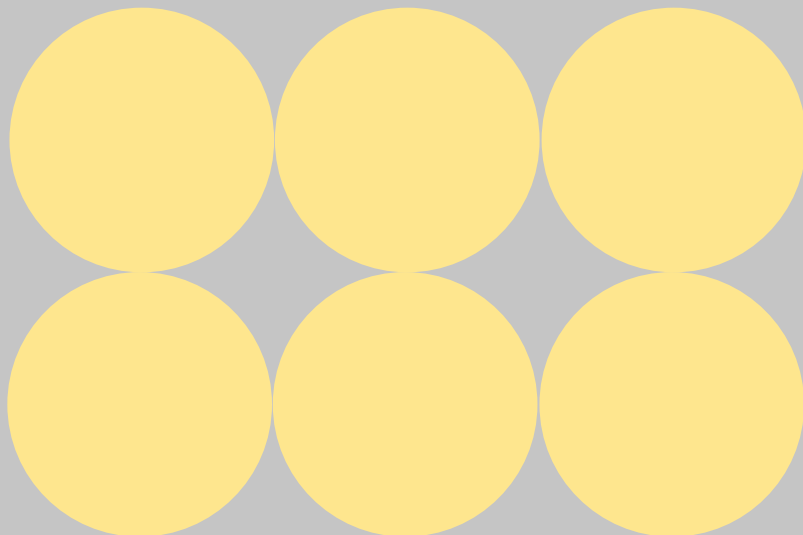




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# Mergers, Acquisitions, and Divestitures Guide



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# Introduction

In the fast-paced world of mergers, acquisitions, and divestitures (MA&D), Legal Data Intelligence (LDI) professionals play a critical role in ensuring that information is accurately reviewed, managed, and leveraged for strategic decision-making. This guide, created by the Corporate LDI Architect team, serves as a comprehensive resource designed to streamline the due diligence process and provide key considerations when handling legal data in these transactions.

This guide is intended to be a practical reference tool for helping LDI practitioners navigate complex transactions with clarity, efficiency, and confidence. Whether you are preparing for due diligence, evaluating regulatory risks, or ensuring data security compliance, this guide provides a structured approach to managing data in high-value transactions.

Specifically, this guide offers:

- **Important Considerations and Questions:** A checklist of critical factors to evaluate and questions to ask when engaging in a merger, acquisition, or divestiture, ensuring compliance, risk mitigation, and data integrity.
- **Stakeholders and Value Propositions:** An overview of the primary stakeholders involved, their interests, and the data-driven value propositions that can enhance deal negotiations and execution.
- **Key Talking Points:** A curated list of discussion points to guide internal and external conversations, ensuring alignment between legal teams, technology experts, and business leaders.
- **Roles, Responsibilities, and Tools/Resources:** Three charts outlining the cross-functional, legal professional, and lawyer roles and responsibilities in an MA&D transaction, alongside a listing of recommended tools and resources that can be utilized during each stage in the transaction.
- **Transaction Workflow Diagram:** A visual representation of the LDI professional's role throughout the transaction lifecycle, from initial data assessment to post-transaction integration.

# Checklist of Important Considerations and Questions for LDI Practitioners During Mergers, Acquisitions, and Divestitures

## Data Mapping/Documentation Considerations

- ☐ Who is responsible for records management at the site(s)?
- ☐ How many employees does the merged/acquired/divested company have, and are there any contractors? Is there a third party that manages contractors and their employment records?
- ☐ Where are the IP documents (physical, digital) stored? Namely, the prosecution files for the company's copyrights, trademarks, patents, and other related patent records.
- ☐ Where are employee proprietary information and invention agreements stored?
- ☐ How many sites/buildings does the merged/acquired/divested company have and where are they located?
- ☐ What is the target date for completion of integration or divestment?
- ☐ Ensure all entities involved in the merger/acquisition/divestiture have up-to-date and accurate documentation of where data resides.
  - ☐ What are the types of records currently stored onsite (both physical and digital)?
  - ☐ In which systems are digital records stored? What email system is used?
  - ☐ What offsite storage vendor is used, if any?
- ☐ Verify that data inventories are complete and reflect the current state of data storage and usage.
- ☐ Does the company have an existing systems data map or inventory that was completed for other initiatives (e.g., privacy risk assessments)?
- ☐ Is the data integrity preserved for all merged/acquired/divested entities (e.g., any metadata alteration or deviations from how data was stored in the ordinary course)?
- ☐ Are there clear audit trails for all data migrations or deletions in the transaction?

