# A Framework for Due Diligence of Data in an M&A Transaction

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The broad adoption of technologies that collect, analyze, store and distribute data is disrupting a number of industries. It is also proving to be a challenge for lawyers attempting to apply existing laws and regulations to the novel issues these technologies raise. One area of law that is often overlooked is conducting due diligence of a target company's data assets in a corporate transaction, since data have become critical corporate assets for a number of businesses. As it does with the other corporate assets of a target company, the acquiring company must ensure that any risks associated with these data assets have been identified and, to the extent possible, mitigated. In addition, the acquiring company should ensure that the value of the target company's data assets is adequately protected.

The first three posts in this series have highlighted several challenges lawyers will face when conducting due diligence of data assets, including:

- The law associated with data is often unclear and evolving;
- Innovative new uses for data are being developed;
- The target company may not know the extent of its own data assets or how they are used; and,
- Due diligence must cut across both technology platforms and legal domains.

They have also described key due diligence issues that an acquiring company should consider with respect to the target company's data assets.

- Data Due Diligence in M&A Transactions: Data Protection/Privacy – This post discussed due diligence in connection with privacy/data protection issues. This type of due diligence has become increasingly important after reports of several high-profile data breaches of target companies that occurred before acquisition. The post explained why it is critical for the acquiring company's counsel to identify what personal data the target company has collected and how the data were acquired, used and stored in order to ensure compliance with applicable laws, policies and agreements. Due diligence should also be conducted on the target company's cybersecurity practices and policies.

- Data Due Diligence in M&A Transactions: Ownership Rights in Data – The second post focused on the importance of understanding ownership rights in data. Unfortunately, as the post discussed, ownership rights in data are not as clear as with many other types of assets. It explained that there are two primary considerations when conducting due diligence on the target company's rights in its

data assets. First, the acquirer needs to determine whether the target company is adequately protecting rights it may have in its own data. Second, the acquirer must ensure that the target company's is not violating any third-party rights.

- Data Due Diligence in M&A Transactions: Data Quality and Liability – The most recent post examined due diligence for potential liability risks associated with data quality. This type of due diligence is becoming more critical as important decisions are made in near real-time based upon data collected from technologies such as the Internet of Things (IoT). In addition, as businesses integrate machine learning and artificial intelligence (AI) into their operations, much of the data often will be collected, processed and used without significant oversight by humans, making data quality issues even more difficult.

## Five Key Areas for Framework Development

**Please click here to view five key areas of focus when developing a framework for conducting due diligence of data assets in a corporate transaction.**


## Related People

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