction is structured as an asset (rather than a share) purchase.

Before presenting this list to a target company, purchasers need to review the list to ensure it covers all material matters. For example, if the purchaser is aware that the target has one or more material contracts, those contracts can be specifically requested in the relevant section.

We suggest that companies planning an exit transaction keep an electronic file of the documents in this list so that when requested, they can be provided quickly.

We suggest that companies arrange their document files in the order and using the headings and numbering used in this list. If the company has more than one document under any heading, list each document separately using consecutive numbering (e.g. the company may have more than one lease, if so the leases should be listed under 2.3 as, say, 2.3.1, 2.3.2 and so on).

If there are unwritten agreements or arrangements, descriptions of those unwritten

agreements/arrangements should be provided.

If the company has subsidiaries, the documents listed should be provided for each subsidiary (to the extent those documents exist).

using this template

The **User Notes** and the statements in the footer below (all marked in red) are included to assist in the preparation of this document. They are for reference only – you should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- ▲ the requested details need to be inserted
- ▲ there are different options for you to consider within a clause
- ▲ the whole clause is optional and you need to consider whether to include it, based on the company's circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and ensure that all square brackets have been deleted.

If you delete any questions, remember to cross reference check the document.

[INSERT NAME OF COMPANY]

(Company)

Due diligence document list

Definitions: In this document list the following words have the following meanings:

Business	<i>[the business of the Company]</i> [Or – delete as applicable] <i>[describe the business of the Company]</i> [User note: If the purchaser is interested in buying only part of the business of the Company, a description of the business being acquired needs to be inserted. If the Purchaser is acquiring all of the assets of the Company, use the first option.]
Company	<i>[insert full legal name of target/selling company]</i> Limited, and includes each member of the Group
Group	the Company and each of its subsidiaries
[Subsidiaries]	<i>[list full legal name of each subsidiary if any]</i> [User note: delete if no known subsidiary.]

No.	Document	Document reference/response
1 Corporate organisation matters		
1.1	Up-to-date organisational chart of all companies forming the Group	
1.2	<p><i>Certificate of incorporation for each company in the Group</i></p> <p>[User note: Delete this question if your transaction is structured as an asset sale.]</p>	
1.3	<p><i>Constitution for each member of the Group</i></p> <p>[User note: Delete this question if your transaction is structured as an asset sale.]</p>	
1.4	<p><i>The names of each director of the Company, details of the remuneration payable to them in the current financial year, and copies of any agreements or other arrangements setting out the terms of appointment of each director</i></p> <p>[User note: Delete this question if your transaction is structured as an asset sale.]</p>	
1.5	<p><i>Share register for each member of the Group</i></p> <p>[User note: Delete this question if your transaction is structured as an asset sale.]</p>	

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No.	Document	Document reference/response
	<i>as an asset sale.</i>	
1.6	<i>Register of directors for each member of the Group</i> [User note: Delete this question if your transaction is structured as an asset sale.]	
1.7	<i>Board papers for the previous five years for each member of the Group</i> [User note: Delete this question if your transaction is structured as an asset sale.]	
1.8	<i>Minutes of meetings and written resolutions of the board of directors and board committees for the last five years, for each member of the Group</i> [User note: Delete this question if your transaction is structured as an asset sale.]	
1.9	<i>Shareholders' agreement(s) for each member of the Group</i> [User note: Delete this question if your transaction is structured as an asset sale.]	
1.10	<i>Agreements or arrangements for the issue of shares or other securities</i>	

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No.	Document	Document reference/response
	<p><i>in any member of the Group</i></p> <p>[User note: Delete this question if your transaction is structured as an asset sale.]</p>	
<p>2 Properties and leases</p>		
2.1	<p>A summary description of all office or service facilities, warehouses, buildings, vacant land or other buildings or premises owned, leased or otherwise used or occupied by the Company including:</p> <ul style="list-style-type: none"> ▲ current use ▲ the nature of the interest in the property (e.g. owned, leased, co-owned) ▲ the address of the property 	
2.2	Certificates of title for each property owned by the Company	
2.3	Lease agreements (together with all variations, assignments and renewals) for each property occupied by the Company	
2.4	Licences to occupy for each property occupied by the Company under licence	

