

Legal
Due Diligence Report

prepared by

Legal Legends Associates

for

[REDACTED] (“Acquirer”)

in respect of

[REDACTED] (“Target”)

as at

[REDACTED] 2019

Introduction

1. *Background*

- 1.1. Legal Legends has been requested by [REDACTED] herein after referred to as (the “**Acquirer**”) to undertake a legal due diligence investigation of the business and affairs of [REDACTED] (“[REDACTED]” or the “**Target**”) (the “**Investigation**”).
- 1.2. The principal aim of the Investigation is to identify any potential or contingent legal risk associated with the Target which may have an impact on the negotiation, structuring and implementation of the proposed acquisition of 100% of the members interest in the Target by the Acquirer (the “**Proposed Transaction**”).
- 1.3. The scope of the Investigation is limited to the information made available to Legal Legends for the purpose of disclosing confidential information to the Acquirers and their advisors.

2. **Format of this due diligence report ("Report")**

This document is divided into four sections:

- 2.1. this introductory section, including the status of this report and Legal Legends assumptions in preparing this Report;
- 2.2. the definitions used in this Report;
- 2.3. the red flag issues report, with key issues and suggestions going forward relevant to the Proposed Transaction; and
- 2.4. the key issues list, being an executive summary of the material issues described in the Report.

3. *Status of this report*

- 3.1. This Report sets out the results of the Investigation and the review performed by Legal Legends in the period from in relation to the various documents furnished to and reviewed by Legal Legends.

- 3.2. This Report sets out only those findings which in the professional discretion and opinion of Legal Legends are material issues which have a bearing on either the implementation of the Proposed Transaction or which would have a material influence on the Acquirers' decision whether or not to proceed with the implementation of the Proposed Transaction. In the circumstances, the potential for undisclosed documents, arrangements and agreements which may constitute a risk for the Acquirers in relation to the Proposed Transaction does exist.
- 3.3. This Report pertains only to the legal aspects of the documentation provided to us and we have not reviewed or commented on any commercial, financial, scientific or technical aspects.
- 3.4. As such, Legal Legends sought to isolate, through the Investigation and based on the documentation provided, those material issues relating to the Target of which the Acquirers should be aware in order to determine whether the Proposed Transaction should occur.
- 3.5. This Report is to be considered as part of the overall process of due diligence being undertaken by and on behalf of the Acquirers in relation to the Target and the Proposed Transaction and is not to be taken in isolation. We do not accept responsibility for assessing the commercial or technical implications of the documents or information reviewed by us (as such a review would require, among other things commercial and industry knowledge and expertise as well as a full understanding of the Acquirers' commercial plans), although we have sought, where possible, to highlight matters which we consider, in our professional discretion and opinion, to be commercially significant. Accordingly, this review should not be seen as a substitute for examination of appropriate documents and materials by commercial and technical personnel and advisors.
- 3.6. This Report does not contain a detailed description of each document reviewed and its purpose is to set out those material legal issues which we consider, in our professional discretion and opinion, to be material in the context of the Proposed Transaction. Reliance should not be placed solely on any of the summaries contained in this Report, which are not intended to be exhaustive of the provisions of any document or circumstances. It is important to note that the Investigation does not consist of a full and comprehensive due diligence investigation.
- 3.7. Unless otherwise expressly agreed by us in writing, no person other than the Acquirers is entitled to rely on this Report, and we shall have no responsibility or liability to any party who has access to this Report, whether in contract, delict (including negligence) or otherwise.
- 3.8. It is recorded that this Report is strictly confidential and may not be released to any person who has not signed the appropriate release letter in favour of Legal Legends.

4. **Scope of the Investigation**

- 4.1. The Target was furnished with a due diligence data questionnaire setting out those documents and information which Legal Legends required for consideration in the Investigation.
- 4.2. Documentation was made available via email.
- 4.3. In accordance with our instructions, any financial, accounting, auditing and tax issues were specifically excluded from the scope of our review.