## Data Security/Leakage Considerations

- ☐ Implement logging mechanisms to track data access and changes (e.g., audit trails, user encryption, multi-factor authentication).
- ☐ Ensure that data transfer protocols are secure and comply with industry standards.
- ☐ Identify potential data leakage risks for departing employees and implement measures to mitigate these risks.

## Data Ownership Considerations

- ☐ Clearly define which data belongs to each entity or company during the transaction.
- ☐ Is there a need for continued data access for legal, regulatory, or compliance reasons?

- ☐ Are there any other official records held by third parties? If so, they need to be identified and the third party must be given instructions regarding appropriate retention, transfer, and disposition.

## Legal Hold Considerations

- ☐ Implement measures to prevent inadvertent deletion or data loss for data subjects per preservation requirements, understanding that legal hold requirements are dynamic.
  - ☐ Who are the main points of contact at the company that can answer questions regarding legal holds? Does outside counsel have relevant information?
  - ☐ What, if any, litigation matters or matters requiring legal holds are currently active that are associated with the company and their employees?
  - ☐ What type of records are relevant to those legal holds (both physical and digital)? Where are they stored?
  - ☐ Are there copies of the legal holds and respective lists of custodians subject to them?
  - ☐ Is there an ediscovery database for tracking legal hold collections?
  - ☐ Within the merged/acquired/divested company, what other databases, systems, or storage locations have records related to any existing legal holds?
  - ☐ How will any relevant legal hold data on devices of legal hold custodians within the merged/acquired/divested company be preserved and transferred to the appropriate company as part of the transaction?
- ☐ Track cases and their status on a periodic basis (e.g., weekly updates).
- ☐ Track which cases, employees, and data are involved.
- ☐ Ensure the legal hold remains intact after the merger/acquisition/divestiture.
- ☐ If necessary, update custodians about their preservation obligations after the merger/acquisition/divestiture.
- ☐ Understand the litigation and regulatory exposure the transaction may impose (e.g., third-party lawsuits, government scrutiny, or investigations).
- ☐ Ensure discovery obligations are met for any existing/ongoing litigation.

## Regulatory and Compliance Considerations

- ☐ Identify any industry-specific regulatory requirements that should be adhered to during the transaction (e.g., GDPR, CCPA, HIPAA, and SEC or DOJ regulations).
- ☐ Address potential conflicts in international data privacy laws if the transaction involves multiple jurisdictions.
- ☐ Determine if any non-essential data can be defensibly deleted.

## Contractual Considerations

- ☐ Review all MA&D and vendor contracts to determine data-related obligations and ensure adherence.
- ☐ Review contracts for data ownership, retention, and access rights pre- and post-closing.

## Future Litigation/Legal Considerations

- ☐ Has there been planning for any potential disputes where older data may be needed?
- ☐ Determine if continued access to any data is required for legal, regulatory, or compliance reasons. If so, establish protocols for granting and monitoring such access.
- ☐ Ensure the merged/acquired entity can comply with discovery requests post-transaction.

## Identification of Technological Solutions

- ☐ Is there software in place to track what type(s) of devices have been issued to merged/acquired/divested company employees? What is the email client and how is email stored in the usual course of business? How is email preserved when subject to legal hold? What other electronic tools are used for data storage and collaboration?
- ☐ Utilize contract analysis tools to review and manage contractual obligations.
- ☐ Implement legal hold management tools to track and enforce legal holds.
- ☐ Use Data Loss Prevention (DLP) solutions to monitor and protect sensitive data.
- ☐ Employ data cataloging and mapping tools to maintain an accurate inventory of data assets.
- ☐ Select a data room that meets the requirements (e.g., tracking, access control, security) of stakeholders.
  - ☐ Is the company going to be incorporated into the merging/acquiring company's technical infrastructure or retain its own?
  - ☐ Does the merged/acquired/divested company have any backup tapes?