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No.	Document	Document reference/response
2.5	All easements, concessions, mortgages, deeds of trust, security agreements (or other encumbrances) and restrictions on use relating to the properties	
2.6	Notices, claims, demands or disputes affecting any property	
3 Personal property, plant and equipment		
3.1	<p>All leases or rental agreements or other similar contracts to which the Company is a party relating to assets having a value in excess of \$[●]</p> <p><i>[User note: Insert here a materiality threshold. For example, you may not be concerned about seeing the lease for the printer, but you would want to see the lease agreement for a substantial piece of manufacturing kit.]</i></p>	
3.2	Asset register	
3.3	A list and description of all shares or other securities (including preference shares, convertible notes, debentures, or options) held by the Company in any unrelated company	
3.4	Warranties, guarantees or similar relating to any assets having a value	

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No.	Document	Document reference/response
	in excess of \$[●]	
4 Material contracts and arrangements		
4.1	Standard form customer agreements (including EULAs)	
4.2	<p>[Agreements with the Company's major customers (being customers who will or may pay the Company \$[●] or more in any financial year)]</p> <p>[Or – delete as applicable] [Agreements with the Company's major customers. Please also indicate the materiality threshold or other relevant factors you have used to determine the "major" customers]</p>	
4.3	<p>[Agreements with the Company's major suppliers (being suppliers who the Company will or may pay \$[●] or more in the current or any future financial year)] [Or – delete as applicable] [Agreements with the Company's major suppliers. Please also indicate the materiality threshold or other relevant factors you have used to determine the "major" suppliers]</p>	
4.4	Reseller, agency, distributor or similar agreements	
4.5	Joint venture or partnership agreements	

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No.	Document	Document reference/response
4.6	Confidentiality agreements	
4.7	Agreements for the sale or purchase of assets or businesses outside the ordinary course in the last five years and any related dispute, outstanding liability or continuing issue	
4.8	Agreements under which the Company has a right to obtain shares or other securities in an unrelated company	
4.9	Agreements with any related parties, e.g. any current or former director, shareholder or employee (or with any company or other entity in which that person has an interest) other than employment contracts (covered in section 8)	
4.10	All consulting agreements to which the Company is a party	
4.11	Any agreements which include a restriction on the ability of the Company to compete in any line of business with any person or commitment by the Company to continue in any line of business	
4.12	Agreements under which the Company indemnifies any other party	
4.13	All contracts for the manufacture of goods or services by the Company	

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No.	Document	Document reference/response
	involving more than \$[●] per year	
4.14	Agreements with any local or foreign government, governmental body or any other government agency	
4.15	Details of any unwritten contractual arrangements or partially documented contractual arrangements which govern any relationship of the Company	
4.16	Any other contracts that are material to the Business	
4.17	A description of any facts or circumstances which may give (or have given) rise to any breach, cancellation or termination of, or a claim for damages or loss under, any of the agreements, contracts, arrangements and understanding referred to in this section 4	
5 Intellectual property (including patents, trade marks and software)		
5.1	Details and a brief description of all intellectual property used or relied upon by the Business, and details of the basis on which that intellectual property is used (e.g. owns the property or licences it from a third party)	

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No.	Document	Document reference/response
5.2	Details of any arrangements with any party relating to intellectual property used or relied upon by the Business (e.g. licence agreements)	
5.3	<p>All patents and applications for patents owned by the Company or used in the Business, including:</p> <ul style="list-style-type: none"> ▲ a brief description of their use ▲ country of registration ▲ registration number ▲ date of issuance of registration 	
5.4	<p>Details of all trade marks and trade names owned by the Company or used in the Business including:</p> <ul style="list-style-type: none"> ▲ a copy of all trade marks and service marks ▲ details of all trade names ▲ details of all trade mark and service mark registrations, including a brief description of their use, registration number and date of issuance of registration 	
5.5	All agreements assigning IP to the Company (including from founders,	

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No.	Document	Document reference/response
	<p>present and former employees, present and former contractors and any other person or entity that has created IP for the Company)</p> <p>[User note: The assignment of IP from an employee or contractor to the Company may be included in the employee's employment agreement, or the contractor's service agreement. If so, provided those agreements are included in section 8.2 they do not also need to be included here.]</p>	
5.6	Licence agreements relating to the use by the Company of third party IP, including software licences	
5.7	Licence agreements relating to the use by third parties of the Company's IP, including software licences	
5.8	Agreements relating to research and development, shared know-how or joint development agreements	
5.9	Any other agreements or arrangements material to the Company's IP position	
5.10	Any claim or correspondence relating to any alleged infringement of any intellectual property rights or any confidentiality agreement	

