

TABLE OF CONTENTS

Acknowledgments.....	v
Introduction	vii
Preface	ix

CHAPTER 1

Introduction to Due Diligence

§ 1.01	Introduction to Due Diligence	1-3
§ 1.02	Key Terms and Concepts	1-7
§ 1.03	Selected Benefits of Due Diligence.....	1-10
	[1] Appropriate Disclosure	1-10
	[2] Transaction Evaluation.....	1-10
	[3] Limitation of Liability.....	1-10
§ 1.04	Selected Elements of a Typical Due Diligence Process	1-11
	[1] Staffing the Due Diligence Team	1-11
	[2] Selected Diligence Team Responsibilities	1-11
	[3] Timeline and Budget	1-12
	[4] Documenting Due Diligence.....	1-12
	[5] Authoritative and Informative Guidance	1-13
§ 1.05	Guidelines for the Due Diligence Process.....	1-16
	[1] Overview	1-16
	[2] Scope	1-16
	[a] Entity and Affiliate Overview....	1-16
	[i] Organization	1-16
	[ii] Company and Industry Profile.....	1-17
	[b] Organizational Records	1-17
	[i] Charter Documents.....	1-17

DUE DILIGENCE

[ii]	Secondary Governance Documents	1-17
[iii]	Proceedings of Equity Holders and Governance Bodies	1-17
[iv]	Records and Ledgers	1-18
[v]	Jurisdictional Qualifications	1-18
[vi]	Jurisdictional Status: Good Standing and Tax Status	1-19
[vii]	Ownership Structure	1-19
[c]	Financial/Accounting	1-19
[i]	Indebtedness	1-19
[ii]	Liens and Encumbrances	1-20
[iii]	Investment Holdings	1-20
[d]	Real and Personal Property	1-20
[i]	Real Property	1-20
[ii]	Equipment and Other Personal Property	1-21
[e]	Legal Proceedings	1-21
[f]	Environmental Compliance	1-21
[g]	Selected Business Practices	1-21
[i]	Sales and Distribution Procedures	1-21
[ii]	Product Liability Procedures	1-22
[iii]	Standard Form Purchase and Sales Orders	1-22
[iv]	Sales Agents and Representatives	1-22
[v]	Warranties and Related Claims	1-22
[vi]	Material Contracts and Other Agreements	1-22
[h]	Regulatory Compliance	1-22
[i]	Employment/Labor Matters	1-23
[i]	Management	1-23
[ii]	Benefit Plans	1-23
[iii]	Equal Employment Opportunities	1-23
[iv]	Health and Safety	1-23
[j]	Management	1-23
[i]	Selected Employment Contracts	1-23

TABLE OF CONTENTS

xiii

	[ii]	Selected Consulting Agreements	1-24
	[iii]	Compensation Schedule	1-24
	[iv]	Related Party Transactions	1-24
	[k]	Intellectual Property	1-24
	[i]	Summary IPR Schedule	1-24
	[ii]	Regulatory Filings	1-24
	[iii]	Licenses	1-24
	[l]	Other Considerations	1-25
[3]		Checklist: Potential Topics	1-25
	[a]	Selected Entity Records	1-25
	[b]	Financial and Accounting	1-26
	[c]	Products and/or Services	1-29
	[d]	Sales Practices	1-30
	[e]	Management and Labor Relations	1-30
	[f]	Plants, Properties, and Equipment	1-31
	[g]	Production Processes	1-31
	[h]	Research and Development	1-32
	[i]	Internal Controls	1-32
[4]		Role of Principals in Negotiated Transactions Due Diligence	1-32
	[a]	Overview	1-32
	[b]	Checklist: Potential Due Diligence Questions for Negotiated Transaction Principals	1-33
	[c]	Focus of Principal Due Diligence: Business and Operations	1-36

CHAPTER 2

Authoritative and Informative Guidance Regarding “Reasonable” Due Diligence

§ 2.01	Overview	2-2
§ 2.02	Section 11: “Reasonable Investigation” Defense	2-4
	[1] Overview	2-4
	[2] No Affirmative Due Diligence Defense for Securities Issuers Under Section 11	2-5