## Resource/Staffing Considerations

- ☐ Ensure team members are trained and equipped to manage tasks such as legal hold monitoring and data security.
- ☐ Assign adequate resources to various phases of the transaction and clearly define roles and responsibilities.

# Stakeholders, Value Propositions, and Key Talking Points

## Stakeholders

Large enterprise stakeholders with significant involvement in MA&D processes:

### Board of Directors

- Board Chair - Often leads strategic discussions and final approvals
- MA&D/Finance Committee Members - Specialized directors who review transactions in detail
- Independent Directors - Provide objective assessment of transaction value

### C-Suite

- CEO - Sets strategic direction and makes final internal decisions
- Chief Financial Officer (CFO) - Leads financial evaluation and determines funding approaches
- Chief Operating Officer (COO) - Assesses operational integration challenges and opportunities
- Chief Strategy Officer (CSO) - Evaluates strategic fit and synergy opportunities
- Chief AI Officer (CAIO) - Quarterback for tech advancement and data integration to help other business units and leaders navigate the MA&D process
- Chief Human Resources Officer (CHRO) - Leads workforce strategy during transactions
- Chief Information Officer (CIO)/Chief Technology Officer (CTO) - Oversees technology integration strategy

### Corporate Development Team

- VP/Head of Corporate Development - Oversees the entire process
- MA&D Directors - Manage specific transactions
- Business Development Managers - Identify targets and preliminary assessment
- Integration Managers - Plan post-merger integration

### Legal Department

- General Counsel - Oversees legal strategy and major risks
- MA&D Counsel - Specializes in transaction documentation
- Compliance Officers - Manage regulatory approval processes
- IP Lawyers - Evaluate intellectual property aspects
- Privacy Teams - Assess data security risks associated with the transactions

### Finance Department

- Corporate Controller - Manages accounting implications

- FP&A Director - Conducts financial modeling and synergy analysis
- Treasury Director - Handles financing arrangements
- Tax Director - Structures transactions for tax efficiency

### HR Department

- Compensation & Benefits Director - Manages benefits integration/separation
- Talent Acquisition Lead - Handles retention planning
- Change Management Lead - Manages organizational transitions

### IT Department

- Enterprise Architecture Lead - Plans systems integration, examines AI applications internally
- Data Management Director - Manages data migration, assesses data hygiene and taxonomies
- IT Security Director - Ensures security during transitions

### Business Unit Leadership

- Division Presidents/General Managers - Provide operational insights
- Product/Service Line Directors - Assess product portfolio implications
- Sales Leadership - Evaluates customer relationship impacts
- Operations Directors - Plan for operational integration

## Value Propositions for Involving LDI Professionals Early and Taking an LDI Approach to Mergers, Acquisitions, and Divestitures

Involving LDI professionals early in MA&D transaction planning can transform what might otherwise be viewed as a compliance or legal cost into a strategic advantage that enhances transaction value and reduces integration challenges.

### Risk Mitigation

- Identification of potential legal liabilities in data repositories before transactions close
- Discovery of compliance issues that might affect valuation or transaction viability
- Prevention of accidental data loss during systems integration or separation

### Due Diligence Enhancement

- Systematic identification and preservation of critical business records and intellectual property (IP)
- Uncovering of relevant contractual obligations buried in unstructured data
- Comprehensive data mapping to understand what information exists and where it resides

### Transaction Efficiency

- Accelerated review of large volumes of documents using advanced analytics and AI tools
- Structured approaches to identify, classify, and transfer only necessary data sets



- Reduction in manual review costs through technology-assisted review processes

### Compliance Assurance

- Maintenance of regulatory compliance during data transfers across jurisdictions
- Proper handling of personally identifiable information (PII) and sensitive data
- Documentation of chain of custody for critical information assets

### Post-Transaction Value

- Streamlined integration of disparate information systems
- Prevention of knowledge loss during organizational transitions
- Creation of searchable repositories of institutional knowledge

### Cost Management

- Targeted approach to data migration rather than "lift and shift" of all systems
- Reduction in storage costs by identifying and eliminating redundant, obsolete, or trivial (ROT) data
- Avoidance of costly emergency data remediation after transaction completion

## Key Talking Points

When approaching stakeholders about involvement, LDI professionals should emphasize these points:

### For the Board of Directors and C-Suite

- **Risk Reduction:** "Our data analysis can identify hidden compliance issues that could affect transaction value or create future liabilities."
- **Value Protection:** "We safeguard critical intellectual property during transitions, ensuring no valuable information is lost."
- **Informed Decision-Making:** "Our early data assessment provides insights that may influence valuation or negotiation strategy."

