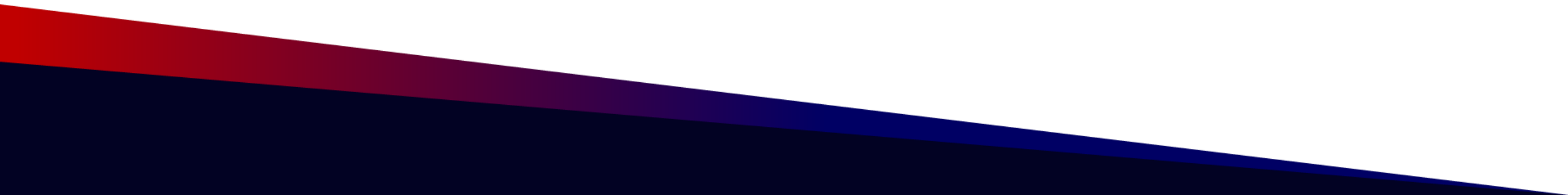




Due Diligence

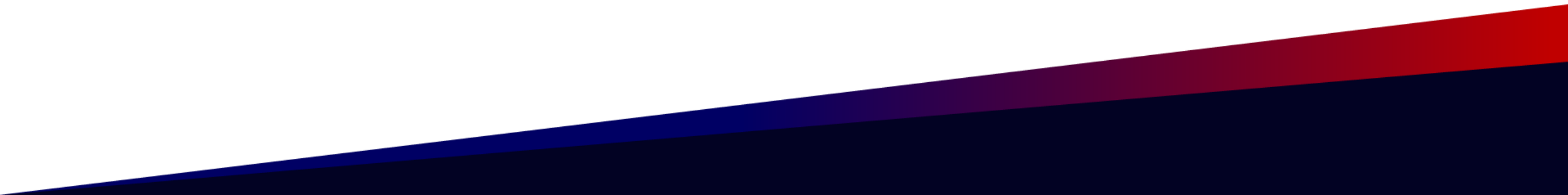
For Transactions

AGENDA

- Introduction: Objective and Purpose
 - Due Diligence Vs. Audit
 - Scope of Due Diligence
 - Due Diligence Process
 - Due Diligence Report
 - Conclusion
- 

Introduction

Objective

- Risk management
 - Prevents unpleasant situations
 - Enables decision making
 - Helps in negotiation
 - Enables value protection
- 

Introduction

Purpose

Buy Side Due Diligence



helps the buyer achieve
maximum returns from
the deal

Sell Side Due Diligence



helps the seller/vendor
obtain the best value from
the deal

Due Diligence Vs Audit

Due Diligence

PURPOSE

Helps the investor in understanding the business and the seller in obtaining the best value from the deal

TIMING

Takes place before the transaction

REPORT

Focused on transactions

GOVERNING RULE

Industry standards and deal drivers

EFFECT

Effect on transaction drivers

ACCESS

Limited access

Audit

Gives report to shareholders or users of financial statements

Takes place after the annual closing

Focused in true and fair accounts

Companies Act, Accounting and Auditing Standards

Effect on transaction drivers

Limited access

Scope of Due Diligence

Due diligence is not guided by any law or standard. The scope and procedure are tailor-made to the transaction, based on the type of transaction, industry, and specific need of the user of the report.

SCOPE OF DUE DILIGENCE IN DIFFERENT SCENARIOS

For 100% acquisition of shares, joint ventures, private equity transactions, the scope of due diligence is as follows:

- ➔ Background verification of the target company
- ➔ Assessing business overview of the target company
- ➔ Reviewing constitutional documents and corporate records
- ➔ Reviewing agreements and contracts
- ➔ Ensuring clear title of shares to be acquired
- ➔ Assessing details of the directors, bankers, and auditors
- ➔ Assessing details of Shareholders
- ➔ Verifying compliance with corporate governance
- ➔ Review financial ratios to assess the future sustainability of the business
- ➔ Verifying owned and leased properties
- ➔ Checking licenses and approvals

