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Legal Due Diligence Checklist In Relation to Investment in Venture Capital Undertakings or Business Entities by Venture Capital Funds or Strategic Investors

➤ Legal due diligence is often carried out by potential buyer or investor on the business of a potential seller and is considered as an in-depth review of all business documents and records in an effort to assess the health and viability of the business to be acquired. This article explains the sequential information/documents needed to conduct a legal due diligence by the Investor/ Acquirer/Purchaser/ Venture Capital Fund/ Alternative Investment Fund in relation to the investment and taking stake in the target company /Venture Capital Undertaking.

INTRODUCTION

'Target corporate entity' is an entity that has been chosen as attractive for takeover by a potential acquirer. Legal due diligence is a crucial component of all significant corporate transactions. Although it can be a demanding process, once the company understands the reasons for legal due diligence and the rationale for which it is usually conducted, the process should proceed more efficiently, saving costs and time. A company which is the subject of a merger or acquisition or a takeover attempt can resort to different precautions, depending on the attitude of the target firm toward the acquirer. If management and shareholders are in favour of the merger or takeover transaction, then a friendly and orderly transaction can take place. When there is opposition to the transaction, the target entity may resort to a variety of hostile actions with a view to prevent the takeover attempt.

Now a days Venture Capital Funds(VCF) and Institutional Investors are very active and normally have strategic road

map for acquisition of corporate entities alongside pitching for acquiring minority or majority stake in such entities. These VCF/ Institutional Investors may be generalists that invest in a variety of industries and locations. By and large, VCF / Institutional Investors specialize in particular industries. If the target corporate entity falls within the VCF's target industry then that VCF/ Institutional Investor make an attempt for making investment or pitching for acquiring minority or majority stake – a VCF that is focused on Telecom / Information Technology/BPO/KPO start-ups will not consider the request for later-stage funding for expansion of other's real estate fund or its investee companies. The due diligence process will vary depending upon the nature of the business proposal. The process may last from three weeks to three months, and one should expect multiple phone calls, emails, management interviews, customer references, product and business strategy evaluations and other such exchanges of information during this time period.

The venture capital industry uses due diligence to describe what the investor does to evaluate a potential investment opportunity. The due diligence process should select the



potential winners, identify the key risks associated with the investment and develop a risk mitigation plan with company management as part of a potential investment.

Due diligence is essentially the investigation of a target company through reviewing documents and interviewing persons with knowledge about the company. For the buyer of a business or an investor in a significant equity stake in a company, the due diligence investigation will attempt to reveal all material facts and potential liabilities relating to the target business or company.

A legal due diligence consists of a scrutiny of all, or specific parts, of the legal affairs of the target company with a view to uncover any legal risks and provide the buyer with an extensive insight into the company's legal matters. Additionally, a legal due diligence often improves the buyer's bargaining position and ensures that necessary precautions in relation to the transaction are taken. Alongside legal and financial due diligence, in subsequent stages the acquirer/strategic investor must also undertake accounting, operational, intellectual, personnel and other related due diligences to have a clear idea, about the viability of the entity proposed to be acquired.

PRECAUTIONS WHILE CONDUCTING DUE DILIGENCE

Repeatedly, unexpected surprises come after an investment deal or transactions in immovable asset is evaluated or negotiated for the proposed merger or acquisition or a takeover attempt or on purchase of any kind of immovable asset. Due diligence is necessary for all deals for a perfect legal transaction. One need to understand previous documentation, understand how to read titles and search for succession including tax liabilities and documentation. The process is needed to ensure that no surprises come after deal completion. Term sheet and due diligence process are very vital in property deals since initial enquiries help to complete an easy and lawful acquisition.

As and when Strategic Investor/ private equity fund takes a decision for making substantial investment, firstly they go through the process of identifying, evaluating, and selecting among various deals and projects that are likely to have a significant impact on their investment strategy.

SEQUENTIAL STEPS

The sequential steps normally required while negotiating investment deal and conducting due diligence are as under:

- (i) Investment deals are sourced through a variety of channels like Investment Bankers, Brokers, Government Agencies, Courts, FIs, Real Estate Agents etc..
- (ii) Non- Disclosure Agreement (NDA) is signed between the strategic investor and investee so that none of the parties disclose the contents of the ongoing transactions to others.

