LEGAL DUE DILIGENCE RISKS IN INDIAN STARTUP M&A

Kause Hrishikesh Eknath, Siddharth College of Law, Fort, Mumbai, 414001

ABSTRACT

Startup acquisitions in India are frequently presented as valuation-driven transactions, but the price agreed in a term sheet is only a provisional economic outcome. Legal due diligence determines whether that headline valuation will survive signing, be reduced through a price adjustment, be secured by an escrow or holdback, or cause the transaction not to close at all. In an Indian startup acquisition, the highest-impact legal risks generally arise from defective corporate and share-capital records; non-compliance with foreign-investment, pricing and reporting rules; intellectual-property ownership gaps; tax exposure; material contracts containing change-of-control restrictions; regulatory licences; data-protection and cybersecurity issues; employment and ESOP liabilities; and actual or threatened litigation.

This paper argues that legal risk affects transaction economics through four principal mechanisms: **valuation adjustment**, targeted or general **indemnity**, an **escrow/holdback** securing post-closing claims, and **conditions precedent** that must be met before closing. The appropriate remedy depends on whether the risk is quantifiable, curable before closing, material to the buyer's investment thesis, or legally incapable of being contracted away. In cross-border share transfers, India's foreign-exchange framework is especially important: the RBI permits up to 25% of consideration to be deferred, escrowed, or indemnified in specified circumstances, generally subject to an 18-month period.[1]

Keywords: Startup acquisition; legal due diligence; M&A; India; valuation; indemnity; escrow; conditions precedent; FEMA; intellectual property; ESOP; tax.

1. Introduction

Indian startup M&A combines conventional private-company acquisition risks with risks intensified by venture financing, rapid growth, founder-led governance, technology-based assets, incomplete compliance systems, and foreign investment. A buyer is rarely purchasing only a legal entity. It is purchasing, among other things, the startup's technology, workforce, customer relationships, regulatory permissions, contractual rights, data, brand, future growth potential and ability to operate without undisclosed liabilities.

A legal due-diligence exercise is therefore not merely a verification process. It is a risk-allocation mechanism. It converts findings in the virtual data room into transaction-document protections. Indian private M&A practice commonly examines share capital and corporate structure, licences and registrations, financial arrangements, key contracts, tax, intellectual property, data protection, employment, real estate, environmental matters and litigation.[2]

The central research question is:

> **Which legal risks identified in due diligence most often influence valuation, indemnity provisions, escrow arrangements and closing conditions in Indian startup acquisitions?**

The answer is that no single legal risk always has the greatest impact. However, four categories repeatedly have the strongest effect:

1. **Corporate, ownership and cap-table defects**
2. **Foreign-investment, regulatory and licensing non-compliance**
3. **Intellectual-property ownership and technology-rights defects**
4. **Tax, employment, data-protection and material-contract liabilities**

Their impact varies according to the seriousness, likelihood, quantifiability, curability and timing of the risk.

2. Research Objectives and Method

Objectives

This paper seeks to:

- Explain the role of legal due diligence in Indian startup acquisitions.
- Identify the legal risks that commonly affect transaction value and risk allocation.
- Analyse the relationship between due-diligence findings and valuation adjustments, indemnities, escrow/holdback arrangements and conditions precedent.
- Examine important Indian legal constraints, especially under the Companies Act, 2013, FEMA/NDI Rules, competition law and sector-specific regulation.
- Offer a practical framework for lawyers, founders and acquirers negotiating startup acquisition agreements.

Methodology

The paper uses a doctrinal and practice-oriented methodology. It relies on Indian statutory and regulatory frameworks, official regulatory material, and Indian private-M&A practice guidance. The analysis focuses on share acquisitions, while noting that an asset acquisition or business transfer can be used where a buyer wishes to avoid inheriting certain historic liabilities.

In a share acquisition, the buyer acquires the target company with its assets and liabilities; unknown liabilities are generally addressed through representations, warranties and indemnities. An asset purchase gives the buyer greater ability to select assets and liabilities, though it may require separate transfers, consents and operational arrangements.[2]

3. Legal Due Diligence in Startup M&A

Meaning and function

Legal due diligence is the buyer's structured review of the target's legal affairs before signing or closing. Its purpose is to establish:

- Whether the target legally exists and validly owns what the buyer believes it is acquiring.
- Whether shares, IP, licences, contracts and business assets are transferable.