SCOPE OF DUE DILIGENCE IN DIFFERENT SCENARIOS

For 100% acquisition of shares, joint ventures, private equity transactions, the scope of due diligence is as follows:

- Checking financial and taxation records
- Verifying compliance to exchange control (FEMA aspects)
- Verifying loans, borrowings, and guarantees
- Reviewing corporate investments
- Assessing intellectual properties
- Checking litigations
- Verifying employee and personnel records
- Assessing insurance coverage
- Miscellaneous

SCOPE OF DUE DILIGENCE IN DIFFERENT SCENARIOS

For asset, business or undertaking acquisition, the scope of due diligence is as follows: (Here the focus is on the assets, business or undertaking to be acquired rather than the company or its shares).

- ➔ Verifying the title and ownership of assets
- ➔ Verifying any encumbrances on the assets
- ➔ Scrutinizing all the asset related agreements and contracts
- ➔ Checking approvals for the specific use of the assets
- ➔ Assessing intellectual property
- ➔ Identifying if any litigation on the use or ownership of the assets
- ➔ Checking employee issues, trade union matters and labour issues
- ➔ Ensuring compliance to health, safety and environment laws
- ➔ Verifying insurance on assets
- ➔ Verify physical existence and completeness of assets

SCOPE OF DUE DILIGENCE IN DIFFERENT SCENARIOS

For due diligence of listed companies, the following needs to be taken care of:



Execution of Non-Disclosure Agreement (Confidentiality Agreement) between the parties to the transaction



Standstill Agreement between the parties to the transaction that restricts them from buying or selling shares of the company while holding unpublished price sensitive information



Restriction from disclosing any due diligence or confidential information to the stock exchanges while it is undertaken



Disclosure of due diligence information to the stock exchanges only when the transaction has reached the finalization and execution stage

SCOPE OF DUE DILIGENCE IN DIFFERENT SCENARIOS

FCA and Anti-Corruption Issues



Specifically needed by US companies (MNC) as a part of due diligence



FCPA regulates the payments made to government officials for routine but with adequate disclosures



Prevention of Corruption Act, 1988 is strict in the country and any offenses made are subject to imprisonment and penalties. It does not allow any kind of payment.



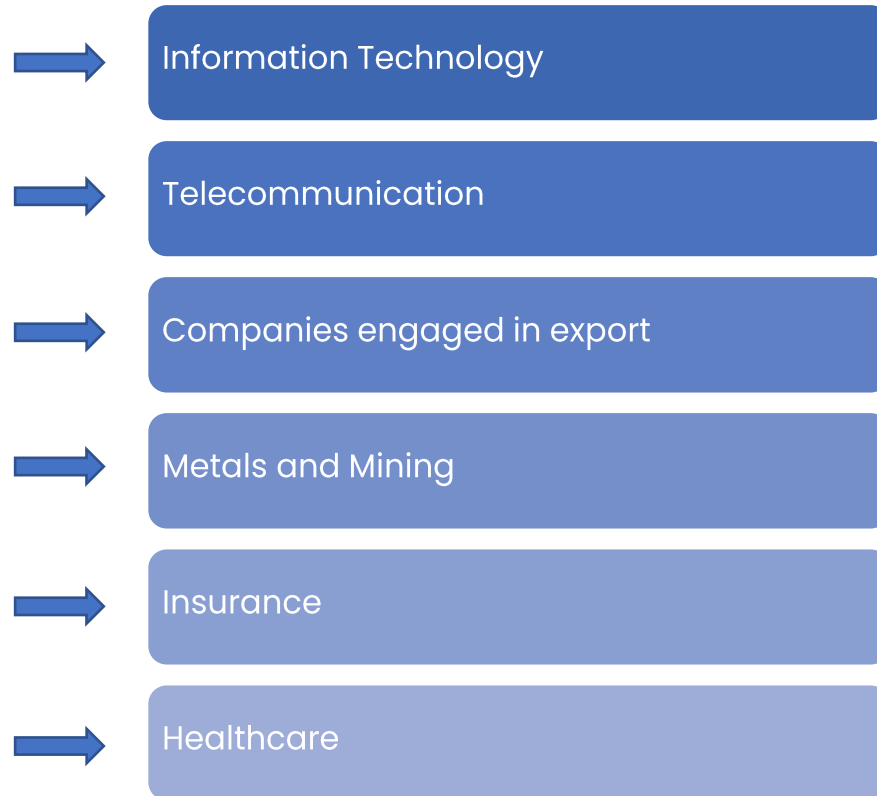
Being unrecorded, these payments are not easy to track



