Risiko-Betrachtung
Altlasten - Flächenrecycling - Due Diligence
Weimar, 27.10.2011
Definition

- Due Diligence = „the required and adequate accuracy“

- Intensive analysis, all-including inspection and evaluation of a company, a site or a property for a transaction

- Disclosure of all relevant data
Or:
What is the Trigger for a Due Diligence?

- Acquisition
- Fusion
- Intended Shareholding
- Initial Public Offering (IPO)
- Credit Assessment for a granting of credit
- Privatisation
- Restructuring
- Special Events: Management Buy Out
Types of Due Diligences

- Commercial Due Diligence
- Legal Due Diligence
- Financial Due Diligence
- Tax Due Diligence
- Market Due Diligence
- IT Due Diligence
- Technical Due Diligence
- Human Resources Due Diligence
- Environmental Due Diligence (EDD)
Target Group:

- Environmental companies
- Production companies
- Trading companies
- Banks, Insurance companies
- Investment Funds
- Public Accountants
- Consulting companies
- Lawyers, Chartered Surveyors
- Broker and Property Advisors
- Facility Managers
Intention of a Due Diligence

- Identification of „Deal Breakers“
- Disclosure of risks and uncertainties
- Screening of processes
- Evaluation of strengths and weaknesses
- Analysis of value-affecting factors
- Evaluation of the company / the site
Environmental Due Diligence (EDD)

- Investigation and Evaluation of environmental risks outgoing from or impacting a company or a property

- Quantification the environmental risks by calculating clean up and removal costs

- Risk transfer options by 3rd Parties
  Fixed Price, Cost Cap, PLL, ...
Background

- Several spectacular hazardous claims in the USA (ca. 1970)
- Class-action lawsuit against the Asbestos-Industry in USA
  - 250,000 Mio$ in US
  - 80,000 Mio€ in Europe
- Federal Soil Protection Act in Germany (1999)
- Industrial Emissions Directive (IED) in Europe ➔ Germany (2013)
Procedure of the EDD

- **Audit preparation** (NDA-Agreement, interfaces, execution-planning, team)

- **Phase I – Investigation**
  - Identification of the environmental risks
  - Site Survey
  - Check of documents
  - Interviews

- **Phase II – Investigation**
  - detailed investigation (soil, water, constructions)
  - definition of improvement or clean-up actions

- **Quantification of Risks** (Clean-up costs) as part of the appraisal report and true value calculation
Points of Special Interest:

- Regulatory Approvals (Target – Performance Comparison)
- Site History (Use, Products, Incidents)
- Production- Processes (Emissions-, Reduction- Potentials)
- Construction pollutants (e.g. asbestos, PCB)
- Soil- and groundwater-impacts
- Drinking- and Process-water Quality
- Radioactive Emissions (e.g. Radon)
- Sewer Systems and Water treatment
- Storage Facilities for chemical
- Energy- and resource-use
- Waste Management
- Air-pollutants and offensive smells
- Noise and Vibrations
- Health & Safety Management
- Catastrophe and Rescue Management
- Nature conservation and ecology
- UST’s
- WW II relicts
- Protection of listed buildings
- Climate protection (Carbon Emissions)

➤ Cost-evaluation and calculation for remedial actions, removal or protection means to avoid environmental impacts
Indicators for potential environmental damages:

- UST's and pipelines without leakage control systems and regular records
- Improper or illegal storage of fluids and goods
- Old sewer systems and sedimentation basins, seepage trenches
- Missing sewer system condition reports
- Accidents and Violation of H&S Instructions
- Improper or illegal storage of waste
- Suspicious landscaping and settlements
- Poor or new vegetation
- Missing disposal permits and documents
- Strange smells
- All current and former locations of hazardous material handling
Legal Framework Germany
(>10000 different environmental regulations)
Advantages of the EDD

**Legal Compliance**
- Base for Risk-Management and Company Transparency
- Avoidance of prosecution and fines
- Avoidance of reputational damage
- Avoidance 3-rd party claims

