

## Who is this book for?

Due diligence is variously described as boring, expensive or time consuming and, more often than not, all three. To many it is a way of spending a lot of money to tell you what you already know. It is also incredibly time pressured. Sellers have absolutely nothing to gain by giving a buyer time to probe and question. The buyer, on the other hand, has to gather and digest an awful lot of information on a whole range of quite specialist topics in a very short time and often with less than perfect access to the sources of information. Despite what many may believe, this in practice makes due diligence not some clever financial modelling exercise or a fascinating legal challenge, but essentially an exercise in project management.

The secret is to be very focused. This book is aimed at helping the practitioner to focus. The practitioner is the person who is going to drive the due diligence process. By knowing what information is needed, where and how to get it, and how the various due diligence professionals, lawyers and accountants as well as management consultants, go about their work, due diligence becomes more manageable, much more fun and much more cost-effective. It allows acquirers to focus on what is important and therefore to make better decisions.

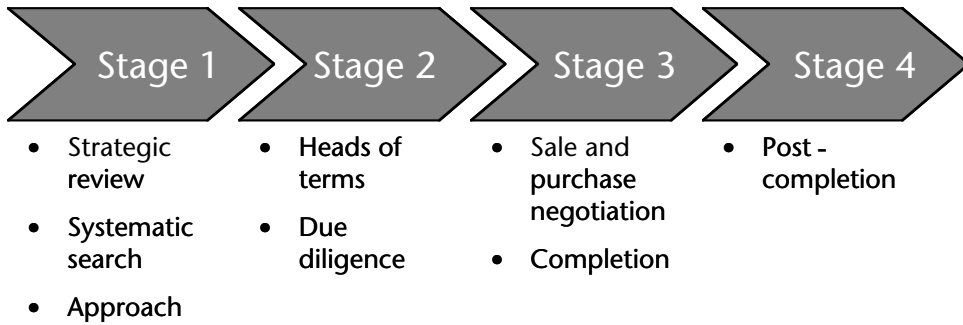
The book should also be helpful to the professional adviser. Even experienced advisers may find something new in the sections which follow covering disciplines other than their own. Advisers tend, unfortunately, to work exclusively on their own area of investigation without reference to any of the other advisers. Although one of the aims of this book is to change that, it is nonetheless true that even lawyers with many deals to their credit may not know much about what accountants and management consultants do and how they go about their work.

## The acquisition process

Due diligence is obviously only one part of an acquisition or investment exercise. In order to understand where it fits into the overall acquisition process, let us, for convenience, assume the process falls neatly into the four generic categories shown in Figure 1.1.

Stage one is about identifying an acquisition target and making an approach. This can only sensibly be done following a proper strategic review in which acquisition has been identified as a logical strategic tool. If an approach leads on to agreement to take things further, the deal enters the second stage. The two parties sketch out the broad terms of the deal and the buyer will begin due diligence. Successful due diligence leads to negotiation and, if all goes well, the deal completes. Then the buyer enters stage four, in many ways the

## 2 Due Diligence



**Figure 1.1** The acquisition process

most important stage of all, where the acquisition must be bedded in and made to pay its way. Each of the four stages is described in more detail below.

### STAGE 1 STRATEGY, SEARCH AND APPROACH

#### Strategic review

It is a long time now since Barings advised Asda not to buy MFI. Asda did the deal anyway. Barings lost a client and a big fee. Standard corporate finance 'advice' has changed a lot since then. Now advice seems to be along the lines of 'Here is a good idea: we advise you to buy this business'. Acquisitions can and do happen as a result of banks hawking round ideas. They can also take place for a host of other not very good reasons. Often the chairman comes across a 'bargain', usually from one of his mates down at the golf club. Even today management may decide it would be a good idea to go on an acquisition spree to diversify shareholders' risk. Goodness knows why, when shareholders can do that better for themselves. At other times it is a case of the acquirer having a large cash pile to spend, management wanting a bigger empire, or, closely related, management persuading themselves that they can manage anything.

Acquisitions are very risky. All the academic research points to a failure rate well in excess of 50 per cent. Because of the risk, acquisitions should take place only after a thorough review of strategic objectives and then only after very careful consideration of the alternatives. They should be seen as a means of achieving strategic objectives – nothing more and nothing less. They will never be an antidote to poor performance in the core business or a means of management self-aggrandizement. Acquisitions are strategic tools, a means to a strategic end and given their very high failure rate, should be seen only as a last resort.

