



Legal Due Diligence

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ADVOCATE

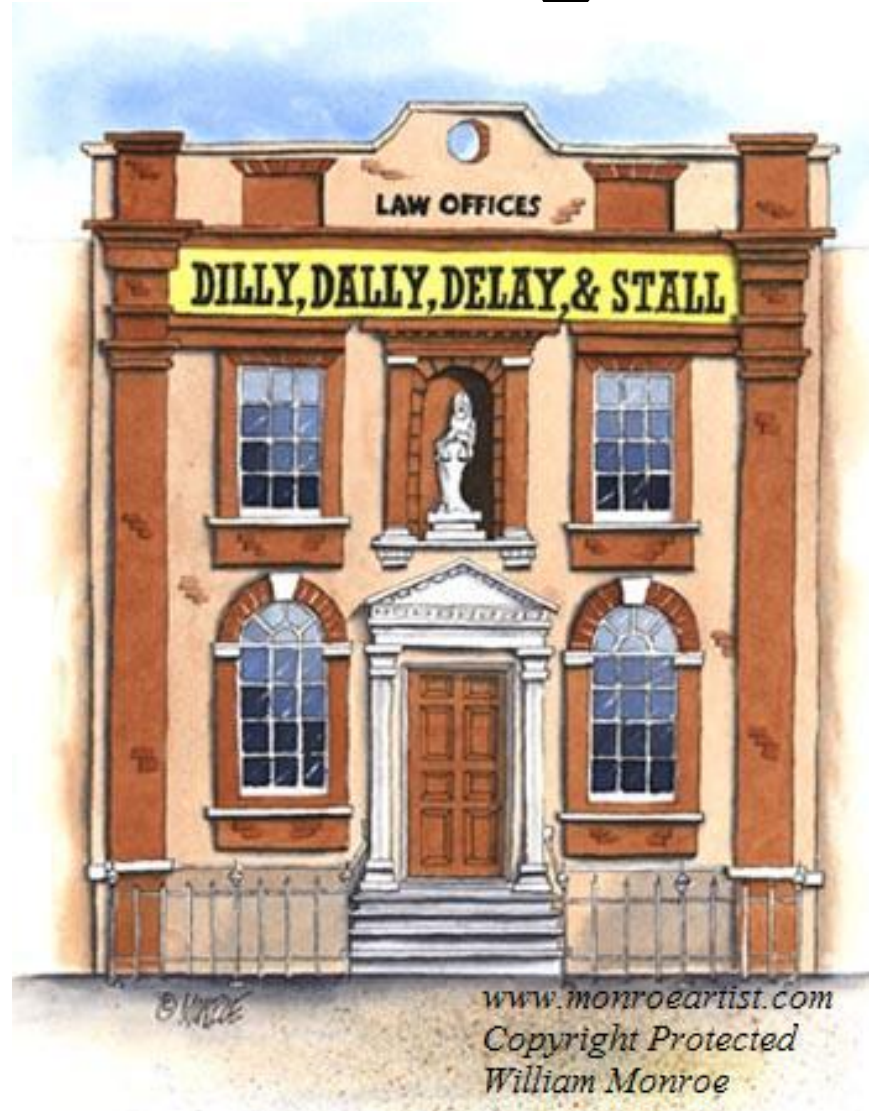
ICAI - WIRC

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Perception about legal advisors...

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Role of a Corporate Lawyer

- Paradigm shift in role of commercial lawyer over last 2 decades.
- Expected to advise not only law but also on commercial aspects of the transaction
- Play a pro-active role throughout the transaction – “step-in-shoes Counsel”
- Be ‘meticulous’ in drafting and positive in negotiations
- Has to work towards successful completion...

Meaning of Due diligence

Due diligence

From Wikipedia, the free encyclopedia

For other uses, see [Diligence \(disambiguation\)](#).