5. **Assumptions**

This Report has been prepared on the basis of the following assumptions:

- 5.1. any photocopies of documentation made available to us are complete and true copies of the originals, that any signatures and/or seals thereon are genuine and authentic and that agreements were concluded under due and proper capacity, power and authority (to the extent that any of the documentation and/or information made available to us turns out to be inaccurate, incorrect or false, we make no representation as to the accuracy and completeness of this Report);
- 5.2. the information reflected in the documents provided is accurate – we have not verified such accuracy independently;
- 5.3. there have been no variations to the documentation as presented to us;
- 5.4. the terms of such documentation have been complied with in all respects;
- 5.5. all documents reviewed, which were signed on behalf of the parties, were concluded under due and proper capacity, power and authority;
- 5.6. the reports and opinions expressed are not adversely affected by the laws of any jurisdiction other than those of South Africa;
- 5.7. the documents and information provided by the Target are all that is necessary in order to address the issues under Investigation or all that is in fact available; and

5.8. except where expressly stated by us to the contrary all transfer duties and/or similar duties, taxes or levies relating to the documents and the transactions contemplated therein have been paid in full on the due date.

6. **Disclaimer**

6.1. This Report is addressed to the Acquirers solely for its use and benefit and may not be transmitted to any other person without our prior written consent, except in those instances where the Acquirers may be obliged by law to do so.

6.2. This Report may not be relied upon by any person other than the Acquirers and may not be used for any purpose other than the consideration by the Acquirers of the Proposed Transaction. We shall accordingly not accept any responsibility for any loss or damage suffered by any person other than the Acquirers as a result of reliance on the contents of this Report.

6.3. We reserve the right to amend this Report in the light of any new information received but do not undertake any obligation to do so.

General Definitions

The following terms shall have the meanings set out below when used in this Report:

6.4. The following definitions should be used to the extent relevant:

6.4.1. **"Acquirers"** means [REDACTED];

6.4.2. **"CIPC"** means Companies and Intellectual Property Commission;

6.4.3. **"Companies Act"** or **"New Act"** means the Companies Act 71 of 2008;

6.4.4. **"Distribution Agreement"** means the agreement entered into between the Target and [REDACTED] (therein referred to as the Supplier) for the supply and distribution the [REDACTED] k product;

6.4.5. **"Employment Contract"** means the standard form employment contracts entered into between [REDACTED] ("**[REDACTED]**") and [REDACTED] ("**[REDACTED]**") and the Target respectively;

6.4.6. **"Insurance Policy"** means the insurance policy entered into between [REDACTED] and the Target in respect of the business of the Target;

6.4.7. **"Lease Agreement"** means the agreement of lease in respect of the Premises entered into between [REDACTED] and the Target;

6.4.8. **"POPI"** means the Protection of Personal Information Act 4 of 2013;

6.4.9. **"Premises"** means the leased premises situated at [REDACTED];

6.4.10. **"Proposed Transaction"** the transaction whereby 100% of the [REDACTED] in the Target will be purchased by the Acquirer from the Seller;

- 6.4.11. **“SADC Countries”** means the countries of [REDACTED]
[REDACTED];
- 6.4.12. **“Seller”** means [REDACTED];
- 6.4.13. **“Supplier”** means [REDACTED] (owner of the [REDACTED] product name);
- 6.4.14. **“Target”** or **“Distributor”** or [REDACTED]” means [REDACTED] Registration number: [REDACTED]);
- 6.4.15. **“VAT”** means value-added tax in terms of the Value-Added Tax Act 89 of 1991;

Red Flag Issues Report Summary of key findings and suggested actions going forward