However, strategic reviews do often identify acquisition as the most logical way forward. If the strategic review has been carried out properly then the next step will be an organized, systematic search for acquisition targets.

#### Search

A systematic search for acquisitions often starts where the strategic review leaves off. The ideal targets have to be characterized. In turn this means creating a set of criteria for the types of company that should be looked at. A search will then seek to identify every company which meets those criteria, and to gather basic information about each one.

The potential targets will then be ranked according to their ability to meet strategic objectives and categorized according to whether they are strong contenders for purchase or merely fallback options. More detailed information will be put together on those companies which seem to be strong contenders, and a shortlist drawn up for approach.

## Approach

Acquisition targets are like London buses. None come along for ages then all of a sudden there are three to choose from. Getting from first approach to a deal can take a long time. Approaching a company can produce extreme reactions. Some potential vendors will rejoice, thinking they are about to become rich, others may be deeply offended, others say 'no' when they mean 'yes' and yet others go away only to come back again. Reactions will vary according to the target's ownership, nationality, industry, and the personalities of those involved, but if a deal is to happen at some point both parties will perceive a mutual interest and decide to take preliminary discussions further.

## STAGE 2 THE PRELIMINARIES TO NEGOTIATION

### Heads of terms

If an approach does lead to mutual interest, both parties will want to begin serious negotiations. Heads of Agreement/Heads of Terms/Letter of Intent is the document which records an agreement to negotiate the purchase of a business. It is a non-binding agreement (see page 20) which sets out the main points on which the parties to a transaction have agreed and the basis on which they are prepared to proceed.

As far as due diligence is concerned, the critical thing about signing Heads of Agreement is that there is a deal underway. Drawing up the document usually focuses the minds of both parties. The buyer will now have assured the seller of its seriousness, both parties will have decided that there is sufficient agreement between them to continue and both can draw comfort that the deal will go ahead because they can point to a document setting out the fundamental issues. Due diligence can therefore begin.

### Due diligence

As explained in greater detail below and indeed in the rest of this book, due diligence assesses the deal from a commercial, financial and legal point of view. It is concerned with understanding more about the business being bought, confirming that the buying company is getting what it thinks it is buying, unearthing any risks in the deal, finding negotiating issues and helping to plan post-deal integration.

Skeletons found in due diligence should not normally break a deal but they will be negotiating points on the way, with luck, to agreement.

## STAGE 3 NEGOTIATION AND AGREEMENT

### Sale and purchase negotiation

With due diligence over, next comes the stage of finalizing the details of the deal. This is where everyone falls out, but eventually, after much posturing and horse-trading, negotiations are concluded, agreement is reached and the deal is signed. As mentioned above, due diligence feeds into the negotiations by identifying risks against which the buyer

should negotiate some sort of protection. This could be through a price reduction or through a guarantee by the seller to compensate for any loss.

### Completion

The due diligence is over, the terms of the deal are agreed, and completion is the process of actually signing the sale documents. For some strange reason there is an unwritten law that completion always happens at 4 o'clock in the morning, and usually at the weekend, even though all the participants struggle to avoid this!

## STAGE 4 POST-COMPLETION – THE BIT THAT EVERYONE FORGETS

Of course the negotiating process is highly charged and extremely challenging. Not surprisingly a satisfactory conclusion, with the new acquisition in the bag, is often seen as an end in itself. Management are left exhausted and, after the thrill of the chase, too apathetic to manage the integration process.<sup>1</sup> But, to paraphrase a well-known slogan, 'a deal is for life, not just for Christmas'. Once the deal is signed, the really hard work starts: that of making the return from the new acquisition justify the price paid. In the chase and excitement of the deal this phase is often overlooked. As is discussed in some detail below, due diligence should play a major role in shaping the post-completion plan. This leads on to the next topic, what should due diligence aim to achieve?

## What is due diligence?

There is no dictionary definition of due diligence. There is no standard legal definition either. A lawyer would probably define it roughly as follows:

a process of enquiry and investigation made by a prospective purchaser in order to confirm that it is buying what it thinks it is buying.

*Caveat emptor* (buyer beware) is central to the whole acquisition process in Anglo-Saxon countries. Due diligence is the way buyers make sure they understand exactly what they are buying.