DUE DILIGENCE

	[3]	Section 11 Affirmative Due Diligence Defense for Underwriters, Experts and Others	2-6
	[4]	Prudent Person Standard	2-8
	[5]	Permutations of Affirmative Due Diligence Defenses Under Section 11	2-8
	[a]	Non-Experts/Non-Expertised Portions.	2-8
	[b]	Experts/Expertised Portions	2-9
	[c]	Non-Experts/Reliance upon Expertised Material	2-9
§ 2.03		The Origins of Judicial Guidance Regarding “Reasonable Investigation”: <i>Escott v. BarChris</i>	2-10
	[1]	Overview	2-10
	[2]	Due Diligence Conduct	2-11
	[3]	Underwriter Defendants.	2-12
	[4]	Underwriters’ Counsel.	2-13
	[5]	Same Standard but Higher Bar for Insiders in Establishing Reasonableness	2-13
	[6]	In-House Counsel.	2-16
	[7]	Reasonable Independent Investigation.	2-17
§ 2.04		Underwriter Due Diligence.	2-19
	[1]	Context: The Definitive Consideration	2-19
	[2]	Verification vs. Reliance	2-22
	[3]	Cumulative Due Diligence	2-24
	[4]	Expertised and Non-Expertised Material	2-25
	[5]	Due Diligence Roles of Lead and Participating Underwriters.	2-26
	[6]	Rule 176 and the “Aircraft Carrier” Release	2-28
§ 2.05		Due Diligence Defense: Selected Parties.	2-31
	[1]	Experts and Attorneys	2-31
	[2]	Underwriters.	2-32
	[3]	Selected Insiders.	2-36
	[4]	Special Situations.	2-38
§ 2.06		Derivative Liability Claims in Due Diligence.	2-41
	[1]	Overview	2-41

TABLE OF CONTENTS

xv

[2]	Selected Derivative Claims	2-41
[a]	Seller-Based Claims Under Section 12(a)(2)	2-41
[i]	Proximate Cause Test.	2-43
[ii]	Substantial Factor Test.	2-44
[iii]	“Reasonable Care” Defense	2-47
[b]	<i>Scienter</i> -Based Claims Under Section 17(a)	2-49
[c]	Aider-and-Abettor-Based Claims Under Section 10(b) and Rule 10b-5 of the Exchange Act.	2-50
	[i] Overview.	2-50
	[ii] Attorneys as Aiders and Abettors	2-51
[3]	The Supreme Court Speaks.	2-53
[4]	Due Diligence in Section 10(b) and Section 17(a) Claims.	2-55
§ 2.07	SEC Administrative Proceedings	2-59
§ 2.08	Other Potential Bases of Due Diligence-Based Claims	2-63
§ 2.09	Sarbanes-Oxley Act and Due Diligence	2-66
	[1] Overview	2-66
	[2] ICFR.	2-67
	[3] Contents of Report.	2-68
	[4] Selected Guidelines	2-68
	[5] <i>Checklist</i> : SOX Internal Control Due Diligence	2-69

CHAPTER 3

The Due Diligence Team

§ 3.01	Overview	3-2
[1]	The Multi-Disciplinary Due Diligence Team and the Relevance of Context.	3-2
[2]	How to Assess Context	3-3
	[a] Finance/Accounting	3-3
	[b] Federal, State, Local and Foreign Taxes.	3-5
	[c] Risk Management Practices/ Insurance Policies	3-6

DUE DILIGENCE

	[d] Human Resources	3-7
	[e] Environmental Hazards and Regulatory Compliance	3-8
	[f] Real and Personal Property	3-9
	[g] Business, Industry, and Competitive Position	3-10
§ 3.02	Subject Matter Experts	3-12
	[1] Overview	3-12
	[2] <i>Form</i> : Request for Proposal: Subject Matter Expert	3-13
	[3] <i>Form</i> : Subject Matter Expert Confidentiality Agreement	3-19
§ 3.03	Coordination and “Cross-Pollination”	3-22
	[1] Overview	3-22
	[2] <i>Form</i> : Diligence Team “Kickoff” Memorandum	3-23
§ 3.04	<i>Form</i> : Physical Data Room Team Protocols	3-27