"Due diligence" is a term used for a number of concepts involving either an investigation of a business or person prior to signing a contract, or an act with a certain *standard of care*. It can be a legal obligation, but the term will more commonly apply to voluntary investigations. A common example of due diligence in various industries is the process through which a potential acquirer evaluates a target company or its assets for *acquisition*.^[1]

Purpose of Due Diligence

- Ensure Complete & Accurate Disclosures
- Analyze Strengths and identify Weaknesses
- Determining the advisability of the Transaction
- To assess the benefits and the liabilities of a Transaction by inquiring into all relevant aspects of the past, present, and predictable future of the Business
- Structuring, Negotiating and Crafting Transaction Documents including the Representations, Warranties & Indemnities

Focus of Legal Due Diligence

- Conditions Precedent for achieving Transaction Completion in timely and compliant manner
- Comprehensive compliance check
- Identify legal risk factors and value depletors
- Assess exposure to parties from existing or potential litigation
- Contingent liabilities and contingent assets
- Effect of change of control or change of shareholding on the ongoing contracts

Different Transactions & Areas of Due Diligence

- Acquisition of a Business or Company

- Structure of entity/shareholding
- Assets and liabilities (real & intangible)
- Disputes & Litigation
- Permits/Consents/Registrations
- Environmental issues
- Direct and indirect tax liabilities

Principal Areas of Legal Due Diligence

•Joint Venture

- Credibility of JV Partner
- Contribution from JV Partner
- Regulatory restrictions on transactions

•Financing

- Viability of the Project
- Status of the Borrower
- Debt servicing ability
- Assessment of security

Principal Areas of Legal Due Diligence

•Listing of Securities

- Risk factors to be included in the Offer Document
- Permits/Licences/Registrations of existing and proposed Project
- Litigation concerning the Issuer Company, Promoters & Promoter Group entities
- Vetting of Offer Document

Principal Areas of Legal Due Diligence

• Commercial Agreements

- Viability of Transaction
- Performance record of contracting Parties

• Privatisation

- Assets and liabilities
- Regulatory restrictions

Transaction Activities

- **Before restructuring**
 - NDA, Exchange of Information
 - Term Sheet/MOU/HOA/Lol
- **During transaction**
 - Due Diligence
 - Negotiation
 - Documentation – CP completion
- **Post Completion**
 - Post completion audit & price adjustment, if any
 - Regulatory compliance & reporting

Essential Terms of MoU/LoI

- Broad concept of proposed transaction
- Non-Disclosure / Confidentiality
- Information Exchange - Scope of Due Diligence
- Exclusivity
- Time table
- Drop Dead Provisions
- Enforceability - Binding Effect
- Arbitration - Dispute Resolution?

Preparation for Legal Due Diligence

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The First Meeting

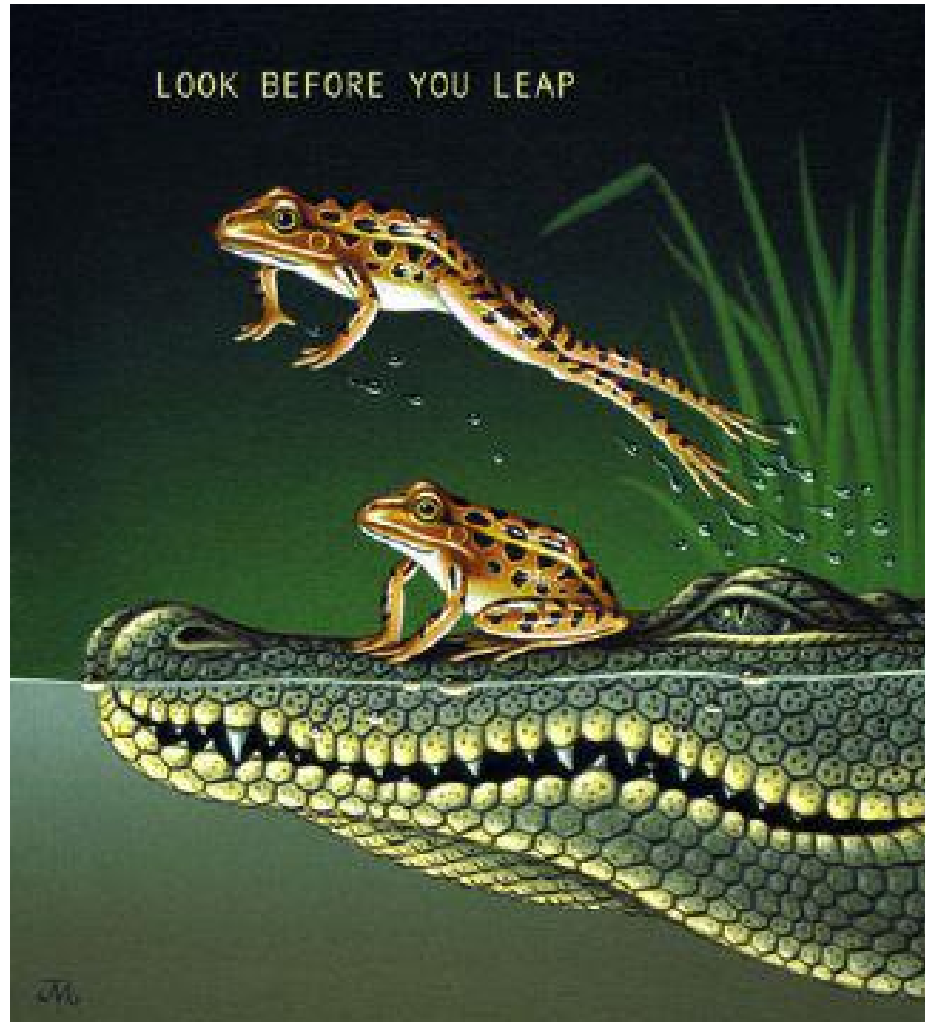
- **Scope of Due Diligence**
 - *Comfort Letter*
 - Preliminary Review
 - Extensive Due Diligence Report