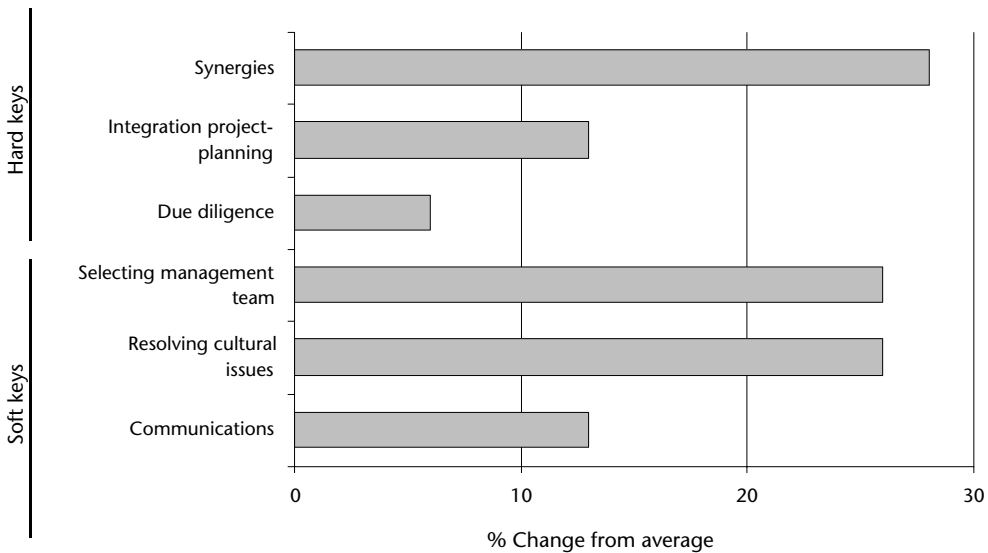
A dealmaker might go further. A dealmaker would say that due diligence is about reducing risk. There is no shortage of surveys which show how risky acquisitions are. As already noted, according to these surveys, at least half of all acquisitions fail. The true failure figure is probably more like three-quarters. The better the due diligence, the more buyers know about a target and therefore the more they know about the immediate risks they are taking on. As far as the dealmaker is concerned, therefore, due diligence allows an acquirer to:

- identify issues which feed into price negotiations, and hence reduce the risk of paying too much;
- de-risk the deal by identifying points against which legal protection should be sought.

In other words, the dealmaker sees due diligence as an aid to working out what contractual protection is required from the vendor and what risks the purchaser should avoid completely.

The problem with this thinking is that it sees the short-term issues specific to negotiations as being the same as those which in the end will dictate whether or not the deal will be a success. This may very well not be the case.

Again, there is no shortage of surveys purporting to show where the risks in an acquisition lie. The trouble with a lot of them is that they are carried out by consultants with a post-acquisition integration consultancy service to sell. Nonetheless, it is probably true that more acquisitions fail because of shortcomings at the post-acquisition implementation stage than at the pre-acquisition investigation stage. For example, according to one piece of research<sup>2</sup> there is an 83 per cent correlation between implementation success and overall acquisition success. Of course, this may be because pre-deal due diligence is so well carried out that risky deals never complete, but the need to think beyond pre-deal 'tyre kicking' to the post-deal aftermath is confirmed by a 1999 study by KPMG.<sup>3</sup> As shown in Figure 1.2, this found three hard keys and three soft keys to acquisition success. The KPMG research tries to pinpoint the factors which give deals a better chance of success than average.



Source: KPMG

**Figure 1.2** Pre-deal activities and the increased chances of deal success

Pre-deal synergy evaluation emerged as the main hard key to success. Acquirers who carried this out thoroughly had a 28 per cent better than average chance of overall deal success. KPMG describe this as the 'what and where' of obtaining value in a deal. Companies can only hope to avoid bad deals by working out how extra value is going to be achieved. This calls for a thorough exercise early on in the acquisition process, involving operational managers, to confirm both the robustness of synergy assumptions and their deliverability.

Integration project-planning is the next most important hard key. This is the mechanics of the 'how'. According to KPMG, the survey confirms, 'that the chances of merger success are increased if the process of working out 'how' is started well before the completion of the deal.'<sup>4</sup>

## 6 Due Diligence

The third hard key highlights the power of 'proper' due diligence. 'Proper' due diligence, according to KPMG, as used by 'sophisticated and forward looking acquirers' uses a 'springboard approach to due diligence which often uses a range of investigative tools designed to systematically assess all the facts impacting on value.' 'Value' is only created once the deal is done.

