

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	1-18
[vii]	Ownership Structure	1-19
[c]	Financial/Accounting	1-19
	[i] Indebtedness	1-19
	[ii] Liens and Encumbrances	1-19
	[iii] Investment Holdings	1-19
[d]	Real and Personal Property	1-20
	[i] Real Property	1-20
	[ii] Equipment and Other	
	Personal Property	1-20
[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	1-21
	[iii] Standard Form Purchase	
	and Sales Orders	1-21
	[iv] Sales Agents and	
	Representatives	1-21
	[v] Warranties and Related	
	Claims	1-22
	[vi] Material Contracts and	
	Other Agreements	1-22
[h]	Regulatory Compliance	1-22
[i]	Employment/Labor Matters	1-22
	[i] Management	1-22
	[ii] Benefit Plans	1-22
	[iii] Equal Employment	
	Opportunities	1-23
	[iv] Health and Safety	1-23
[j]	Management	1-23
	[i] Selected Employment	
	Contracts	1-23
	[ii] Selected Consulting	
	Agreements	1-23

TABLE OF CONTENTS xiii

	[iii]	Compensation Schedule	1-23
	[iv]	Related Party Transactions.	1-23
[k]		Intellectual Property	1-23
	[i]	Summary IPR Schedule	1-23
	[ii]	Regulatory Filings	1-24
	[iii]	Licenses.	1-24
	[l]	Other Considerations	1-24
[3]		Checklist: Potential Topics	1-24
	[a]	Selected Entity Records.	1-24
	[b]	Financial and Accounting	1-25
	[c]	Products and/or Services	1-28
	[d]	Sales Practices	1-29
	[e]	Management and Labor Relations.	1-30
	[f]	Plants, Properties, and Equipment	1-30
	[g]	Production Processes	1-31
	[h]	Research and Development	1-31
	[i]	Internal Controls.	1-31

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
	[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

DUE DILIGENCE

§ 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
	[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

TABLE OF CONTENTS

xv

	[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: SOX Internal Control</i> 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
	[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: Request for Proposal: Subject</i> Matter Expert	3-13
	[3] <i>Form: Subject Matter Expert</i> Confidentiality Agreement	3-19

DUE DILIGENCE

§ 3.03	Coordination and “Cross-Pollination”	3-22
	[1] Overview	3-22
	[2] Form: 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	4-3
	[1] Overview	4-3
	[2] Working Group Lists	4-3
	[3] Timelines; Time and Responsibility Schedules	4-3
	[4] <i>Form</i> : Short Form Timeline: Traditional Public Offering of Securities	4-4
	[5] <i>Form</i> : Detailed Time and Responsibility Schedule: Traditional Public Offering of Securities	4-5
	[6] <i>Form</i> : Summary Time and Responsibility Schedule: Public Tender Offer	4-11
§ 4.03	Selected Guidance for Those New to the Due Diligence Process	4-15
§ 4.04	Kick-Off: Due Diligence Request Lists	4-27
	[1] Overview	4-27
	[2] Sample Forms of Due Diligence Request List	4-28
	[3] <i>Form</i> : Sample Generic Due Diligence Request List	4-28
	[4] <i>Checklist</i> : Summary Business Due Diligence Checklist for Negotiated Transactions	4-42
	[5] <i>Form</i> : Prioritized Financial and Accounting Due Diligence Checklist	4-56
§ 4.05	<i>Form</i> : Sample Due Diligence Document Request List for Medical Facility Acquisition	4-63
§ 4.06	<i>Form</i> : Sample Abbreviated Preliminary Due Diligence Request List for Negotiated Acquisition	4-81
§ 4.07	<i>Form</i> : Alternative Form Initial Due Diligence Request List	4-88

TABLE OF CONTENTS

xvii

§ 4.08	<i>Checklist: Selected Due Diligence Request Guidelines</i>	4-97
§ 4.09	Data Rooms	4-103
	[1] Overview	4-103
	[2] Physical vs. Virtual Data Rooms	4-103
	[3] Selected Data Room Mechanics and Protocols	4-104
	[4] <i>Form: Short Form Data Room Index</i>	4-105

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] <i>Graphic: Due Diligence Work Product Tiers</i>	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

DUE DILIGENCE

	[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
		[d] <i>Checklist: Due Diligence Support for Model Legal Opinion</i>	5-115
	[2]	Accountants' Comfort Letters	5-133
		[a] Overview	5-133
		[b] <i>Form: Sample Accountant's Comfort Letter in Securities Offering</i>	5-133
	[3]	Officers' Certificates	5-138
		[a] Overview	5-138
		[b] <i>Form: Sample Officers' Certificate (Securities Offering)</i>	5-138

TABLE OF CONTENTS

§ 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] *Form*: Confidentiality and
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

