

## Closing Checklist: Private Mergers and Acquisitions

by PLC Corporate & Securities

Maintained • USA

*A closing checklist to be used in a private merger, stock or asset purchase transaction. This Standard Document has integrated notes with important explanations and drafting and negotiating tips.*

### CLOSING CHECKLIST

<b>Parties</b>			
[BUYER]		Buyer	
[BUYER COUNSEL]		BC	
[SELLER]		Seller	
[SELLER COUNSEL]		SC	
[SELLER ACCOUNTANTS]		A	

Document/Action	Purchase Agreement Section Reference	Responsible Party	Status
<b>Principal Documents</b>			
Purchase Agreement (PA)		S, SC, B, BC	Signed on [DATE]
Exhibits to PA: <ul style="list-style-type: none"><li>• [Escrow Agreement]</li><li>• [Transition Services Agreement]</li><li>• [Assignment and Assumption]</li></ul>		S, SC, B, BC	Finalized on [SIGNING DATE]

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<ul style="list-style-type: none"> <li>Agreement]</li> <li>• [Bill of Sale]</li> <li>• [Intellectual Property Assignment Agreement]</li> <li>• [Deed for transfer of [PROPERTY]]</li> </ul>			
Disclosure Schedules to the PA		S, SC, B, BC	Finalized on [SIGNING DATE]
[LIST OTHER PRINCIPAL AGREEMENTS THAT ARE NOT EXHIBITS]		S, SC, B, BC	Signed on [DATE]
Resolutions of Seller authorizing [transaction and] transaction documents		S, SC	Authorized on [DATE]
Resolutions of Buyer authorizing [transaction and] transaction documents		B, BC	Authorized on [DATE]
[Resolutions of [Merger/Acquisition Subsidiary] authorizing [transaction and] transaction documents			
<b>Pre-closing Documents/Actions Related to the Transaction</b>			
<b>Document/Action</b>	<b>Purchase Agreement Section Reference</b>	<b>Responsible Party</b>	<b>Status</b>
Prepare Government Approvals: <ul style="list-style-type: none"> <li>• [HSR Act filing]</li> <li>• [OTHERS]</li> </ul>		S, SC, B, BC	
Prepare requests for third-		[SC]	

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<p>party consents [and notices] listed on Section [NUMBER] of the Disclosure Schedules:</p> <ul style="list-style-type: none"> <li>• [NAME of RECIPIENT]</li> <li>• [NAME of RECIPIENT]</li> <li>• [NAME of RECIPIENT]</li> </ul>			
Conduct title searches and have title reports prepared		BC	
Conduct lien and judgment searches		BC	
<p>Conduct Phase I environmental reports at:</p> <ul style="list-style-type: none"> <li>• [NAME OF PROPERTY]</li> <li>• [NAME OF PROPERTY]</li> <li>• [NAME OF PROPERTY]</li> </ul>		BC, [ENVIRONMENTAL CONSULTANT]	
<p>[Prepare updates to Disclosure Schedule Sections:</p> <ul style="list-style-type: none"> <li>• [SECTION NUMBER]</li> <li>• [SECTION NUMBER]</li> <li>• [SECTION NUMBER]]</li> </ul>		[S, SC/B, BC]	
[Prepare opinion from Seller's Counsel]		SC	
[Prepare opinion from Buyer's Counsel]		BC	

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<p>Prepare director and officer resignations for:</p> <ul style="list-style-type: none"> <li>• [NAME]</li> <li>• [NAME]</li> <li>• [NAME]</li> </ul>		SC	
<p>Request good standing certificates and [foreign qualifications] for:</p> <ul style="list-style-type: none"> <li>• [NAME OF ENTITY/STATE]</li> <li>• [NAME OF ENTITY/STATE]</li> <li>• [NAME OF ENTITY/STATE]</li> </ul>		SC	
<p>Prepare Secretary's Certificate for Seller</p>		Seller, SC	
<p>Prepare Secretary's Certificate for Buyer</p>		Buyer, BC	
<p>Prepare [Officer's/Closing] Certificate for Seller</p>		Seller, SC	
<p>Prepare [Officer's/Closing] Certificate for Buyer</p>		Buyer, BC	
<p>[Prepare Buyer board/stockholder resolutions to the extent necessary, including the following actions:]</p> <p>[INCLUDE ANY INTERNAL REORGANIZATIONS NECESSARY FOR TRANSACTION OR EQUITY ARRANGEMENTS WITH</p>		Buyer, BC	

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SELLER'S EMPLOYEES/STOCKHOLDERS]			
[Prepare Seller's share certificates for transfer and prepare all appropriate stock powers]		Seller, SC	
[Prepare FIRPTA Affidavit for each Seller]		Seller, SC	
[Prepare Certificate of Merger and submit for pre-clearance with [STATE AGENCY]]		BC	
[Form and organize Merger Subsidiary: <ul style="list-style-type: none"> <li>• Draft and file certificate of incorporation of Merger Subsidiary</li> <li>• Draft statement of incorporator</li> <li>• Draft by-laws</li> <li>• Draft initial stock certificate evidencing issuance of [NUMBER] shares of common stock to Buyer]</li> </ul>		BC	
[INSERT OTHER ACTIONS RELATING TO TRANSFER (SUCH AS TERMINATIONS OF CERTAIN AGREEMENTS, RESIGNATION OF AUDITOR AND AMENDMENT OF CHARTER DOCUMENTS)]		Seller, SC	

