

ROLE OF DUE DILIGENCE IN MERGERS AND ACQUISITION OF CORPORATIONS

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Introduction

Since the Indian economy opened up in foreign markets after the 1991 economic liberation revolution, mergers and acquisitions have become a common thing all over India. Merger and acquisition have emerged as one of the fastest ways to organize companies to get competitive benefits. While mergers are an amalgamation of two companies, one company merges with another and loses its ownership, while another dominant company gains greater value and can absorb another company or merge with another company, whereas acquisition is an act in which the receiving company buys the interests of acquired shareholders and ceases to have an interest.

Mergers and acquisitions usually include a proper amount of effort required by the buyer. Before committing to the transaction, the buyer will want to make sure that he knows what he is buying, what obligations he is assuming, the nature and extent of the seller's contingent liabilities, problematic contracts, litigation risks, intellectual property issues, and lot of things. This is predominantly true in private company acquisitions, in which the seller has not been subject to the inquiry of the public markets.

Recent M&A work and complaints have featured the need for the consumer to be more prudent about potential risks, particularly investigating financial statements, data fraud, and cybersecurity issues, intellectual property issues, and potential employment law and liability for sexual harassment. Merger and Acquisition are governed by the SEBI Take Code, 1994 and require compulsory approval from the competent high courts of such companies to carry out any merger or arrangements that may take place.

What is Due Diligence?

Due diligence is an important activity in mergers and acquisitions transactions. Due diligence refers to the process of investigation or investment opportunity that assists the consumer with the guarantee of what they are buying. It means the process of investigating any business or person before signing a contract. In the M&A process, due diligence allows the consumer to verify appropriate information about the seller, such as contracts, finances and customers. By gathering this information, the consumer is better prepared to make an informed decision and close the agreement with a sense of certainty. Due diligence begins when the letter of intent (LOI) is signed

While the due diligence process, research is conducted to make sure that all facts come out before entering into a financial transaction or agreement with another party. In a company's acquisition, due diligence usually includes a full understanding of the company's obligations, such as their liabilities, lease agreements, etc.

Why is Due Diligence essential to The M & A Process?

Due diligence is a very important aspect of M&A transactions as it assists buyers in finding the element of business items they are interested in purchasing. It is an appropriate effort process that helps the consumer to understand the various interactions, the growth potential of the business and helps it to get a hand in more customers. Adequate diligence also helps the consumer to increase his chances of earning money and reduce their losses.

The buyer is better able to adjust expectations as they review the company's unique information. Due diligence is an effective way for consumers to protect themselves from risky business deals. Since great effort is required for a large amount of communication between the two groups, businesses are also able to build collaborative relationships.

Objectives –

- ⌘ To establish compliance with appropriate laws and reveal any regulatory limitations on the proposed transaction.
- ⌘ To estimate the condition of the physical plant and equipment; as well as other tangible and intangible property.
- ⌘ To determine the suitable purchase price and the method of payment.
- ⌘ To verify details that may be significant to the drafting of the acquisition agreement.
- ⌘ To ascertain liabilities or risks that may be deal-breakers.
- ⌘ To examine any potential antitrust issues that may forbid the proposed M&A
- ⌘ To assess the legal and financial risks of the transaction

Types of Due Diligence

A potential M&A deal involves many types of due diligence. However, there are up to six types of due diligence that will need to be accomplished as part of the process.

1) Business Due Diligence

In this, the feature of due diligence seeks to verify whether the company's revenue and cash flow are sustainable as a long-term investment and whether the business has the capacity to grow.

2) Accounting Due Diligence

In this, the main focus is on making sure that the financial information you have provided to them is correct and honest. This part of the due diligence process plays the largest role.

3) Legal Due Diligence

This part of the process will entail looking into the legal background of your business. Lawyers will take a look at the recent contracts you hold with providers and charge them for any potential liability issues.

4) IT Due Diligence

During the IT due diligence stage, a team of IT professionals will be looking for security risks, downtime issues, and other IT problems that may need to be resolved before the deal can be finalized.

5) Environmental Due Diligence

In this, the due diligence team may want to spend some time focusing on the disclosure of any environmental risks that may be connected with acquiring your company now or in the future.

6) Financial due diligence

In this, financial professionals bring out an inquiry and research on the financial matters and conditions of the target firm and scrutiny of a variety of correlated factors.

Conclusion

Due diligence helps the consumer to get detailed information about the target company and helps them to prepare themselves according to the outlook of the target company. Due diligence helps the acquirer to protect themselves from potential risks during the business. It also helps in setting effective measures and efficient planning for the smooth integration process. Continuous hard work helps to build a good relationship between the buyer and the target company.

With the strict firm commitment that exists, companies can easily address the risks involved and make the end result success in effective mergers and acquisitions. Today, India presents significant opportunities for companies to engage in cross-cultural trade and amalgamations. Indian markets are showing significant growth in overseas corporations in India as well as severe competition between business houses seeking to expand their market.