1. It is advised that the Acquirer should consider converting the Target which is currently a [REDACTED] into a private company post the acquisition for the various reasons set out in the Report below.
2. The Distribution Agreement poses a risk to the Acquirer. The Targets business is dependent on this agreement been in force, if this agreement is terminated by the Supplier, the Target will no longer have a business as the Target will no longer be permitted to trade under the name [REDACTED] ' or to sell [REDACTED] products (which appears to be the principal business of the Target as set out in the founding statement). The risk posed by the Distribution Agreement is that due to the ambiguity in the wording around the Suppliers right to cancel the agreement, the Supplier can technically terminate this agreement at any point in time with 30 days written notice. It is advised that the Acquirers and the Target need to approach the Supplier to renegotiate the terms of the Distribution Agreement surrounding the Suppliers right to terminate this agreement. The Suppliers should be made aware of the Proposed Transaction and the Suppliers consent to the Proposed Transaction should be a condition precedent to any sale purchase agreement that is executed.
3. The Acquirer to ascertain if insurance is required to cover the business of the Target in areas outside of the Premises and specifically in the jurisdictions of [REDACTED]. If out and about insurance is required, the Acquirer needs to amend the Insurance Policy either prior or immediately following the Proposed Transaction.
4. From a reading of the Insurance Policy the Target is not currently covered by the Insurance Policy, as the period of insurance cover is only from [REDACTED] [REDACTED] and the renewal date is [REDACTED]. It is not clear whether the Insurance Policy has been renewed and if it has been renewed, the dates of cover for the renewal period are not clear. It is advised that the Acquirer should ascertain what period the Insurance Policy covers the Target and its business, and the Insurance Policy needs to be amended to reflect the correct dates to ensure that the Target is currently covered under the Insurance Policy.
5. Receipt of a [REDACTED] approving the sale purchase agreement must be provided as a condition precedent to the sale purchase agreement;
6. A change of control clause in the Lease Agreement provides that there will be a breach of the Lease Agreement if the [REDACTED] is sold as per the Proposed Transaction. The Acquirers and the Target must obtain the lessors written consent for the Proposed Transaction to proceed which should be stipulated as a condition precedent to any sale purchase agreement that is concluded. A failure to obtain the lessors consent will result in a breach of the Targets obligations in terms of the Lease Agreement and the lessor will have the right to terminate the lease.
7. Acquirers to ascertain if the Lease Agreement was validly entered into as the version provided is unsigned and a condition precedent contained in the Lease Agreement relating to the provision of a deed of suretyship has not been validated. Acquirers to ascertain if the option to renew contained in the Lease Agreement was exercised. If the option was not exercised the lease is currently operating as a monthly lease capable of termination by either party

on [REDACTED] written notice. This could pose a big risk to the Acquirers who may be forced to vacate the Premises on [REDACTED] notice.

8. It is advised that the Acquirers renegotiate the Lease Agreement with the lessor, especially if the option to renew was not exercised. If the Lease Agreement is renegotiated, a suggestion is made to remove the requirement to provide a deed of suretyship from the Lease Agreement.
9. The sale purchase agreement should contain an indemnity such that the Acquirers will not be held liable for any claims arising from any guarantees or suretyships or loan accounts which may attach to the members interests in respect of the deed of suretyship that is referred to in the Lease Agreement or any other loan agreements.
10. The sale purchase agreement must contain standard warranties and indemnities and specifically set out that all required insurance to run the business of the Target is currently in place, the Target has complied with all POPI legislative requirements in the running of its business, the Employment Contracts have not been amended and the Premises are in the same condition in which they were let at the commencement of the Lease Agreement.

Key Issues List

Part A- Corporate documentation

<i>Key issues/ information</i>	<i>Implication and/or possible mitigation</i>
<p>1. Certificate of amended Founding Statement</p> <p>██████████ It is noted that the Target is a ██████████ ██████████. The Seller holds ██████% of the ██████████ in the Target.</p> <p>The description of the principal business as set out in the founding documents is the “██████████.”</p>	<p><i>Implication:</i></p> <p>It is noted that the Target is a ██████████ and that the principal business of the ██████████ is the “██████████.”</p> <p>A ██████████ is a company with juristic personality ██████████ ██████████ ██████████ ██████████ ██████████.</p> <p>The Companies Act No. 61 of 1973 (“Old Act”) did not provide for a similar type of business entity that promoted the interests of small business owners and, as a result, CCs became popular in South Africa.</p> <p>The Companies Act No. 71 of 2008 (“New Act”) which came into effect in May 2011 changed the regulatory framework applicable to CC’s. Although the CC Act is still in force, as of May 2011 no new CC may be formed under the CC Act and no company may convert to a new CC. It is important to note the New Act preserves CCs that were already in existence as at 30 April 2011. CCs that are in existence can be converted into private companies but it is not compulsory for this to take place although it is advised.</p> <p>The New Act therefore observes the phasing out of CCs by regulating the above-mentioned position. The reason for this shift in legislation is that, unlike the Old Act, the New Act now</p>

provides for the incorporation of small private companies with director shareholders which are flexible enough for entrepreneurs who wish to start up a small business with juristic personality where such small private companies are now offered the benefits previously associated with CCs and including additional benefits.