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No.	Document	Document reference/response
6 Regulatory matters		
6.1	All government and regulatory permits, licences, approvals, consents and similar rights of the Company	
7 Borrowings		
7.1	<p><i>Loan agreements, credit agreements, overdraft arrangements, facility agreements, promissory notes and letters of credit</i></p> <p>[User note: Delete this question if your transaction is structured as an asset sale.]</p>	
7.2	Any security the Company has given over its property (including freehold and leasehold land), assets, book debts or any other assets	
7.3	Any letters of comfort, guarantees, performance bonds, letters of credit, indemnities or similar instruments given by or for the benefit of the Company	
7.4	<p><i>Any forex hedging documentation</i></p> <p>[User note: Delete this question if your transaction is structured as an asset sale.]</p>	

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No.	Document	Document reference/response
7.5	<p><i>Any other agreements between the Company and any bank or lender</i></p> <p>[User note: Delete this question if your transaction is structured as an asset sale.]</p>	
7.6	<p><i>A description of any facts or circumstances which may give (or have given) rise to any breach, cancellation or termination of, or a claim for damages or loss under, any of the agreements referred to in this section 7</i></p> <p>[User note: Delete this question if your transaction is structured as an asset sale.]</p>	
8 Employees and employee benefit plans		
8.1	The names of management and their compensation at present and for the previous financial year	
8.2	Agreements used for employees and contractors engaged in the Business. If different forms of the agreement have been used, please provide each form of agreement used	

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No.	Document	Document reference/response
8.3	<p>A schedule of all employees, showing:</p> <ul style="list-style-type: none"> ▲ name ▲ occupation ▲ location ▲ any accrued employee benefit entitlements, for example, annual and sick leave, and any redundancy compensation ▲ the form of employment agreement used 	
8.4	All bonus and deferred or incentive compensation programmes and practices involving any employee of the Company	
8.5	Details of any loans to employees or directors including amounts and terms of those loans together with any security for those loans	
8.6	A list and description of the current status of all complaints or grievances from current or former employees involving the Company lodged during the past three years	
8.7	Copies of all employee benefit plans providing medical and welfare benefits covering any employee or former employee of the Company	

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8.8	Copies of all bonus, share option and deferred or incentive compensation programmes and practices involving any employee of the Company	
8.9	Copies of any employee handbooks, or similar, describing employee benefits, the hiring process, salaries, wages and holiday policies	
8.10	A description of all other benefits not included above involving any employee of the Company (e.g. company cars, use of company facilities by employees, KiwiSaver contributions)	
8.11	Copies of all severance agreements to which the Company is a party	
8.12	Copies of all secrecy, non-competition, patent assignment or similar agreements between the Company and any of its present or former employees	
9 Health and safety		
9.1	Details of any policies and procedures in place to ensure compliance with the Health and Safety at Work Act 2015	
9.2	Details of any notifiable events reported to a regulator	

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No.	Document	Document reference/response
10 Accident compensation <i>[User note: Delete this section if your transaction is structured as an asset sale.]</i>		
10.1	<i>All information relating to the ongoing liability of the Company for ACC premiums, and the experience rating of the Company (including the total amount of ACC premiums paid by the Company in the last 3 years, and the extent of any loading or discounting of those premiums)</i>	
10.2	<i>A schedule detailing the claims for work injuries made by employees of the Company or re-attributed to the Company, and any payments made by ACC in respect of those claims, in the last 5 years</i>	
11 Insurance		
11.1	A schedule of current insurance policies, including summaries of cover for each policy (your insurance broker can provide this)	
11.2	A schedule of all major insurance claims and any associated costs over the last three years	
11.3	Details of any correspondence or communications in the previous 2 years with any of the Company's insurers or brokers concerning any proposal by an insurer to cancel, not renew or materially vary	

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No.	Document	Document reference/response
	(including any material variation to price) any insurance policy	
12 Disputes and litigation		
12.1	A summary of each threatened or actual legal claim, law suit, arbitration, investigation or dispute involving the Company (brought either by or against the Company)	
12.2	Any legal advice received by the Company relating to the matters described in 12.1	
12.3	A list of litigation settlements or any waiver or agreement cancelling any claim over the past three years	
13 Scope of activities		
13.1	A list of all jurisdictions outside New Zealand in which the Company is registered or qualified to do business. Provide copies of the applicable registration and qualification certificates	

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