CHAPTER 4**Tailoring Due Diligence**

§ 4.01	Overview	4-2
§ 4.02	Getting Started	4-4
	[1] Overview	4-4
	[2] Time and Responsibility Schedules	4-4
	[3] <i>Form</i> : Short Form Timeline: Traditional Public Offering of Securities	4-5
	[4] <i>Form</i> : Detailed Time and Responsibility Schedule: Traditional Public Offering of Securities	4-6
	[5] <i>Form</i> : Summary Time and Responsibility Schedule: Public Tender Offer	4-12
§ 4.03	Selected Guidance for Those New to the Due Diligence Process	4-17
	[1] Overview	4-17
	[2] <i>Selected Guidance</i> : The Diligence Process	4-17
§ 4.04	Kick-Off: Due Diligence Request Lists	4-30
	[1] Overview	4-30
	[2] Forms of Due Diligence Request List	4-31
	[3] <i>Form</i> : Sample Generic Due Diligence Request List	4-31

TABLE OF CONTENTS

xvii

	[4] Checklist: Summary Business Due Diligence Checklist for Negotiated Transactions	4-45
	[5] Form: Prioritized Financial and Accounting Due Diligence Checklist . . .	4-59
§ 4.05	Form: Due Diligence Document Request List for Medical Facility Acquisition	4-66
§ 4.06	Form: Abbreviated Preliminary Due Diligence Request List for Negotiated Acquisition	4-84
§ 4.07	Form: Alternative Form Initial Due Diligence Request List	4-91
§ 4.08	Checklist: Selected Due Diligence Request Guidelines	4-101
§ 4.09	Data Rooms	4-108
	[1] Physical vs. Virtual Data Rooms	4-108
	[2] Data Room Mechanics and Protocols . . .	4-109
	[3] Form: Short Form Data Room Index . . .	4-110

CHAPTER 5

“Data Trails” in Documenting Due Diligence

§ 5.01	Introduction	5-3
	[1] Guidance Regarding Due Diligence Documentation	5-3
	[2] Selected Examples of Optional Documentation	5-4
	[3] Tiers of Work Product	5-5
	[a] Tier One: Questionnaires, Notes, Checklists, Manuals, Guidelines, etc.	5-5
	[b] Tier Two: Preliminary and Periodic Diligence Memoranda	5-5
	[c] Tier Three: Diligence Compendia	5-6
	[d] Tier Four: Principal-Oriented Memoranda in Negotiated Transactions	5-6
	[4] Graphic: Due Diligence Work Product Tiers	5-8
§ 5.02	Tier Two Work Product	5-9

	[1]	<i>Form: Sample Preliminary Due Diligence Memorandum (Negotiated Transaction)</i>	5-9
	[2]	<i>Form: Sample Preliminary Data Room Survey Report (Negotiated Transaction)</i>	5-14
	[3]	<i>Form: Sample Subject Matter Specialist Memorandum (Competition and Antitrust)</i>	5-27
	[4]	<i>Form: Sample Subject Matter Specialist Memorandum (Environmental Matters)</i>	5-33
	[5]	<i>Form: Sample Subject Matter Specialist Memorandum (Manufacturing Facilities)</i>	5-37
§ 5.03		Tier Three Work Product	5-47
	[1]	<i>Form: Sample Negotiated Transaction Diligence Compendium</i>	5-47
	[2]	<i>Form: Sample Outline of an Underwriter Sales Force Memorandum (Securities Offering)</i>	5-75
	[3]	<i>Form: Sample Outline for Underwriter Internal Review Committee Memorandum (Securities Offering)</i>	5-78
§ 5.04		Tier Four Work Product	5-80
	[1]	<i>Form: Sample Executive Summary (Negotiated Transaction Preliminary Due Diligence Findings)</i>	5-81
	[2]	<i>Form: Sample Summary of Legal Due Diligence Findings in a Negotiated Transaction (Long Form)</i>	5-87
	[3]	<i>Form: Sample Executive Summary of Legal Due Diligence Findings (Short Form)</i>	5-100
§ 5.05		Legal Opinions/Representation Letters, Comfort Letters, and Officer's Certificates	5-106
	[1]	Legal Opinions	5-106
	[a]	Overview	5-106
	[b]	<i>Checklist: Transactional Legal Opinion Due Diligence Support</i>	5-107
	[c]	<i>Form: Sample Due Diligence Support Memorandum for Legal Opinion (Securities Offering)</i>	5-111