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- (iii) Details of investment deals, previous documentation regarding titles, bank borrowing and charges etc. are provided by the investee to the team of the strategic investor.
- (iv) All such investment deals are initially evaluated, in brief, by the Deal Evaluation Team of the strategic investor.
- (v) Thereafter, a brief Term Sheet or MOU is signed between the strategic investor and investee along with handing over of token/ earnest money by the strategic investor to the investee entity. In some cases, instead of handing over of token money the strategic investor prefers to keep the amount in an Escrow Bank Account or with some Independent Law Firm.
- (vi) Thereafter, within a fixed timeframe, detailed legal and commercial due diligence is conducted by the legal team of the strategic investor on the various heads of the investee entity as per the process stated under the Heading: **Questionnaire of Detailed Due Diligence Check List.** (*infra*)
- (vii) Public notices are also given in Regional & National Newspapers by the the strategic investor, with brief details of the acquisition attempt.
- (viii) After the successful and logical conclusion of legal and commercial due diligence, a detailed investment agreement is signed between the parties and thereafter full consideration of the deal is paid and assets are handed over either physically or through constructive delivery and closing conditions are complied within the stipulated period.
- (ix) If Legal & Commercial Due Diligence does not favour the proposed deal then the token/ earnest money is returned by investee to the strategic investor.

WHY LEGAL DUE DILIGENCE IS NECESSARY ?

Some of the primary reasons for conducting legal due diligence are outlined below.

- (i) **Understand Target Company's Business:**



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Legal due diligence is necessary to give the buyer the information that it needs to learn about the target company and to structure its proposed purchase transaction.

(ii) **Help to Value the Target Company:**

The buyer will use the information obtained in the legal due diligence process to determine how much to pay for the deal. It helps them in examining the company's cash flows and balance sheet. The buyer and its legal counsel will search for more subtle indicators of value or potential liabilities through company's documents, important contracts etc.

(iii) **Drafting of the Definitive Documents:**

The information and documents gathered in the legal due diligence process will be helpful for both the buyer's counsel and the company's counsel in drafting and negotiating the Merger or Acquisition Agreement and related definitive documents, representations and warranties, pre-closing conditions and post-closing indemnification rights of the buyer.

(iv) **Identify Obstructions to Closing:**

In the legal due diligence process the parties will attempt to identify everything that must happen before the transaction is completely closed. It will examine shareholders and other approvals required to complete the transaction, regulatory requirements to determine if any governmental approvals are required and also the repayment requirements of Banks / financial institutions etc.

HOW TO CARRY OUT LEGAL DUE DILIGENCE ?

Some of the important steps involved in the legal due diligence process are outlined below.

(a) **Establish the Big Picture First.**

Before going into the maze of files and voluminous contracts, buyer's counsel will first seek to understand the target company at a broader level. Unless the company is a public company with regular Stock Exchange Reporting available at the click of a button, be prepared to help the buyer establish a big picture understanding of the company by providing brief summary of one's business and industry. Such summaries are often found in information memorandum or in audited financial statements, respective website and relevant news articles about the target company.

(b) **Be Prepared to Provide Documents and Interviews**

Buyer's counsel is likely to prepare a lengthy due



diligence request list asking you to provide every piece of paper that possibly relates to the target company. The request list at first sight may be frightening, but take comfort in knowing that it is often over-inclusive. Still, be prepared to provide copies of all important documents relating to the target company, including the company's organizational documents, all material contracts, all documents relating to pending litigation and litigation recently completed, all documents relating to labour and employee benefits, tax documents etc. Now a days, with an increasing focus on electronic data, physical data has been replaced by electronic data. Therefore one should provide both electronic and physical data. In addition, be prepared to make available members of target company's executive management, preferably its Chief Financial Officer/ General Legal Counsel/ Company Secretary to answer questions about the company. Interviews can be an extremely efficient way to quickly address issues and resolve concerns in the due diligence exercise.

(c) **How much Legal Due Diligence is necessary?**

The legal due diligence process can take anywhere from several days, in a relatively small and uncomplicated transaction, to several months, in a larger and more complex transaction. The scope of legal due diligence in any transaction will depend on the size of the company and the number of issues requiring preliminary and detailed analysis. The process will conclude when the buyer is satisfied that it has sufficiently identified and analyzed the relevant issues and gained an adequate



understanding about the target company.

