



Alok Tewari

Partner, Kochhar & Co. (New Delhi)

(Q) How important is legal due diligence as a tool to successfully conduct an acquisition?

Financial and legal due diligence are the pillars on which an acquisition primarily depends. Pursuant to due diligence, we analyse the economic feasibility of the transaction. The scope of legal due diligence

is to ascertain the following:

- a) Is the company legally compliant;
- b) What is the shareholding structure of the company;
- c) Are all the intellectual and other property rights of the company fully secured;
- d) What are the litigations, arbitrations, assessments and/or any other dispute pending against the company;
- e) What rights the company has over the immovable property(ies);
- f) Are there any agreements which are not enforceable on account of management and control issues;
- g) What is the financial implication on account of all of the above.

The rationale of ascertaining the above is to enable the acquirer to analyse (i) legal risks and liabilities likely to be carried over after acquisition; (ii) whether the representations, undertaking and warranties given by the company are true and correct; (iii) any other risks associated from the business, financial, legal and other perspectives. Further, it also helps in identification of legal issues in the transfer of shareholding & management control, including determining whether the

consent of lenders, if any, for the changed shareholding and management is required. By way of this exercise the acquirer can make an informed decision whether they should acquire the company and the manner in which the deal should be structured.

(Q) What are the hurdles that Indian lawyers face while conducting a legal due diligence?

While carrying out due diligence, we commonly encounter that the statutory and other records of most of the Indian companies are not properly maintained. Further, most of the promoter driven Indian companies do not have a full fledged legal department due to which it becomes difficult to obtain complete records and information pertaining to the company. Secondly, except the online records available under the Companies Act, 1956, there is no centralised department where all the information pertaining to the company is available as a result of which it becomes difficult to corroborate the information provided by the company specifically with respect to litigation, FEMA, tax & IP. Consequently, the lawyers generally have to rely upon the information provided by such company.