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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



THE FUTURE OF LEGAL DUE DILIGENCE IN MERGERS AND ACQUISITIONS: LEVERAGING TECHNOLOGY AND INNOVATION

AUTHORED BY - AAYUSHI SAXENA¹

Introduction to Legal Due Diligence in M&A

Due diligence in mergers and acquisition is the process of investigating the prospective target. There are different types of due diligences, however, legal due diligence includes financial, human resources, operational and different types of due diligences.² The concept of legal due diligence emerged from the saying of 'Caveat emptor'³ for the purpose of a prospective business decision by obtaining and reviewing the legal and commercial state of a target.⁴ The concept has gained statutory recognition in Section 3⁵, Transfer of Property Act and Section 27(1)⁶ of the SEBI Act. Legal due diligence becomes essential in the deals concerning mergers and acquisition as it decides the course of a future company and the position to fail and succeed in the market.⁷ This includes consideration given to various theories of corporate law, including the Business Judgment Rule, Corporate governance, Piercing the Corporate veil, Ultra Vires, and Fiduciary Duty.⁸ India has witnessed several high-profile mergers and acquisitions in recent years.⁹ Notable mergers include the Indus Towers-Bharti Infratel deal in 2020, Bank of Baroda's merger with Vijaya Bank and Dena Bank in 2019, and Vodafone India's union with Idea Cellular in 2018. Meanwhile, significant acquisitions include Infosys' purchase of Kaleidoscope Innovation and Reliance Retail's takeover of Future Group's retail

¹ Aayushi Saxena, B.A.LL. B (2021-26), Lloyd Law College, Greater Noida.

² Erik P.M. Vermeulen, 'Due Diligence Process in Mergers & Acquisitions and Integration Problems' (LLM thesis, Tilburg University 2016).

³ Peter Howson, *Due Diligence: The Critical Stage in Mergers and Acquisitions* (Taylor & Francis 2017) 15.

⁴ Pooja Patel, 'Path to a Successful M&A Transaction: An Effective Legal Due Diligence' in *Practical Aspects of Mergers and Amalgamations* (ICSI-WIRC | IMC, Mumbai 2017).

⁵ Transfer of Property Act 1882, s 3

⁶ Securities and Exchange Board of India Act 1992, s 27(1).

⁷ Melissa E. Graebner, 'Caveat Venditor: Trust Asymmetries in Acquisitions of Entrepreneurial Firms' (2009) 52 *Academy of Management Journal* 435.

⁸ Mochammad Tanzil Multazam and others, 'Securing Blockchain Enterprises: Legal Due diligence Amidst Rising Cyber Threats' (2024) 11(1) *PAJADJARAN Journal of Law*.

⁹ Matt Savare and Bryan Sterba, 'M&A Due Diligence: A Primer on Transactions Involving Private Sellers' (Thomas Reuters Westlaw, 25 February 2020).

business, both in 2020.¹⁰ As a result, due diligence has become a crucial step in the M&A process, playing a vital role in ensuring successful deal-making.¹¹ The article provides an in-depth examination of the legal due diligence landscape in India, covering the latest developments, obstacles, and strategies, while also offering insights into its potential future trajectory.

Emerging Trends in Legal Due Diligence

Unlike other types of due diligence, which often involve analyzing data from structured databases, legal due diligence typically requires reviewing a vast number of documents written in natural language.¹² The nature of legal due diligence differs significantly from financial due diligence, which concentrates on financial spreadsheets; instead, legal due diligence deals with the clear, black-and-white terms outlined in contractual agreements.¹³

As technology continues to advance, virtual data rooms have emerged as a game-changer in document management, making it easier to review, sort, and analyse large volumes of documents.¹⁴ By applying AI to contract analysis, legal professionals can rapidly identify variations, such as those found in lease agreements, and prioritize higher-level tasks, like assessing strategic implications.¹⁵

Blockchain technology is an emerging investment frontier, offering a decentralized, transparent, and secure framework for transactions that transcend borders, eliminate paperwork, and foster open-source collaboration.¹⁶ Prior to investing in the blockchain market, conducting thorough legal due diligence is paramount to shield investors from an array of hacking threats, including ecosystem, infrastructure, protocol logic, rug pull, and smart contract language hacks. This process involves posing key questions to uncover potential risks and

¹⁰ Major Mergers and Acquisitions in India (Byju's Exam Prep, 14 January 2025). <https://byjus.com/govt-exams/mergers-acquisitions-india/>.

¹¹ Michael G Harvey and Robert F Lusch, 'Expanding the Nature and Scope of Due Diligence' (1995) 10 Journal of Business Venturing.

¹² Pieter van der Made and others, 'How AI is Changing Legal Due Diligence' (Mergermarket, an Acuris Company, Imprima 2020).