- **Mandate Letter**

- **Confidentiality Agreement**

Look before you leap...

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Types of Due Diligence

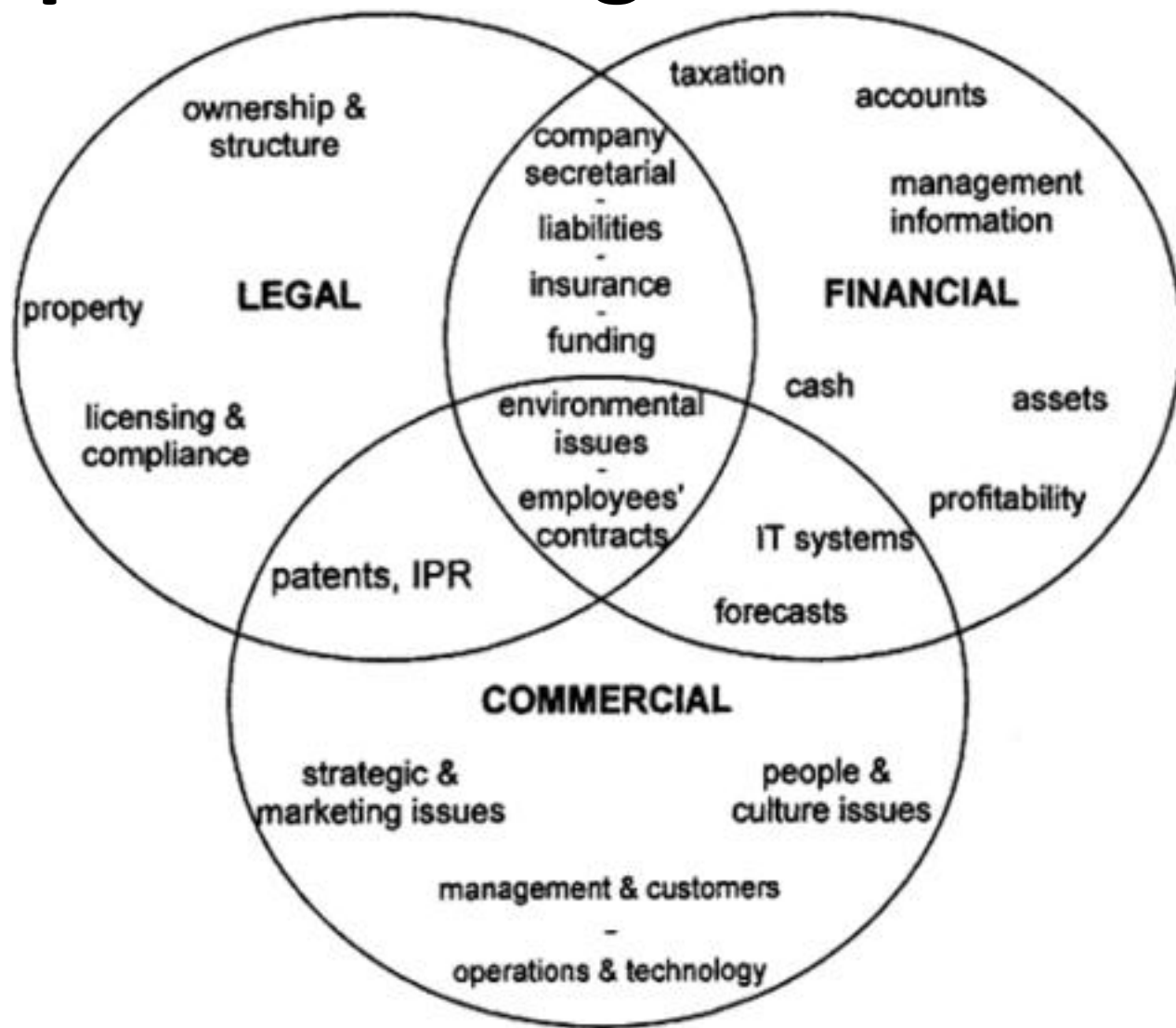
- Legal & Secretarial
- Financial / Accounting
- Technical / Environmental
- Commercial / Market Intelligence
- Social / Cultural / Ethical

