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# Environmental Due Diligence as a part of the M&A process

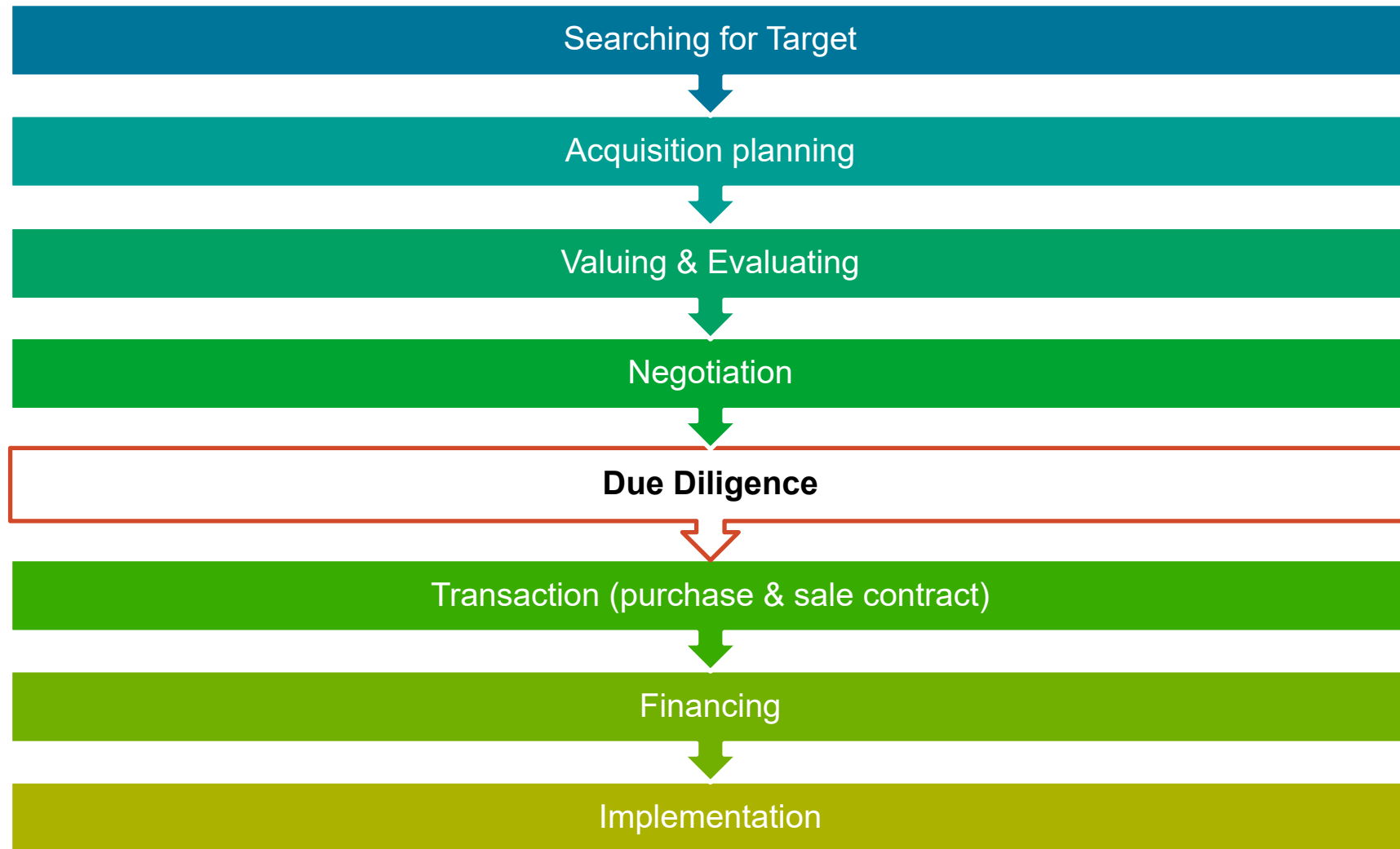
Brownfield remediation seminar  
Istanbul, 14 November 2018

Agnieszka Skorupińska, Counsel  
Head of Environmental Law Practice, CEE and Poland



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# M&A process – step by step



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## What is Due Diligence?

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**Due diligence** is an investigation or audit of a potential investment or product to confirm all facts, such as reviewing all financial records, plus anything else deemed material

It refers to **the care a reasonable person should take** before entering into an agreement or a financial transaction with another party

In the investment world, due diligence is performed by **companies seeking to make acquisitions**, by equity research analysts, by fund managers, broker-dealers, and of course by **investors**

## **Environmental law**

### **Typical issues dealt by environmental lawyers in M&A process:**

- Waste management
- Water and wastewater management
- Emission into the air
- Nature (natural resources) conservation restrictions
- Environmental regulations in an investment process (environmental impact assessment)
- Soil and groundwater contamination
- Chemicals safety (REACH, CLP)

The purpose is the same: to **assess the environmental compliance of the operations of the target**

Each type of examination **supplements the findings of the other**

**Different diagnostic tools and different methods used during the analysis**

Risk assessment in legal due diligence is aimed primarily at identifying the **legal consequences of non-compliance**

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## Why bother?

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**The rapidly  
changing legal  
environment makes  
it easier for  
irregularities to  
occur**



**Environmental  
sanctions may be  
severe**

## **ENVIRONMENTAL LAW PRIMARILY PROVIDES FOR ADMINISTRATIVE LIABILITY:**

- **violation of the law is sufficient for liability**
- **It does not matter that the operator's actions were not culpable** or resulted from circumstances beyond its knowledge



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## Environmental transaction risks - examples

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Environmental risks associated with acquiring an industrial plant or real estate may be very harmful for an investor, especially **many years after the transaction, when most of the claims against the seller have expired**

Remediation of contaminated soil may undermine the profitability of the transaction

The potential liability for soil contamination is important in **any transaction involving real estate** – not just acquisition of an industrial plant

Development restrictions associated with **nature conservation** requirements may impede later expansion or even current operation of a target

Specific conditions for implementing a development project may also result from the environmental impact assessment

Nearly all businesses are affected by packaging regulations or general rules of waste management

**Contractual provisions concerning environmental risks (examples):**

**Representations and warranties** concerning such issues as environmental permits, soil and water contamination, waste management, and the ability to carry out the intended development of the real estate

**Indemnities - provisions governing liability** (particularly on the part of the seller) for the occurrence or discovery of circumstances causing harm to the environment, or more broadly liability under environmental law

Mechanisms which, depending on the existence or discovery of such circumstances, **enable an adjustment of the purchase price, modification of the continuing validity of the agreement etc.**

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**Thank you for your attention**

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# Contact

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**Agnieszka Skorupińska**  
**Counsel**  
**Head of Environmental Law Practice, CEE and Poland**

**T** +48 22 520 8336

**M** +48 693 545 183

**E** [agnieszka.skorupinska@cms-cmno.com](mailto:agnieszka.skorupinska@cms-cmno.com)

**CMS Cameron McKenna Nabarro Olswang Pośniak i Sawicki Sp. k.**  
Warsaw Financial Center  
ul. Emilii Plater 53  
00-113 Warsaw  
Poland

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