In other words, the successful acquirer's definition of what due diligence is all about goes much further than any legal or deal-doing definition. According to the successful acquirer, the objective of due diligence is not just to 'audit' or verify past performance, it is not just to look for black holes or reasons to chisel the price. It aims to do all of these but, more important for success, it should aim to assess future prospects and show how they can be realized. Of course due diligence is going to look out for vulnerabilities but at least equal importance needs to be given to identifying opportunities. After all, there is really only one reason for buying a business. Not because it has done well in the past, nor because it is cheap. The only reason is because it has a great future with you as the new owner. As KPMG put it, 'with more money chasing fewer deals, a greater proportion of the valuation is made up of strategic and synergistic elements'.<sup>5</sup>

Sadly though, as the statistics show, there are few successful acquirers around. The long and the short of it is that 'acquirers keep making the same mistakes over and over again: not enough planning, too obsessed with the financials to the detriment of other areas'.<sup>6</sup> Again this can be seen from the KPMG study where getting the soft keys right is more important to increasing the chances of deal success than getting the hard keys right.

In summary, pre-acquisition due diligence should be constructed to give as good an insight as possible into post-deal implementation as to isolating pre-deal risks. This contrasts with the quaintly traditional way in which due diligence is still mostly performed, biased towards:

- getting the deal done
- the financial and legal aspects
- unearthing 'skeletons'.

A proper due diligence programme, therefore, should have five strands:

- the verification of assets and liabilities
- the identification and quantification of risks
- the protection needed against such risks which will in turn feed into the negotiations
- the identification of synergy benefits (which may also feed into price negotiations)
- post-acquisition planning.

This is easy to say, but the reality is that managers working on an acquisition are first going to have to satisfy the Chairman, the board, their boss or themselves that the deal itself is under control otherwise they may very quickly find themselves working on something less high profile.

So the number one priority from due diligence is to understand what is being bought, where the immediate risks are in doing the deal and what protection is needed. But, number two, do not underestimate the benefits a well thought-through programme of due diligence can bring to the long-term success of the deal. Due diligence should be seen as integral to post-acquisition planning. In the heat of a deal, there is always a tendency to delay or play

down the importance of planning for the aftermath. The evidence above would suggest that there is no substitute for early post-deal planning. The KPMG and other studies<sup>7</sup> suggest that unless there is an integration plan which is properly communicated, and the mechanics of that plan implemented within a couple of months of completion, acquirers will lose value from their acquisition. Never mind  $2 + 2 = 5$ ; if due diligence is not used to help put together an integration plan, a buyer may well end up with  $2 + 2 = 3$ .

## The arguments for carrying out due diligence

The above is all very well, but what about the deals where the buyer knows the company very well, knows the market and quite frankly does not need to go to all the expense and trouble of due diligence? The answer is that it is possible to buy a company without doing any due diligence, but there are a few snags.

First of all, the information disclosed by the seller to qualify the warranties will be the only material formally available to the purchaser with which to confirm a decision to buy the company. Nothing at all wrong with that in certain circumstances. In addition, there will only be fairly standard warranties and indemnities available for legal protection. This is hardly surprising given that the buyer has not made the enquiries which give a basis on which to negotiate non-standard warranties and indemnities or other forms of protection. Again, this may be fine in certain circumstances. It is fairly common where the deal is quite small in relation to the size of the buyer or where the buyer's knowledge of the target is very good.

However, for reasons discussed below, just relying on warranties and indemnities is not a good idea. For a start, the protection they offer may be limited or impractical to enforce. Also if the seller is plain dishonest, which is not entirely unknown, just taking warranties and indemnities without further investigation is unlikely to uncover any fraud or other wrongdoing. Due diligence can sometimes identify suspicious activity.

Leaving aside the integration questions, the real value due diligence can add, even where buyers think they have a lot of knowledge, is in what can best be described as unearthing problems no one really knew existed. Sellers, usually quite genuinely, believe their companies to be problem-free. Often they will have lived with what outsiders would see as 'problems' without any harmful effects. This does not mean that the buyer would take the same view. However, without identifying and quantifying the 'problems', the buyer can take no view at all. For example, it is often the case that important pieces of software in early stage IT companies have been developed by programmers who are not employees of the company. The law is quite clear about copyright: it resides with the author. In this case buying the company will not buy the intellectual property central to its success. Clearly this would be an issue for the purchaser whereas for the current owners the software has been developed, it works and is selling so there is not a problem.