TABLE OF CONTENTS

xix

	[d] <i>Checklist: Due Diligence Support</i> for Model Legal Opinion	5-115
[2]	Accountants' Comfort Letters	5-133
	[a] Overview	5-133
	[b] <i>Form: Sample Accountant's</i> Comfort Letter in Securities Offering	5-133
[3]	Officers' Certificates	5-138
	[a] Overview	5-138
	[b] <i>Form: Sample Officers'</i> Certificate (Securities Offering)	5-138
§ 5.06	Special Considerations: Legal Issues Associated with VDRs, Electronic Recordings, and Confidential Information . . .	5-140
	[1] Introduction	5-140
	[2] VDR Metadata	5-140
	[3] Electronic Recording of Conversations by Non-Attorneys	5-141
	[a] Overview	5-141
	[b] Use of Electronic Recordings	5-141
	[c] Remedies, Damages and Criminal Penalties	5-142
	[4] Additional Considerations for Attorney Actors	5-143
	[a] Overview	5-143
	[b] State Law and Ethical Standards . . .	5-143
	[5] Protection of Confidential Information	5-144
	[a] Overview	5-144
	[b] <i>Form: Confidentiality and</i> Non-Disclosure Letter Agreement	5-145

Chapters 6 through 15 and the Index appear in Volume 2

TABLE OF CONTENTS

CHAPTER 6

Due Diligence Meetings, Interviews, and Questionnaires

§ 6.01	Introduction	6-2
	[1] Overview	6-2
	[2] Meetings and Interviews	6-2
	[3] Questionnaires	6-4
	[4] Conclusion	6-6
§ 6.02	<i>Form: Management Session Agenda</i>	6-7
§ 6.03	<i>Form: Independent Auditor Session Agenda</i>	6-10
§ 6.04	<i>Form: Legal and Regulatory Session Agenda</i>	6-14
§ 6.05	<i>Form: Director and Officer Information Tracker</i>	6-20
§ 6.06	<i>Form: Director, Officer, and Beneficial Owner Questionnaire: Securities Offering</i>	6-35
§ 6.07	<i>Form: Director, Officer, and Beneficial Owner Questionnaire: Periodic Reports</i>	6-66
§ 6.08	<i>Form: Non-Employee Directors Information Tracker</i>	6-99
§ 6.09	<i>Form: Non-Employee Director Questionnaire: Securities Offering</i>	6-107
§ 6.10	<i>Form: Beneficial Owner Tracker</i>	6-139
§ 6.11	<i>Form: Beneficial Owner Questionnaire: Periodic Reports</i>	6-142
§ 6.12	<i>Form: Selling Shareholder Questionnaire: Securities Offering</i>	6-166
§ 6.13	<i>Form: Combined Short-Form Questionnaire for Directors, Officers, and Beneficial Owners</i>	6-192
§ 6.14	<i>Form: Investor Suitability Questionnaire: Private Placement of Securities</i>	6-207