(d) **Presentation of Legal Due Diligence Findings**

The buyer will normally expect its counsel to present the due diligence findings promptly and in a user-friendly format. For small deals or cost-sensitive buyers, the presentation may take the form of a verbal conversation. On the other end of the spectrum, for large complicated deals, it is common for legal due diligence findings to be presented in the form of a memorandum, ranging from 50 to 100 pages, that describes all documents reviewed, analyzes the key issues discovered and recommends various solutions. Many VCFs/acquirers/buyers merely ask for a bullet-point list of key issues identified in the legal due diligence process. The point is that, if you are a buyer, you should make your expectations clear and communicate with your counsel regarding any cost sensitivities and the format in which you would prefer the legal due diligence findings to be presented.

Due diligence is a rigorous process that determines whether or not the VCF /investor will invest in the target company. The process involves asking and answering a series of questions to evaluate the business and legal aspects of the opportunity. Once the process is complete, the investor will use the outcome of the process to finalize the internal approval process and complete the investment deal. The precise extent of a legal due diligence depends on the activities of the target company and the nature of the transaction. If the VCF acts as a lead investor in a syndicate, then they may also share the outcome of their due diligence with other investors.

THREE STAGES OF DUE DILIGENCE

Stage 1: Screening due diligence

VCFs review and evaluate hundreds of business opportunities over the life of the fund and use predetermined criteria to identify which opportunities to focus on as possible investments. This allows them to quickly flag the ones that fit and indicate that they will spend more time and money evaluating the said opportunity.

Usually, for each 10 (ten) opportunities reviewed, 1 (one) will receive a detailed review (second stage and third stage of due diligence) and the fund may invest in one of them. Most opportunities do not make it through screening for two reasons:

1. The opportunity does not fit the VCF's mandate or criteria (e.g., the business stage, geographic region, size of the deal, industry sector).
2. Some VCFs will only review opportunities that have come from a trusted source.

Stage 2: Business due diligence

Once the opportunity is determined to "fit" the VCF's investment criteria, the deal is assigned to a junior and senior member of

the team who will investigate further to determine the viability of the deal. Each firm may have a specific process, but it tends to involve reviewing the management team, market potential, the product or service (and the need it meets) and the business model.

Stage 3: Legal due diligence

Once the VCF/acquirer/buyer has reached the stage of moving toward a favourable decision, their legal counsel will complete a legal review. Thereafter, the seller's legal counsel must be prepared to answer their questions. If the VCF is highly experienced in this area (or has in-house legal counsel), they may take on part of the review to reduce the overall deal expenses.

Target firms are often acquired at a price in excess of their fair market value. This is rational when the acquiring firm perceives an additional strategic value to the acquisition, such as greater economies of scale. These economies do not always materialize however, since there can be additional hidden costs associated with the integration of two firms.

TIPS ON DUE DILIGENCE FROM THE COMPANY'S PERSPECTIVE

Once the target company's management has decided to raise money from outside investors, take time to prepare due diligence checklist. Then the seller company's management should assign the coordination of the checklist to one person who will keep track of information and update documents when appropriate. Having due diligence process ready will demonstrate to the potential investor that you are prepared. It will also speed up the review process. Using these business and legal checklists enables you to anticipate most of the information requested. Seller Company's Management should respond quickly and professionally to any additional investor requests.

During the course of the due diligence exercise, the seller may be required to provide additional documents and/or information. Similarly, during the course of the due diligence exercise or subsequent to the completion of the due diligence exercise, Seller's legal counsel may be requested to provide certificates as to the completeness and accuracy of the information provided.

SCOPE OF LEGAL DUE DILIGENCE

The objectives of a legal due diligence exercise may vary from case to case. Some of the basic objectives may, however, be summarized as follows:

- To gather information from the target company in relation to debts, rights, obligations, pending and potential lawsuits, leases, warranties, all high value contracts – both inter-corporate and intra-corporate,



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- Uncovering the target company's strong and weak sides, relevant risks and advantages in connection with the transaction.
- Minimizing the risk of unexpected situations.
- Improvement of the Seller's bargaining position.
- Identification of areas where representations and warranties from the Seller's should be obtained in the definitive agreement.