- Whether the company has complied with applicable laws.
- Whether hidden, contingent or historical liabilities may arise after closing.
- Whether a transaction needs third-party, shareholder, lender, regulator or governmental approval.
- How identified risks should be reflected in the transaction documents.

A conventional diligence process involves a buyer's information request, uploading of target documents to a data room, review by legal, tax and financial advisers, follow-up questions and preparation of a due-diligence report.[2]

Startup-specific importance

Legal diligence is particularly significant in startups for five reasons:

- Startups often raise multiple financing rounds through equity shares, compulsorily convertible preference shares, convertible notes, SAFEs or similar instruments.
- Founder-led businesses may have informal arrangements, incomplete documentation or delayed statutory filings.
- In technology businesses, the principal asset may be software, algorithms, databases, trademarks, domain names and confidential know-how rather than physical property.
- Rapid recruitment can create employment, ESOP, consultant-classification and statutory-benefit liabilities.
- A startup's valuation may depend on a few key contracts, licences, customer relationships, data sets or founders, each of which may be vulnerable to transfer restrictions or legal defects.

Core diligence workstreams

A startup-acquisition diligence checklist should normally include:

Workstream	Principal legal question
Corporate and cap table	Is the company validly incorporated, and are all securities validly issued and transferable?
Constitutional documents	Do the articles, shareholders' agreements, investor rights and side letters restrict the deal?
Foreign investment	Were historic investments and transfers FEMA-compliant, correctly priced and reported?
Contracts	Do key customer, vendor, lease, debt and technology agreements require consent on change of control?
Intellectual property	Does the target own, or have a sufficient licence to use, its code, trademark, patents, content and data?
Regulatory compliance	Does the business have all required registrations, licences and approvals?
Tax	Are there unpaid taxes, assessments, withholding issues, GST disputes or transfer-pricing risks?
Employment and ESOP	Are employment terms, ESOP grants and statutory benefits compliant?
Data and cybersecurity	Has the target lawfully collected, processed, stored and secured personal and confidential data?
Litigation	Are there existing, threatened or reasonably foreseeable claims, investigations or regulatory proceedings?

4. Legal Risks and Transaction Effects

The most useful way to analyse diligence findings is not simply to classify them as “high,” “medium” or “low” risk. A buyer should ask four questions:

1. Is the risk **quantifiable** in monetary terms?

2. Is it **curable before closing**?

3. Is it fundamental to the business or acquisition thesis?

4. Can the seller credibly stand behind an indemnity, or does the buyer need financial security?

The following table explains the usual consequences.

Legal risk	Effect on valuation	Indemnity approach	Escrow/hold back relevance	Closing condition
Defective title to shares or undisclosed securities	Often severe price reduction or restructuring	Fundamental, often uncapped or higher-cap indemnity	Strong; buyer may retain part of consideration	Usually mandatory CP
FEMA/FDI/pricing/reporting breach	Discount for penalties, approval delay and remediation cost	Specific indemnity	Strong in cross-border transactions	Often CP where approval or regularisation is needed
IP ownership gap	Can materially reduce value, especially in tech acquisitions	Specific indemnity; IP warranty	Common where cure is incomplete	CP if core IP cannot be assigned
Tax demand or unpaid statutory dues	Usually quantified deduction or purchase-price adjustment	Specific tax indemnity	Very common, especially for known assessments	CP if NOC, payment or settlement is needed
Change-of-control consent	Value falls if key contract may terminate	Specific indemnity for loss if consent fails	Possible if contract is commercially critical	Common CP
Regulatory licence deficiency	May threaten business continuity	Specific indemnity	Common for known exposure	Usually CP if licence is essential

Data privacy or cybersecurity incident	Discount for remediation, fines and customer loss	Specific indemnity and special warranties	Possible for identified incidents	CP for material breach/remediation
Employment/ESOP irregularity	Deduction for statutory and dilution exposure	Specific employment/ESOP indemnity	Moderate to high	CP for cap-table or key-person matters
Litigation	Discount based on expected liability and defence costs	Specific indemnity	Common for material claims	CP if injunction or material proceeding exists

A. Corporate governance and cap-table defects

Corporate and cap-table risk is often the most serious risk in venture-backed startup acquisitions because it affects the buyer's ability to acquire clear title and determine exactly what percentage of the company it is buying.

Typical issues include:

- Shares allotted without proper board or shareholder approval.
- Incomplete filings with the Registrar of Companies.
- Mismatch between the register of members, statutory filings and the cap table.
- Unrecorded convertible instruments or side letters.
- Improperly documented ESOP grants.
- Investor veto rights, pre-emption rights, tag-along rights, drag-along rights or rights of first refusal.
- Failure to obtain waiver of transfer restrictions under the articles of association or shareholders' agreement.