DUE DILIGENCE

CHAPTER 7

Documentary Due Diligence

§ 7.01	Introduction	7-2
§ 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

TABLE OF CONTENTS

	[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: Sample Environmental Due Diligence</i>	8-16
§ 8.06		<i>Form: Sample Environmental Facility Questionnaire</i>	8-22
§ 8.07		<i>Form: Environmental Site Due Diligence Workform</i>	8-26
§ 8.08		<i>Form: Sample Short-Form Environmental Overview</i>	8-35
§ 8.09		Greenhouse Gas Emissions Due Diligence:	
		An Evolving Landscape	8-39
§ 8.10		<i>Checklist: Short-Form Sustainability</i>	8-41
§ 8.11		<i>Form: Preliminary Environmental Impact Questionnaire</i>	8-45
§ 8.12		<i>Form: California Environmental Quality Act (CEQA) Sample Checklist</i>	8-48
§ 8.13		Sustainability: EPA Energy Star Program	8-54
§ 8.14		<i>Form: European Union Environmental and Sustainability Checklist</i>	8-57
§ 8.15		<i>Checklist: Sample Government Regulations Review: Sustainable Development</i>	8-71

DUE DILIGENCE**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	9-2
	[3] Real Property Due Diligence: Surveys, Title Records, and Insurance	9-4
	[a] Surveys	9-4
	[b] Title Review	9-5
	[c] Title Insurance	9-5
	[d] Special Situation: Visual Artists Rights Act Considerations	9-5
	[4] Personal Property Due Diligence	9-7
§ 9.02	Real Property Due Diligence: Preliminary Considerations	9-8
	[1] Planning and Organizing	9-8
	[2] Local Counsel	9-8
	[3] Appraisals	9-9
§ 9.03	<i>Form</i> : Sample Real Property: Fee Interest Workform	9-11
§ 9.04	<i>Form</i> : Sample Real Property: Leasehold Interest Workform	9-18
§ 9.05	<i>Form</i> : Sample Real and Personal Property: Due Diligence Process Checklist	9-24
§ 9.06	<i>Form</i> : Sample Real Property: Mortgage and Encumbrance Short-Form Workform	9-31
§ 9.07	<i>Form</i> : Sample Real Estate Investment Trust Checklist	9-35
§ 9.08	<i>Form</i> : Sample Leased Personal Property Checklist	9-39
§ 9.09	<i>Guidelines</i> : Sample Real Property Due Diligence Requirements for a Government Agency Transaction	9-43

CHAPTER 10**Negotiated Transactions Due Diligence**

§ 10.01	Introduction to Negotiated Transactions Due Diligence	10-2
	[1] Overview	10-2

TABLE OF CONTENTS

[2]	Purposes of Negotiated Transactions	
	Due Diligence	10-3
	[a] Overview	10-3
	[b] Complying with Law	10-3
	[c] Identifying and Managing Risk	10-3
	[d] Setting Economic and Other Terms	10-3
	[e] Facilitating Negotiation and Drafting	10-4
	[f] Protecting Reputations and Business Franchises	10-4
	[g] Limiting Post-Closing Disputes	10-4
[3]	Buy-Side Due Diligence	10-5
	[a] Overview	10-5
	[b] Tailoring	10-7
	[c] Business and Operational Due Diligence	10-8
	[d] Legal and Regulatory Due Diligence	10-9
	[e] Financial and Accounting Due Diligence	10-11
	[f] Contractual Provisions	10-11
	[g] Public Record	10-11
	[h] Red Flags	10-12
	[i] Subject Matter Experts	10-12
[4]	Sell-Side Due Diligence	10-13
	[a] Overview	10-13
	[b] Data Room	10-13
	[c] Clean Teams	10-13
	[d] Broker-Dealers and Sell-Side Advisors	10-14
	[e] Contractual Provisions	10-15
	[f] Non-Cash Consideration	10-15
[5]	Lending Transactions Due Diligence	10-15
	[a] Overview	10-15
	[b] Understanding the Potential Scope of Debt Instruments	10-17
	[c] Loan Types	10-20
	[d] Basic Terms	10-21
	[e] Selected Elements of Lending Transaction Due Diligence	10-25
§ 10.02	<i>Form: Simple Loan Review Workform</i>	10-27
§ 10.03	<i>Form: Municipal Securities Workform</i>	10-35
§ 10.04	<i>Form: Customer/Vendor Credit Debt Workform</i>	10-41

DUE DILIGENCE

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
	[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	11-47
§ 11.11	Americans with Disabilities Act Due Diligence	11-59
	[1] Overview	11-59

TABLE OF CONTENTS

xi

[2]	The Meaning of “Disability”	11-60
[3]	The Meaning of Prohibition and Discrimination	11-60
[4]	Employers Subject to the ADA	11-61
[5]	Qualified Individuals for Purposes of the ADA	11-61
[6]	Selected Employer Duties Under the ADA	11-61
[7]	Exceptions for Undue Employer Hardship	11-62
[8]	Substance Abuse and Testing	11-63
[9]	ADA Due Diligence	11-63
§ 11.12	<i>Form: ADA Due Diligence Workform</i>	11-64