### For Corporate Development and Legal Stakeholders

- **Transaction Acceleration:** "Our technology accelerates document review by up to 80%, potentially shortening transaction timelines."
- **Enhanced Due Diligence:** "We uncover relevant information in unstructured data that traditional due diligence might miss."
- **Defensible Process:** "Our documented, systematic approach creates an audit trail that protects against future challenges."
- **Privacy:** "We help evaluate and investigate privacy risks as an integrated part of the process."

### For Finance Stakeholders

- **Cost Avoidance:** "Early involvement prevents costly emergency data remediation, which typically costs 3 – 5x more than planned approaches."

- **ROI Clarity:** "We provide detailed cost projections for data integration/separation, preventing budget surprises."
- **Synergy Realization:** "Our data mapping accelerates IT system consolidation, helping achieve cost synergies faster."

#### For HR Stakeholders

- **Employee Information Protection:** "We ensure compliant handling of sensitive employee data during transitions."
- **Knowledge Preservation:** "Our processes capture institutional knowledge that might otherwise be lost during organizational changes."

#### For IT Stakeholders

- **Migration Efficiency:** "We reduce data migration volume by 40 – 60% through intelligent classification and deduplication."
- **System Integration Planning:** "Our data mapping provides critical insights for IT integration roadmaps."
- **Security Assurance:** "We maintain data security controls throughout the transition, preventing breaches during vulnerable periods."

#### For Business Unit Stakeholders

- **Operational Continuity:** "We ensure critical business records remain accessible throughout the transition."
- **Customer Relationship Protection:** "Our processes safeguard important customer information during systems changes."

## Roles, Responsibilities, and Tools/Resources

### Cross Functional

Role	Responsibilities	Tools/Resources
Financial Advisors	Financial advisors help with valuation, structuring deals, and securing financing. They provide insights into the financial health of the companies involved and recommend the best strategies for the transaction.	Financial Modeling Software, Customer Relationship Management (CRM) Software
Legal Support	Legal teams handle due diligence, draft contracts, and ensure compliance with regulations. They also address any legal issues that may arise during the process.	Contract Lifecycle Management (CLM) Solutions, Due Diligence Automation

Operational Support	Operational experts assist in integrating the companies' processes, systems, and cultures. They help streamline operations to achieve synergies and improve efficiency.	
Human Resources	HR teams manage the transition for employees, including communication, retention strategies, and addressing cultural differences. They play a critical role in maintaining morale and productivity.	People Management Platforms
IT Support	IT professionals ensure the integration of technology systems and data. They help mitigate risks related to cybersecurity and ensure seamless operation of digital infrastructure.	Cybersecurity Monitoring, Infrastructure Management Platforms
Marketing & Communications	Marketing teams handle rebranding, public relations, and communication strategies to inform stakeholders and customers about the merger/acquisition/divestiture.	CRM Deal Management, New Services
Project Management	Project managers oversee the entire MA&D process, coordinating between different teams and ensuring that timelines and objectives are met.	Project Management Platforms

## Legal

Role	Responsibilities	Tools/Resources
Due Diligence	Conduct thorough investigations into the target company's legal, financial, and operational aspects to identify potential risks and liabilities.	Virtual Data Rooms, Due Diligence Automation
Negotiation and Structuring	Negotiate terms and structure the deal to maximize value and minimize risks. This includes drafting and reviewing contracts and agreements.	Collaboration, CRM Software
Regulatory Compliance	Ensure the transaction adheres to all applicable laws and regulations, including antitrust laws, securities regulations, and industry-specific rules.	Regulatory Change Monitoring Software, Compliance Management Software
Contract Management	Prepare and review essential legal documents such as non-disclosure agreements (NDAs), letters of intent	CLM Solutions, Contract Drafting