- Missing share certificates, transfer forms or stamp-duty compliance.
- Founder shares subject to vesting, liens, pledges or contractual restrictions.

A private company must restrict transferability of shares, and such restrictions commonly appear in its articles. Before a share sale closes, existing shareholders' pre-emptive rights may need to be waived. Shareholder arrangements may also contain tag-along and drag-along rights that affect who must participate in the sale.[2]

Transaction effect

If the defect means the buyer cannot receive clean title to the agreed shareholding, it is normally a **fundamental closing condition**, not merely an indemnity issue. An indemnity is an inadequate substitute where the buyer's ownership itself is uncertain.

Where the defect is historical but remediable such as an omitted filing or incorrect statutory register the buyer may require:

- Rectification of statutory registers.
- Filing of overdue forms.
- Waivers from investors or shareholders.
- Confirmation that all options, warrants and convertible instruments are disclosed.
- A specific indemnity for dilution, title defects or claims by former holders.
- Escrow until remediation is completed.

B. Intellectual property ownership

For a technology startup, the key asset may be the source code, platform, proprietary data, customer-facing product, brand, patent, design or trade secret. As a result, IP diligence can directly determine whether the buyer is acquiring the business it thought it was buying.

Recurring issues include:

- Code developed by founders before incorporation but never formally assigned to the company.
- Developers, consultants or agencies working under contracts without robust IP-assignment clauses.
- Open-source software used contrary to licence conditions.
- Use of third-party software, APIs or datasets without appropriate licence rights.
- Trademarks, domains or patents registered in the name of a founder rather than the target.
- Infringement allegations, takedown notices or unresolved disputes.
- Lack of confidentiality protection for trade secrets and proprietary algorithms.

Transaction effect

Where IP is central to the acquisition thesis, an ownership defect may result in one of three outcomes:

- **Price reduction:** if the buyer must spend money to recreate, license or defend the technology.
- **Condition precedent:** if the relevant IP must be assigned to the target before closing.
- **Specific indemnity plus escrow:** if there is a known infringement risk or third-party ownership claim that cannot be conclusively resolved before closing.

A buyer should distinguish between a minor documentation gap and a core-asset failure. If the startup's product is built on code created by an independent contractor who refuses to assign rights, the risk may be deal-threatening. If the issue is merely a missing confirmatory assignment from a cooperative founder, it may be curable pre-closing.

C. FEMA, FDI and cross-border compliance

Foreign investment issues are among the most consequential legal risks in Indian startup M&A,

particularly where the target has foreign investors, foreign founders, offshore holding structures or a non-resident buyer.

The relevant framework includes FEMA, the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, RBI directions, applicable FDI policy, sectoral caps, pricing guidelines and reporting requirements. RBI's foreign-investment directions state that foreign investment may be subject to entry routes, sectoral caps and conditions; entities from countries sharing a land border with India, or investments whose beneficial owner falls within the prescribed category, require government approval.[1]

Issues frequently found in startup diligence include:

- Delayed or missing Form FC-GPR, Form FC-TRS or other foreign-investment reporting.
- Transfer of shares at a price inconsistent with FEMA pricing requirements.
- Use of instruments not permitted or improperly structured for foreign investors.
- Breach of sectoral caps or FDI-linked performance conditions.
- Failure to obtain approval under the government route.
- Beneficial ownership issues involving restricted jurisdictions.
- Downstream-investment non-compliance.
- Put, call, exit or earn-out arrangements that could be interpreted as providing an impermissible assured return.

Transaction effect

A FEMA breach can affect value because it may result in delay, compounding costs, regulatory scrutiny, penalties or uncertainty over the enforceability of a transaction structure. If the breach is capable of regularisation, the buyer may require regularisation as a **condition precedent**. If the exposure is historic but uncertain, the buyer will usually seek a **specific indemnity**.

Cross-border transactions also constrain the parties' ability to use escrow and deferred consideration. RBI directions permit, in a transfer of equity instruments between a resident and a non-resident, up to 25% of total consideration to be deferred or placed in escrow for up to 18 months from the transfer agreement; indemnity arrangements are also subject to stated limits and timing requirements.[1]

Thus, in a cross-border startup acquisition, legal risk does not merely justify an escrow. It also determines whether the proposed escrow is legally permissible.