Essence of Due Diligence – Trust but verify!!!

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Overlap of Due Diligence Activities



Diligence...

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Diligent
adjective dil - i - gent
characterized by steady,
earnest and energetic effort

The Due Diligence Team

- Identify teams for conduct of Legal, Financial, Technical & Commercial Due Diligence
- Legal Due Diligence Team members should include specialists in relevant industry
- Conduct a common briefing session for all Identify personnel from Target for interaction
- Identify target's Auditors, Legal Counsel and other Transaction Advisors
- Identify Target's Vendors and customers for third party Due Diligence

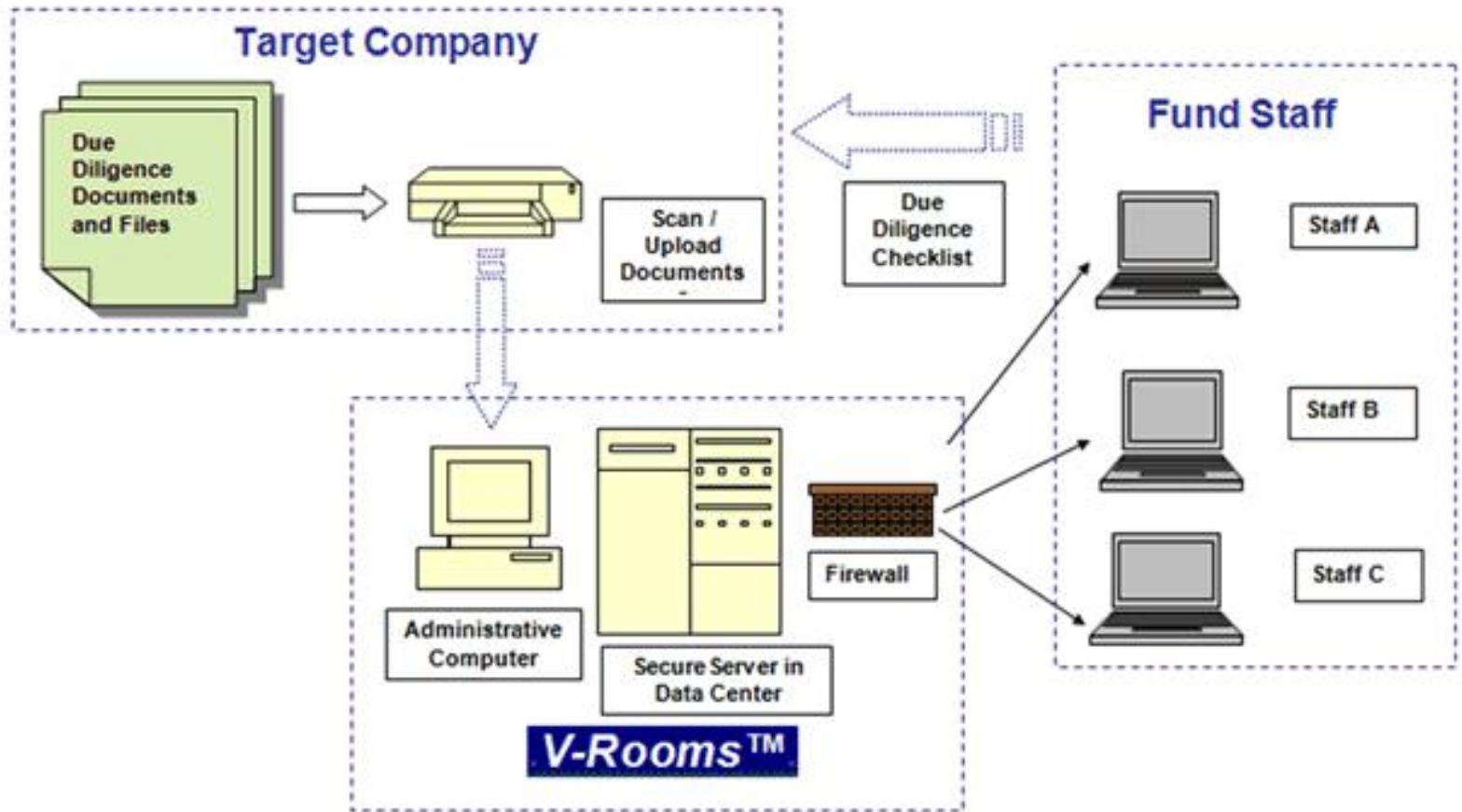
Methodology of Data Gathering

- Do your homework thoroughly
- Prepare a comprehensive Information Request for each type of Due Diligence - Customize the check-lists based on preliminary information