EXTENT OF THE LEGAL DUE DILIGENCE

The findings arrived at during legal due diligence process will be summarized in a due diligence report, offering a complete picture of the target company's legal situation. In addition to conveying a general overview, the report will clearly flag those areas, which require particular attention thereby making it easier to evaluate the impact of the legal findings on the acquisition as a whole. Further, the report will often pinpoint those areas where specific representations and warranties are needed, including a suggested alternative course of action.

If one has been approached by a potential acquirer of any business, regardless of whether the deal is structured as an asset transaction, a stock transaction, or a merger, one can expect that the acquirer/investor will like to conduct a detailed "due diligence investigation" of your company's finances and operations.

The due diligence checklist will be helpful for a target company in understanding how to efficiently navigate the legal due diligence process and generally what to expect from the acquirer/investor. This checklist will briefly summarize (i) the primary reasons for legal due diligence and (ii) the basic manner in which legal due diligence is usually conducted.

There is no definitive form of a legal due diligence. The investigative aspects as well as form of the legal due diligence process varies depending upon the scope of work dictated by the acquirer/investor, the focus, the nature of business, etc. However, the basic philosophy of a legal due diligence is common to most processes to be followed. The following is a

checklist of information and documents Target Company's Management can expect from the Acquirer /Investor/Fund House, though there can be need based deviations & modifications in the related checklist as per the requirement of respective assets/business to be acquired. In the herein below mentioned detailed check list in addition to answering the relevant points, wherever the response to any question includes any documents, these may be similarly annexed and referenced. All information with reference to the target corporate entity/ VCU's as well as each subsidiary should be clearly explained. Where the item requested does not exist or is otherwise inapplicable, then the seller's should accordingly indicate so, in the response column and reason why it is inapplicable. Where the same information and documents are to be supplied in response to two or more different questions, please provide the necessary cross-reference.

COMMON DUE DILIGENCE MISTAKES

The buyer's/ investors Team may misidentify the risks associated with the acquisition. They may get so focused on their individual functions that they miss the big picture. They may overlook the "soft" but important element of the target's corporate culture. The Buyer's/ Investors team may rely solely on virtual due diligence, and never realizing the ground level reality. Sometimes, the Buyer's/ Investors team may be so focused on spotting risks which result into overlooking opportunities in the Deal. On the other side, Buyer's/ Investors team may have so much attraction with the deal that ultimately they ignore risks identified in due diligence and move ahead with the acquisition anyway.

CONCLUSION

Legal due diligence is one of the means to enable the parties to finalize commercial negotiations. It is not an end in itself but is also useful for post-closing follow-up. An appropriately managed legal due diligence leads to successful conclusion of business transactions. An efficient due diligence process can save companies from making costly mistakes that may have profound consequences for the corporate entity's other operational areas and/or its corporate reputation. The line of



questioning that is essential for collating information sometimes may come across as negative, intrusive and often misunderstood. However, this pressure must be overcome if the transaction need to be successful, since the margin of error for survival in such critical transactions are very thin. Ideally due diligence should start even before negotiations are underway. Another advantage, beginning the process early could prevent long, costly effort to unwind a transaction that should never have been entered into in the first place. If the due diligence phase is satisfactory, the respective VCF or strategic investor will offer you a term sheet. This is usually a non-binding document that spells out the basic terms and conditions of the investment agreement. The term sheet is generally negotiable and must be agreed upon by all parties, after which one should expect a wait of roughly three to four weeks for completion of legal documents and comprehensive legal due diligence before funds are made available to the seller company's management. Subsequently in due course of time, Term Sheet is followed with the execution of merger or acquisition agreements and related definitive documents, representations, warranties, pre-closing conditions and post-closing rights of the buyer and seller.