The second real value of due diligence is what can best be described as its comfort factor. Everything in this universe is relative. Accountants and lawyers may be expensive, but not when compared with going to law. Comparatively speaking, due diligence is cheap, litigation is not. This is why most buyers are much more comfortable knowing about problems beforehand rather than being left with the possibility, however remote, of making warranty or indemnity claims or having to sue the seller after completion. However good the warranties and indemnities, a buyer really does not want to litigate. Litigation is expensive,

in both time and money, and its outcome is far from guaranteed. In fact, a buyer's aim should be never to have to open the sale and purchase agreement once it is signed.

Finally, knowledge is power. Due diligence gives the buyer knowledge. The more that is known about a seller's business, the better the buyer is armed, both physically and psychologically, for the negotiations which lie ahead.

Contrary to popular myth, due diligence can be a worthwhile investment.

## ISN'T DUE DILIGENCE REQUIRED BY LAW?

Due diligence is not legally required. The nearest it comes to being a legal requirement is in the following circumstances:

- The Cadbury Report recommended that significant acquisitions should be reviewed by the full board of directors of the purchasing company. To ensure that the board considers all the issues, due diligence reports may be required.
- With listed companies, which are subject to the London Stock Exchange's regulations, if an acquisition is a major one and therefore needs shareholder approval, a financial report on the merged group will be required. This makes a detailed accountants' investigation necessary so that the necessary circular can be drawn up.
- In European public deals, synergy papers are increasingly becoming a critical element in pre-deal planning. In these cases the financial robustness of an acquirer's cost savings, and in some cases their revenue enhancement targets, are vetted and approved as being realistic.
- As a defence against charges of negligence in a transaction. The US courts have found that, 'due diligence is equivalent to non-negligence'<sup>8</sup> having earlier 'established that it is not reasonable to rely on exclusively management for key data. Data must be double-checked through an independent investigation.'<sup>9</sup>

## The different due diligence disciplines

There are a number of different types of due diligence which can be carried out. Table 1.1 summarizes the three main areas, while Table 1.2 shows the other usual due diligence topics. It looks like a forbidding list. In any deal, some of these will be more important than others. Some will be carried out as topics in their own right and others subsumed under other headings.

**Table 1.1** The main due diligence topics

<i>Due diligence topic</i>	<i>Focus of enquiries</i>	<i>Results sought</i>
Financial	Validation of historical information, review of management and systems	Confirm underlying profit. Provide basis for valuation
Legal	Contractual agreements, problem-spotting	Warranties and indemnities, validation of all existing contracts, sale and purchase agreement
Commercial	Market dynamics, target's competitive position, target's commercial prospects	Sustainability of future profits, formulation of strategy for the combined business, input to valuation

**Table 1.2** The other due diligence disciplines

<i>Due diligence topic</i>	<i>Focus of enquiries</i>	<i>Results sought</i>
Human Resources and culture	Make-up of the workforce, terms and conditions of employment, level of commitment and motivation, organizational culture	Uncovering any employment liabilities, assessing the potential Human Resources costs and risks of doing the deal, prioritizing the HR issues that need to be dealt with during integration, assessing cultural fit, costing and planning the post-deal HR changes
Management	Management quality, organizational structure	Identification of key integration issues, outline of new structure for the combined businesses
Pension	Various pension plans and plan valuations	Minimize the risks of underfunding
Tax	Existing tax levels, liabilities and arrangements	Avoid any unforeseen tax liabilities, opportunities to optimize position of combined business
Environmental	Liabilities arising from sites and processes, compliance with regulations	Potential liabilities, nature and cost of actions to limit them
IT	Performance, ownership and adequacy of current systems	Feasibility of integrating systems; associated costs. IT plans for operational efficiency and competitive advantage
Technical	Performance, ownership and adequacy of technology	Value and sustainability of product technology
Operational	Production techniques, validity of current technology	Technical threats; sustainability of current methods; opportunities for improvement; investment requirements
Intellectual Property Rights (IPRs)	Validity, duration and protection of patents and other IPRs	Expiration; impact and cost
Property	Deeds, land registry records and lease agreements	Confirmation of title. Valuation and costs/potential of property assets
Antitrust	The various national filing requirements (some of which can be expensive if not complied with); degree of market/information sharing with competitors	Merger control filings and clearance; an assessment of any antitrust risks posed by the target's activities; an assessment of the enforceability of the target's contracts
Insurance/Risk	Present, future and, most importantly, past exposures of the business. The structure and cost of the existing programme	The costs and benefits of retaining risk versus transferring it