- No check list is "final" !
- Request for Management Presentation from target or its Investment Advisors
- Set up a physical or virtual data room
Personnel interviews Document review On-site inspections Independent investigations



Virtual Data Rooms

Buy-Side Due Diligence



Document Review

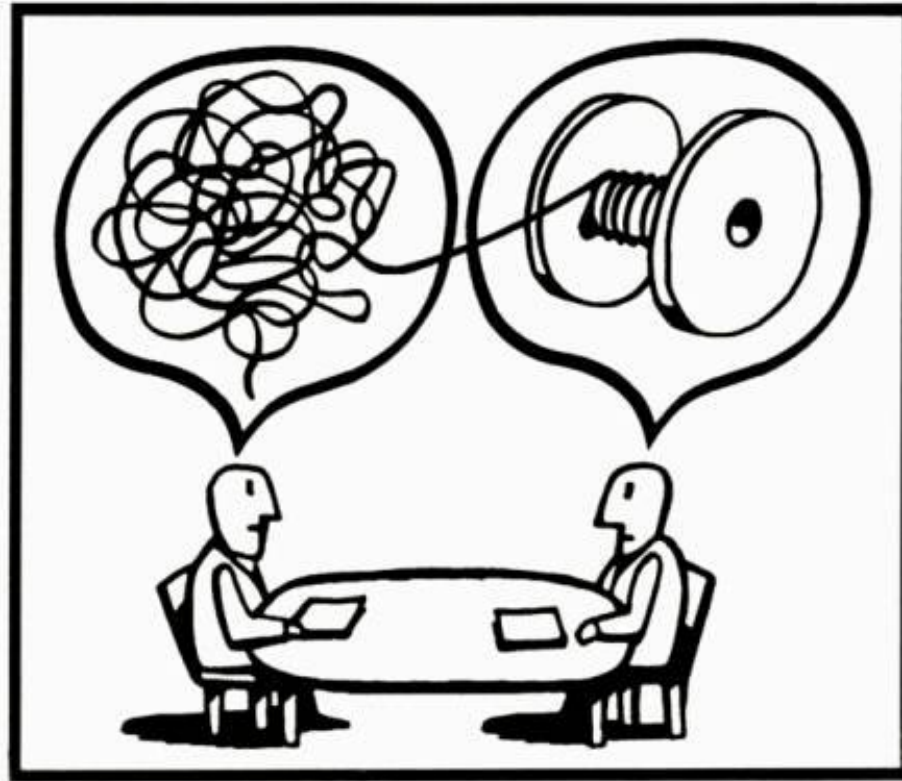


- Make a Wish List of what to review
- Select a Team of representatives and counsel
- Make sure the Team understands the context, purpose & key terms of intended business deal
- Establish a realistic time line for review
- Be selective but thorough: consider review of representative documents
- Liaise with specialist Attorneys for specific areas

HR Diligence



Emotional Due Diligence



Conclusion of Due Diligence

- **Identify a Cut-off date for data gathering**
 - Are you comfortable with the info received?

