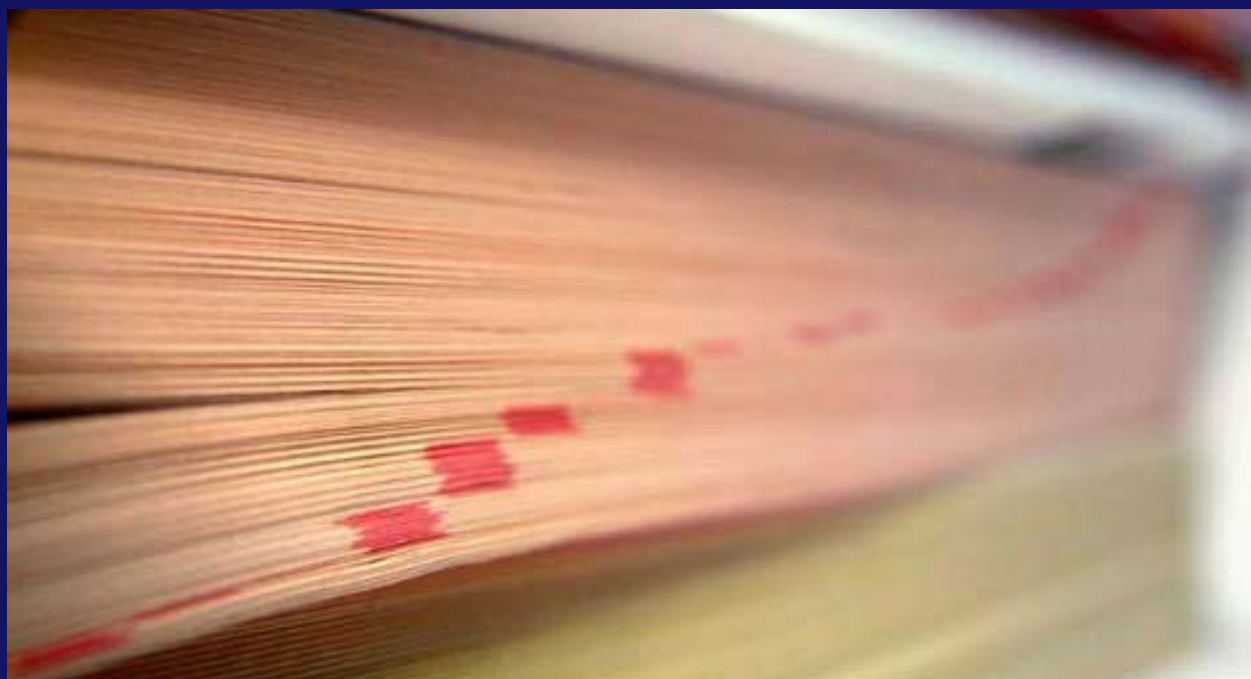




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# PRE-ACQUISITION DUE DILIGENCE: UKRAINIAN FOCUS



# Ukrainian Legal Environment – Impact on the DD

- uncertain and contradictory law  
informal nature of business practices
- absence of a satisfactory administrative infrastructure for commercial transactions
- informal nature of business practices





## Data Room?



- Documents are usually available in hard copies
- Internal documents of Ukrainian companies are rarely kept in systemized order