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[INSERT ANY ACTIONS RELATED TO DEBT FROM M&A TEAM (SUCH AS PAYOFF LETTERS)]		[Buyer, BC, Lender, LC]	
[INSERT ACTIONS RELATED TO STOCKHOLDER OR EMPLOYEE ARRANGEMENTS IF APPLICABLE (SUCH AS PAYMENT OF TRANSACTION BONUSES OR ROLLOVER OF SHARES)]		[Buyer, BC/Seller, SC, EMPLOYEE/STOCKHOLDER NAMES]	
[INSERT PREPARATION OF ANY FINANCIAL STATEMENTS REQUIRED FOR PURCHASE PRICE ADJUSTMENT]		Seller, A	
[INSERT ANY OTHER ACTIONS REQUIRED BY THE PURCHASE AGREEMENT]		[Seller, SC]	
Prepare funds flow memorandum		Buyer, BC	
Prepare press release		Buyer, BC, Seller, SC	
<b>Closing Documents/Actions Related to the Transaction</b>			
<b>Document/Action</b>	<b>Purchase Agreement Section Reference</b>	<b>Responsible Party</b>	<b>Status</b>
Executed Exhibits to PA:		S, SC, B, BC	
<ul style="list-style-type: none"> <li>[Escrow Agreement]</li> </ul>			

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<ul style="list-style-type: none"> <li>• [Transition Services Agreement]</li> <li>• [Assignment and Assumption Agreement]</li> <li>• [Bill of Sale]</li> <li>• [Intellectual Property Assignment Agreement]</li> <li>• [Deed for transfer of [PROPERTY]]</li> </ul>			
<p>Third-party consents listed on Section [NUMBER] of the Disclosure Schedules:</p> <ul style="list-style-type: none"> <li>• [NAME]</li> <li>• [NAME]</li> <li>• [NAME]</li> </ul>		SC	
[Updated Disclosure Schedules]		Seller, SC	
[Opinion from Seller's Counsel]		SC	
[Opinion from Buyer's Counsel]		BC	
<p>Director and officer resignations for:</p> <ul style="list-style-type: none"> <li>• [NAME]</li> <li>• [NAME]</li> <li>• [NAME]</li> </ul>		Seller, SC	
<p>Good standing certificates [and foreign qualifications] for:</p> <ul style="list-style-type: none"> <li>• [NAME OF</li> </ul>		SC	

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<p>ENTITY/STATE]</p> <ul style="list-style-type: none"> <li>• [NAME OF ENTITY/STATE]</li> <li>• [NAME OF ENTITY/STATE]</li> </ul>			
Seller's Secretary's Certificate		Seller, SC	
Buyer's Secretary's Certificate		Buyer, BC	
Seller's [Officer's/Closing] Certificate		Seller, SC	
Buyer's [Officer's/Closing] Certificate		Buyer, BC	
[Seller's share certificates executed for transfer with all appropriate stock powers]		Seller, SC	
[FIRPTA Affidavit for each Seller]		Seller, SC	
[File Certificate of Merger with the Secretary of State of [STATE]]		BC	
[INSERT OTHER ACTIONS AND DELIVERABLES RELATING TO TRANSFER (SUCH AS DELIVERY OF TERMINATIONS OF CERTAIN AGREEMENTS, RESIGNATION OF AUDITOR AND AMENDMENT OF CHARTER DOCUMENTS)]		[Seller, SC]	



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[INSERT ANY ACTIONS AND DELIVERABLES FROM M&A TEAM RELATED TO DEBT FINANCING (SUCH AS PAYOFF LETTERS)]		[Buyer, BC, Lender, LC]	
[INSERT ACTIONS AND DELIVERABLES RELATED TO STOCKHOLDER OR EMPLOYEE ARRANGEMENTS IF APPLICABLE (SUCH AS PAYMENT OF TRANSACTION BONUSES OR ROLLOVER OF SHARES)]		[Buyer, BC/Seller, SC, EMPLOYEE/STOCKHOLDER NAMES]	
[INSERT ANY OTHER ACTIONS AND DELIVERABLES REQUIRED BY THE PURCHASE AGREEMENT]		[Seller, SC]	
Payment of purchase price to Seller's account by wire transfer		Buyer	
[INSERT OTHER PAYMENTS (SUCH AS PAYMENT TO ESCROW AGENT OR PREPAYMENT OF DEBT)]		[Buyer/Seller]	
Submit press release to news wire		[SC/BC]	
<b>Post-closing Actions</b>			
[INSERT ANY POST-CLOSING ITEMS (SUCH			

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AS A CORPORATE NAME CHANGE)]			
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