D. Tax exposure

Tax diligence almost always affects transaction economics because tax liabilities are often quantifiable and can survive a change of ownership. Startup targets may have exposure relating to income tax, GST, withholding tax, transfer pricing, employee taxes, ESOP taxation, permanent establishment issues, capital gains, angel-tax history, tax incentives, or treatment of intercompany and founder transactions.

The buyer should investigate:

- Pending assessments, notices, demands and appeals.
- Unpaid GST, TDS, professional tax, provident-fund-related deductions and other statutory dues.
- Incomplete tax returns.
- Incorrect revenue recognition.
- Input tax credit disputes.
- Transfer pricing exposure.
- Withholding obligations on payments to non-residents.
- Tax treatment of ESOPs and employee incentives.
- Tax consequences of the transaction structure.

The Income Tax Act can also create a transactional concern where tax proceedings are pending. A transfer of shares or fixed assets may be void unless the relevant transferor obtains a no-objection certificate from the assessing officer under section 281, subject to the applicable legal requirements. In practice, buyers may demand a no-objection certificate or seek an accountant's certificate to assess the risk.[2]

Transaction effect

Tax risks usually produce the clearest commercial response:

- A **rupee-for-rupee specific tax indemnity** for known liabilities.
- A dedicated **tax escrow** or retention.
- A reduction in purchase price equal to an identified tax demand or expected payment.
- A condition precedent requiring payment, settlement, filing or confirmation of no outstanding dues.
- Longer survival periods for tax warranties than ordinary business warranties.

Tax issues are particularly escrow-friendly because they are often identified but unresolved at closing. The buyer may be willing to close if a portion of the seller's consideration is retained to fund a later assessment or settlement.

E. Material contracts and change-of-control provisions

A startup may derive most of its value from a small number of customers, platform partners, cloud-service providers, distributors, lenders, landlords, suppliers or strategic alliances. Legal diligence must identify contracts that are material by value, operational importance or strategic relevance.

The buyer should examine whether a contract:

- Prohibits assignment.
- Terminates automatically on a change of control.
- Requires counterparty consent.

- Contains exclusivity, non-compete or minimum-commitment obligations.
- Has service-level, penalty or liquidated-damages provisions.
- Contains a most-favoured-customer clause.
- Can be terminated at will.
- Restricts the use or transfer of data, IP or subcontractors.
- Is in breach or subject to unresolved disputes.

Indian M&A practice recognises that share purchases may require contractual approvals where underlying agreements contain change-of-control provisions. Such requirements commonly arise under lease deeds, vendor contracts and financing arrangements.[2]

Transaction effect

If consent is required from a major customer or platform partner, the buyer may insist that it be obtained before closing. This is often a **condition precedent** because indemnity cannot restore the commercial value of a lost strategic relationship.

If consent is not legally required but there is a meaningful commercial risk of termination, the buyer may seek:

- A valuation discount.
- An earn-out linked to retention of the customer or contract.
- An escrow securing the loss of key revenues.
- A specific indemnity for losses caused by non-disclosure or breach of contract.

F. Regulatory licences and business compliance

A startup may operate in a heavily regulated sector such as fintech, payments, lending, insurance, healthtech, edtech, telecom, food delivery, pharmaceuticals, e-commerce, gaming, transport or data services. In such sectors, acquisition risk depends not only on corporate law but on the validity and transferability of sectoral permissions.

Legal due diligence should determine:

- Which licences are necessary for the business.
- Whether the licences are valid, current and in the company's name.
- Whether there are regulatory investigations or show-cause notices.
- Whether a change in ownership or control requires prior consent or notification.
- Whether promoters, directors or key managerial personnel satisfy fit-and-proper requirements.
- Whether the target has complied with sectoral data, KYC, consumer-protection, advertising or cybersecurity obligations.

Transaction effect

A licence that is essential to operating the business normally requires one of two outcomes:

- A **condition precedent** requiring regulator approval, licence renewal or correction of non-compliance before closing; or
- A restructuring, including an asset acquisition, where the buyer cannot accept legacy risk in a share purchase.

If the breach can be remedied but regulatory outcome remains uncertain, a buyer may seek a specific indemnity and escrow. However, an indemnity cannot cure a licence suspension. This explains why material regulatory failures more frequently affect closing than ordinary valuation.

G. Data protection and cybersecurity

Data-intensive startups create a distinct diligence challenge. The buyer should review the types of personal and sensitive data processed; the purposes and legal basis for processing; privacy notices; user consents; retention practices; vendor arrangements; cross-border transfers; information-security policies; breach history; and contractual commitments to customers.

