Acquisition Task Checklist

Task	Comments/Notes
A. Pre-Deal	
Acquisition Task Checklist	
1. Client Identification and Conflict Clearance	
a) What entity or persons will be clients? See, *M&A Manual*, Chapter 2 for a discussion entitled "Managing the Client Relationship and Other Ethical Issues."	
b) Will the identity of the client depend on ultimate structure? For example, in an asset sale or merger, the entity owning the assets would likely be the client, but in a stock sale, some or all of the shareholders might be clients.	
c) Have necessary conflict checks and waiver clearances been obtained?	
d) Is the expected client a new or existing client?	
2. Confidentiality	
a) Is there a confidentiality or nondisclosure agreement in place?	
b) If not, is it to be included in a letter of intent or a stand-alone agreement? See *MSPA, Vol. II* for a model form of confidentiality agreement.	
3. Preliminary Agreements	
a) Is there a letter of interest signed or contemplated?	
b) Is there a letter of intent/term sheet signed or contemplated? Will a public announcement be required? See *MSPA, Vol. II* for a model form of letter of intent.	
c) Are the parties considering an exclusivity or "no shop" understanding?	
d) If there will be an exclusivity or "no shop" understanding, will it be included in a letter of intent or set forth in a stand-alone exclusivity agreement? What is the duration of the exclusivity period? Is the date on which the exclusivity expires clearly articulated? What is the contemplated recourse for a breach – breakup fee, reverse breakup fee or other recourse?	

Confirmatory Scoping Letter
(Pre-Deal Document No. 3(a))

[*law firm letterhead*]

[*Client name & address*] [*date*]
Attention: [*client engagement contact*]

Re: Scope of our engagement relating to
[*Brief description of the transaction/project name*]

Dear _____:

We are pleased you have engaged our firm for this transaction and we look forward to helping you bring it to a successful close.

We believe our mutual expectations will best be served by having an express understanding as to the scope of the services you wish us to perform. Accordingly, Exhibit A to this letter sets forth the scope of our expected services for this engagement. *Select one:* [Any fee estimate and progress reporting we may furnish will be based on this scope. We note that fee and expense estimates are intended for your guidance only and are not guarantees of the final amount of our fees and expenses, which may vary from any estimate.]/[Our agreed fee has been, and any progress reporting we may furnish will be, based on this scope.]

If circumstances arise that indicate a change in scope may be warranted, you and we will discuss those changes. Once changes are agreed between us, we will revise the stipulated scope of services for this engagement accordingly, as well as the related [fee estimate/agreed fee] and progress reporting.

Please indicate your agreement with this letter by signing below and returning the signed copy to us.

Very truly yours,

[*law firm or law firm partner*]

Confirmed and agreed:

[*Name of client*]

By_______________________
Name & title of client representative

Attachment: Exhibit—Confirmation of Scope of Services [*This may be in the form of a grid, such as Pre-Deal Document No. 3. Regardless of its form, Exhibit A should reflect the substance of the scoping conversation described in Pre-Deal Document No. 2—Initial Deal Scoping Discussion*]

Pre-Deal Document No. 6

Deal Kickoff Meeting Checklist

Explanatory Note: This Legal Project Management (LPM) tool suggests topics for discussion among client, law firm, and their respective counterparts at the inception of an M&A transaction. Common in capital market transactions, the use of such meetings in M&A deals can be a useful practice.

While every transaction is different and the handling of each stage of the transaction may be influenced by the circumstances of the parties, geographies, and levels of sophistication, the deal process can be streamlined by conducting a deal kickoff meeting as soon as possible after the letter of intent is executed. Such a meeting serves as a useful vehicle for the parties and their respective advisors to meet one another, set expectations, and establish protocols. As a result, an in-person meeting is ideal, but video and telephonic meetings are often more convenient and more readily convened.

Where a kickoff meeting is used, thought should be given as to which participants to include. The best practice would be to include key business leads of each of the parties, their respective counsel, investment bankers, accountants, and other key professionals and consultants.

A designated representative from each client party should be prepared to lead a discussion of matters that would benefit the attendees and serve to facilitate the M&A transaction. The following is a suggested list of topics, most of which are organizational in nature. Other more substantive items will be subject to subsequent due diligence and negotiations and generally not be appropriate for discussion at the kickoff.

Early Due Diligence Assessment Questions:

A. Compliance-General

1. Is the target the subject to or has the target ever been the subject to a consent decree, corporate integrity agreement, or other legal restriction or penalty imposed upon it by a governmental agency?
2. Is the target the subject of, or has the target ever been the subject of, a government investigation, inquiry, or complaint alleging compliance or ethical violations?
3. Is the target subject to, or has the target ever been subject to, an allegation or judicial or administrative finding that it engaged in retaliatory conduct towards an employee?
4. Does the target have a code of conduct for its employees that sets out the target's expectations and standards of conduct for its employees. Are all employees required to sign a written acknowledgment of compliance on an annual basis?
5. Within the past two years, has the target received a "confidential tip" of a possible significant violation of its compliance policy? If so, what action has been taken by the target to investigate and resolve the possible violation?

B. Anti-Bribery and Corruption

1. Does the target do business in countries that present significant anticorruption risks? (Consider whether the target does business in the countries ranked in the lower half of Transparency International's Corruption Perceptions Index, http://www.transparency.org/cpi2014.)
2. Does the target generate significant revenue from sales to government agencies or state-owned companies outside the U.S.?
3. Does the target operate in a highly regulated industry outside the U.S. (e.g., pharmaceuticals and medical devices, defense, telecommunications, energy)?
4. Does the target, its owners or its affiliates or any significant customer appear on any lists of banned or sanctioned parties published by government agencies or industry regulators?
5. Does the target have a meaningful accounting function that appears to include a system of internal controls consistent with what will be required when incorporated into the client?
6. Are the target's sales decisions controlled by one or two individuals who are intended to control those decisions post-acquisition?

C. Cybersecurity, Privacy, and Data Security/Protection

1. As a matter of domestic/global law (whether by statute, regulation, or contractual obligation):
   a) Are cybersecurity, privacy or data security/protection risks among the most significant factors that would make acquisition of the target speculative or risky or otherwise present a material issue?
      (i) Consider an enterprise-wide risk assessment with appropriate cybersecurity, privacy or data security/protection advisors/consultants.
      (ii) Are the security systems sufficiently secure and mature to reasonably address threats?
      (iii) Have system vulnerabilities been identified or do they need to be identified? What is the estimated cost to address system vulnerabilities?
      (iv) Are tactical and strategic fixes in place which improves security and what are the related costs?