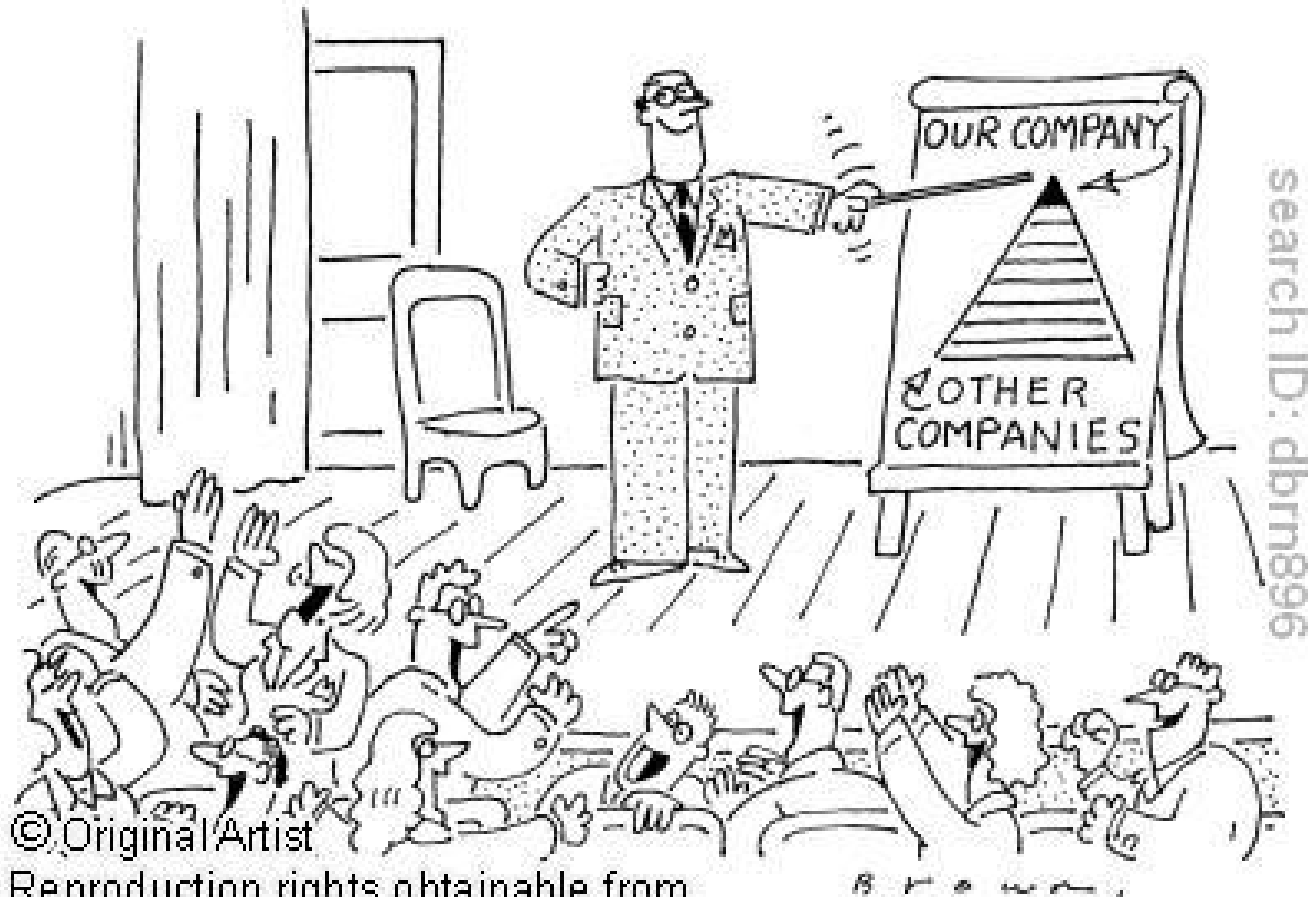
- **Next steps -**
 - Co-ordinate with other Due Diligence teams
 - Prepare a draft report addressing main areas of exposure and concerns
 - Hold meetings with target management for confirmation of information and conclusions

Due Diligence Analysis & Completion of restructuring

- Red flags / Show stoppers
- Value depleting factors - negotiation
- Conditions precedent
- Representations, Warranties & Indemnities
- Regulatory and contractual compliance
- Implementation of restructuring and post completion activities

Clarity of communication !!