CHAPTER 7

Documentary Due Diligence

§ 7.01	Introduction	7-2
	[1] Overview	7-2
	[2] Use of Forms and Checklists to Facilitate Documentary Due Diligence	7-3
	[3] “Sell-Side” Documentary Due Diligence in Negotiated Transactions	7-4
	[4] Target Company Document Record Retention Challenges	7-5
	[5] Target Company Sample Record Retention Policy	7-5
§ 7.02	<i>Checklist:</i> Selected Examples of Documentary Due Diligence	7-15
§ 7.03	Organizational Document Review	7-19
§ 7.04	Equity Issuances, Minutes, and Resolutions	7-21
§ 7.05	<i>Form:</i> Corporate Organizational Records Review	7-23
§ 7.06	<i>Form:</i> Partnership Organizational Records Review	7-29
§ 7.07	<i>Form:</i> LLC Organizational Records Review	7-33
§ 7.08	<i>Checklist:</i> Corporate Resolutions Review	7-36
§ 7.09	<i>Checklist:</i> Meeting Minutes Review	7-38
§ 7.10	<i>Form:</i> Short-Form Board and Committee Meeting Analysis	7-44
§ 7.11	<i>Form:</i> Litigation and Related Matters Review Worksheet	7-48
§ 7.12	<i>Form:</i> Short-Form Transaction Documents Review	7-51
§ 7.13	<i>Form:</i> Short-Form Licenses Review	7-54
§ 7.14	<i>Form:</i> Short-Form Material Agreements Review	7-57
§ 7.15	<i>Form:</i> Antitrust Compliance Questionnaire	7-61
§ 7.16	<i>Form:</i> Organizational Records Checklist	7-65
§ 7.17	<i>Checklist:</i> Example of Regulated Company Documentary Due Diligence	7-72
§ 7.18	Franchised Business Documentary Due Diligence	7-77
§ 7.19	Due Diligence for Letters of Intent	7-80
§ 7.20	<i>Guidance:</i> Financial and Accounting Documentary Due Diligence	7-82

CHAPTER 8

**Environmental and Sustainability
Due Diligence**

§ 8.01	Introduction	8-2
§ 8.02	Environmental Due Diligence	8-4
	[1] Overview of the Regulatory Regime	8-4
	[a] Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).	8-4
	[b] Resource Conservation and Recovery Act (RCRA).	8-5
	[c] Emergency Planning and Community Right-to-Know Act (EPCRA)	8-5
	[d] Occupational Safety and Health Act (OSHA) Hazard Communication Standard.	8-6
	[e] Federal Water Pollution Control Act (Clean Water Act)	8-6
	[f] Clean Air Act (CAA).	8-6
	[2] Bases of Liability.	8-7
§ 8.03	Sustainability Due Diligence	8-9
	[1] Introduction	8-9
	[2] Selected Guidance	8-9
§ 8.04	Environmental Due Diligence: Process and Methodology	8-11
	[1] Overview	8-11
	[2] Data Review and Analysis	8-13
	[3] Phases of Environmental Audit	8-14
§ 8.05	<i>Checklist:</i> Sample Environmental Due Diligence.	8-16
§ 8.06	<i>Form:</i> Sample Facility-Based Environmental Questionnaire	8-22
§ 8.07	<i>Form:</i> Environmental Due Diligence Workform.	8-27
§ 8.08	<i>Form:</i> Sample Short-Form Environmental Survey	8-36
§ 8.09	Greenhouse Gas Emissions Due Diligence.	8-39
§ 8.10	<i>Checklist:</i> Short-Form Sustainability	8-42
§ 8.11	<i>Form:</i> Preliminary Environmental Impact Questionnaire	8-46
§ 8.12	<i>Form:</i> California Environmental Quality Act (CEQA) Sample Checklist	8-49

§ 8.13	EPA Energy Star Program	8-56
§ 8.14	<i>Form</i> : European Union Environmental and Sustainability Checklist	8-59
§ 8.15	<i>Checklist</i> : Sample Government Regulations Review: Sustainable Development.	8-63

CHAPTER 9

**Real and Personal Property
Due Diligence**

§ 9.01	Overview	9-2
	[1] Real Property vs. Personal Property	9-2
	[2] Tailored Scope of Review	9-3
	[3] Real Property Due Diligence: Surveys, Title Records, and Insurance	9-5
	[a] Surveys	9-5
	[b] Title Review	9-5
	[c] Title Insurance	9-5
	[d] Visual Artists Rights Act Considerations	9-6
	[4] Personal Property Due Diligence	9-7
§ 9.02	Real Property Due Diligence: Preliminary Considerations.	9-9
	[1] Planning and Organizing	9-9
	[2] Local Counsel.	9-10
	[3] Appraisals.	9-10
§ 9.03	<i>Form</i> : Real Property: Fee Interest Workform . . .	9-13
§ 9.04	<i>Form</i> : Real Property: Leasehold Interest Workform	9-21
§ 9.05	<i>Form</i> : Real and Personal Property: Due Diligence Process Checklist.	9-28
§ 9.06	<i>Form</i> : Real Property: Mortgage and Encumbrance Workform	9-35
§ 9.07	<i>Form</i> : Real Property: Real Estate Investment Trust (REIT) Checklist.	9-39
§ 9.08	<i>Form</i> : Leased Personal Property Checklist . . .	9-43
§ 9.09	<i>Guidelines</i> : Selected Real Property Due Diligence Requirements for a Government Agency Sponsored Transaction	9-47

