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# IP due diligence checklist



# IP due diligence checklist example

IP is a critical asset in business and M&A. As companies continue to innovate and develop their intangible assets, strong IP portfolios have become a crucial factor in valuation and acquisition decisions.

No surprise, studies show that companies owning intellectual property rights have, on average, 23.8% higher revenue per employee than those without intellectual property rights.

However, how do you protect IP rights during M&A and secure your business from purchasing risky ones? Thorough IP due diligence solves this by identifying available assets and assessing potential risks.

## Good to know:



This piece walks you through the basics of IP due diligence, including the use of checklists, describes its key components and potential challenges, and presents an example of an IP due diligence checklist to use as a template when drafting one for your deal.

# IP due diligence specifics

Intellectual property due diligence involves reviewing and evaluating a company's IP assets, such as patents, trademarks, copyrights, and trade secrets, before a business transaction like a merger, acquisition, or investment.

Intellectual property due diligence helps buyers assess the target company's IP ownership, legal protections, and potential risks such as disputes or expired rights.



# Why IP due diligence is important

In M&A and other deals, IP due diligence is crucial for determining a company's true value. It ensures the buyer secures clear and enforceable rights to critical technologies, brands, or creative works. Without proper IP due diligence, businesses might face legal challenges, unexpected costs, or even lose the rights to important assets.

Here's what intellectual property due diligence can help with:



## Confirm IP ownership

Ensures the company owns its patents, trademarks, copyrights, and trade secrets.

## Identify legal risks

Checks for disputes, lawsuits, or claims that could affect the IP's value or use.

## Evaluate IP strength

Reviews how well the IP is protected and whether it offers a real competitive advantage.

### Assess licensing agreements

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Examines contracts where the company has licensed its IP to others or depends on third-party IP.

### Check for expiration or renewal needs

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Reviews how well the IP is protected and whether it offers a real competitive advantage.

### Ensure freedom to operate

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Confirms that using the IP won't infringe on others' rights, avoiding future legal trouble.

### Determine the financial impact

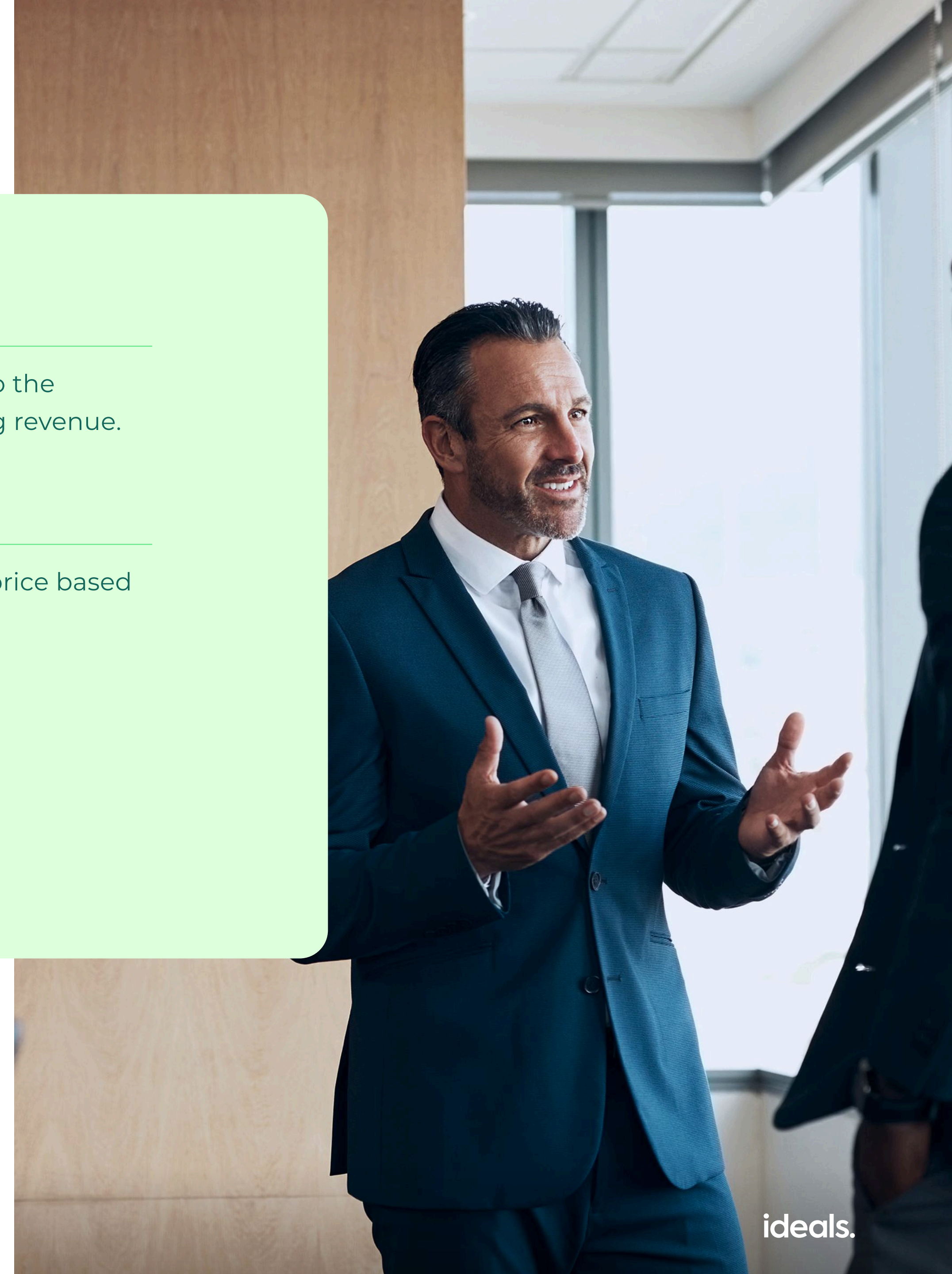
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Measures how much value the IP adds to the company and its potential for generating revenue.

