

Name: G. Sairamkuma

Unit No: 2

Case No: 4635

Subj: Secretarial Audit, Compliance Management and
Due Diligence.

2 Distinguish Between.

Try to write most important points in short when you are writing any ans. you can define here what kind of operational aspects and Strategic aspects..

(i) Operational Due Diligence

1 It covers the operational aspects for a target company.

It covers strategic rationale behind a proposed transaction and whether the deal is commercially viable for a target company.

2 This type of due diligence is used when a company is in going concern basis.

It can be used for going concern basis for the company.

It considers aspects on operational weakness, inadequacy of control mechanisms etc.

it considers factors such as value creation opportunities, competitive position, critical capabilities.

3 This type of due diligence only analyses the operational aspects for a target company.

This type of due diligence helps the target company to buy viable projects.

2 (iii)	particulars	Audit	Due Diligence
1.	Scope	It is limited to financial aspects.	It not only covers financial aspects but also business management plan, risks involved, legal aspects etc.

(2)

		Audit	Due Diligence
2	Data	Based on historical data	Covers future prospects in addition to historical data.
3	Mandatory	Mandatory.	Mandatory based on the transaction.
4	Type	Post-Mortem Analysis	Based on future decisions
5	Nature	Repetitive Nature.	Based on the nature of transaction.
6	Repetitiveness	Recurring Event.	occasional event.
7	Assurance	Positive Assurance i.e. Covers only financial aspects for a Company.	Negative Assurance i.e. Identification of risks if any.

Need to improve presentation skills.

(i) Financial due diligence Tax due diligence

(1) It covers financial aspects of a company. The financial aspects also includes the taxation aspects or areas.

(2) Balance sheet, profit and loss account and adequacy of cash flow statement is covered. Tax planning, Tax evasion, Double taxation aspects etc, are covered.

Try to write most important points in short when you are writing any ans..

review of accounting policies, review of internal audit procedures, quality and sustainability of earnings and cash flow, condition and value of assets, potential liabilities, tax implications of deal structures

The tax due diligence comprises an analysis of:
— tax compliance
— tax contingencies and aggressive positions
— transfer pricing
— identification of risk areas
— tax planning and opportunities

(3)

③ Financial due diligence
It covers mainly the financial aspects applicable to a company.

Tax due diligence
It covers both direct and indirect taxes applicable to a company.

Advantages of a Virtual Data Room

- ① The Documents are kept in electronic form instead of physical form so it is easy to copy the documents from ^{one} system to another system.
- ② The time required to set up Virtual Data Room is less when compared to physical Data Room.
- ③ The cost involved in setting up the data room is less. Copying/printing of documents may be restricted.
- ④ The Documents stored in it are more safe and secured. Closure of Virtual Data Room may happen at any time.
- ⑤ The Documents can be copied at convenient time.
- ⑥ Easy to identify the prospective bidders.

Disadvantages of a Virtual Data Room

- ① Cost involved in setting up the Data Room may be high. It is advantage or disadvantage?
- ② Not easily accessible to copy the documents.



you are writing same point in advantage and in disadvantage, be clear when you are writing.. refer to ans sheet for proper answer...

③ Time required to set up the data room may be greater when ^{compared} to physical data room.

Inability to copy or print information some times becomes a hurdle
④ There is a possibility that the stored documents may be lost due to system errors and difficult to retrieve ^{it} back.

3] Mr. Pia's advice to the Company Sch Ltd to go for Initial public offer (IPO) ^{should} be as follows: -

To,
The Board of Directors,
Sch Ltd,
(Address)

Dear Sir(s)/Madam(s),
Sub: Steps to go for Initial public offer (IPO)
conditions

The following are the steps to be followed by the Company to go for Initial public offer (IPO).
Check whether -

(a) the issuer has ^{preceding 3 full years} net tangible assets of at least 30000000 out of which not more than fifty percent are held in monetary assets. If more than fifty percent of the net tangible assets are held in monetary assets then such excess amount is utilised for business commitments or projects.

(b) the issuer has average ^{financial} pre-tax profit of at least 15000000000 ^{of 5 periods} preceding 3 full years out of 5 periods

limit of fifty percent on monetary assets shall not be applicable in case the public offer is made entirely through an offer for sale

operating

financial years of the Company.

(c) the issuer has networth of atleast 1 crore in preceding 3 full financial years (of twelve months each);

(d) the Company has changed its name within one year, if so atleast 50% of the revenue is earned with its changed name. which one year?