Benefits of converting a CC to a private company are as follows:

1. Compete with bigger companies in the same market.
2. Invite other parties to invest as shareholders in the company.
3. Raise more capital.
4. Enable companies and CCs to be shareholders in the Company.
5. Benefit by being regulated by a law (the new Companies Act) that is up-to-date with international best practice.
6. Administer the company electronically.
7. Ensure that the rights, duties and responsibilities of members are clearly set out.
8. Avoid disputes between members.

Mitigation:

It is advised that the Acquirer should consider converting the [REDACTED] into a [REDACTED] post the acquisition.

The conversion from a CC to a company is effected by filing with CIPC a notice of conversion in the prescribed manner and form along with the required documentation. Registration by CIPC of the converted CC occurs in a similar way to the registration of a new company.

The effect of the conversion of a CC to a company is that the entity that existed as a CC will continue to exist as a company. Anything done by the CC is deemed to have been done by the company. As such, all of the rights, obligations, assets and liabilities of the CC forthwith vest in the company. This also has the result that any legal proceedings instituted by or against the CC may be continued by or against the company.

2. **Contract of Distribution (“Distribution Agreement”)**

Entered into between [REDACTED] (owner of the [REDACTED] product name and referred to as the “Supplier” and the Target (referred to as the “Distributor”). The Distributer is granted (in perpetuity) sole agency of sales and distribution of the product described as “[REDACTED]” in “SADC Countries” of [REDACTED]
[REDACTED]
[REDACTED]

The Distribution Agreement records that the product name [REDACTED] belongs to the Supplier and should the contract be terminated for whatever reason the Target would need to change its name or be dissolved. The Distribution Agreement furthermore restricts the Target from selling any other products (other than [REDACTED] as supplied by the Supplier.

Payment to the Supplier must be made within [REDACTED] days from the date of invoice.

The Supplier can cancel the Distribution Agreement in the event of [REDACTED]
[REDACTED]. Reasons must be given for cancellation in writing with a [REDACTED] notice period however there is no mechanism to dispute the reasons provided.

Implications

The Target is restricted from selling any other products other than [REDACTED] products which are supplied by the Supplier. The Target is therefore not permitted to source [REDACTED] products from any other party other than the Supplier and furthermore the Target cannot expand its business to sell any other products.

If the Distribution Agreement is ever cancelled, the Target would lose the right to trade under the name [REDACTED] and would either be required to change its name or dissolve the [REDACTED].

The Supplier can cancel the Distribution Agreement on [REDACTED]’ notice if [REDACTED] [REDACTED] occurs in [REDACTED]’. This wording is extremely broad and does not given any examples as to what ‘poor sales performance’ is defined as or as to what [REDACTED]” is defined as. The effect of the ambiguity is that the Supplier could technically cancel the Distribution Agreement at any point in time as they could allege, for example, that there is [REDACTED] [REDACTED], or in a certain area of [REDACTED]. There is no mechanism for dispute resolution set out in the contract whereby the Target can object to any reasons why the Supplier is cancelling the Distribution Agreement.

Mitigation

The Distribution Agreement poses a big risk to the Acquirer. Essentially the whole of the Targets business is dependent on this agreement been in force, if this agreement is terminated by the Supplier for any reason whatsoever, the Target will no longer have a business as the Target will no longer be permitted to trade under the name [REDACTED] or to sell [REDACTED] products.

The risk posed by this agreement is that due to the ambiguity in the wording around the Suppliers right to cancel, the Supplier can technically terminate this agreement at any point in time with [REDACTED] written notice.