	(LOIs), purchase agreements, and shareholder agreements.	
Tax Advisory	Provide guidance on the tax consequences of the transaction and structure the deal to optimize tax benefits.	Tax Compliance Software, CRM Deal Software, Managed Services
Deal Closing	Facilitate the finalization of the transaction, including the transfer of assets, shares, and intellectual property.	CRM Deal Software
Post-Transaction Integration	Assist with the integration of the merged/acquired/divested entity, addressing any legal issues that arise during the transition.	Project Management Software

## Lawyers

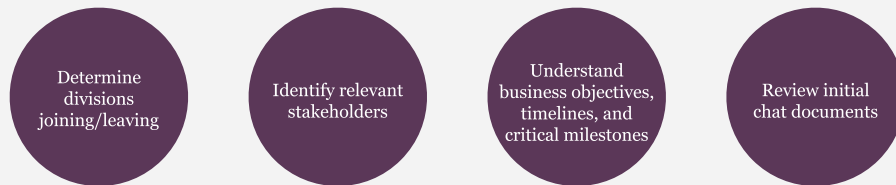
Role	Responsibilities	Tools/Resources
MA&D Lawyers	Lead negotiations	MA&D Platforms
	Draft and review contracts	Outside Counsel - Deal Counsel
	Conduct due diligence	Outside Counsel - Due Diligence Counsel
	Ensure regulatory compliance	Internal Department Management Team (Corporate Affairs, Business Management, Alliance Management, IT, HR, Legal, Operations, Communications, Business-Specific Management)
Securities Lawyers	Ensure compliance with securities regulations	MA&D Platforms, Compliance Monitoring Services, Anti-Money Laundering (AML) Services
	Handle filings and disclosures	Outside Counsel - Securities in Country, Foreign/Domestic Markets
Intellectual Property Lawyers	Protect and transfer intellectual property rights	Intellectual Property Management Software

	Conduct IP due diligence	R&D team, IP Counsel, Outside Counsel IP
Employment and Labor Lawyers	Address employee transitions	HR Management Platforms
	Ensure compliance with labor laws	Labor Monitoring Services
	Manage employment contracts	Human Resources and Outside Counsel - Labor and Employment Focus
Tax Lawyers	Assess tax implications	MA&D Platform, Tax Monitoring
	Structure deals to optimize tax benefits	Tax Department, Outside Counsel - Tax Specialists
Environmental Lawyers	Ensure compliance with environmental regulations	Environmental, Social, and Governance (ESG) Management Services, Domestic/Foreign Regulatory Monitoring Services
	Conduct environmental due diligence	Real Estate Team, Facilities Team, ENS and ESG Teams, Outside Counsel - ESG Focus
Real Estate Lawyers	Handle property transfers	ESG Management Services, Domestic/Foreign Regulatory Monitoring Services
	Conduct real estate due diligence	Real Estate Team, Facilities Team, ENS and ESG teams, Outside Counsel - ESG Focus
Litigation Attorneys	Manage any legal disputes arising from the transaction	Legal Research Platform, Legal Data Intelligence Platform
	Represent the company in court if necessary	Litigation and IP Litigation Teams, Preferred Outside Counsel Representing Specific Subject Matter for Litigation

# Transaction Workflow Diagram

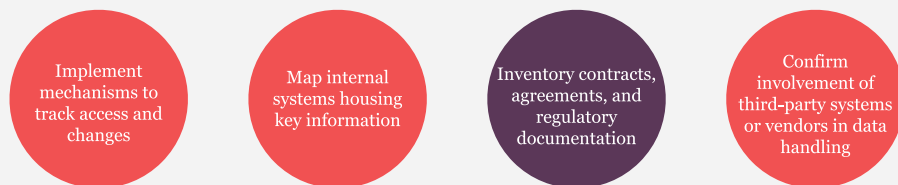
## PHASE I

### Gather Information About the Deal



## PHASE II

### Identify Relevant Systems/Documents



### Explore Custodian Implications



### Consider Regulatory and Contractual Issues



## PHASE III

### Analyze Impact to Ongoing/Future Disputes