### Support negotiation and pricing

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Helps buyers and sellers agree on a fair price based on the IP's actual worth and risks.



# Key challenges in IP due diligence

During IP due diligence, dealmakers can also face roadblocks. Here are the most common challenges:



## Ownership disputes

A target company may not have clear legal ownership of its patents, trademarks, or copyrights, especially if the IP was developed by multiple parties, former employees, or contractors. If ownership is debatable, the buyer could face legal claims that delay or even block the use of critical IP assets after the acquisition.

## Licensing risks

The target company may have agreements that grant others the right to use its IP, or it may rely on third-party IP to operate. If these licenses have strict conditions, renewal requirements, or non-transferable clauses, the buyer may face restrictions on IP control, limiting its use and monetization of key assets.

## Regulatory compliance

Different industries and regions have strict rules regarding IP, including patents, data protection, and trade secrets. If the target company has not followed these regulations properly, the buyer could face legal penalties, restrictions on using the IP, or the need for costly adjustments to ensure compliance.

## Potential infringement issues

The target company's IP could unknowingly violate another entity's patents, trademarks, or copyrights. If this is not identified during due diligence, the buyer could face lawsuits, financial penalties, or be forced to stop using key technologies or branding.

## Incomplete or expiring IP protection

Some IP rights may be outdated, close to expiration, or not properly registered in all relevant markets. This weakens the company's competitive position and reduces the long-term value of the acquisition.

# Key components of the IP due diligence process

The process of IP due diligence includes the following stages:

## IP portfolio assessment

This is a detailed review of all patents, trademarks, copyrights, and trade secrets owned by the target company. This step helps identify valuable assets, check if they are properly registered and maintained, and assess their commercial potential. It also reveals any weaknesses, such as expired rights or incomplete protections, that could affect the deal.

## Ownership and chain of title verification

This stage confirms that the target has full legal ownership of its IP assets and that there are no gaps in the transfer of rights. This includes checking past assignments, employee agreements, and contracts with contractors or partners to ensure the IP was properly transferred.

## Third-party agreements and licensing risks

Here, the buyer evaluates all contracts where the company has licensed its IP to others or is using third-party IP. Some agreements may have restrictions, renewal requirements, or revenue-sharing obligations that impact how the buyer can use the IP after the acquisition. If key licenses cannot be transferred or are non-exclusive, the buyer may face unexpected limitations.