		<p>Suggest that prior to the implementation of the Proposed Transaction the Acquirer is introduced to the Supplier and that the Distribution Agreement is renegotiated – specifically around the terms of cancellation. Clear guidelines need to be set out in the Distribution Agreement as to what instances the Supplier is permitted to cancel this agreement. Furthermore, it would be prudent to ensure that the Supplier is made aware of the Proposed Transaction and consents to the terms of the Proposed Transaction.</p>
<p>3.</p>	<p>Insurance Policy- Western Union (“Insurance Policy”)</p> <p>The “<i>situation of premises</i>” as recorded in the Insurance Policy is- all premises used by the insured (the Target) situated in the [REDACTED]. However it appears from the Insurance Policy that the only premises that are covered are the premises of [REDACTED] (the “Premises”).</p> <p>The Insurance Policy records the period of insurance being [REDACTED] and any subsequent period as per renewal. The policy renewal date is recorded as [REDACTED].</p> <p>The Insurance Policy records the following insurance cover:</p> <p>Fire: [REDACTED]</p> <p>Office contents: [REDACTED] (the Premises);</p> <p>Theft: [REDACTED] (the Premises)- a requirement for a valid claim is that a burglar alarm is installed.</p>	<p><i>Implications</i></p> <p>The Insurance Policy does not cover the territorial areas of [REDACTED]. Furthermore the insurance items for Fire, Office Contents, Theft, Public Liability and Electronic Equipment are all limited to [REDACTED]. Although there is a clause under the Public Liability section which refers to the [REDACTED] included in the territorial limits.</p> <p>The Distribution Agreement includes [REDACTED] as areas where the [REDACTED] product is to be distributed and further states that poor sales performance in an area of the SADC Countries can justify a termination of the Distribution Agreement. Note this is only relevant for Public Liability insurance. Therefore, if an incident occurred which required Public Liability Insurance in either [REDACTED], the Insurance Policy would not cover this incident. The Insurance Policy itself is furthermore ambiguous as to whether Public Liability insurance would be applicable in any area outside the location of the Premises. The implication of this is that if the Target seeks to claim insurance for any item listed under Fire, Theft, Office Contents or Electronic Equipment outside of the Premises - the Target would not be covered. In regard to Public Liability Insurance it is not clear whether the Target would be covered outside of the Premises. The Target would not be covered in the jurisdictions of [REDACTED].</p> <p>The dates reflected in the Insurance Policy do not align. It appears that the period of insurance cover was from 1 [REDACTED] (been on the month of</p>

<p>Public Liability: [REDACTED] (territorial limits include [REDACTED] [REDACTED]);</p> <p>Motor: [REDACTED]: Honda Civic 1.8 LXi A/T 2009 comprehensive insurance for [REDACTED]; Volkswagen Polo Vivo 1.4 5DR comprehensive insurance for [REDACTED] Nissan NP200 1.6 P/U S/C comprehensive insurance for [REDACTED], Nissan NP200 1.6 P/U S/C comprehensive insurance for [REDACTED]</p> <p>Electronic Equipment: [REDACTED] (the Premises)</p>	<p>[REDACTED] The renewal date is the 1 [REDACTED]. From a reading of this it appears that the Target was not insured from the period [REDACTED] if the Insurance Policy was indeed renewed on [REDACTED]. If the Insurance Policy was not renewed on [REDACTED] then the Target and its business is currently not covered by the Insurance Policy. The period of renewal is also not clear from a reading of the Insurance Policy.</p> <p><i>Mitigation</i></p> <p>It is advised that the Acquirer should ascertain if insurance is required in areas outside of the Premises. If out and about insurance is required, the Acquirer needs to amend the Insurance Policy either prior or immediately following the Proposed Transaction.</p> <p>The Acquirer furthermore to confirm if the areas of [REDACTED] are distribution areas and further if they are distribution areas, whether it is required for insurance to be in place in these areas. If they are not distribution areas, the Distribution Agreement should carve out that they are not current areas. If they are distribution areas, the Insurance Policy possibly needs to be amended to include these areas either for all items or merely for Public Liability Insurance at the discretion of the Acquirer.</p> <p>From a reading of the Insurance Policy it appears that the Target is not currently covered by the Insurance Policy, as the period of insurance is only from 1 [REDACTED] [REDACTED] and the renewal date is [REDACTED]. It is not clear whether the Insurance Policy has been renewed and if it has been renewed, it is not clear what the renewal period is. Acquirer needs to enquire as to what period of the Insurance Policy covers and the Insurance Policy needs to be amended to reflect the correct dates to ensure that the Target is currently covered under the Insurance Policy.</p>
<p>4. “Credit Application”</p>	<p><i>Implications</i></p>