Data risks can arise from:

- Inadequate consent architecture.
- Privacy policies inconsistent with actual practices.
- Unauthorised sharing or monetisation of user data.
- Poor cybersecurity controls.
- Data breaches or ransomware incidents.
- Failure to comply with contractual data-security obligations.
- Inadequate processor contracts with cloud providers, analytics vendors and outsourced service providers.
- Unclear ownership or permitted use of datasets employed to train AI systems.

Transaction effect

Data and cybersecurity issues can affect valuation in two ways. First, the buyer may incur remediation, forensic, notification, security-upgrade and customer-retention costs. Second, a serious breach may undermine the scalability or legality of the business model itself.

A known breach may justify:

- A specific indemnity.
- A ring-fenced escrow.
- A condition precedent requiring remediation, notice to affected parties where legally required, or completion of a security audit.
- A price reduction reflecting expected cost and revenue loss.

H. Employment, founder dependency and ESOP risks

Startups often have weak HR documentation during their early stages. The legal risks include:

- Employees engaged as consultants to avoid employment obligations.
- Missing employment agreements.
- Inadequate confidentiality, non-solicitation and IP-assignment obligations.
- Non-payment or underpayment of statutory benefits.
- Gratuity, bonus, leave-encashment, PF and ESI exposure.
- Improper termination of employees.
- Mismanaged ESOP schemes.
- Options granted without proper approvals.
- Incorrect option pool calculations and dilution disclosures.
- Key founders or engineers without retention commitments.

Transaction effect

Employment risks most frequently affect valuation where the buyer must absorb statutory arrears or expects post-closing attrition. ESOP irregularities have a separate importance: they can alter the fully diluted cap table and thus directly reduce the buyer's economic ownership.

The buyer may require:

- A corrected cap table and ESOP schedule.
- Cancellation or re-documentation of defective grants.
- A specific employment and benefits indemnity.

- Founder employment, non-compete, non-solicitation and IP-confirmation agreements.
- Escrow for quantified statutory liabilities.
- A closing condition requiring key personnel to execute retention or transition arrangements.

I. Litigation and contingent liabilities

The target may face disputes with customers, former employees, founders, investors, vendors, landlords, regulators or competitors. Legal diligence should examine court records, notices, arbitration claims, demand letters, regulatory correspondence, settlement agreements and insurance claims.

The buyer should distinguish among:

- Existing litigation with a quantified claim.
- Regulatory investigation or show-cause notice.
- Threatened but unfiled litigation.
- Routine low-value claims.
- Litigation affecting core IP, key licences, founder ownership or a major customer relationship.
- Claims likely to trigger reputational harm.

Transaction effect

Known litigation is usually handled through a specific indemnity. If the claim is materially quantifiable, the buyer may deduct the expected exposure from the price or escrow an amount based on probable loss and defence costs.

However, litigation that threatens to restrain the transaction, invalidate a key licence, challenge ownership of core IP or impose an injunction commonly becomes a closing condition. The transaction should not close while a court order or regulatory prohibition prevents the buyer from receiving the intended business.

5. The Four Transactional Remedies

Valuation adjustment

A valuation adjustment is appropriate where the legal problem can be reasonably converted into an economic cost. For example:

[Adjusted Purchase Price = Headline Valuation - Expected Liability - Remediation Cost - Expected Value Loss]

Illustration: if a startup faces an identified GST exposure of INR 2 crore, requires INR 50 lakh for compliance remediation, and may lose a contract worth INR 1 crore in expected value, the buyer may seek to reduce the price by INR 3.5 crore, subject to negotiations about probability and discounting.

Valuation adjustment is most suitable for:

- Quantified tax liabilities.
- Known statutory arrears.
- Identified remediation costs.
- Expected loss from a contract defect.
- Dilution caused by undisclosed ESOPs.
- Technology rebuilding or IP-licensing cost.

Indemnity

An indemnity shifts the economic burden of a specified loss from buyer to seller. Indian private-M&A agreements commonly contain seller warranties and indemnities covering title to shares, capitalisation, undisclosed liabilities, material contracts, compliance, employment, tax, litigation, real property, environmental matters and other business risks.[2]

Indemnities may be:

- **General indemnities**, arising from breach of representations and warranties.
- **Fundamental indemnities**, for title, authority, ownership and capitalisation.
- **Specific indemnities**, for identified risks such as a pending tax demand, IP claim or FEMA breach.
- **Tax indemnities**, frequently drafted separately and given longer survival periods.

