

UpCounsel Full Due Diligence Checklist

- **Antitrust and Regulatory Issues**
 - Any potential antitrust issues as a result of the purchase.
 - A list of any prior regulatory or antitrust issues.
 - Issues involved in a [Hart-Scott-Rodino filing](#) with the Federal Trade Commission.
 - Any Exon-Florio issues for national security and foreign investment.
 - A list of Department of Commerce filings.

- **Information Technology Concerns**
 - A list of software used by the company.
 - A list of software licenses bought to analyze other companies.
 - The current system usage and age of equipment.
 - Outsourcing agreements with IT companies.
 - The software's level of customization.
 - A list of interfaces that link systems together.
 - An analysis of the system. Legacy systems often need maintenance. From this analysis, you can choose to keep the current system or replace it.
 - An outline of a disaster recovery plan should systems crash or become damaged.

- **Publicity**
 - Articles and press releases about the company within the last three years.

- **Outsourced Professionals**
 - A list of all independent professionals that have worked with the company within the past five years. This includes accountants, lawyers, and consultants.

- **Insurance Coverage**
 - A copy of insurance claims over the past three years.
 - A schedule and copy of the company's insurance coverage, such as:
 - Worker's compensation
 - General liability
 - Personal and property
 - Directors and officers
 - Errors and omissions
 - Key-man
 - Product Liability
 - D&O
 - E&O
 - Vehicle
 - Intellectual Property

- **Litigation**
 - A list of all pending litigation.
 - Descriptions of threatened litigation.
 - A list of unsatisfied judgments.
 - Documents about injunctions or settlements.
 - Copies of insurance policies that protect against litigation.
 - History of problems with regulatory bodies such as the SEC or IRS.

- A review of all board minutes, shareholder minutes, and audit minutes.
- **Product and Services**
 - Lists of products and services offered.
 - Lists of products and services in development.
 - Correspondence and documents related to regulatory approval of product line.
 - Summary of complaints.
 - Summary of warranty claims.
 - Tests, evaluations, studies, and surveys about products or services under development.
 - A list of major customers and product applications.
 - Current market share values.
 - Profitability and cost structure, including:
 - Expense trends over the past five years.
 - Questionable expenses that you can cut.
 - Employee loans. This might include pay advances or long-term loans.
 - Fixed assets.
 - If a company owns many fixed assets, it could show a reactive approach to market trends.
 - Valuation, inspection, maintenance, utilization, and replacement rate are all topics to know about fixed assets.
 - Speed and nature of change within the industry.
- **Customer Information**
 - List and description of competitors, including strengths, weaknesses, market position, and basis of competition.
 - Current ad programs, marketing budgets, and printed marketing materials.
 - Research on ways to get new business.
 - A list of [distribution channels](#), marketing opportunities, and marketing risks.
 - Surveys and market research on company products.
 - A comparative analysis.
 - This shows how the company's marketing efforts stack up against competitors.
 - It should also show the company's dedication to creating a brand.
 - A list of coordination protocols between the sales and marketing departments.
 - A schedule of the company's 12 to 20 largest customers, as well as sales within the last two years for each.
 - Issues about keeping customers after the sale.
 - A description of the company's credit policies.
 - A description of the company's purchasing policies.
 - Supply and service agreements.
 - A schedule of unfilled orders.
 - A list and explanation of any major customers lost within the past two years.
 - A list of strategic relationships or [partnerships](#).
 - Revenue listed by customer
 - A list of the top 10 suppliers, as well as business deals within the past two years.

