

Phase 1: Scoping with the Client in Legal Due Diligence

(Part of the Buyer-Side Legal DD Series)

When a buyer instructs you to run legal due diligence on a potential acquisition, your first instinct may be to jump straight into the data room and start reviewing contracts. Resist that urge. Phase 1: scoping with the client, is where you set the stage. This phase determines whether your diligence will be a strategic exercise that supports decision-making, or a box-ticking scramble that leaves value on the table.

Think of Phase 1 as a coaching session with the client. You're not only asking questions; you're listening for what matters most, testing assumptions, and translating business goals into legal workstreams. The more disciplined you are here, the sharper and faster your entire review will be.

Start Informed: The Pre-Read

Before speaking with the client, you should already understand the basics of the deal. Collect the teaser, CIM, LOI or term sheet, management presentation, and if possible, the buyer's financial model. Skim registry extracts, IP databases, and litigation dockets for anything public. With that, prepare a one-page briefing note: what the target does, where it makes money, what looks like a "crown jewel," and where obvious risks may hide. This way, your scoping call begins with insight, not ignorance.



Key Pre-Read Documents











- Teaser and Confidential Information Memorandum (CIM)
- Letter of Intent (LOI) or term sheet
- Management presentation
- Buyer's financial model (if available)
- Public registry extracts and database information

One-Page Briefing Note Contents

- Target's business description
- Revenue sources and profit centers
- Potential "crown jewels" of the business
- Obvious risk areas requiring attention

The Scoping Call: Asking the Right Questions

The scoping call with the client is not just about gathering information; it is about framing the diligence as a strategic tool. Walk the client through clear themes:

-  **Deal perimeter & structure**
What exactly is being acquired—shares, assets, or a carved-out business? Which geographies are in play, and what's excluded?
-  **Business model & economics**
Where does revenue come from? Who are the top customers and suppliers? What drives margins?
-  **Crown jewels**
Ask bluntly: "What could kill this deal if we can't transfer it?" Often the answer is licenses, source code, data sets, land banks, or a handful of key contracts. Write these down word for word. They become your "always material" list.
-  **Regulatory exposure**
Does the business run on sectoral licenses? Are approvals tied to individuals? Any merger control or foreign investment concerns?
-  **Technology & data**
How dependent is the business on software, IP, or personal data? Is open-source code part of its products? Has it suffered breaches?
-  **People & culture**
Who are the key employees? Are there unions or works councils that could delay a transfer? What change-in-control triggers might detonate bonuses?
-  **Real estate & environment**
Which sites are critical? Any contamination notices or lease restrictions?
-  **Litigation & compliance**
Are there injunctions, government investigations, or consent decrees?
-  **Integration intent**
What must be operational on Day 1, billing, payroll, branding? How does the buyer want to use data post-close?
-  **Risk appetite**
Which risks are acceptable with escrows or insurance, and which are walk-aways?

Run this call like a coach: short, clear questions, live note-taking, and constant steering back to the buyer's thesis.

Translating the Thesis into Diligence Objectives

After the call, convert what you heard into 8–15 Thesis Questions, plain-English challenges your diligence must answer. For example:

- "Can customer data lawfully be repurposed for cross-selling within 90 days post-close?"
- "Are the top five customers locked in beyond one year, or can they walk at will?"

For each Thesis Question, assign a workstream owner, note the evidence you need, and identify the eventual SPA hook representation, covenant, condition precedent, or indemnity. This ensures every hour of DD is tied back to deal value.



1

Identify Key Thesis Questions

Formulate 8-15 plain-English questions that directly address the buyer's strategic concerns

2

Assign Workstream Owners

Designate responsible team members for each thesis question to ensure accountability

3

Document Evidence Requirements

Specify what documentation or information will be needed to answer each thesis question

4

Map to SPA Provisions

Connect each thesis question to relevant SPA mechanisms (representations, covenants, CPs, indemnities)

Crafting the R1 Request List

Your first request to the seller: the R1 list, should be surgical, not bloated. It focuses on red-flag issues that link directly to the crown jewels and thesis questions. For example:



Corporate documents

Charters, shareholder agreements, cap table.



