

December 2008

THE DUE DILIGENCE PROCESS

Not just the 'big picture' risks

A due diligence process is a normal part of any business acquisition or merger.

This is an evaluation of the target company to assess the business risks. The object of the due diligence process is an effort to make everyone on each Board as aware as a prudent Board member can be, of any liabilities the other party may bring to the transaction.

The 'due diligence' process is typically carried out by consultants with legal and financial expertise at a 'high level'. This can result in more mundane practical problems being overlooked.

Some examples:

- A child was electrocuted because of an exposed cable touching a swimming pool fence at a hotel. The hotel had been acquired by another Group three months earlier. In the subsequent prosecution the judge commented on the inadequacy of the due diligence process.
- Another hotel acquisition was declared by the fire service to be 'unsafe'. The estimated cost of remedial work exceeded \$1m.
- A client purchased a large estate which included a substantial building. It was later discovered that there were outstanding problems regarding the water supply to the fire protection sprinkler system. The costs of fixing the problem were substantial.
- A large factory was purchased. In spite of the 'due diligence' process it was later discovered that there were fire risk issues with the building that resulted in significantly increased insurance costs.

These are recent examples but there have been many other instances where businesses have been acquired where practical operational problems have cropped up after the purchase was completed.

In addition to the high level financial and legal ramification of the acquisitions here are some basic management issues that should not be forgotten:

INSURANCE

Will the acquisition fit the 'risk profile' that you have with your insurer or are there aspects that could result in disproportionate increases in insurance costs; for example: inadequate fire protection, inferior building construction, exposure to natural hazards – flood, wind, to suggest a few.

HEALTH AND SAFETY

Does the target company have good health and safety systems, and by this we do *not* mean lots of manuals, but applied safety procedures? Could costs be incurred in bringing safety systems up to the required standards? Are there safety issues that could be expensive to fix? Are there safety problems that could give early rise to injury and possible prosecution?

ENVIRONMENT

Searches of Council records and Land Information Memoranda (LIM) will provide a history of the site and should alert the purchaser to historical problems. However an on site inspection can be equally revealing.

- Are there any signs of land contamination, for example oil and chemical spillages?
- Is there asbestos on site and how has this been managed?
- How does the company meet its obligations under the Resource Management Act 1991, Hazardous Substances and New Organisms Act 1996 and Local Authority Trade Waste Bylaws?

WILLIS RISK ADVISORY SERVICE

The following table indicates the areas of review that can be undertaken:

TOPIC	SCOPE OF REVIEW
Property	<ul style="list-style-type: none"> • Property details • Fire protection • Process hazards • Insurance implications
Health and Safety	<ul style="list-style-type: none"> • Plant • Asbestos • Manual Handling • Hazardous substances • Confined Spaces • Noise • Work at Heights • Electrical Safety • Hazardous Processes • Hot work • Traffic Management • Legionella Management • Contractor Management • First Aid and Emergency Procedures • Health & Safety Consultation, Training and Certification of Operators • Any Safety Authority prohibition, improvement notices or fines • Any additional OHS risk identified
Environment	<ul style="list-style-type: none"> • Historical Background • Environmental Management • Site emissions/discharges, consents and compliance • Substance Management • Underground Storage Tanks • Storm Water Management • Environmental Noise Management • Legacy Issues • Cooling Towers and Legionella Management • Asbestos • Waste Management

CONTACT

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