CHAPTER 10**Lending Transaction
Due Diligence**

§ 10.01	Introduction to Lending Related Due Diligence	10-1
[1]	Overview	10-1
[2]	Selected Contexts and Concepts	10-3
[a]	Loan Types	10-3
[b]	Basic Terms	10-5
[3]	Selected Elements of Lending Transaction Due Diligence	10-8
§ 10.02	Debt Instruments in Context	10-11
§ 10.03	<i>Form</i> : Simple Loan Review Workform	10-14
§ 10.04	<i>Form</i> : Industrial Development Bond Workform	10-22
§ 10.05	<i>Form</i> : Customer/Vendor Credit Workform	10-28

CHAPTER 11**Labor and Employment Due Diligence**

§ 11.01	Labor and Employment Due Diligence	11-2
[1]	Overview	11-2
[2]	Selected Considerations	11-3
§ 11.02	Regulatory Framework: Retirement Plans	11-6
[1]	Introduction	11-6
[2]	ERISA	11-6
[3]	Other Regulations	11-8
§ 11.03	Introduction to Employee Benefit Plan Due Diligence	11-10
[1]	Overview	11-10
[2]	Defined Benefit Plans	11-10
[3]	Defined Contribution Plans	11-12
[4]	Non-Qualified Plans	11-12
[5]	Selected Due Diligence Considerations	11-13
§ 11.04	Employee Stock Ownership Plan Due Diligence	11-14
[1]	ESOP Overview	11-14
[a]	Introduction	11-14
[b]	Selected Benefits of ESOPs	11-15

DUE DILIGENCE

	[c] Selected Structural Considerations	11-16
	[2] Selected ESOP Cases	11-17
	[3] <i>Form</i> : Checklist for ESOP Due Diligence	11-19
§ 11.05	<i>Form</i> : Short-Form Checklist for Employee Benefit Plan Due Diligence	11-23
§ 11.06	<i>Form</i> : Long-Form Checklist for Employee Benefit Plan Due Diligence	11-26
§ 11.07	<i>Form</i> : Management Questionnaire: Employee Benefits Plans	11-32
§ 11.08	<i>Form</i> : Employee Benefit Plan Review Workform	11-37
§ 11.09	<i>Form</i> : Employment Agreement Review Workform	11-44
§ 11.10	<i>Form</i> : Employment Matters Management Questionnaire: Organized Labor Workforce	11-48
§ 11.11	Americans with Disabilities Act Due Diligence	11-61
	[1] Overview	11-61
	[2] The Meaning of “Disability”	11-62
	[3] The Meaning of Prohibition and Discrimination	11-62
	[4] Employers Subject to the ADA	11-63
	[5] Qualified Individuals for Purposes of the ADA	11-63
	[6] Selected Employer Duties Under the ADA	11-63
	[7] Exceptions for Undue Employer Hardship	11-64
	[8] Substance Abuse and Testing	11-65
	[9] ADA Due Diligence	11-65
§ 11.12	<i>Form</i> : ADA Due Diligence Workform	11-66

CHAPTER 11A**Foreign Worker Status Due Diligence**

§ 11A.01	Introduction	11A-2
§ 11A.02	Foreign Worker Visas	11A-3
	[1] Nonimmigrant (Temporary) Workers	11A-3
	[a] B-1 and B-2 Visas	11A-4