Contracts

Top customers and suppliers, plus any with change-of-control or exclusivity.



IP

Registrations, founder assignments, open-source policy and scans.



Privacy & cyber

Data inventory, breach logs, vendor list, certifications.



Regulatory licenses

Current status and expiry.



Employment

Roster, key-person contracts, union agreements.



Real estate

Title deeds, major leases, environmental notices.



Litigation

Pleadings, settlements, government inquiries.



Keep it to 60–120 items. If a request doesn't connect to a thesis question, cut it.

Materiality and Sampling

Phase 0 gave you generic thresholds, but now you must calibrate them to this deal. Set quantitative cut-offs (e.g., contracts above 1% of revenue), and a qualitative "always material" list (e.g., anything involving the crown jewels). Define sampling rules, review the top 20 contracts by value, a random 10, and all with change-of-control clauses. Record this in a one-page Materiality Addendum and have the client sign off. This prevents over-lawyering on trivial items or, worse, missing a small contract with a big risk.



Quantitative Thresholds

- Contracts above 1% of annual revenue
- Litigation with potential exposure over \$X
- Customers representing >5% of business
- Capital expenditures above \$X

Qualitative "Always Material" Items

- Crown jewel assets identified in scoping
- Key intellectual property
- Critical licenses and permits
- Strategic customer relationships

Sampling Methodology

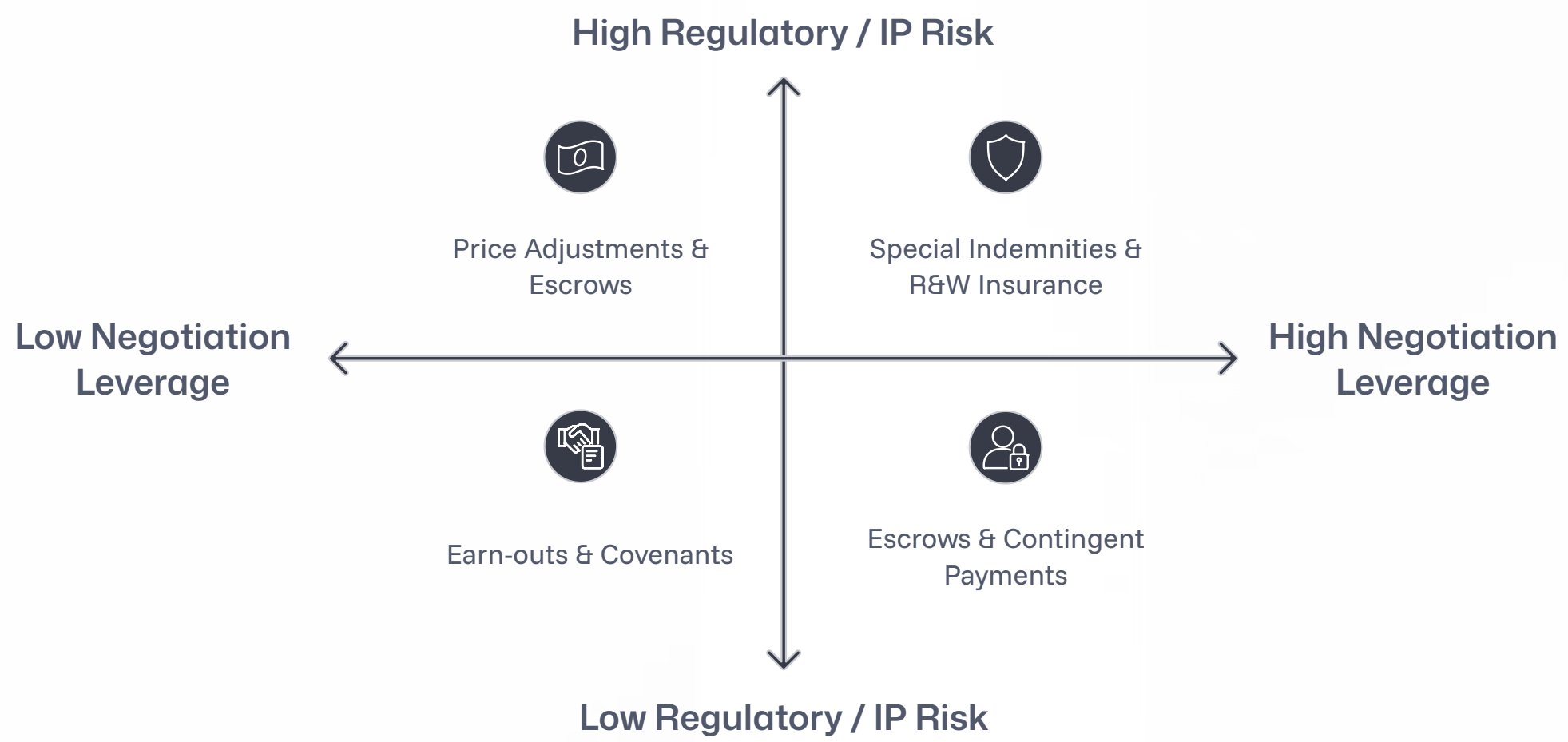
- Top 20 contracts by value
- Random sample of 10 mid-tier contracts
- All contracts with change-of-control provisions
- All agreements with key personnel