QUESTIONNAIRE ON DETAILED DUE DILIGENCE CHECK LIST

1. BROAD INFORMATION

The target company should furnish the following information and wherever appropriate, furnish certified true copies of the following documents:

- i. Full registered name of the target corporate entity/venture capital undertakings including each of its subsidiary/subsidiaries (target company).
- ii. Date of incorporation, commencement of business and the Registration/CIN number of the target company.
- iii. Address of the Registered Office and (if different) its Head Office, Corporate Office and branch offices where the target company is carrying on its activities.
- iv. In brief explain the history of the target company since their incorporation, including the details of:
 - a. change of legal name or status, registered office or authorized business; and
 - b. the acquisition of Subsidiaries by the target company.
- v. Concisely, describe the business of the specifically detailing products/ services
- vi. List of countries where the target entity is qualified or licensed or admitted to do business as a foreign corporation, or has offices or facilities owned or leased property or conducts business.

2. CORPORATE, ORGANISATION AND STRUCTURE

- i. Details of any interest (including any partnerships/limited



- liability partnership, financial & collaborations, sole proprietorships, joint ventures or other entities or interest groupings) held in any entity by any of the following:
 - a. any promoter of the target company; or
 - b. any company in a group of companies of which any promoter is a part; or
 - c. any individual having a controlling interest in the target company or in the Group.
- ii. Organizational and ownership charts or similar information relating to the target company.
- iii. Following details of relationship between the target company, promoters, affiliated companies, families and friends:
 - a. cross shareholdings; and
 - b. direct or indirect investments and the reason for each direct and indirect investment.
- iv. Copies of all resolutions filed under section 192, 293(1)(a), 293(1)(d) and 372A of the Companies Act, 1956 whereas under the New Companies Act, 2013 the said copies of all these resolutions shall be under the sections 117, 180(1)(a), 180(1)(c) and 186.
- v. Copies of all commercial contracts between the company and any officers, directors, shareholders having five-percent stake or its affiliates.
- vi. The following details in respect of every undertaking in which the target company has a direct or indirect interest, if the book value of that interest represents at least 5% of the capital and reserves of the target company or if that interest accounts for at least 5% of the net profit or loss of the target company and any other undertaking in which the target company has an interest which is liable to have a significant effect on the target company's assets and liabilities, financial position or profits and losses:



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- a. name and address of the registered office;
- b. proportion of capital held;
- c. issued and subscribed capital;
- d. amount still to be paid up or shares held; and
- e. amounts of debts owed to and by the target company.

3. LICENSES AND CONSENTS

- i. Details of all licenses and registrations including applicable licenses to carry on the business.
- ii. Copies of all approvals for any foreign shareholdings, approvals issued by the Reserve Bank of India, the Foreign Investment Promotion Board, Ministry of Industry & Finance or any other regulatory body if any.
- iii. Copies of bonds or guarantees given to customs, excise deptt. or other authorities, if any.
- iv. Copies of any other licenses/registrations/approvals required by the Company granted by relevant authorities enabling the Company to conduct its business.

4. MANAGEMENT

- i. Following information in relation to the management of the target company :
 - a. names of the members of the board of directors and details of directorships held;
 - b. all documents relating to appointment of nominee directors and constituting the present board of directors including nominee directors of the lenders or financial institutions or banks;
 - c. details of any outstanding loans granted by the target company to any of the directors and also any guarantees provided by the target company for their benefit;
 - d. give details of any personal bankruptcy of any director and of any insolvency of a company of which any of the Directors was a Director, officer or shareholder;
 - e. details of any non-arm's length transactions between directors and the target company and any other company promoted by the promoters of the target company and the target company or its Subsidiaries;
 - f. whether any director has been disqualified under section 274 of the Companies Act, 1956; and
 - g. are there any restrictions upon the directors' dealings in the Target Company shares?
- ii. Names of the Company Secretary, CFO and other key officers of the target company.
- iii. Copies of compliance certificate, if any, issued by the Managing Director/Company Secretary/Compliance Officer to the Board of Directors of the Target Company.

5. SHARE CAPITAL AND OWNERSHIP

- i. Particulars of share capital showing their authorised, issued and paid up capital, and details of number & classes of shares with their principal description.