## Regulatory and compliance risk assessment

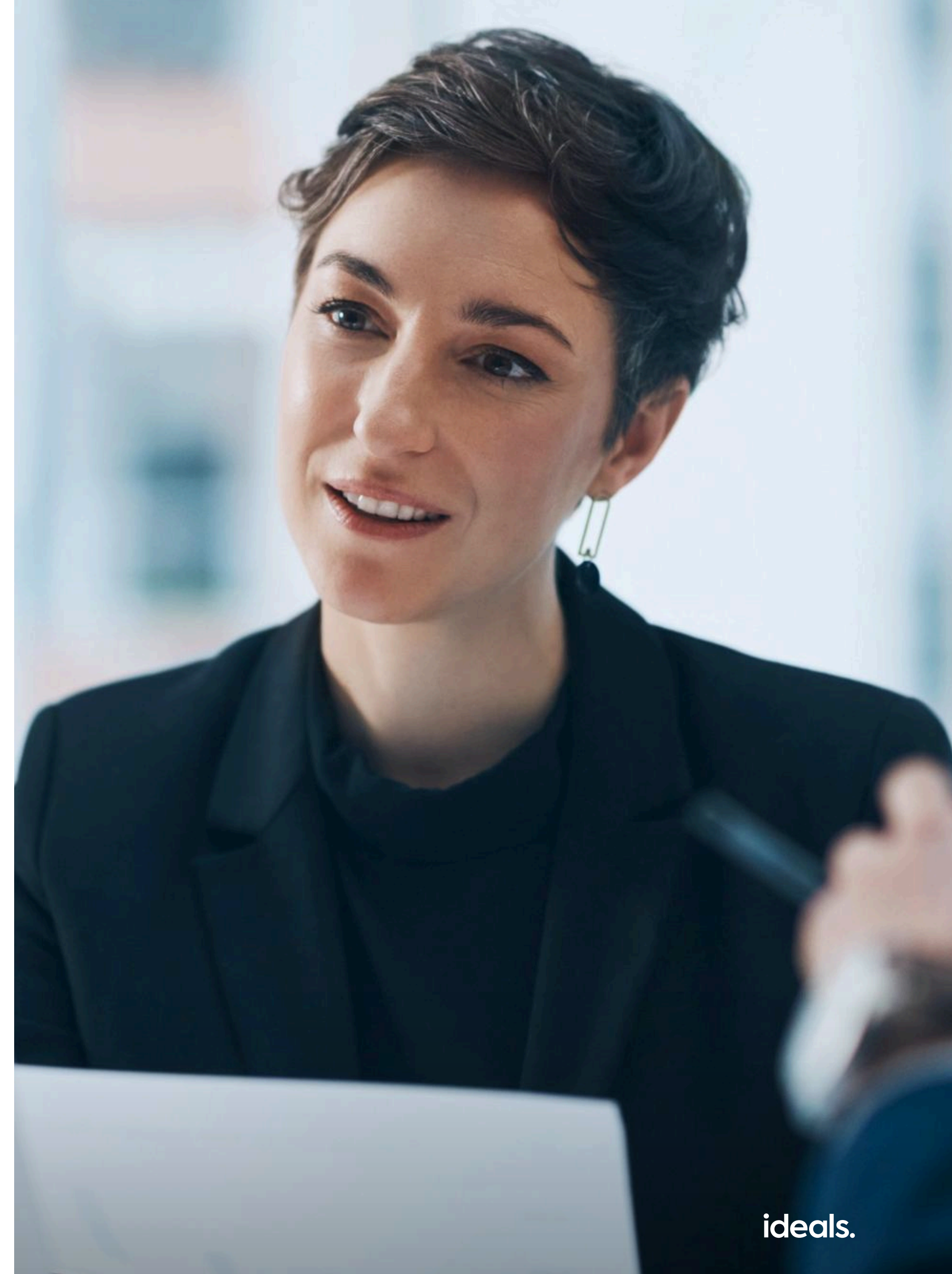
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The buyer reviews whether the company's IP complies with industry regulations, data protection laws, and international IP rules. This step is especially important for industries like pharmaceuticals, finance, and technology, where IP is heavily regulated.

## IP litigation and dispute identification

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This identifies any past or ongoing legal issues related to the company's IP, including infringement claims, contract breaches, or challenges to patents and trademarks. A buyer must assess these risks carefully to avoid inheriting costly legal problems.