¹³ Stackey Rickford and others, 'How AI is Changing Legal Due Diligence' (Mergermarket, an Acuris Company, Imprima 2020).

¹⁴ Ibid.

¹⁵ Emma Danks and others, 'How AI is Changing Legal Due Diligence' (Mergermarket, an Acuris Company, Imprima 2020).

¹⁶ Iris H-Y Chiu, *Regulating the Crypto Economy: Business Transformation and Financialisation* (Bloomsbury Publishing 2021) 96.

vulnerabilities, ultimately safeguarding stakeholders against looming threats.¹⁷ Conducting thorough legal due diligence on blockchain-powered organizations involves a multifaceted approach. This includes assessing ecosystem and infrastructure safeguards, evaluating protocol logic design, and understanding measures to prevent fraudulent activities. Additionally, investigating smart contract testing and auditing procedures is crucial. A comprehensive review of the legal framework, platform terms, and compliance with applicable laws ensures the resilience and longevity of these organizations.¹⁸

It has been rightly said, “*Verba volant, scripta manent!*” which means “*spoken words fly away, written words remain*” highlights the importance of contracting through lawyers and organization in today’s evolving world.¹⁹ Legal departments are often tasked with managing a large number of contracts, encompassing both basic non-disclosure agreements and complex legal contracts.²⁰ Unfortunately, this can result in inefficient contracting, leading to significant value leakage for companies, with losses estimated to be between 5-40% of the deal's value.²¹ The pandemic-driven shift to remote work highlighted the need for legal departments to adopt cutting-edge technologies that facilitate collaborative work, reduce costs, and increase effectiveness.²² By harnessing the power of AI, contract analysis solutions streamline the contracting process, enabling legal teams to rapidly review and analyze contracts.²³ These solutions can be customized for various legal domains, including real estate, sales, intellectual property, and employment, and help lawyers deliver outstanding results. Ultimately, the integration of AI in the legal field is a complementary force that streamlines routine tasks, freeing lawyers to focus on higher-level work and deliver better services to clients.²⁴

¹⁷ Mochammad Tanzil Multazam and others, 'Securing Blockchain Enterprises: Legal Due Diligence Amidst Rising Cyber Threats' (2023) 11 PAJADJARAN Journal of Law 1 (ISSN 2460-1543, e-ISSN 2442-9325).

¹⁸ Ibid.

¹⁹ Beverly Rich, 'How AI is Changing Contracts' Harvard Business Review (12 February 2018) <https://hbr.org/2018/02/how-ai-is-changing-contracts>.

²⁰ AI-Powered Contract Analysis: How Sophisticated Innovation is Delivering Efficiencies for Modern Law Departments' (Thomson Reuters 2021). <https://legalsolutions.thomsonreuters.co.uk/content/dam/ewp-m>

²¹ Beverly Rich, 'How AI is Changing Contracts' Harvard Business Review (12 February 2018). <https://hbr.org/2018/02/how-ai-is-changing-contracts>.

²² Legal Department Operations Index 2021 (6th edn): The Risk of Being Left Behind' (Thomson Reuters, Legal Europe 2021) <https://legalsolutions.thomsonreuters.co.uk/en/trends-insights/reports/legal-department-operations-index-sixth-edition-2021.html?gatedContent=%252Fcontent%252Fewp-marketing-websites%252Fuk-legal-solutions%252Fen%252Ftrends-insights%252Freports%252Flegal-department-operations-index-sixth-edition-2021%252Fthank-you>.

²³ Kerrin Kluwer, 'Contract Analysis Software: What Does it Do?' Legartis (18 April 2023) <https://www.legartis.ai/blog/what-is-contract-analysis-software>.

²⁴ AI-Driven Contract Analysis in Perspective and in Practice' (Kira Inc 2020) <https://kirasystems.com/files/ebooks/KiraSystems-Ebook-AiDrivenContractAnalysis.pdf>.

Future of Legal Due Diligence in M&A

The landscapes of due diligence in mergers and acquisition would be significantly transformed by the inclusion of artificial intelligence. Upon accessing a VDR, AI technology can apply its analytical capabilities to identify gaps in the documents and provide summary insights, streamlining the review process for potential buyers.²⁵ A Virtual Data Room is created to save documents or to create a central repository for distributing the key documents in the due diligence process. It has been created to replace the conventional data room with fewer disadvantages.²⁶ There are various reasons that why AI is been adopted for assessing lawyers. Some of them are the Automating Document Review, extracting structured data and unstructured legal documents, assessment in risk profiling and predictive analysis and comparative contract analysis.²⁷ The legal due diligence process involves a detailed evaluation of a target company's financial, legal, and operational frameworks to gauge its potential for growth and identify potential pitfalls. However, the limitation of traditional due diligence is many. The approach includes manual analysis which is prone to human errors and time consuming. It results in inefficiencies, missed insights and an ability to handle large datasets effectively. Therefore, for strong and efficient due diligence process inclusion of AI in the due diligence process of mergers and acquisitions becomes essential.²⁸ The integration of generative AI in legal workflows necessitates that lawyers update their legal acumen and review skills to maintain the quality and precision of their work. AI adoption has led to the enactment of new laws in Europe, and similar legislative measures are expected to follow in the Asia Pacific and other regions.²⁹

²⁵Dr. Marc Vogelsang, 'How AI Will Impact Due Diligence in M&A Transactions' EY (17 January 2024)https://www.ey.com/en_ch/insights/strategy-transactions/how-ai-will-impact-due-diligence-in-m-and-a-transactions.