- Electronic form of documents is hardly ever used



# Structuring Data Request

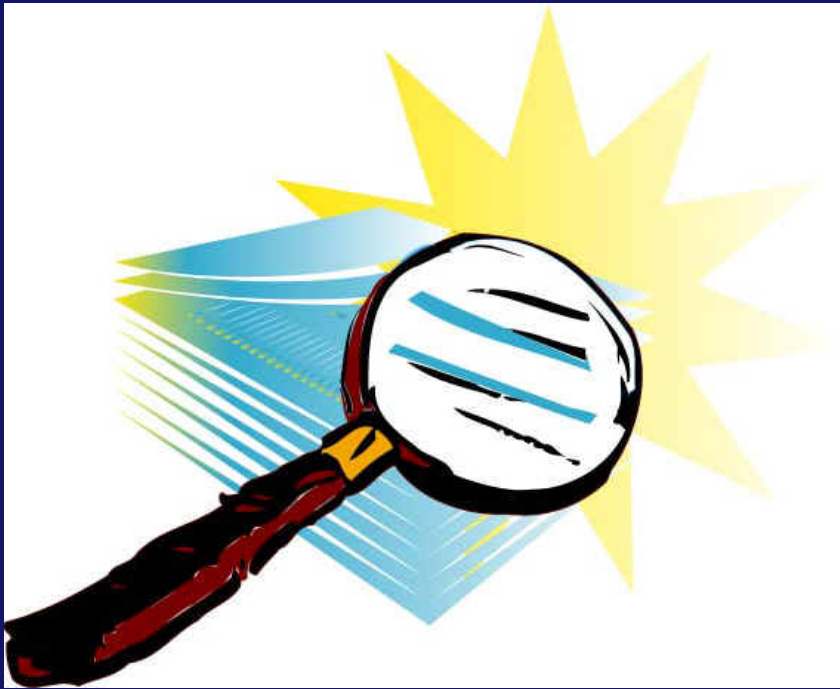
- Request List should be coordinated with the Acquirer



- It should be structured to meet the particular goals of the intended acquisition
- Request List should reflect the peculiarities of Target's management and business activities to the maximum extent possible



## Focus of the Due Diligence



- “Successor liabilities” – risks and obligations of the Target transferred to the Buyer upon acquisition
- “Deal breakers” – risks preventing the Acquirer from completing the planned acquisition
- Legal factors impacting Target’s valuation



## Business-friendly DD report



- Ask lawyers to deliver schemes, tables and diagrams instead of bulky descriptive analysis
- Insist on clear multilevel structure of the Due Diligence Report
- Ask for comprehensive executive summaries
- Agree beforehand, how detailed you want the lawyers to be regarding analysis of particular issues



## Some tips...



- Use materiality thresholds
- Do not ask to check legal documents or facts claims under which are time barred
- Set the final disclosure date and feasible deadlines
- Tell your lawyers to keep the list of all disclosed documents
- Do not forget to coordinate legal, financial and technical due diligence



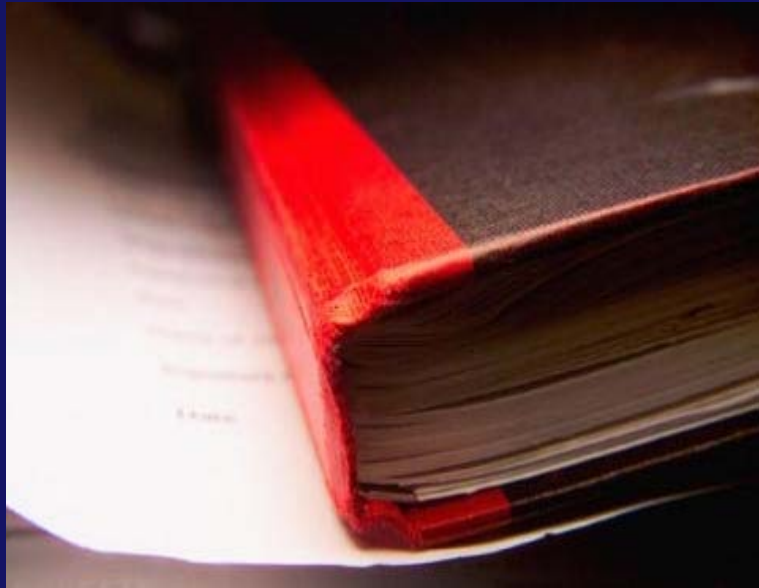
# Materiality Thresholds



- Price of the agreement
- Change of control clause
- Encumbrances on substantial assets
- Exclusivity conditions
- Limitations of Target's activities



## Executive summary of the DD Report



- Clear image of Target's legal condition
- Assessment of risks and benefits of intended acquisition for the Acquirer



## DD: what is next?

- Incorporate findings of the DD into the SPA
- Use revealed risks for price adjustment
- Do not forget about possibility of non-disclosed liabilities





**THANK YOU**

**Konnov & Sozanovsky**  
**23 Shota Rustaveli Street, Suite 5**  
**Kiev 01023, Ukraine**

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