Building the Risk → Lever Matrix

Every anticipated risk should have a default playbook response:

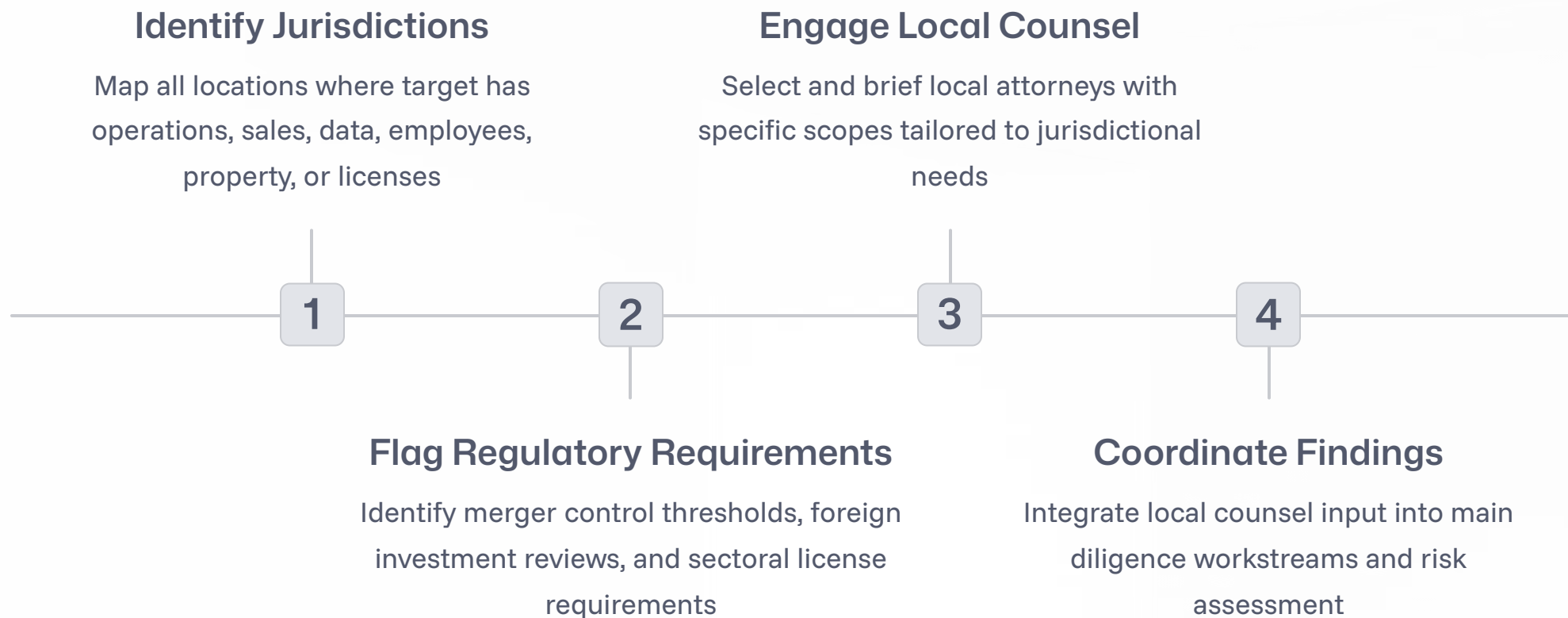
Risk Type	Negotiation Lever	Example Application
Financial exposure	Price adjustment	Working capital shortfall
Discrete but serious risks	Special indemnity	IP ownership, environmental liability
Contingent liabilities	Escrow or holdback	Pending litigation, tax audit
Regulatory or third-party approvals	Covenant or CP	License transfers, customer consents
Performance uncertainty	Earn-out	New product launch, market expansion
General risks when speed matters	R&W insurance	Competitive auction, seller resistance