²⁶'Guide to M&A Due Diligence' (Midaxo 2025)
<https://www.midaxo.com/hubfs/Downloadables/M&A%20Due%20Diligence%20Guide.pdf>.

²⁷Emir Aksoy, 'The Future of AI in Legal Due Diligence: A Detailed Legal Perspective' Asylegal (20 November 2024)
https://www.asylegal.com/ai-in-legal-due-diligence/?utm_source=mondaq&utm_medium=syndication&utm_content=articleoriginal&utm_campaign=article.

²⁸'Why the Future of M&A Due Diligence is AI-Powered' GEP (July 7, 2023)<https://www.gep.com/blog/technology/why-the-future-of-m-and-a-due-diligence-is-ai-powered>.

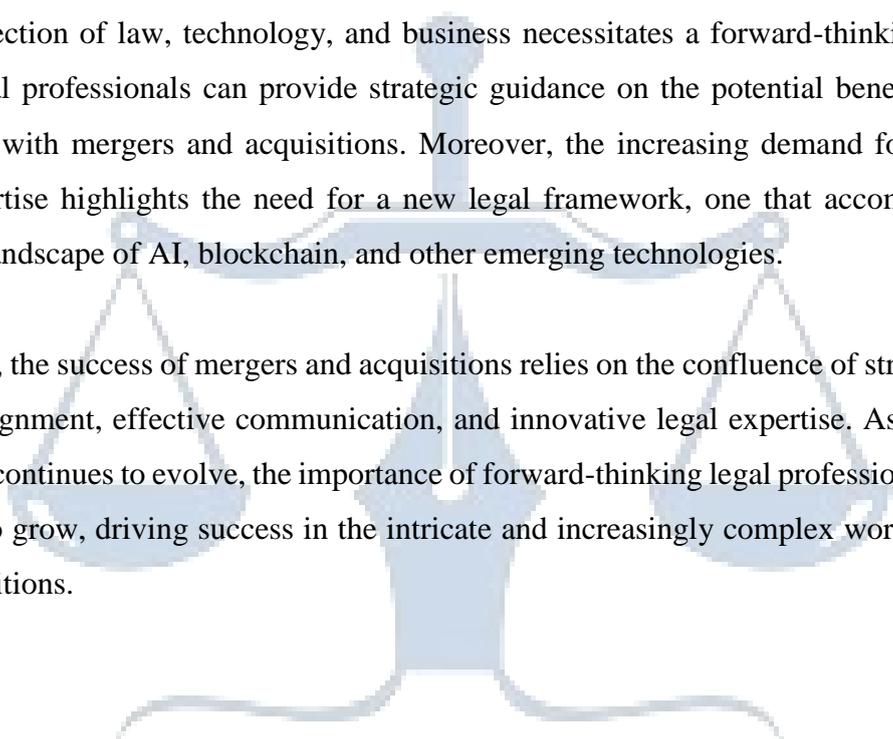
²⁹6 Predictions: Building Speed While Achieving Results for Tomorrow's M&A Legal Teams' (KPMG)<https://kpmg.com/xx/en/our-insights/transformation/6-predictions-for-m-and-a-legal-teams.html>.

Conclusion

In conclusion, the intricacies of mergers and acquisitions underscore the imperative of a multifaceted approach, incorporating strategic, cultural, and technological considerations. As companies navigate the complex landscape of growth and expansion, the role of legal expertise cannot be overstated. Investors and corporations require lawyers who possess a deep understanding of innovative trends, including the burgeoning integration of AI and blockchain in legal due diligence.

The intersection of law, technology, and business necessitates a forward-thinking approach, where legal professionals can provide strategic guidance on the potential benefits and risks associated with mergers and acquisitions. Moreover, the increasing demand for specialized legal expertise highlights the need for a new legal framework, one that accommodates the evolving landscape of AI, blockchain, and other emerging technologies.

Ultimately, the success of mergers and acquisitions relies on the confluence of strategic vision, cultural alignment, effective communication, and innovative legal expertise. As the business landscape continues to evolve, the importance of forward-thinking legal professionals will only continue to grow, driving success in the intricate and increasingly complex world of mergers and acquisitions.



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