- ii. A summary of any events or transactions that have changed the amount of the authorised and issued capital since its incorporation.
- iii. Details of any issued capital still to be paid up including statements of:
 - a. the number or total nominal value; and
 - b. the types of shares not yet fully paid up, broken down (where applicable) according to the extent to which they have been paid up.
- iv. Details of any expected dilution effect of any exercises of conversion rights, options, warrants, ESOPs, Sweat Equity etc.
- v. The percentage shareholding together with details of the number and classes of shares held by promoters.
- vi. Details of any charge, hypothecation, pledge or other encumbrances or escrow arrangements relating to the shares of the Target Company
- vii. Details of any lenders who hold a charge on any shares in the Target Company .
- viii. Copies of any governmental or regulatory approvals obtained by the target company in relation to the acquisition or transfer of shares of the target company.
- ix. Current shareholding pattern.

6. SECRETARIAL AND REGULATORY

- i. Copies of the following:
 - a. Certificate of Incorporation (including any previous certificates of incorporation and amendments thereto, whether on account of change of name or otherwise);
 - b. Certificate of Commencement of Business (if applicable) and
 - c. Memorandum & Articles of Association (as originally adopted and all amendments).
- ii. Confirmation from the target company that all the business that it has carried out is in accordance with the Memorandum of Association and the object clause in the Memorandum of Association permits the target company to carry on the business as is currently conducted.
- iii. **Meetings**
Minutes of meetings, agenda papers, presented to the following constituents of the target company:
 - a. Shareholders;
 - b. Directors;
 - c. Directors' committees; and
 - d. Management committees.
- iv. Copies of all quarterly, annual and other periodical reports and other communications to the shareholders of the target company.
- v. Copies of all Returns filed with the office of Registrar of Companies (ROC).
- vi. Copies of any legal notices that have been published by or in respect of the target company .
- vii. Copies of consents in relation to any loans or guarantees made by or given in favour of non-Indian parties, and



- copies of any related agreements and correspondence.
- viii. Copies of any reports, notices or correspondence relating to any alleged violation, non-compliance or infringement by the target company of any Government regulation, licence, permit or other authorisation.

7. FINANCIAL ACCOUNTS AND TAX INFORMATION

- i. Accounts
 - a. furnish the name of statutory and internal auditors of the target company;
 - b. furnish copies of the audited accounts of the target company;
- ii. Tax
 - a. Copies of all assessment orders.
 - b. Copies of Excise registration certificate;
 - c. Details of any outstanding or pending claims.
- iii. Details of any actual or contingent liabilities of the target company whether as original contracting part to, as a guarantor of any party to, or their liability in respect of any freehold or leasehold property or license connected therewith.
- iv. Schedule of all law firms, accounting firms, consulting firms, and similar professionals engaged by the target company during past five years.

8. BANKING FACILITIES/ BORROWING/ FINANCIAL GRANTS

- i. Details of all borrowing by the target company including inter-group borrowings and loans from directors, employees or shareholders.



- ii. Details of guarantees, performance guarantees, sureties, indemnities or counter-indemnities (including Letters of Comfort, demands or other communications from such third parties) given by the target company in respect of its obligations.
- iii. Details of all loans made to or by the target company including all loans and indebtedness to directors, officers, employees or shareholders of any of the target company or any other companies in which any such director, employee or shareholder is interested, together with copies of all loan documentation.
- iv. Copies of all hire purchase or instalment purchase agreements, finance leases, letters of credit, performance and other bonds and similar documents involving or relating to the Target Company.

9. EMPLOYMENT MATTERS INCLUDING EMPLOYEES & EMPLOYEE BENEFITS

Employees

- i. Details of organisation charts for employees of the target company including a list of key personnel as well as details of the number of full-time and part-time employees and whether these employees are permanent or temporary.
- ii. Statement indicating litigation/dispute, if any, pertaining employees.
- iii. A list of employees with their current salaries, bonuses paid during last three years, and years of service.
- iv. All employment, consulting, non-disclosure, non-solicitation, or non-competition agreements between the Company and any of its employees.
- v. Resumes of key employees.
- vi. Summary of qualified and non-qualified retirement plans.
- vii. Copies of collective bargaining agreements, if any.
- viii. Description of all employee problems within the last three years, including alleged wrongful termination, harassment, and discrimination.
- ix. Description of any labour disputes, requests for arbitration, or grievance procedures currently pending or settled within the last three years.
- x. List and description of benefits of all employee health and welfare insurance policies or self-funded arrangements.
- xi. A description of worker's compensation claim history.
- xii. A description of unemployment insurance claims history
- xiii. Copies of all stock option and stock purchase plans and a schedule of grants.

