

DUE DILIGENCE CHECKLIST: EMPLOYEE BENEFIT PLAN ISSUES

KEY QUESTIONS:

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|---|-------------------------------------|--|
| Is this an asset sale or a stock sale? | <input type="checkbox"/> Asset Sale | <input type="checkbox"/> Stock Sale |
| Is this a purchase of a subsidiary or an entire business? | <input type="checkbox"/> Subsidiary | <input type="checkbox"/> Entire Business |
| Does the buyer intend to continue the seller's qualified plans? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

The list of necessary documents will change depending on the answers above.

REQUIRED DOCUMENTS

From both Seller and Buyer:

- Copies of qualified plan documents – plan, trust, summary plan description, amendments and corporate resolutions
- Most recent IRS determination letter for the document
- Three most recent Form 5500 filings
- Most recent plan administration package – trust reconciliation and participant accounting

From Seller:

- Copies of nonqualified plan documents and accounting
- Corporate structure including any controlled groups or affiliated service groups
- Information on any pending governmental audits or inquiries
- Employment or other agreements for executives – parachute payments, severance agreements, etc.
- Welfare benefit plans – health, dental, cafeteria, disability, etc.
- Investment policy statements, investment committee meeting minutes

SERVICES PROVIDED:

- Review of qualified plans for conformity and compatibility
- Review of nonqualified plans for 409A issues
- Section 280G calculation for “change in control” transactions
- Analysis of controlled group, separation from service and nondiscrimination issues
- Recommendations for plan corrections, amendments or termination
- Recommendations for warranties and covenants
- Assistance with plan redesign, mergers or spin-offs

If you have questions about this article or would like more information, please contact Richard Green at rgreen@windes.com or **844.4WINDES** (844.494.6337).