

DUE DILLIGENCE

Due dilligence is the investigation in the affairs of the co. to avoid post transaction risk. Due dilligence is done to conduct SWOT analysis and to ensure that the parties involved have provided necessary information for the transaction. It covers activities relating to pre transaction and post transaction covering all the aspects of past, present and future of business.

* SWOT ANALYSIS

consider following aspects :

- Background of promoter
- Senior Management
- ~~Operational~~ Organisational strategy
- Risk Management System
- Technological advancement
- Adequate Infrastructure
- Optimum utilisation of resources.

5. Info. from external sources

Auditors will examine info. from customers & vendors of the org. and if any flaws are identified it will help to re-negotiate the terms.

6. Limit the report with only material facts

All the material facts collected during DD will be prepared in the report.

7. Structure of information.

Info. in the report has to be properly structured to have a better understanding on related matters.

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* Factors to be kept in mind while conducting Due Diligence.

1. Objective and Purpose

- Be clear about your expectations
- Ensure if you have resources to make the business succeed and you are willing to put all the hardwork.
- Whether you will get an opportunity to put your skills & experience in good use.
- Learn about the industry in which you are interested through media reports & journals

2. Planning the Schedule

- Decide the steps to be followed in due diligence
- Areas to be checked
- Aspects to be checked
- Material info. to be requested from the seller.

3. Negotiation for time

Seller might try to rush the process but buyer will negotiate for the time to analyse crucial financial & legal aspects.

4. Risk Minimization

Auditor checks all the material info. and

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* Challenges in conducting due diligence

- i) Non availability of information
- ii) Lack of time
- iii) Non cooperation by the employees.

* Stages of Due Diligence

① Pre Diligence

- Letter of Intent

- Areas
 - Docs — Maintain + collect
 - DD Report
 - Timelines

- NDA

- Receive docs from the co. + verify from the checklist already given to the co.

- Identify the issue

- Organise paper → Data room will be created.

② Due Diligence.

- Outcomes of due diligence reports are following:

① Deal Breaker — Non compliance that may lead to criminal proceedings.

② Deal Diluter — finding show that there are non compliances leading to quantifiable penalties & ~~diminish~~ diminishing the value of co.

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(ii) Deal Cautions — Non compliances that are rectifiable and requires the investors to create a cautious path.

(iii) Deal Maker — Compliances with applicable laws & clean report.

(iii) Post Diligence.

* Type of Due Diligence

(i) Legal Diligence.

It means investigating legal aspects of the co. including liabilities.

In legal due diligence, following documents will be verified :

- (a) MOA / AOA
- (b) Minutes of Board Meeting
- (c) Minutes of General Meeting
- (d) Contract & Agreement
- (e) ~~Statute~~ Maintenance of statutory registers
- (f) Related Party Transactions
- (g) IPO / FPO / prospectus in compliance with SEBI reg.
- (h) Borrowings & Investments of Co.
- (i) Details of associate & subsidiary co.
- (j) Return filed with ROC
- (k) Organisational chart
- (l) Pending litigations

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(m) Payment of Dividend

(n) Details of all the guarantee to which the co. is a party.

Scope of legal Due Diligence

(a) Company law

(b) Labour law

(c) Environment law

(d) Tax law

(e) Commercial law

(f) IPR

(h) RBI

(i) FEMA / FCRA etc.

* Environment Due Diligence.

(1) Due Diligence

(2) Environment DD.

- Investigating into affairs of the co. to understand environment risk & check compliance with applicable rules, regulations and laws.

(3) ~~DD~~ Applicable environmental laws

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(2) Following would be verified to avoid environmental risk:

- i) Permits & licenses
- ii) Copies of all correspondence with authorities.
- iii) Compliance with applicable laws, rules & reg.
- iv) Assessment of site conditions
 - v) Hazardous substances being used.
 - vi) Litigation or investigation pending against the co.

* Labour Due Diligence

(1) DD

(ii) Labour DD

In labour DD, the purpose is to identify gaps and non-compliance with applicable labour laws and regulations.

Applicable labour laws

Verify.

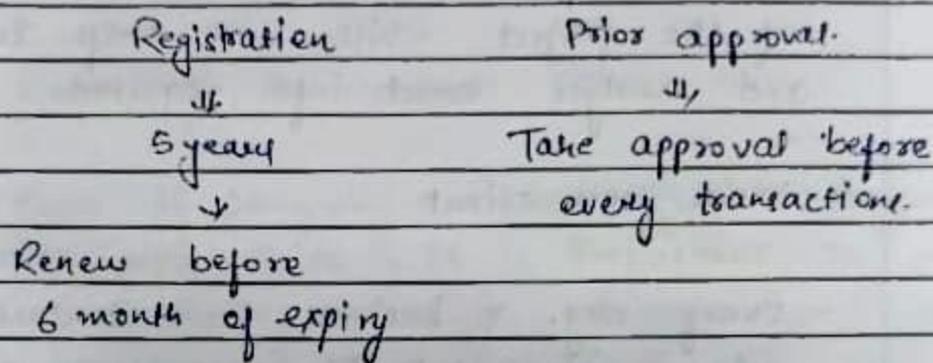
- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)

- (1) Compliance with labour laws and regulations
- (2) Maintenance of records & docs.
- (3) Record of imp. info. & job descriptions.
- (4) Agreement regarding termination of employment
- (5) Employment contract and change to it.

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* FCRA Due Diligence.

— NGO — foreign funding.



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Ministry of Home Affairs.

FY end 9 months Return / disclosure of fund.

* Information Technology Due Diligence.

Purpose of IT DD is to identify security gaps and uncover IT risk.

IT due diligence covers following:

- (i) Info. Security Measure
- (ii) Data Security
- (iii) Network control
- (iv) Wireless & Remote Access facility
- (v) Incident management.

* Techniques of due diligence

i) Analyzing the objective of co.

- The first step is to be sure about the objective of the project which will help to collect and analyse exact info. required.

ii) Know your client

- Every org. & business have certain risk & it is important to know your client to identify risk associated with them.

iii) Examination of the financial of org.

- following financial records of the org. will be examined:

- a) Balance Sheet
- b) P & L A/c
- c) Income Statement
- d) Inventory
- e) Debt
- f) Tax

iv) Inspection of Documents

- To get a better understanding of the org. all the important docs, info. & records will be examined.

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v) Actions taken to control any risk

- In any org. it is important that risk is identified and steps are taken to control the risk.

vii) Responding to incidents.

- Even if company makes significant efforts, risk may arise. It is important to verify how the org identify, mitigate and correct any fall out providing support to consumers.