- A sales force productivity model that outlines:
 - Plans for new hires
 - Quota average
 - Sales cycle
 - Compensation and commission
 - Organization
 - Productivity
 - Skills match
- **Tax Information**
 - Federal, state, local, and foreign tax returns for the past three years, including net loss or profit.
 - A list of any tax liens.
 - IRS [Form 5500](#) for 401(k) plans.
 - State sales tax returns for the last three years.
 - Excise tax filings for three years.
 - Audit reports.
 - Employment tax filings for past three years.
 - This shows if the company pays a lump sum or quarterly taxes.
 - You can also see if the company is paying the correct amount in taxes.
 - Tax settlement documents over the past three years.
 - Detailed explanations of general accounting principles.
 - A schedule of financing for debt and equity.
 - A list of undisclosed tax liabilities.
- **Materials Contracts**
 - Monthly manufacturing yields.
 - Agreements and relationships with any subsidiaries, partnerships, or joint ventures.
 - Copies of contracts between the company and directors, officers, affiliates, and minimum 5 percent shareholders.
 - Loan agreements including [promissory notes](#), financing details, and lines of credit.
 - All nondisclosure and noncompete agreements.
 - A list of mortgages, collateral pledges, indentures, and security agreements.
 - Installment sales agreements.
 - Guarantees involving the company on any level.
 - Copies of quote, invoice, purchase, and warranty forms.
 - Distribution, sales, marketing, and supply agreements.
 - Contracts, transcripts, or letters of [divestitures](#) from any merger or acquisition within the past five years.
 - Options and [stock purchase agreements](#) affecting company [operations](#).
 - Off-balance sheet liabilities.
 - Explanation of supply chain and supply restrictions.
 - Transportation costs.
 - A list of inventory systems to track incoming and outgoing goods and find obsolete goods.
 - Power of attorney agreements.
 - Exclusivity agreements.
 - Franchise agreements.
 - Indemnification agreements.

- **Licenses and Permits**
 - Copies of federal, state, and local licenses, permits, and consent forms.
 - Any documents about proceedings with a regulatory agency.

- **Environmental Issues**
 - A list describing or identifying any environmental liabilities or contingencies.
 - A list of hazardous materials used in production.
 - A list of any superfund exposure.
 - Copies of notices and filings with the Environmental Protection Agency (EPA).
 - A list of all environmental investigations and pending litigation.
 - Environmental audits for each company property.
 - A description of company disposal methods for hazardous materials, recyclables, etc.
 - A list of terminated licenses or permits.
 - Costs for environmental compliance.

- **Real Estate**
 - Listings of all owned or leased property and locations.
 - Copies of deeds, mortgages, real estate leases, title policies, and zoning approvals.

- **Physical Assets**
 - A list of [Uniform Commercial Code](#) (UCC) filings.
 - A list of leased equipment.
 - A list of major equipment sales and purchases over the past three years.
 - A schedule of fixed assets with locations.

- **Intellectual Property (Trade Secrets, [Copyrights](#), [Patents](#), [Trademarks](#))**
 - A list of foreign and domestic [patent applications](#).
 - A list of copyrights.
 - A [list of trademarks](#) and trade names both domestic and abroad.
 - A description of methods used to protect [trade secrets](#).
 - Descriptions of all technical information within the company.
 - Patent clearance documents.
 - Work-for-hire agreements.
 - Summary of claims or threatened claims on intellectual property.
 - Copies of all consulting agreements, invention agreements, and licenses of intellectual property to and from the company.
 - A list of all licensing revenue and expenses.

- **Employees and Benefits**
 - Copies of stock purchase and stock option benefits for employees.
 - Worker's compensation claims history.
 - Unemployment claims history.
 - List of employees and their positions, current salaries, years of service, and total compensation over the past three years.
 - An explanation of the company's salary philosophy.
 - Pay history and pay freeze information, which helps you decide if current employees will expect a raise soon.
 - All nondisclosure, noncompete, and nonsolicitation agreements between employees and company.

