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CYBER SOLUTIONS

Due Diligence for Mergers & Aquisitions

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Understanding Unstructured Data & Why It Matters

When the Marriott International-owned Starwood hotel chain was breached in December 2018, some 500 million customers were affected. The breach was one of the largest lapses to date, comparable only to *the 2017 breach of 500 million Yahoo accounts,* which resulted in Verizon negotiating a $350 million price drop in their acquisition of Yahoo.

So, what went wrong?

As cybersecurity experts contemplated how Starwood could've avoided the rupture in customer data, it became clear that the hotel chain's shortcomings began far before the announcement of the breach—and even before Marriott and Starwood were one in the same.

Prior to acquiring the Starwood brand, Marriott failed to include an effective cybersecurity review in their due diligence process. This is an often-overlooked aspect during the processes of assessing risk and measuring a company's value before closing an acquisition deal.

In times of transition, there are several due diligence actions that organizations should take to protect against cyber threats. While every merger and acquisition (M&A) deal is unique – and the depth of transitional due diligence needed varies – it is still important to make sure the following areas are addressed during the process:

1. ***Corporate structure and general matters –*** including capitalization, organizational documents and corporate records to make sure everything is in order. This may include but is not limited to corporate bylaws, incorporation documents, warranties, restructuring documents, stockholder and voting agreements, agreements related to any sales or purchases, etc.
2. ***Taxes –*** including documents such as government audits, tax sharing and transfer pricing agreements, tax returns filed in the last five years, correspondence from any taxing authority, net operating losses or credit carryforwards and settlement documents.
3. ***Intellectual property –*** including a review of any existing patents, copyrights, trademarks, domain names, trade secrets, IP litigation and claims, licenses and licensing agreements.
4. ***Material assets –*** such as inventory stock, equipment, technology, research and development and/or real estate.
5. ***Contracts –*** including all material contracts and commitments of the target company, which may involve any customer and supplier contracts, a schedule of accounts receivable and payable, agreements of partnership or joint ventures, settlement agreements, equipment leases, loans or credit agreements, license agreements, franchising agreements, employment contracts and distribution, dealer, advertising or sales agency agreements.