TABLE OF CONTENTS

xi

	[b] E-1 and E-2 “Treaty Trader” Visas	11A-4
	[c] H-1B “Specialized Training” Visas	11A-6
	[d] TN Visas for Certain Citizens of Mexico and Canada	11A-7
	[e] L-1 Visas for Certain Intra-Company Transferees	11A-8
	[2] Workers Seeking Permanent Residency (“Green Card”)	11A-9
§ 11A.03	Employer Compliance and Liability	11A-11
	[1] Form I-9 Employment Eligibility Verification	11A-11
	[a] Required Information	11A-11
	[b] Documentation Retention Requirements	11A-12
	[2] Anti-Discrimination	11A-13
	[3] Selected Employer Sanctions	11A-13
	[a] Sanctions Under the IRCA	11A-13
	[b] Successor Liability	11A-14
§ 11A.04	Selected Foreign Worker Due Diligence Considerations	11A-15
	[1] Employee-Focused Diligence	11A-15
	[2] Employer-Focused Diligence	11A-15
§ 11A.05	<i>Form:</i> Selected Foreign Worker Due Diligence Considerations	11A-17
§ 11A.06	<i>Form:</i> Foreign Worker Due Diligence Worksheet and Checklist	11A-22
§ 11A.07	<i>Form:</i> I-9 Employment Eligibility Review	11A-24

CHAPTER 12

Due Diligence in International Negotiated Transactions

§ 12.01	Overview	12-1
§ 12.02	Due Diligence Team	12-3
§ 12.03	Due Diligence Methodology	12-4
§ 12.04	Selected Regulatory Considerations	12-5
	[1] Overview	12-5
	[2] Foreign Investment in the United States	12-5
	[3] United States Direct Investment Abroad	12-7
	[4] EU Merger Notifications	12-8

DUE DILIGENCE

	[5] Foreign Corrupt Practices Act	12-11
	[6] Export/Import Restrictions	12-11
§ 12.05	Common Due Diligence Questions	12-13
§ 12.06	<i>Form:</i> Sample Preliminary Due Diligence Team Meeting Agenda	12-16
§ 12.07	<i>Form:</i> Scope of Engagement: Local Counsel	12-19
§ 12.08	<i>Guidelines:</i> Due Diligence Process	12-37
§ 12.09	<i>Form:</i> Preliminary Due Diligence Memorandum	12-39
§ 12.10	<i>Form:</i> Preliminary Local Counsel Legal Due Diligence Report.	12-49

CHAPTER 13**Intellectual Property Due Diligence**

§ 13.01	Overview	13-2
§ 13.02	Selected Components of IPR Diligence Process	13-4
	[1] Identify IPR and Its Relevance in the Context	13-4
	[2] Define the Appropriate Scope of Review	13-5
	[3] Assemble an Appropriate Team	13-5
	[4] Conduct Interviews as Appropriate.	13-5
	[5] Investigate the Scope of the IPR.	13-5
	[6] Investigate IPR Litigation and Disputes.	13-6
	[7] Ensure the IPR Have Been Perfected.	13-6
§ 13.03	Types of IPR	13-8
	[1] Patents.	13-8
	[a] Utility Patents.	13-8
	[b] Design Patents	13-9
	[c] Plant Patents	13-9
	[d] Other Categories in Foreign Jurisdictions	13-9
	[2] Trade Secrets	13-10
	[3] Copyrights	13-11
	[4] Trademarks.	13-12
	[5] Special Areas	13-13
	[a] Semiconductor Chip Protection Act.	13-13
	[b] Right of Publicity.	13-14
	[c] Moral Rights/Neighboring Rights	13-14

TABLE OF CONTENTS

xiii

§ 13.04	Four Building Blocks of IPR Due Diligence	13-16
	[1] One: Understand the Business	13-16
	[2] Two: Understand the Transaction Structure	13-16
	[3] Three: Understand the IPR	13-17
	[4] Four: Understand the Objectives of the Investigation	13-17
§ 13.05	<i>Form:</i> IPR Diligence Activities Checklist.	13-19
	[1] Patents.	13-19
	[2] Trademarks.	13-21
	[3] Copyrights	13-22
	[4] Trade Secrets	13-23
	[5] Personal Rights	13-24
	[6] Contracts.	13-24
§ 13.06	<i>Guidelines:</i> Selected IPR Due Diligence by Category.	13-26
	[1] Preliminary Matters.	13-26
	[2] Team Logistics.	13-26
	[3] Patents.	13-27
	[4] Trademarks.	13-29
	[5] Copyrights	13-30
	[6] Trade Secrets	13-32
	[7] Miscellaneous IPR Areas	13-32
§ 13.07	<i>Form:</i> IT Systems, Facilities and Personnel Diligence Questionnaire.	13-34
§ 13.08	<i>Form:</i> Software Licenses Diligence Review Work Form	13-38
§ 13.09	<i>Form:</i> Software Licenses Diligence Guidelines	13-42