CORPORATE RESTRUCTURING PLANS EXPLAINED
TO SHAREHOLDERS.



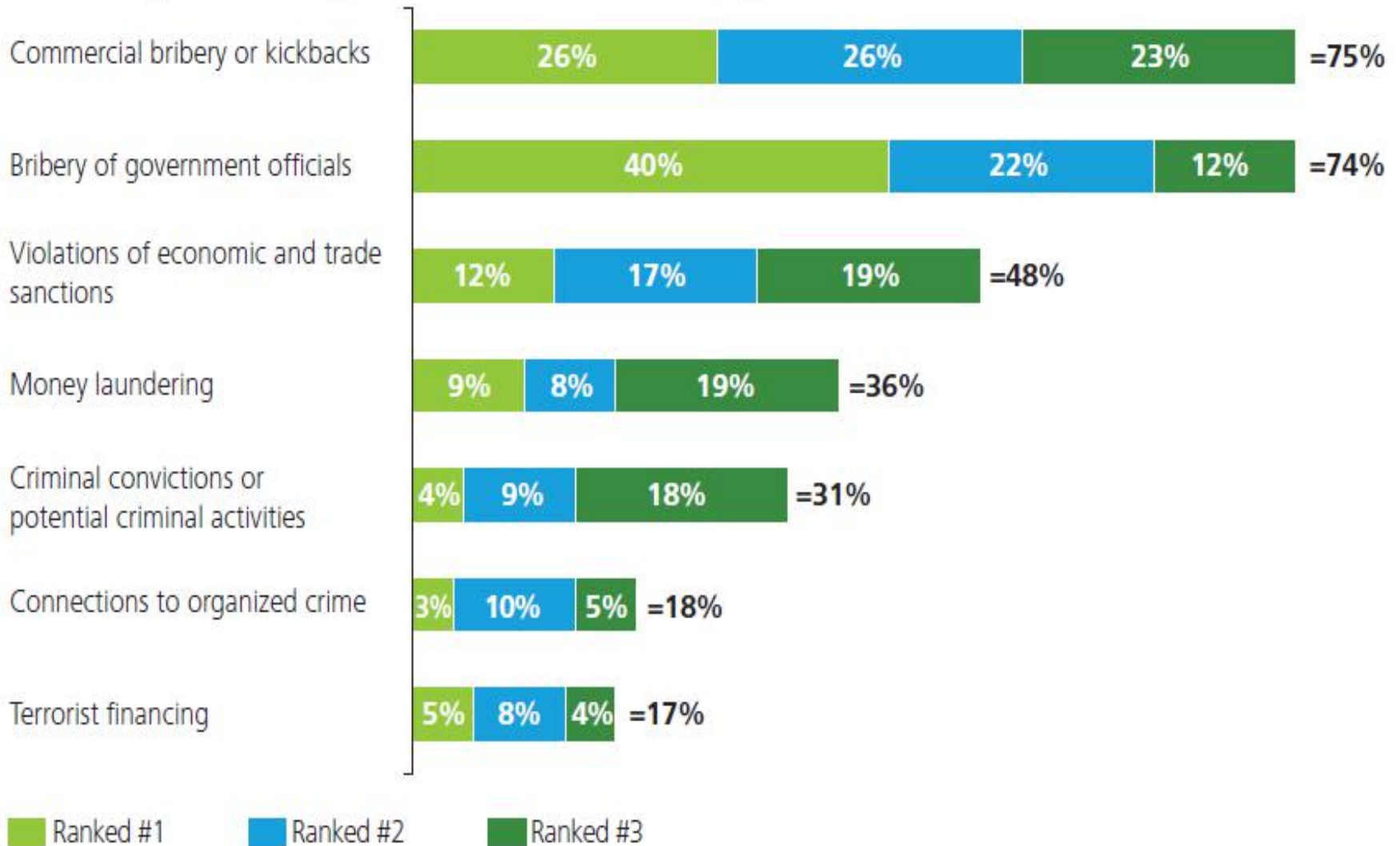
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Global Concerns...

Greatest compliance and integrity-related risk concerns in emerging markets



THANKYOU