10. PROPERTY (BOTH FREEHOLD AND LEASEHOLD PROPERTY)

- i. Details of all freehold property owned or occupied by the target company as well as all the properties leased to the target company.
 - (1) Particulars of Title Search Report's/Certificates arranged / to be arranged.
 - (2) To verify and arrange search of earlier conveyance



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and agreement for Sale in the Sub-Registrar's office for a period ranging from previous 12 years to 30 years.

- (3) To verify and arrange search in the Court of Law whether there is any pending litigation for the same or not.
- (4) To verify Registration of Charges under the Companies Act and note whether any mortgage, charge or lien of Bank is there or not.
- (5) Public notice needs to be given wherein objections are invited giving a period of 2 weeks to the Public.
- (6) To obtain no encumbrance certificate from local Advocate.
- (7) To verify whether all property tax & other statutory levy are paid till date.
- (8) To verify whether all building /property maintenance is paid off.
- (9) Electricity and Water Connections installed in the target company's premises are in whose name registered with the respective service provider.

ii. Movable Properties

1. Particulars of Movable Properties;
2. Charges and other encumbrances on movable assets;

- iii. A schedule of all material plant, machinery and equipment, motor vehicles and other tangible assets and movable property used by the Target Company indicating the ownership and nature thereof and the material terms of any financial lease or security agreement pursuant or subject to which the same may be leased or owned.

11. BUSINESS AND OPERATIONAL MATTER

- i. Identify the critical technologies used or to be used by the Target Company in their respective businesses (Technologies) including, but not limited to:
 - a. Software;
 - b. Hardware;
 - c. any Technologies that are under development.
- ii. Supply all maintenance, repair, support, training and other consultancy services agreements in relation to the Technologies.
- iii. All material contracts present or contemplated, which the Target Company is, or will become, party to.

12. INTELLECTUAL PROPERTY

- i. Provide a schedule of all patents, trademarks, service marks, trade names, copyrights, know-how and registered designs, if any, owned by or licensed to or by or used by the target company and all other intellectual property of the target company and copies of all relevant registrations, applications, consents, licences and sub-licences.
- ii. Details of any opposition proceedings, petitions or challenges to any of the target company's intellectual

property.

- iii. Details of any infringement or alleged infringement of the intellectual property rights of the target company or of any such rights of others, by the target company and related correspondence and documentation.
- iv. All assignments of intellectual property rights by or to the target Company.
- v. Details of all contracts taken out by the Target Company relating to the maintenance of computer hardware and software.
- vi. Ownership of Intellectual property arising of the product development by the Target Company.

13. LEGAL PROCEEDINGS, DISPUTES AND INVESTIGATION

- i. Provide details of all pending or threatened or anticipated claims, litigation, arbitration proceedings, or Governmental investigations and proceedings (domestic or foreign), including parties, damages and other remedies sought, nature of action, details of any actual or potential breaches of contract (all kinds of contracts including those detailed in the Financial, Business and operation matters, Intellectual property, and other sections) or infringement of rights by or against the target company.
- ii. A summary of all litigations and arbitrations settled.

14. INSURANCE POLICIES

- i. Details of all material insurance policies taken out by or on behalf of the target company and also furnish copies of all contracts, policies and certificates of insurance.
- ii. Schedule and copies of the company's general liability, personal and real property, product liability, errors and omissions, key-man, directors and officers, worker's compensation, and other insurance
- iii. Schedule of the company's insurance claims history for past three years.

15. CUSTOMER INFORMATION

- i. Schedule of the company's 10 (ten) largest customers in terms of sales thereto and a description of sales thereto over a period of two years.
- ii. Any supply or service agreements.
- iii. A description or copy of the company's purchasing policies.
- iv. A description or copy of the company's credit policy.
- v. A schedule of unfilled orders.
- vi. A list and explanation for any major customers lost over the last two years.
- vii. All surveys and market research reports relevant to the Company or its products or services.
- viii. Company's current advertising programs, marketing plans, and budgets, and printed marketing materials.
- ix. A description of the company's major competitors.
- x. Copies of all articles and press releases relating to the company within the past three years.