CHAPTER 11A

Foreign Worker Status Due Diligence

§ 11A.01	Introduction	11A-2
§ 11A.02	Overview: Foreign Worker Visas	11A-3
[1]	Nonimmigrant (Temporary) Workers	11A-3
[a]	B-1 and B-2 Visas	11A-4
[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 IRCA	11A-13
[b]	Successor Liability	11A-13

§ 11A.04	Foreign Worker Due Diligence	
	Considerations in Selected Contexts	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	11A-22
§ 11A.07	<i>Form</i> : I-9 Employment Eligibility Review	
	Work Sheet	11A-24

CHAPTER 12

Selected Considerations in Due Diligence for Transborder Transactions

§ 12.01	Overview	12-2
§ 12.02	Due Diligence Team	12-3
§ 12.03	Due Diligence Methodology	12-4
§ 12.04	Selected Regulatory Considerations	
	in Negotiated Transactions.	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
	[5] Foreign Corrupt Practices Act.	12-10
	[6] Export/Import Restrictions.	12-11
§ 12.05	Selected Transborder Transaction	
	Due Diligence Questions	12-12
§ 12.06	<i>Form</i> : Sample Preliminary Transborder	
	Negotiated Transaction Due Diligence	
	Kickoff Meeting Agenda	12-15
§ 12.07	<i>Form</i> : Scope of Engagement: Local Counsel	
	for Transborder Negotiated Transaction	12-18
§ 12.08	<i>Guidelines</i> : Transborder Due Diligence	
	Process	12-36
§ 12.09	<i>Form</i> : Preliminary Transborder Negotiated	
	Transaction Due Diligence Memorandum.	12-38
§ 12.10	<i>Form</i> : Preliminary Local Counsel Legal	
	Due Diligence Report for Transborder	
	Negotiated Transaction.	12-48

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
§ 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

DUE DILIGENCE

	[5] Personal Rights	13-24
	[6] Contracts	13-24
§ 13.06	<i>Guidelines: Selected IPR Due Diligence</i> 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: IT Systems, Facilities and Personnel</i> Diligence Questionnaire	13-34
§ 13.08	<i>Form: Software Licenses Diligence</i> Review Work Form	13-38
§ 13.09	<i>Form: Software Licenses Diligence</i> 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: Sample Risk Management</i> Diligence Request List	14-9
§ 14.04	<i>Form: Insurance Policy Review</i>	14-13
§ 14.05	<i>Form: Preliminary Risk Management</i> Assessment Memorandum	14-20
§ 14.06	<i>Form: Risk Management Matrix</i>	14-31
§ 14.07	<i>Form: Sample Lines of Insurance</i> Summary	14-33
§ 14.08	<i>Form: Risk Assessment: Errors and</i> Omissions	14-41
§ 14.09	<i>Form: Preliminary Report: Errors and</i> Omissions Insurance Coverage Review	14-44
§ 14.10	<i>Form: Insurance Company Documentary</i> Due Diligence	14-48

CHAPTER 15

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

§ 15.01	Overview	15-2
§ 15.02	Introduction to 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	15-6
	[iii] Foreign Corrupt Practices.	15-7
	[d] Violations and Sanctions	15-7
	[3] Successor Liability	15-8
	[a] Overview.	15-8
	[b] Selected Proceedings	15-8
	[4] Potential Due Diligence Considerations.	15-10
§ 15.03	Selected Due Diligence Considerations: Non-U.S. Investors	15-12
	[1] Overview	15-12
	[2] Exon-Florio and Foreign Investment Risk Review Modernization Act.	15-12
	[a] Legislative History	15-12
	[b] Control and National Security.	15-14
	[i] Determining Control	15-14
	[ii] Determining a Threat to National Security	15-15
	[iii] Past Applications	15-15
	[3] Security Clearance Considerations for Government Contractors	15-17
§ 15.04	<i>Form:</i> Import Restriction Compliance Questionnaire	15-19
§ 15.05	<i>Form:</i> Export Compliance Questionnaire	15-24
§ 15.06	<i>Checklist:</i> Foreign Investment in U.S. Companies	15-27

DUE DILIGENCE**CHAPTER 16****Special Situations**

§ 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 Due Diligence.....	16-8
§ 16.05	Investment Services Due Diligence.....	16-9
	[1] Investment Stewards	16-9
	[2] Investment Advisors	16-10
§ 16.06	[Reserved]	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.....	16-13
	[3] Microfinance.....	16-15
§ 16.08	Selected Privacy and Data Security Issues in Due Diligence	16-20
	[1] Overview	16-20
	[2] Attorney-Client Privilege Considerations... ..	16-21
	[3] Anti-Competition Issues	16-22
INDEX		I-1