**Liability Clarification**
- Disclosure of all liability aspects
- Identification of hidden risks
- Updating in respect of changed legislation
- Separation of production- and product-liabilities
Planning compliance
- Preparation of clean-up actions without time pressure
- Fast and effective negotiations, true values
- Reliable planning data

Securing the future
- Identification of cost-saving potentials (natural resources, energy, waste)
- Optimisation of production-processes and utility-costs
- Securing the site and workplace for future changes or developments

⇒ Implementing Risk Transfer and Insurance Options/Solutions
Facts & Figures *

Top 500 European Companies stated:

- 33% identified environmental damages after finalising the transaction
- 19% identified environmental damages although an EDD was done

Negotiation effects of the EDD:

- 53% agreed additional warranties or insurance solutions
- 56% stopped negotiations, since EDD identified a deal breaker
- 59% negotiated a new purchase price

* Study by FNS Financial & Professional Services, UK, initiated by KPMG in 2004
Similar Applications

- Quick Checks and Drive-by Studies during competition
- Conversion or Closure of Production-, Storage- or Traffic-Facilities
- Sale Preparation, Servicing the Data Room
- Design and Survey of Remediation Actions
- Appraisal Reports
- EU Environmental Liability Directive (2204/35/EG), 10.5.2007: Extension to Biodiversity
- EU Industrial Emmissions Directive (IED -2010/75/EU)
Future Applications

- International Accounting Standards (IAS) require “true values” for the real estate assets instead of “book values”
- The Basel Capital Accord (Basel II) with its scored risk-evaluation for Brownfield Developments
- EU Soil Directive for EU Quality Protocol for Top Soil
  - Germany: “Bodenzustandsbericht” und “Ausgangszustandsbericht”
  - UK: “House Information Packs” (HIPS)

- Research/Carbon Emission Reduction: Sustainability- Certifications
  - Germany: DGNB (Deutsche Gesellschaft für Nachhaltiges Bauen)
  - UK: Breeam (Building Res. Establ. Env. Assessment Method)
  - US/Int.: LEED (Leadership in Energy and Environmental Design)
### Risk-Scoring for Basel II:

#### Kriteriengruppe 3

<table>
<thead>
<tr>
<th>Objekt</th>
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<tbody>
<tr>
<td>3.1 Architektur / Bauweise</td>
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<td>3.1.2 Belichtung / Beschattung</td>
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<td>3.1.3 Grundrissplanung / Funktionalität</td>
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<td>3.2 Ausstattung</td>
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<td>3.3 Baulicher Zustand</td>
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<td>3.4 Grundstückssituation</td>
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<td>3.5 Umweltverträglichkeit</td>
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<td>3.6 Rentabilität der Gebäudekonzeption</td>
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Gewichtete Beurteilung der Kriteriengruppe 3 „Objekt“

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**Abb. 8: Bewertete Kriteriengruppe 3 „Objekt“**
“Bodenzustandsbericht”

EU-GESETZE
Teure Erdkunde

Home Information Packs (HIPS):

From 1 June 2007 every home put on the market will have a Home Information Pack that rates its energy efficiency. From 1 June 2007 the law will require all homes put on the market to have a Home Information Pack. Included is a rating of the home’s energy efficiency and recommendations that could help cut CO₂ emissions and fuel bills. Home Information Packs also include paperwork such as title deeds, leasehold documents and Local Authority searches that are needed to sell a home. Visit our website to find out more.

@HM Government homeinformationpacks.gov.uk
Content of HIPS, installed on Aug. 1st 2007:

(initially for houses > 3 bedrooms, most likely for all real estate in 2008)

- Results of standard local-authority searches and inquiries
- Official copy of individual register
- Energy Performance Certificate (EPC)
- Summary of the legal content of the pack
- Optional: **Home Condition Report (HCR):**
  - fabric of building
  - condition of sewer system
  - site condition (contamination, flooding)

Fine: 400 $/per day, if property is on the market without a HIP
IED – Bürokratisches Monster oder ehrlicher Einstieg in die Neulastenvermeidung?

Jörg Frauenstein
Performance Requirements of EDD:

- Fast!
- Reliable!
- Safe!
- International!
- Cheap!

→ New Tools most welcomed!
Thank you for your attention!