This "Risk → Lever Matrix" becomes the bridge between diligence findings and negotiation strategy.



Mapping Jurisdictions and Local Counsel

Do not underestimate geography. Build a map of where the target operates, sells, stores data, employs people, owns land, or holds licenses. For each jurisdiction, flag merger control, FDI reviews, and sectoral licenses. Engage local counsel early, with clear scopes (employee transfer rules, license transferability, land title checks). This avoids surprises like a foreign ownership cap discovered at the eleventh hour.



Jurisdictional surprises like foreign ownership caps or mandatory employee transfer rules can derail deals at the last minute if not identified early.

Stakeholder Access Plan



Some answers don't live in documents. You need management Q&A sessions, reference calls with customers or suppliers, and sometimes site visits. Schedule them early. Always send question lists in advance, keep lawyers on the line, and avoid triggering change-of-control or consent provisions. Sensitive information should be routed through a clean team if the buyer is a competitor.



Management Interviews

Schedule sessions with key executives to address strategic questions not answered by documents



Reference Calls

Arrange discreet conversations with customers or suppliers to verify relationships



Site Visits

Plan physical inspections of critical facilities to verify conditions and operations



Clean Team Protocol

Establish procedures for handling competitively sensitive information when necessary

Quick Public-Source Checks

Even before the data room opens, you can learn a lot. Run registry searches for liens or pledges, IP lookups for oppositions or gaps, court dockets for litigation patterns, and sanctions/PEP screens for key names. These "day zero" checks often confirm—or contradict—what management has told the buyer.



Registry Searches

Check corporate registries for liens, pledges, or encumbrances that might affect ownership or transferability



Court Dockets

Review litigation records to identify patterns of disputes or undisclosed legal proceedings



IP Lookups

Search patent, trademark, and copyright databases for registrations, oppositions, or gaps in protection



Sanctions/PEP Screens

Run key individuals through sanctions and politically exposed persons databases to identify compliance risks

Exit Criteria for Phase 1

Do not move forward until you have:

Agreed Thesis Questions

8–15 questions, with owners and SPA hooks identified

Drafted Risk → Lever Matrix

Mapping anticipated risks to negotiation strategies

Issued R1 Request List

First document request sent with Q&A protocol established

Finalized Materiality Addendum

Thresholds and sampling methodology documented and approved

Built Jurisdiction Map

Geographic footprint mapped with local counsel identified

Scheduled Stakeholder Access

Management interviews and site visits planned

Logged Public-Source Findings

Initial research documented and shared

Circulated Updated Issue Register

Tracking document refreshed with latest findings

Coaching the Juniors

Finally, remember what I tell my team:



Anchor every request to the deal thesis.