	<p>The current Credit Application form used by the Target requests the following information from the applicant:</p> <ol style="list-style-type: none"> 1. ID copies 2. Company registration information; 3. Bank letters 	<p>Note that certain information requested in terms of the Credit Application is regarded as personal information as defined in the Protection of Personal Information Act (“POPI Act”) which act governs how a recipient of personal information is required to deal with such personal information.</p> <p>In terms of the POPI Act it is envisaged that any unlawful retention, distribution, sharing or unauthorised use of personal information which results in non-compliance with the Act, may carry onerous penalties of up to R10 million in fines, and could even result in jail sentences (in some instances of up to 10 years, depending on the seriousness of the breach or non-compliance). Although it is unlikely that these penalties would be applicable it is noteworthy to be aware of same.</p> <p><i>Mitigation</i></p> <p>The sale purchase agreement should contain a warranty and indemnity clause that the POPI Act has been complied with by the Target in respect of all personal information retained, distributed or shared by the Target.</p>
5.	<p>“Lease Agreement”</p> <p>Entered into between ██████████ (“Lessor”) and the Target (or “Lessee”)</p> <p>The termination date in the Lease Agreement is recorded as 18 September 2018, whereafter the lease shall continue as a monthly tenancy capable of termination by either party giving the other party not less than 2 calendar months notice prior to the termination date.</p> <p>Monthly rental is ██████████ which would increase on the ██████████ ██████████ of each year by a sum of ██████████%.</p>	<p><i>Implications</i></p> <p>From a reading of the Lease Agreement it appears that it has been terminated ██████████ ██████████ unless the option to extend was duly exercised on 1 ██████████. In the event that the Lease Agreement has terminated without the option to extend been exercised, the lease will be governed on a monthly tenancy basis which is capable of termination by either party giving the other party not less than ██████████ notice prior to the termination date.</p> <p>There is a change of control clause reflected in the Lease Agreement which states that a transfer of the members interest shall be regarded as a cession of the lease. A cession of the rights or obligations in terms of the Lease Agreement would be regarded as a breach of</p>

In terms of the Lease Agreement, the Lessee shall not, cede, assign, transfer, alienate or otherwise dispose of any rights and/or obligations under the Lease Agreement.

Should the Lessee be a company or a close corporation, then the transfer of its present issued shares, unissued share capital or future increase share capital of any of its present members interest as the case may be, shall be deemed to be a cession by the Lessee of the rights under the Lease Agreement which will result in a breach of the Lease Agreement and permit a termination of the Lease Agreement by providing ■ months notice.

The Lessee shall not make any alterations or additions to the leased premises without the written consent of the Lessor. Furthermore the Lessee shall at its own expense keep and maintain the interior of the leased premises, and all parts thereof, in good order and repair, fair wear and tear excepted, and shall on the termination of the lease redeliver the leased premises to the Lessor in the same good order and repair as at the commencement date, fair wear and tear excepted.

The Lessee also undertakes in the Lease Agreement, to insure with an insurance company approved by the Landlord- all and any glass whether internal or external, contained in or on the leased Premises at its sole cost and expense against damage howsoever and whomsoever caused.

the Lease Agreement permitting the Lessor to terminate the Lease Agreement on ■ months written notice.

The Lessee is obliged to return the leased premises to the Landlord in the condition in which they were let.

The Lessor has a right to enforce parking charges on the tenants.

