

A Guide To M&A Due Diligence In India

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What is legal due diligence? How can typical Mergers and Acquisitions due diligence be conducted?

The inflow of foreign investment is attributed to the rise in Mergers and Acquisitions (M&A) activity, but these transactions are sensitive and necessitate extensive legal due diligence. Reviewing a company's documents to identify potential legal exposure and non-compliance issues is popularly known as legal due diligence. Legal due diligence is often carried out when a company (acquirer/buyer) is interested in buying or merging with a target company. The buyer or investor submits a list of documents they need and legal questions to the target company to begin the legal due diligence. Lawyers for the investor or buyer review the gathered documents, information and paperwork either in person at the target company's offices or digitally through virtual data rooms created specifically for such due diligence. Due to the significant impact of the Mergers and Acquisitions process, the legal due diligence report is prepared with great caution. Every investment transaction will have some information that an investor would want to investigate prior to finalising the deal. In such cases, having a readily available Mergers and Acquisitions due diligence checklist, which is customized in accordance with the business structure, could prove extremely beneficial.

Firstly, it provides the acquirer with a better opportunity to study the target firm and its operations prior to purchase; secondly, the buyer can use the information obtained through legal due diligence to determine the appropriate amount to pay for the transaction and thirdly, the information gathered during the legal due diligence process can assist both the buyer and the target company in drafting appropriate merger and acquisition documents as well as ancillary documents as may be required.

What is Due Diligence?

The process of looking into a company or individual before signing a contract is known as "due diligence." The due diligence process in Mergers and Acquisitions enables the buyer to confirm pertinent information about the

seller, such as contracts, finances, and clients. The buyer is better equipped to make an informed decision and sign the contract with confidence after gathering this information. The signing of the Letter of Intent (LOI) signals the start of due diligence.

The process of gathering, comprehending, and evaluating all legal risks related to an M&A process is a component of legal due diligence. The acquirer conducts interviews with anyone connected to the target company and evaluates all relevant documents during due diligence. The purpose of this investigation is to determine whether any legal issues are likely to arise as a result of this transaction.

An orderly strategy to evaluate a business for purchase through sale, merger, or any other means is to use a due diligence checklist. One can find out about a company's assets, liabilities, contracts, benefits, and potential issues by using this due diligence Mergers and Acquisitions checklist. This due diligence M&A checklist could assist with understanding what obligations, liabilities, problematic contracts, intellectual property problems, and litigation risks a company may be privy to. The majority of the information and documents on the due diligence checklist are readily available upon request. It is up to the company and its legal counsels to evaluate the information after the same is received. These documents will determine whether the investment is a wise one.

Importance of Due Diligence in Mergers and Acquisitions

The complexity of M&A obliges the buyer and seller to gather and analyse the relevant and important information required before finalising the transaction. This not just assists in deal closures but also enables both buyers and sellers to get a fair idea of the information that they already have and gather additional relevant information through the due diligence checklist as discussed above.

1. The buyer's perspective

For buyers, thorough due diligence can reduce the risk involved while purchasing another company. The transparent oversight of legal issues during the process of verifying the documents as per the M&A due diligence checklist allows a buyer to get an accurate valuation of the target company and thus makes them feel more confident of their expectations from the transaction. Access to detailed and relevant information in accordance with the legal due diligence checklist equips the buyer to make an informed decision as to whether the terms of the deal need to be modified or if the deal is at all worth pursuing.

• The seller's perspective

Due diligence provides an indication of the real market value of the company to the sellers. A careful financial analysis will show the actual worth of the seller's company, allowing them to expect realistic expectations on the purchase price. As a result, it is usual for sellers to create their own due diligence reports before possible purchases.

Reasons for Mergers and Acquisitions due diligence

Top reasons why due diligence is conducted:

- To confirm and validate information mentioned during the transaction or investment procedure.
- To spot any flaws in the offer or investment opportunity and prevent a disastrous business deal.
- To gather data that will be helpful in determining the deal's value.

- Checking to see if the investment opportunity or deal satisfies the investment or deal criteria.

Cost of Due Diligence

The costs of conducting due diligence vary depending on the scope and duration of the process, which are significantly influenced by the complexity of the target company. When compared to the risks involved in not conducting due diligence, the costs connected with it are an outlay that is easily justifiable. Contracting parties determine who is responsible for due diligence. Typically, investment bankers, accountants, lawyers, and other consultants are paid for by both the buyer and the seller.

Conclusion

A crucial step in an acquisition transaction is legal due diligence, which examines the pertinent corporate documents of the target company to assess the risks associated with the transaction. The main purpose of this exercise is to make the buyer aware of the true characteristics of the target company, which ensures that the appropriate safety measures are implemented when setting up and concluding the purchase transaction. Recently, there has been a trend toward groups buying guarantee insurance to lessen the risks associated with M&A deals. This protection will protect the parties against expenses attributable to failures by either party to deliver necessary documentation during the due diligence process, subject to certain restrictions.

FAQs

What are the 4 types of M&A?

Four types of M&A are:

- a. Horizontal Merger
- b. Vertical Merger
- c. Congeneric Merger
- d. Conglomeration

What documents are needed for due diligence?

Basic checklist for conducting Legal Due Diligence:

- a. The organization's memorandum, articles of incorporation, and bylaws.
- b. Industry policies, practices, and procedures followed by the company.
- c. Employment contracts.
- d. The prospectus submitted at the time of the public fund-raising.
- e. Copies of any lawsuits filed against Target or any of its subsidiaries, as well as any court orders, judgments, or decrees of similar nature.
- f. Records submitted to the ROC for the registration of charges or immovable property.
- g. Any settlements reached in court cases, and if applicable, the relevant paperwork.
- h. Mortgages, financial or performance guarantees, indemnifications, equipment leases, or other agreements that attest to outstanding loans and to which the Target Company is or was a party within the last three years.

How much does due diligence cost in India?

Financial investors are required to perform their own due diligence using their own resources at their own expense and risk. Or, he could demand that the businessman perform his own due diligence at the company's expense, which is known as reverse due diligence. The parties may also decide to appoint consultants, specialists, etc. to conduct legal due diligence through third-party sources. One of the biggest expenses in an M&A deal is the cost of due

diligence. The cost of due diligence can be significantly lowered if the company's departments are well-organized, well-documented, and compliant with the law.