CHAPTER 14

Risk Management Due Diligence

§ 14.01	Introduction	14-1
§ 14.02	Selected Risk Management Concepts	14-4
	[1] Overview	14-4
	[2] Selected Types of Insurable Business Risks	14-4
	[3] Evolving Risk Management Landscape.	14-6
§ 14.03	<i>Form:</i> Sample Risk Management Diligence Request List	14-9

DUE DILIGENCE

§ 14.04	<i>Form: Insurance Policy Review</i>	14-13
§ 14.05	<i>Form: Preliminary Risk Management Assessment Memorandum</i>	14-20
§ 14.06	<i>Form: Risk Management Matrix</i>	14-31
§ 14.07	<i>Form: Sample Lines of Insurance Summary</i>	14-33
§ 14.08	<i>Form: Risk Assessment: Errors and Omissions</i>	14-41
§ 14.09	<i>Form: Preliminary Report: Errors and Omissions Insurance Coverage Review</i>	14-44
§ 14.10	<i>Form: Insurance Company Documentary Due Diligence</i>	14-48

CHAPTER 15

**National Security and International Trade
Regulations Due Diligence**

§ 15.01	Overview	15-2
§ 15.02	Selected Due Diligence Considerations:	
	International Trade	15-3
	[1] Overview	15-3
	[2] Regulatory Framework	15-3
	[a] Import Control	15-3
	[b] Export Control	15-4
	[c] Selected Additional Considerations	15-6
	[i] Embargoes	15-6
	[ii] Anti-Boycott Laws	15-7
	[iii] Foreign Corrupt Practices	15-7
	[d] Violations and Sanctions	15-8
	[3] Successor Liability	15-8
	[a] Overview	15-8
	[b] Selected Proceedings	15-9
	[4] Potential Due Diligence Considerations	15-11
§ 15.03	Selected Due Diligence Considerations:	
	Non-U.S. Investors	15-13
	[1] Overview	15-13
	[2] Exon-Florio and Foreign Investment Risk Review Modernization Act	15-13
	[a] Legislative History	15-13
	[b] Control and National Security	15-15

TABLE OF CONTENTS

xv

	[i] Determining Control	15-15
	[ii] Determining a Threat to National Security	15-16
	[iii] Past Applications	15-17
	[3] Security Clearance Considerations for Government Contractors	15-18
§ 15.04	<i>Form</i> : Import Compliance Questionnaire	15-20
§ 15.05	<i>Form</i> : Export Compliance Questionnaire	15-25
§ 15.06	<i>Checklist</i> : Foreign Investment in U.S. Companies	15-28

CHAPTER 16

Special Situations in Due Diligence

§ 16.01	Cumulative and Current Due Diligence	16-1
§ 16.02	Lead and Participating Underwriters	16-4
§ 16.03	Red Flags	16-6
§ 16.04	Securities Offering Disclosures and Due Diligence	16-8
§ 16.05	Investment Services Due Diligence	16-9
	[1] Investment Stewards	16-9
	[2] Investment Advisors	16-10
§ 16.06	Due Diligence and Contract Terms	16-11
§ 16.07	Selected Special Transactions Due Diligence	16-12
	[1] Mortgage Backed and Other Derivative Securities	16-12
	[2] Asset Backed Commercial Paper Due Diligence	16-14
	[3] Microfinance	16-19
§ 16.08	Selected Privacy and Data Security Issues in Due Diligence	16-24
	[1] Overview	16-24
	[2] Attorney-Client Privilege Issues	16-25
	[3] Anti-Competition Issues	16-27

INDEX	I-1
-------------	-----

