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M&A - due diligence from an employment law perspective

Issues that are identified during an employment due diligence can have a crucial impact on the business transaction as during M&A the buyer also acquires the human capital of the target company. Human capital is considered an intangible asset of the company. Besides that, the employment issues and disputes can be extremely costly. As such, prior to M&A, the employment lawyer should assess the potential administrative and criminal risks that might lay on the target company. It is, therefore, essential for the buyer to review all employment-related files and documents.

Before acquisition, the purchaser must ascertain whether there have been any claims against the seller and whether such claim has been resolved. If it is unresolved, how can it affect the acquisition? This is one of the topics that is discussed during due diligence. Some companies, of course, may choose different priorities or additional areas of focus. The essential considerations upon conducting the employment due diligence include:

1. Compliance of the Employment Agreements with the requirements of the Labor Code
2. Classification of the employee as an independent contractor
3. Vacation pay
4. Employee's compensation and benefit plans
5. Labor Safety
6. Immigration Considerations
7. Legal Considerations of the employee's dismissal/transfer
8. Labor disputes

The new business acquirer should not underestimate the necessity of conducting employment due diligence. An employment law due diligence plays a substantive role in deciding on acquisition or merging with another business. The results of the due diligence can affect the purchase price and terms.

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Practice areas

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