Ensure each document request and inquiry connects directly to the buyer's strategic objectives.



Ask for evidence, not just explanations.

Seek documentation that verifies management's claims rather than accepting verbal assurances.



Escalate issues with solutions, not just problems.

When flagging risks, propose potential mitigations or negotiation approaches.



Write precisely: counterparties, dates, values.

Include specific details in all findings to enable accurate risk assessment and deal structuring.

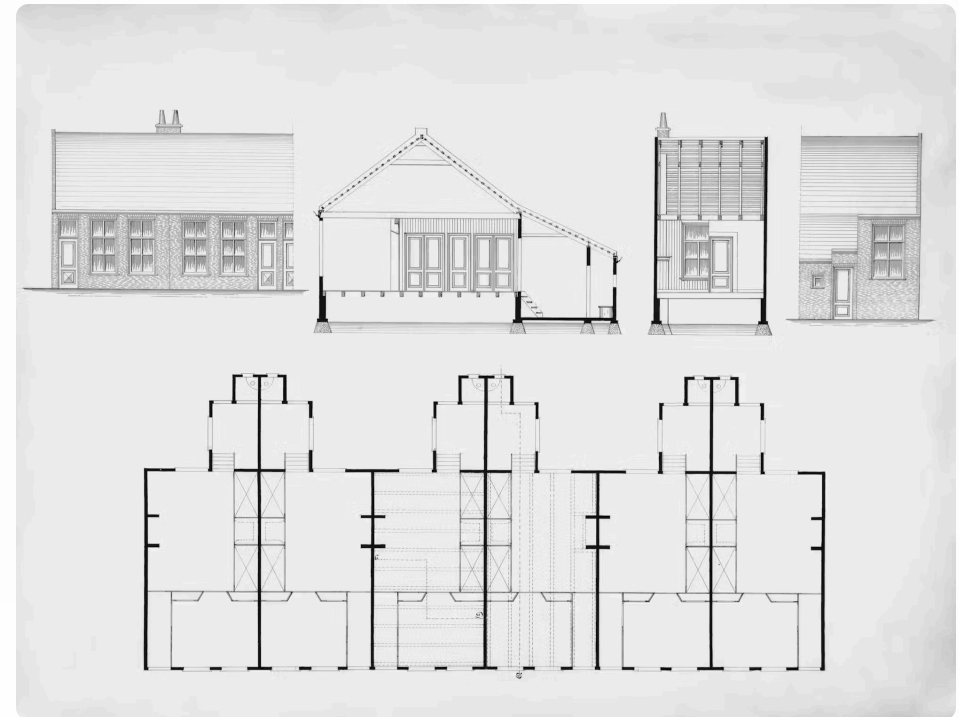


Protect the process—use the Q&A protocol, respect clean team rules, and avoid triggering consents.

Follow established procedures to maintain confidentiality and prevent premature disclosure.

Conclusion: Phase 1 as Deal Design

Phase 1 is not document review, it is deal design. Done well, it sharpens focus, reduces wasted hours, and positions you to turn diligence findings into real negotiating leverage. Done poorly, you drown in PDFs and miss the issues that matter. Treat it as coaching the client, and coaching your own team, toward clarity of purpose.



Focus on Deal Thesis

Align all diligence activities with strategic objectives

Coach for Clarity

Guide client and team toward purposeful action



Optimize Resources

Reduce wasted hours through targeted investigation

Create Leverage

Position findings to strengthen negotiating position

Phase 1 is where you set the stage. This phase determines whether your diligence will be a strategic exercise that supports decision-making, or a box-ticking scramble that leaves value on the table.

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