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Legal due diligence for M&A Purposes in Georgia

Legal due diligence is one of the critical parts of legal work before merger and acquisition transactions. Due diligence is a process of investigation of a target company's business prior to a potential investment. Due diligence reports prepared by lawyers allow interested parties, mostly potential acquirers, to receive confirmation on facts related to the target company's corporate structure, material contracts, employment relations, IP and property rights, ongoing and potential litigations, etc.

It is also a common practice for owners of the target company to hire external lawyers to conduct. This may attract potential investors and speed up a sale of the target company.

1. Scope of legal due diligence

Scope of legal due diligence depends on various factors, such as a type of business activity, corporate structure, jurisdictions, where the target company is incorporated or carries out its business, etc. Scope of legal due diligence is preliminarily agreed with an interested party, as in some cases a due diligence of limited scope might be preferred.

With the scope of due diligence, an information checklist is agreed between a lawyer and an interested party, an acquirer or a seller.

The checklist is a list of documents and information to be reviewed by the lawyers and covering mainly the following issues:



- capitalization and shareholder structure;
- organizational structure;
- rights of the target company over its real estate;
- intellectual property rights of the target company;
- potential or ongoing bankruptcy / insolvency proceedings;
- authorizations, approvals, licenses allowing the target company to conduct its business, compliance of the target company's goods and services with applicable regulations;
- litigation – list of potential, ongoing and closed commercial litigations, arbitral proceedings, government investigations or disputes with government authorities;
- material contracts;
- related party transactions;
- financing;
- insurance;
- compliance with mandatory regulations of labor law and commitments under employment contracts.



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2. Access to the Information

In practice information to lawyers is provided by an interested party through virtual data rooms. In case of strict confidentiality requirements access may be granted only to the hard copies of the document without authorization to make any kind of copies of the target company's documents or information.

Before granting access to the data room lawyers are required to sign a non-disclosure agreement putting them under a confidentiality obligation.

Part of information such as the target company's corporate and shareholder structure or real estate rights are obtained through investigation of the publicly available sources.

In Georgia this information is available through electronic databases of National Agency of Public Registry (NAPR):

- ▶ registry of Real Estate;
- ▶ registry of Entrepreneurs and Non-entrepreneur Legal Entities;
- ▶ registry of Economic Activity;
- ▶ registry of Public Law Restrictions and Tax Liens and Mortgages.

The following information might also be available through the publicly available database of the Service of Accounting, Reporting and Auditing Supervision:

- ▶
 - financial and Management Reports of the Entity;
 - information about the Group of Entity;
 - information about the Entity's Auditors;
 - profile information about the Entity.

3. Legal Due Diligence Report

Structure of a report depends on the scope of due diligence agreed between the lawyers and an interested party. Though, in most cases full scale due diligence report is structured in the following way:

1) Introductory Section generally includes:

- ▶ disclaimers, limitation of liability clauses;
- ▶ general Information about the target company: name, field of its business activity, legal organizational structure, jurisdiction(s) where the target's business is conducted, overview of a general business environment of a country where the target is incorporated or carries out its activity;
- ▶ scope of a due diligence report;
- ▶ sources from which information about the target company is received: data room, management of the target company, publicly accessible sources, etc.

2) Definitions – this part of due diligence report defines all terms and abbreviations used later in the document.

3) Executive Summary provides main findings and risks identified during the due diligence study.

4) Detailed due diligence report provides overview of information and documentation further to the scope of due diligence agreed with the acquirer or any other interested party.

5) Legal advice on the planned transaction – upon request of the acquirer or any other interested party due diligence report may include description of steps and procedures for entering into and closing the planned transaction.

6) Appendices and schedules to the due diligence report:

- ▶ a list of documents received from the target company;
- ▶ a list of documents obtained from publicly available sources through independent research carried out by lawyers;
- ▶ a list of real estate assets of the target company;
- ▶ a list of the Intellectual rights of the company;
- ▶ a list of ongoing or potential litigation of the target company.

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Practice areas

[CORPORATE AND M&A](#)

Locations

