

DUE DILIGENCE

WHY, WHO FOR AND HOW?

A necessary step in virtually every business acquisition process is to conduct a due diligence review of the target business. This may be conducted pre or post execution of a business or share sale/purchase agreement.

Due diligence (DD) is the name given to the process whereby someone undertakes an appraisal of a business to assess its underlying financial performance and commercial viability. Consider it as an audit of the business.

Buyers of medium sized businesses are usually more experienced and better organised than the sellers. The buyer may make regular acquisitions. In contrast, the seller may only ever sell one business and never buy any.

A seller's lack of experience and preparation may decide the success or otherwise of the sale process. Being well prepared is the key. Having the best-suited team of M&A, accounting/tax and legal advisers is of critical importance to a successful outcome. It is difficult and often stressful trying to understand the scope, focus, requirements and expectations of each party in a DD process without prior experience. The right team will help prepare the seller and business for the scrutiny of a thorough due diligence process.

It is in both parties' interest that DD be carried out by the buyer. Whilst the benefits to the buyer are obvious, there are also benefits to the seller.

Sellers are usually expected to provide warranties. If the buyer has had the option to conduct DD, or better still, completed a DD review, many of the aspects that a seller may otherwise be expected to warrant can be checked first hand by buyers and their team, and may even mitigate a claim of misrepresentation.

Supertrac co-ordinates and facilitates the due diligence process between the parties and their advisors. Supertrac has facilities to operate virtual datarooms, allowing multiple bidders to access sensitive client files in a controlled environment. The data is held in a secure location and is accessed via a link on Supertrac's website home page (Partner Login) using individually allocated login credentials. All activity and downloads (where permitted) are recorded.

This facility is also used to allow clients to upload and transfer large volumes of data to Supertrac.

Whilst Supertrac is very experienced with DD processes, it does not perform formal DD for clients (buying or selling).

WHAT TO COVER

To prepare for the sale and Buyer Due Diligence (DD), it is recommended that Vendor DD be conducted by the seller and their advisors, covering a wide range of aspects.

A comprehensive Buyer/Vendor Due Diligence checklist can be provided by Supertrac on request.

Areas covered include:

- Financial Performance
- Financial Reporting
- Corporate Structure
- Sales and Marketing
- Suppliers
- Borrowings
- Tax
- Legal
- Related Parties
- Commercial
- Insurance
- Contingent Liabilities and Capital Commitments
- Distribution

- Environmental
- Management
- Employees and Superannuation
- Land and Buildings
- Plant and Equipment
- Intellectual Property
- Material Contracts
- Trade Practices
- Privacy
- IT
- Research & Development, Grants
- Risk Management
- Quality Assurance
- Occupational Health and Safety