As mentioned above, often these are combined, so that, for example, Human Resources, IPR and property could be covered by legal due diligence; tax, insurance, IT, operational and pension matters by financial due diligence and management and technical by commercial due diligence. All the above, except property and operational, are covered in later chapters. Property is covered under legal while operational is so highly tailored to the target company

it is difficult to generalize about it much beyond what is said in Table 1.2 and in the appropriate headings in the chapter on financial due diligence.

## Different types of due diligence

As well as different due diligence disciplines, there are also different types. Most of this book is concerned with the traditional, buyer-commissioned due diligence prior to the purchase of a private company. There are other forms.

### VENDOR DUE DILIGENCE

Vendor due diligence (VDD) is the name for any due diligence which is commissioned by the current owners of the business in preparation for its sale. It is a relatively new phenomenon which grew out of the sellers' market of the late 1990s and in particular with the rise of data rooms.

Vendor due diligence is commissioned for a number of reasons most, but not all, designed to control the information flow and so maintain negotiating advantage. As such, vendor due diligence:

- allows the seller to argue that it has provided all the information a buyer could want and therefore no further access to management and customers is necessary;
- gets all the bad news out up front so discovery of problems later is not used as an excuse to chisel the price;
- may be a device for hiding or 'spinning' problems.

And it:

- stops management, advisers, customers and suppliers being deluged by questions;
- is used in some cases by the seller to understand exactly what is being sold.

Buyers should be wary of due diligence reports presented by the seller. The tone of reports, if not the facts, can always be varied according to the brief. Even if the investigations have been conducted by an independent organization of the highest reputation, the buyer will not have been privy to the original briefing. I once witnessed a vendor due diligence briefing involving a UK public company which had a potential buyer interested in one of its very weak, and probably unsaleable, businesses, a corporate finance boutique determined to earn its fee and a similarly fee-hungry due diligence consultancy. The 'briefing' consisted of a discussion on what the vendor due diligence should, and should not, say. It amounted to nothing more than a shockingly blatant conspiracy to pull the wool over the eyes of the potential buyer who, sadly, would be blissfully unaware of what had gone on.

The message with vendor due diligence, then, is 'watch it'. Vendor due diligence makes it more difficult for a buyer to form its own opinions, and in some cases it is *designed* to do exactly that. If given vendor due diligence a buyer should:

1. read it.
2. assess the reputation of the firm which carried out the work – do some due diligence on the due diligence providers.

3. read between the lines. Note what is not there, but which should be. Sherlock Holmes once solved a mystery because he spotted that a dog did *not* bark in the night (proof that the crime had been committed by the dog's owner).
4. meet the firm(s) which produced the vendor due diligence (be very suspicious if the seller will not allow this). Ask:
  - if the bill was paid in full – if it was not, probe for the reasons. There may have been an argument about the wording in the final report.
  - how many drafts were produced. The more drafts the more the client interference.
  - what was re-drafted?
  - their overall impressions of the target. (Watch the body language as they answer and listen out for direct questions indirectly answered or not answered at all.)

Given most advisers' paranoia about legal action, these conversations will have to be off the record. Be very sceptical and if the slightest doubt remains, either insist on commissioning further due diligence or pull out. Due diligence which does not rely on the target for information, can, if necessary, be carried out without the seller's knowledge.

## DUE DILIGENCE IN PUBLIC BIDS

Due diligence in public bids can be very different to private or semi-private transactions. With hostile bids, expect, at best, the minimum of cooperation and be prepared to rely on external intelligence gathering and publicly available information about the target company. Commercial due diligence is a good example of intelligence gathering that can be done without the target's cooperation. It is often commissioned prior to an approach that may turn into a hostile bid in order to reassure the buyer that the bid is sensible before it embarks on what is a painful and costly exercise.