It is recorded that the Lease Agreement is of no force or effect until the Lessee has procured and obtained the signatures of such parties as the Lessor requires to a deed of suretyship in accordance with a standard form as supplied by the Lessor. We have not been provided with this deed of suretyship, but presumably the Lessor will require a similar deed of suretyship to be signed by the Acquirers.

The Lease Agreement provided is unsigned.

Mitigation

Acquirers to ascertain if the Lease Agreement was firstly validly entered into as the version provided is unsigned, also to ascertain if the deed of suretyship required to be concluded as a condition of the lease was entered into. Secondly Acquirers to ascertain if the lease period was renewed and whether the option to renew was exercised. If the option was not exercised this is a monthly lease capable of termination by either party on ■ months written notice.

It is suggested that the Acquirers may wish to renegotiate this Lease Agreement with the Lessor especially if the option to renew was not exercised. If the Lease Agreement is renegotiated, a suggestion is made to remove the requirement to provide a suretyship from the Lease Agreement.

A change of control clause in the Lease Agreement provides that there will be a breach of the Lease Agreement if the members interest is sold as per the Proposed Transaction. The Acquirers and the Target must obtain the Lessors written consent for the Proposed

<p>In terms of the Lease Agreement, the Lessor has the right to restrict parking by tenants, their officers, directors, agents and employees to employee parking areas and enforce parking charges (by operation of meters or otherwise).</p> <p>An option to extend the Lease Agreement for a period of [REDACTED] year is afforded to the Lessee commencing on [REDACTED] [REDACTED] provided that this option has been exercised by the Target not later than [REDACTED] failing which the option will lapse.</p> <p>It is recorded that the Lease Agreement is of no force or effect until the Lessee has procured and obtained the signatures of such parties as the Lessor requires to a deed of suretyship in accordance with a standard form as supplied by the Lessor.</p> <p>The Lease Agreement provided is unsigned.</p>	<p>Transaction to proceed failing which the Targets obligations in terms of the Lease Agreement will be in breach and the Lessor will have the right to terminate the lease.</p> <p>The Lessee is obliged to return the leased premises to the Landlord in the condition in which they were let. It is suggested that the Acquirers obtain a warranty and indemnity in the sale purchase agreements that the leased premises are in the same condition in which they were let at the commencement of the lease, fair wear and tear excluded.</p>
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Part B – Employment

<p><i>Key issues</i></p>	<p><i>Implication and/or possible mitigation</i></p>
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1.	<p>Employment Contract: ██████████”) and ██████████)</p> <p>A standard template employment contract has been used for both ██████████ and ██████████ (“Employment Contract”)</p> <p>The notice period in the termination clause in the Employment Contract has not been completed.</p> <p>The Employment Contract states: <i>‘the parties agree that on termination of the employment contract, the employer shall furnish the employee with a certificate of service and the UIF card.’</i></p> <p>The Employment Contract contains a provision that the employer will review the employee salary/wages annually.</p>	<p>Implications</p> <p>██████████ and ██████████ contracts do not specify the notice period for termination. In terms of the Basic Conditions of Employment Act the common law position is therefore (as ██████████ and ██████████ have been employed for a period of over █ year) a required notice period of 4 weeks would be required to terminate these employees contracts.</p> <p>Note that an employee can only claim UIF if he has been retrenched, and not if his contract is terminated for any other reason. The Employment Contract should therefore carve out that the UIF card should only be supplied upon a retrenchment. This however will not be an issue in terms of the operation of law.</p> <p>Note that in terms of the Basic Conditions of Employment Act an employer cannot unilaterally amend the terms of an employment contract.</p> <p>Mitigation</p> <p>Enquire from the Target whether the salary/wages have been increased in the year of ██████████ as ██████████ and ██████████ contracts were entered into in ██████████ and perhaps include a warranty in the sale purchase agreement that there have been no amendments to the Employment Contracts.</p> <p>Note that if the Target wishes to amend any of the terms of an Employment Contract, this will need to be amended together with the employee’s consent as the employer is not legally</p>
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		entitled to unilaterally amend the terms of an employment contract. However, on a review of the Employment Contracts no red-flags have been identified.
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