# IP due diligence checklist example

An IP due diligence checklist is a structured document that lists the steps of IP due diligence to verify the target company's IP before entering a deal. It helps to ensure that no area of IP due diligence is overlooked, which enhances the chances of a successful due diligence process.

On the following pages, you can see an example of what an IP due diligence checklist can look like. Use it for inspiration when crafting a checklist for your deal and customize it based on your specific needs.

## Important:



This is just a guideline that does not constitute legal advice.

1. General IP overview

Identify all IP assets	List patents, trademarks, copyrights, trade secrets, and domain names.
Confirm IP strategy alignment	Ensure the IP portfolio supports the company's business goals and market position.

2. Patents

Verify ownership	Check that the company has full legal rights to all patents.
Review patent filings and grants	Ensure patents are properly registered and maintained in relevant jurisdictions.
Assess expiration dates	Identify patents nearing expiration and evaluate their impact on the business.
Check for pending applications	Review pending patents and assess the likelihood of approval.
Identify licensing agreements	Check if patents are licensed to or from third parties and any associated restrictions.

3. Trademarks

Confirm trademark ownership	Verify registration and ownership of all trademarks in key markets.
Check active and pending trademarks	Ensure key brand names, logos, and slogans are properly protected.
Identify renewal deadlines	Note any trademarks that require renewal soon.
Review licensing agreements	Identify any third-party usage rights or brand-related restrictions.

4. Copyrights

List copyrighted assets	Identify software, creative works, marketing materials, and proprietary content.
Verify registration and protection	Check if key copyrights are registered and properly documented.
Review licensing and usage rights	Assess agreements granting others the right to use copyrighted materials.

5. Trade secrets and confidential information

Identify trade secrets	List proprietary formulas, algorithms, business processes, and confidential data.
Review security measures	Confirm policies and safeguards to protect trade secrets from unauthorized use.

6. Third-party agreements and licensing

Review inbound IP licenses	Identify dependencies on third-party IP and review contract terms.
Review outbound IP licenses	Check if the company has granted IP usage rights to others and any limitations.
Assess restrictions and termination clauses	Identify clauses that could affect post-transaction IP use.

7. Regulatory and compliance

Verify IP compliance with industry regulations	Ensure IP meets legal and regulatory standards in all operating markets.
Check data privacy and protection laws	Confirm that software, databases, and proprietary technologies comply with relevant regulations.
Identify renewal deadlines	Note any trademarks that require renewal soon.

8. Litigation and disputes

Identify past or ongoing litigation	Review any legal actions involving IP, including infringement claims.
Assess settlement agreements	Check any past IP disputes and whether settlement terms affect future use.
Identify potential infringement risks	Assess whether the company’s IP may violate third-party rights.

9. Post-acquisition considerations

Plan for IP transfer and integration	Ensure a smooth transition of IP ownership and operational use..
Address IP valuation and risks	Adjust the deal structure or price based on IP findings.

# Simplify the IP due diligence preparation with Ideals

Ideals virtual data rooms (VDRs) significantly improve the IP due diligence process. With its help, you can:



## Store IP-related documents in one location

All the IP-related documents are stored on a secure cloud and can be accessed by authorized users at any time and from anywhere, which streamlines the review process.

## Ensure the security of sensitive IP information

Ideals offers a variety of security features that ensure your sensitive IP documents stay protected and private. There are watermarks, redaction, IP restrictions, two-factor authentication, and more.

## Take full control of user access rights

Virtual data room administrators set access permissions for each user. Ideals offers eight levels of granular access permissions, allowing administrators to control who can view, edit, or download each file.

## Monitor user activity

Thanks to detailed audit trails, you can always see who accesses what files and when. It helps ensure data integrity and track potential investors' interest.

## Collaborate with involved parties

Due diligence participants can effectively collaborate over documents in the dedicated Q&A module. You can ask a question about a certain file and get a prompt answer from an expert.