If a public bid is friendly, that is recommended by the target's board, some due diligence is possible although given the price sensitivity full unfettered access is going to be a problem until the deal is announced. Even then, due diligence can be a big headache for the seller in public bids in the UK. If a competitive offer comes along, there is a right to information under Rule 20 of the City Code. Rule 20 says that where there are competitive bids the target company has to supply the same information to the new bidder as it did to the original bidder. The slight get-out is that the second bidder cannot just ask for all the information supplied to the first bidder but has to ask specific questions. Nevertheless, this can act as a constraint on due diligence in public bids. It is not unknown for competitors to enter the fray on fishing expeditions rather than as serious bidders. A target company may therefore not want to disclose sensitive information, even to a recommended bidder, just in case a competitor announces a bid and the information has to be handed over.

Warranties and indemnities are unlikely to be given in public bids. Once the deal is done there is usually nobody left willing to give them, although management might give warranties in public to private transactions as a means of helping bankers get comfortable enough to back the deal.

## DUE DILIGENCE IN PUBLIC OFFERINGS

Due diligence for an offering of securities is different from that for an acquisition. The focus is on complete and reliable information on the target company so that underwriters do not misrepresent to potential buyers.

## DUE DILIGENCE WHEN BUYING FROM THE RECEIVER

Receivers often allow buyers only a few days to complete a deal. This can severely limit what can be achieved by due diligence. If anything, due diligence is more important with receiverships than with normal acquisitions. If you cannot get proper access for a reasonable time for due diligence you should seriously consider whether or not to go through with the deal, however cheap the target might seem.

For many, the quid pro quo of compressed timescales is that the price is so low a few transaction risks are worth taking. However, compared with even distressed prices, risks can be huge and warranty protection will be almost non-existent. In addition, there may be issues around title to stock or the costs of maintaining the goodwill of key suppliers who might have incurred relatively large bad debts as a result of the receivership.

Others will maintain that risk can be reduced by buying the business rather than the company. The issue with picking and choosing which assets and liabilities to take on is that the buyer still needs due diligence information to make a proper, informed judgement.

But the most compelling reason for proper due diligence may be the post-integration issues. The truth is that businesses get into trouble for a reason. Understanding why a company is in receivership could be crucial not only to making an offer but also to turning it round. Turning companies round always takes longer and costs more than was ever envisaged.

## Different types of deal

Due Diligence is a term traditionally used for the review process applied to an acquisition. Exactly the same process is, can, and should be applied to a whole range of other transactions, for example:

- the investment by private equity investors to provide development capital to a private company or to finance a management buy-in (MBI) or management buy-out (MBO)
- the provision of bank facilities either prior to lending or when there is concern about an existing loan
- joint ventures
- strategic alliance
- divestment
- public to private.

Finally, other types of business arrangement might benefit from some, possibly scaled-down, due diligence. For example, a company embarking on a new distribution relationship might wish to make enquiries about the abilities and track record of its new partner.

## Different contexts

The book tends to concentrate on Anglo-Saxon legal practice and on UK law. This is not because European acquisitions are not important, or that it is meant for an Anglo-Saxon audience; quite the opposite. It is simply because:

- The acquisition process, and therefore due diligence, is much more developed in Anglo-Saxon jurisdictions, so much so that even purely continental European transactions sometimes adopt Anglo-Saxon practices.
- The acquirer should *always* take local advice in international transactions. This, therefore, is not the place to deal with the differences between law and practice in different jurisdictions. Appropriate advisers will take care of that.
- Despite what many believe, due diligence is not just about the law. The law comes into it in quite a big way but it is not the most important element of the process. It is far more important to grasp the principles of due diligence than to get bogged down in the legal differences between a myriad of different jurisdictions. Again, the important thing as far as the practitioner is concerned is to stay focused on the big picture, using advisers where advice is needed.

## Conclusion

Due Diligence is not simply a tool to unearth black holes. Nor is it just to provide ammunition for the negotiations. It does both of these but should also be used as a tool for the longer term.

The academic research in this area shows quite clearly that half of all mergers and acquisitions do not achieve their intended purpose. Other research shows that in the majority of cases this is because the acquisition is not effectively integrated. However good the strategy, however good the choice of target and however good the negotiation of the sale and purchase agreement, poor post-deal integration will seriously increase the probability of a poor deal. Integration must be carried out so that it generates the value the acquisition is expected to bring. It must be conducted quickly, with minimum uncertainty for the acquired workforce and minimum disruption to operations. The key to integration is advance planning. Pre-deal due diligence is the ideal vehicle for the investigative work needed for advance planning. The aim of due diligence should be to give the buyer an assessment of the risks and benefits of the deal both as an aid to negotiation and as an aid to delivering value post-completion.