- Resumes, history, and experience of key employees such as senior level management.
 - A list of union affiliations and contracts.
 - List and description of all employee health and welfare insurance policies.
 - Descriptions of any labor disputes, arbitration, or grievances settled or outstanding over the past three years.
 - Copies of [collective bargaining](#) agreements.
 - Evidence of compliance with IRS Section 409A in regards to [stock options](#).
 - Evidence of compliance with IRS Section [280G](#) in connection with the purchase.
 - A list of any officers in criminal or civil litigation.
 - Actuarial reports for the past three years.
 - Layoff and [severance](#) package information.
 - A list of harassment, [wrongful termination](#), and discrimination disputes within the past three years.
 - A copy of the [employee handbook](#) including policies on vacation, sick days, benefits, holidays, and paid leave. This allows you to compare your current situation with others in the industry.
 - Turnover data for the past two years.
 - Documents on pension plan [funding](#) and distributions.
 - Copies of all Occupational Safety and Health Administration (OSHA) examinations.
 - The results of formal and informal employee surveys.
- **Organization and Good Standing of Company**
 - The Articles of [Incorporation](#) and any amendments.
 - A list of company [bylaws](#) and amendments.
 - A list of company assumed names.
 - A list of all states or countries where the company does business, has employees, or owns/leases an asset.
 - Annual reports for the last three years.
 - A copy of the company's minute book.
 - An organizational chart.
 - A list of all shareholders and percentages owned.
 - A [Certificate of Good Standing](#) from each Secretary of State where the company does business.
 - Active status reports in the [state of incorporation](#) over the past three years.
 - Agreements on voting trusts, subscriptions, puts, calls, options, and convertible securities.
- **Financial Information**
 - Audited financial statements (cash flow, balance sheet, income statement, footnotes) for the last three years, including an auditor's report and quarterly and annual statements.
 - Auditor's correspondence for the past five years. These are letters sent to management that outline areas to improve profits and efficiency.
 - Unaudited financial statements for comparison.
 - Company credit report.
 - A schedule of accounts receivable

- A schedule of accounts payable. Check these for any overdue or unpaid accounts that might impact profit.
 - An aging schedule of accounts payable and accounts receivable.
 - A list of outstanding debt.
 - Search for any clauses that increase debt if a company is sold.
 - Scan for any related parties that have loaned money to the company. This includes manager, investors, and shareholders.
 - A list of unrecorded liabilities, which you usually find when interviewing the seller or employees.
 - A list of collateral for debt.
 - A schedule of depreciation and amortization methods over the past five years.
 - Analysis of gross margins.
 - Analysis of fixed and variable expenses.
 - A list of the company's internal control procedures.
 - A list of assets and liabilities.
 - A schedule of inventory.
 - Projections, capital budgets, and strategic plans.
 - Projections should include revenue by product type, customer, and channel.
 - Projections should also include all financial statements such as a balance sheet, cash flow statement, and cash-on-hand.
 - A list of growth drivers and possible clients and customers.
 - Industry and company pricing plans.
 - Analysis of projected expenditures and depreciation.
 - Any perceived risk in foreign markets such as inflation, political strife, and exchange rates.
 - The general ledger.
 - Analyst reports.
 - Breakdown of sales and gross profits by geography, channel, and product type
 - Planned projection vs. actual sales chart.
 - Capital structure.
 - Current shares outstanding.
 - A list of all stockholders with options, warrants, and notes.
 - A list of non-operational expenses. Many companies put operating expenses in this category to pad their earnings.
 - Public filings. If the company is publicly traded, it must file a Form 10-K annual report, Form 10-Q quarterly report, and other issues on the [Form 8-K](#). You can get these from the [Securities and Exchange Commission \(SEC\) website](#).
- **Revenue Streams**
 - Recurring revenue stream. This is a key value driver from the company. It shows loyal customers and how much they bring to the business.
 - Backlog. Creating a monthly backlog of the past year shows true revenue. It also shows decreasing or increasing revenue trends.
 - Pricing philosophy. This lets you know how the company prices its goods or services.
 - Estimating philosophy. If the company has a special order, it should have an estimate department. Analyzing this provides you with a detailed list of profit or loss.