## Benefit from due diligence checklist functionality

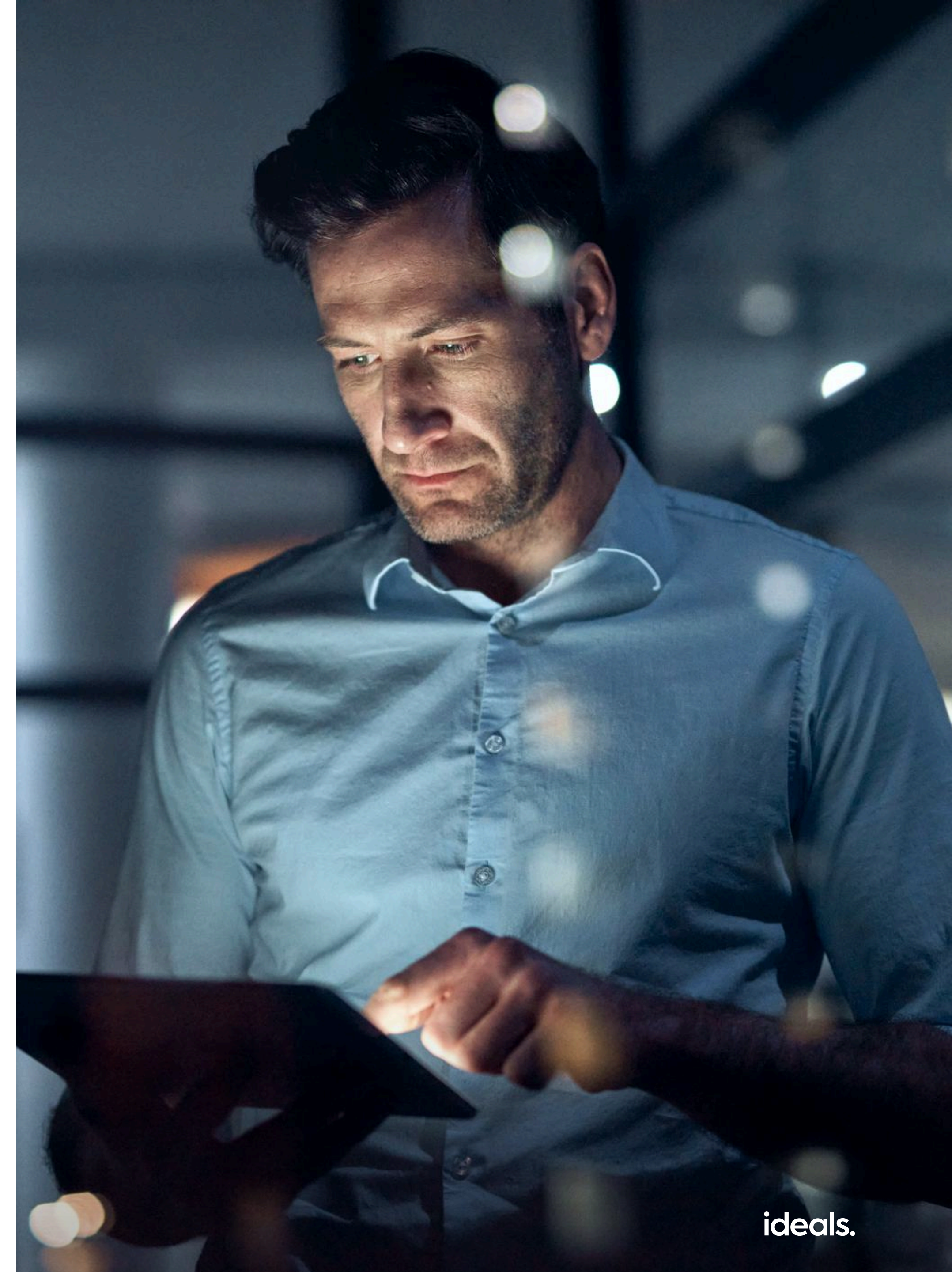
Ideals has a due diligence checklist feature that allows you to upload existing XMSL checklists without conversion, make real-time edits, and track actions.

# Final thoughts

A well-structured IP due diligence process ensures a smooth and risk-free M&A transaction. By thoroughly assessing ownership, legal risks, compliance, and licensing agreements, dealmakers can avoid costly surprises and make informed decisions.

An IP due diligence checklist helps streamline this process, ensuring that no critical details are overlooked.

Use our IP due diligence checklist template from this [whitepaper](#) as an example to create one for your needs. And to make the process of IP due diligence even more straightforward, opt for a virtual data room like [Ideals](#).



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