

PART I – CONCERN

MERGER & ACQUISITION AND DUE DILIGENCE SERVICES

By Tran Thanh Tung, LL.M

From Risky Transactions

Mergers and Acquisitions – (M&A) has long become a worldwide prevailing business sector. Such sector is quite new to Vietnam but forecasted to be “hotter and hotter”, especially in the current scenario of economic recession. However, M&A is characterized by risky operations. It is no wonder that we heard from experts that most M&A deals came to a fiasco. Some statistics from the world’s well-known consultant companies showed all bust regarding around two-thirds of M&A deals.

In Vietnam, we have ever been “shocked” by the fact that Dong Nai joint stock start-up (Dona Corp) acquired foreign-invested Cheerfield Vina down to the tune of US 1\$; however afterwards, Dona Corp got into troubles because the person entering into the acquirement contract without authorization from the foreign investors. Or for the acquisition deal of a popular ice-cream company, the problem is that the sale contract did not stipulate intellectual property right of the pictures on ice-cream mold. Or as seen in the legal lawsuits regarding corporate acquisition, the enterprise encountered a glitch where a very long time after acquisition, someone suddenly knocked its door and asked it to pay debts that had existed before acquisition.

The foregoing are some typical examples of the causes where M&As get landed in fiasco. Among the most common headaches of M&As is a shortage of information on contracting enterprises.

Upon conducting an M&A operation, there are at least three questions the parties involved need



to seriously consider: What are you specifically purchasing? What is the potential cost of such a deal? What is the appropriate procedure and process for this?

Never ceasing to amaze us is that in a number of M&A deals neither party can define what their specific target is in their transaction: Is it the whole enterprise? A portion of their projects? Their distribution system? It goes without saying that, without the potential target, the enterprise cannot determine the reasonable prices or the approach to conduct a M&A deal.

In reply to such questions, the parties, especially the buyers, need to have full information. That is a basis for a specific supporting service of M&A deals: the due diligence service. Such service takes responsibility for identifying possible risks in a M&A deal, thereby finds out solutions to restricting these risks.

To Due Diligence Services

Due Diligence – DD, has no corresponding notion in Vietnamese. DD is the process of researching and reviewing the entire operation and the internal situation of a target enterprise to roll out the most detailed and comprehensive picture of such target. In almost every single sector of business, due diligence is done by those who have in-depth experience and understanding of the specific field being addressed. This process is done by the experts who have depth experience and understanding of every single field.

DD will provide the most accurate data regarding the operations and efficiency of an enterprise while evaluating and, identify latent or existing risks in the transaction.

On the commercial side, **Commercial Due Diligence** (CDD) surveys the market, the competition, and outlook of an enterprise thereon while pointing out external impacts on its operations. Upon conducting CDD, the experts will consider the impact of signed contracts, meet with suppliers, and interact with potential or current clients and even rivals who may hold key information on the target enterprise.

While CDD tends to focus on external impacts of an enterprise, **Financial Due Diligence** (FDD) generally concerns itself with the internal financial matters of the target enterprise, such as equity capital, loaned capital, debt receivables, debt payables, cash flows. Not being an audit issue, FDD is a matter of future orientation, not only reviewing the past financial matters. FDD will determine where cash flows of the target enterprise will pour and their net existing value alike. Such is the key benchmark in determining the sale price of the target enterprise.

Furthermore, **Legal Due Diligence** (LDD) is the most common form of DD with regard to M&A



and also a familiar service in a M&A deal. LDD takes into account the legal matters of the target enterprise so as to detect latent or existing risks and provides the buyer with core knowledge about the enterprise's legal matters. LDD informs the buyer whether the target enterprise is in compliance with the laws and extends the necessary legal warnings to weigh pros and cons in such transaction. Though some are of the opinion that LDDs tend to mention more potential risks and threats than are actually necessary and tend to slow down the transaction process, but in fact, LDDs provide the easiest means for M&A deal success and restriction of subsequent disputes.

The more the economy develops, the more concerned the environment gets; and hence, it is no surprising that **Environmental Due Diligence** (EDD) service is on the high rise. Generally, EDDs consider the target enterprise's compliance with environmental regulations and future environmental impacts. EDDs will rid the buyer of any concerns they may have with regard to the target enterprises that such enterprises shall be acquired due to in environmental dispute and there is no decision to close such enterprises due to their environmental violations

In addition, there still exists **Technology Due Diligence** (TDD). TDD

Types of DD:

- ✓ **Commercial Due Diligence**
- ✓ **Financial Due Diligence**
- ✓ **Legal Due Diligence**
- ✓ **Environmental Due Diligence**
- ✓ **Technology Due Diligence**

focuses on defining current technology, possible improvements or technologically outdated risks in the target enterprise. TDD rid the buyer of acquiring an enterprise whose technology will

be outmoded following a couple of months because of the emergence of a more modern or similar technology.

Woes



DD is of special importance in a M&A operation. However, for now, few enterprises know how to use these services in Vietnam. Therefore, there arise many regrettable disputes over M&A deals that should have been shunned through DD

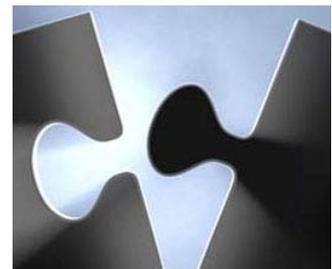
It cost you a considerable collection of information and data on the target enterprise in order to conduct DD. The information can be provided by the target enterprise itself or sought by the partner on his/her own. But in reality, the pre-supply information, especially those on financial matters, that are diversely modified by the enterprise because of various intents, cannot be relied on. Meanwhile, accessing information from state agencies is a very difficult and slow process. Although Article 27 of the current Law

on Enterprises allows organizations and individuals to request business registrant agencies to supply corporate information such as business registration contents and their amendments, few business registrants implement this in practice. The reason is that, aside from above general regulations, the laws have yet to give more guidelines, and thus, the information supply has not yet become an actual obligation of the state agencies. It seems to me that the state agencies (especially business/investment registrants) need to more actively assist enterprises in executing the right to claim information supply.

As such, it is high time for the state agencies to establish information supply channels and control corporate acquisition transactions in order to clear the doubt-overcast market.

Another difficulty is that DD for participation of many experts from diverse fiels such as audit, law, environment, branding. However, the market of such supporting services has yet to catch up with the current M&A boom. In the future, such service market will be certainly more perfect amid increasingly booming M&A deals.

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Conclusion

The enterprise, in any M&A transaction, assumes the role of a special commodity – a legal entity can self-create the legal rights and obligations hour by hour and day by day. The enterprise is a type of uncontrollable, non-physical commodity, but it functions like a living organism through individuals operating in an enterprise. Therefore, in order to minimize the parties' risks, the demand for information search becomes the one on either party's own in conducting M&A. Nobody can outdo you in prudence and in protecting your own rights in a M&A deal. And DD will be always the effective tool for assisting the parties in such transaction.