In spite of tracking, the reason for them is very prevalent

SCOPE OF DUE DILIGENCE IN DIFFERENT SCENARIOS

Particular Industry Focused Areas of Diligence



PRE DUE DILIGENCE PROCESS

Step 1 – Define The Scope And Timelines

Scope

- Areas of due diligence
- Manner of collecting and maintaining data
- Final deliverables such as executive summary, due diligence report, executive summary, etc.

Timelines

- Accepted timelines for completion of work

PRE DUE DILIGENCE PROCESS

Step 2 – Gearing up

- Gather documents like Memorandum of Understanding, Information Memorandum, transaction-related documents, etc.
- Prepare a work checklist for the team
- Assign responsibilities and circulate necessary documents to the team
- Identify any major issues pertaining to the transaction
- Outline the due diligence process and set team expectations
- Assess the need for any third-party expert or consultant for areas such as real estate issues, labor-related issues, etc.
- Understand the industry and regulatory issues related to the transaction

DELIBERATIVE OVERVIEW

These are issues that are most significant to the execution of a transaction. Conducting deliberative overview helps you understand the scope and intensity of the due diligence.

COMPONENTS OF DELIBERATIVE OVERVIEW

Transaction Structure

Identifying transactions and related parties, assessing the structured i.e. share or asset purchase, taxation matters, restrictive covenants, etc.

Transaction Funding

Understanding the source of funding and other preliminary consideration

Regulatory Issues

Checking for any restriction on foreign holding or subsidiaries, verifying approvals, assessing competition law issues and foreign exchange considerations

International Aspects

Assessing the need for engaging foreign professional advisers

Confidentiality Agreements

Assessing the power of the target to restrict the circulation of certain information

Lock-In Arrangements

Assessing arrangements based on the negotiations between the transaction parties

Data Room Guidelines

Understanding data room guidelines for the target entity

Overall Due Diligence Strategy

Finalizing due diligence checklist to circulate

Specialized Issues

Identifying industry and sector-specific issues such as specific legislative requirements

CONSTITUENTS OF DUE DILIGENCE PROCESS

Due diligence process is of two types:

Formal Process

It involves reviewing and analyzing the information from the documents obtained, interviews with representatives of the target company, etc.

Informal Process

It involves acquiring the information from the informal meetings and discussions with key personnel of the target company, etc

POST DUE DILIGENCE PROCESS

Preparing due diligence report

The due diligence report must meet the objectives of due diligence.

- It should contain all the important information in a summarized and easy-to-understand format.
- It should be circulated among the acquirer and its legal and business advisors.
- The report primarily consists of three sections:

Executive summary

This section highlights any issues or critical factors that require the acquirer's attention.

Main body

This section contains the terms of reference or checklist.

Appendices

This section contains the documentation or datasheets of the critical issues.

How Can IMC Group Help You?



Our due diligence service focuses on the critical aspects of transactions.

Some of our services are:

- ✓ We help our clients identify and quantify deal-specific risks and opportunities.
- ✓ We evaluate the reasonableness of past and projected earnings as well as cash flows.
- ✓ We identify any hidden costs, contingencies, and commitments of the target business.
- ✓ We identify, assess, and quantify tax exposures if any.
- ✓ We conduct in-depth research and identify issues that have the probability of affecting the purchase price or contract conditions.
- ✓ We identify and measure liabilities that can act as deal-breakers.

Besides, our due diligence service can provide a sound foundation for your business decisions.