A specific indemnity should identify:

- The underlying risk.
- The relevant period.
- Whether it is subject to a cap, basket or deductible.
- Whether it survives beyond ordinary warranties.
- Whether legal costs and third-party claims are covered.
- Claims procedure, notice requirements and defence control.
- Whether the buyer must mitigate loss.
- Whether recovery is limited to escrow or may be pursued against the sellers directly.

Escrow and holdback

Escrow provides the buyer with a source of recovery. It addresses a practical problem: an indemnity is valuable only if the indemnifying seller remains solvent, identifiable and willing to pay after closing. This issue is particularly acute when sellers are individual founders or numerous venture investors who distribute their sale proceeds.

An escrow arrangement typically specifies:

- Amount retained.

- Duration.
- Escrow agent.
- Release schedule.
- Claims procedure.
- Whether amounts are released pro rata or in tranches.
- Which claims are covered.
- Whether tax, fundamental and specific indemnities have separate escrows.
- Dispute-resolution mechanism for release of funds.

For cross-border share transfers involving a resident and non-resident, the RBI framework allows an amount not exceeding 25% of total consideration to be deferred or settled through escrow, generally for no more than 18 months from the date of the transfer agreement. This restriction should be considered at the structuring stage, rather than after commercial terms are negotiated.[1]

Conditions precedent

Conditions precedent are obligations that must be satisfied or waived before closing. They are appropriate where the buyer should not be required to complete the acquisition until the legal defect has been cured or a required approval obtained.

Typical conditions precedent include:

- Board and shareholder approvals.
- Waiver of pre-emption, tag-along or other transfer restrictions.
- Receipt of lender, customer, landlord or other third-party consents.
- Regulatory approvals and notifications.
- CCI approval, where required.

- FEMA approval, reporting or regularisation.
- Assignment of key IP to the target.
- Settlement of material litigation.
- Completion of tax filings or payment of statutory dues.
- Resignation or appointment of directors.
- Execution of founder employment, non-compete and IP-confirmation documents.
- Absence of a material adverse change.
- No injunction, prohibition or legal restraint.

In Indian private M&A documentation, conditions precedent, closing actions, representations, warranties, indemnities, holdbacks and escrow are standard substantive components of an acquisition agreement.[2]

6. Competition-Law Considerations

Competition-law analysis is relevant even in startup acquisitions. A buyer must examine whether the acquisition constitutes a notifiable "combination" under section 5 of the Competition Act, 2002, including through applicable assets, turnover or deal-value thresholds.

The CCI states that a 2024 notification exempts acquisitions, mergers and amalgamations where the target has assets of not more than INR 450 crore in India or turnover of not more than INR 1,250 crore in India, subject to the terms and duration of that notification.[3]

The Competition (Amendment) Act framework and 2024 regulations also introduced a deal-value threshold: transactions valued above INR 2,000 crore, where the target has substantial business operations in India, may require CCI notification.[4][5]

Transaction effect

Competition approval, where required, is a non-negotiable closing condition. The parties cannot solve a mandatory filing issue merely through indemnity or escrow. The buyer should include:

- A clear allocation of filing responsibility.
- Cooperation obligations.
- A long-stop date.
- Risk allocation for remedies imposed by CCI.
- Termination rights if approval is denied or unduly burdensome conditions are imposed.

7. Conclusion

Legal due diligence in Indian startup acquisitions is not a post-valuation procedural exercise. It is a determinant of the price, transaction structure, risk allocation and closing timetable. The most frequently valuation-sensitive risks are defective ownership and cap-table records, IP ownership gaps, tax exposure, material-contract restrictions, foreign-investment non-compliance, regulatory licensing defects, employment/ESOP liabilities, data risks and litigation.

The correct legal response depends on the character of the risk:

- Use a **valuation adjustment** when the expected cost is measurable.
- Use a **specific indemnity** when the risk is known, seller-caused and likely to arise after closing.
- Use an **escrow or holdback** when the buyer needs actual security for recovery.
- Use a **condition precedent** when the defect affects ownership, legality, regulatory permission or business continuity and must be resolved before closing.

The most important practical lesson is that a buyer should not treat all diligence findings alike. A missing ROC filing, a pending tax demand, a missing software assignment and a revoked licence may all be labelled "legal risks," but they require fundamentally different contractual solutions. The highest-quality M&A advice is therefore not the longest diligence report; it is the ability to translate each finding into the correct economic and contractual remedy.

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