5th Condition??
refer to ans sheet for proper answer...

If the issuer does not satisfy any of the conditions specified above then IPO can be done through book-building process where atleast 75% of net offer to be issued to public.

the issuer undertakes to allot, at least seventy five percent of the net offer to public, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers...

8 (a) Pre Diligence

The following are the steps involved in Pre Diligence-

(a) Signing Letter of Intent (LOI) and Non-Disclosure Agreement (NDA)

Receipt of documents from the company and review of the same with the checklist of documents already supplied to the company.

(b) Identifying the issues

(c) organising the papers required for due diligence

(d) Creation of data room.

who will sign LOI and NDA, be specific and clear about writing.. refer to ans sheet for proper answer...

After Letter of Intent (LOI) and Non-Disclosure Agreement (NDA) is signed the following steps are to be followed -

- (a) Do not Delay the Deadlines.
- (b) Read the Agreement which is entered carefully.

For Due Diligence team which is conducting Due Diligence the following steps are to be followed -

- (a) Inquire and welcome the Due Diligence team conducting Due Diligence which involves professionals.

- (b) Join them for lunch.

- (c) Accept the mistakes given by them and rectify it.

18 (b) Ensure that the promoter's contribution is -

- (i) at least 20% of post-issue capital in case of initial public offer (IPO). In case of less than 20% then alternate investments has been made

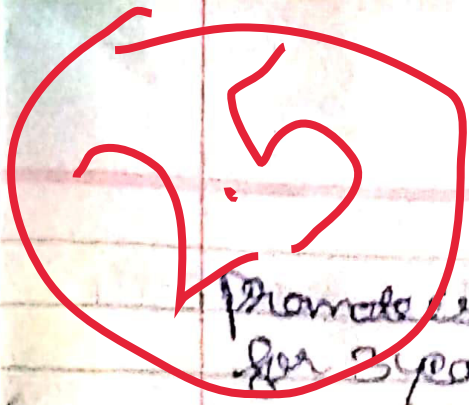
subject to a maximum of ten per cent of the post issue capital.

- (ii) at least 20% of post-issue capital or post-issue size in case of further public offer (FPO).

- (iii) at least 20% of post-issue capital or post-issue size in case of composite issue, which is excluding rights issue component.

Ensure that the promoter's contribution is kept in Escrow Account. The minimum and the 5%

whenever you are writing any conditions, you should write complete point, ICSI will deduct the marks for incomplete point..



(7)

THPL
DATE / /

Promoters Contribution are kept in lock-in-period for 3 years and 1 year respectively.

16 Checklist for preferential issue of shares

Check whether -

(a) the issue is authorized by Articles of Association (AOA) of the Company. If not Articles to be altered and Form MHT-14 to be filed.

(b) the issue is authorized by special resolution.

Check the certified copy of the resolution passed by the Board of Directors of the company for the proposed preferential and the true copy of Form MGT-14 and Form SH-7 filed with the ROC.

(c) the notice furnished to preference shareholders

cover the following -

- (i) objects of the issue;
- (ii) number of securities offered;
- (iii) value of securities offered;
- (iv) Number of persons to whom allotment is made;
- (v) price arrived by registered valuer in valuation report;
- (vi) pre and post issue shareholding pattern.

(d) the allotment is made within 12 months from the date of passing special resolution. If not made within 12 months then another special resolution to be passed for 12 month period for making allotment.

Check whether the allotment pursuant to the special resolution in case of preferential issue has been completed within a period of fifteen days from the date of passing of such resolution.

(e) Form PAS-3 is filed within time with requisite attachments and fees.

Check whether the allotment has been made in dematerialised form.

(f) the Company (listed Company) then it has followed SEBI norms in addition to above regulations refer to ans sheet for proper answer...

5 (1) The given statement is true.

(2) Roll-over of non-convertible portion of partly convertible debt instruments can be done if the following are complied - refer to ans sheet for proper answer...

i) at least 75% in value of non convertible ~~debt~~ debt holders has appeared the roll over through postal Ballot.

credit rating has been obtained from at least one credit rating agency registered with SEBI within a period of six months prior to the due date of redemption and has been communicated to the holders of the convertible debt instruments, before the roll over.

ii) Credit Rating has been obtained before the roll over.

4 (1) More than 500 cases in an IPO then a monitoring agency to be appointed.

refer to ans sheet for proper answer...

(2) No advertisement to be done for an IPO through medias like television using models etc.

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