

**MEDIA  
PLANET**

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# DUE DILIGENCE

A SPECIAL REPORT ABOUT AVOIDING POTENTIAL PITFALLS IN MERGERS AND ACQUISITIONS



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## STRATEGIC INTELLIGENCE



One of the most important factors to assess in any deal is: who is my counterparty? This is especially important when working in countries that may not have an established rule of law, or where fortunes have been made so quickly that the investor cannot rely on an established history or reputation.

Therefore, the investor will want the right professional support answer the following questions: Who is this person? What do I know about this company? What do I know about their past? What do I know about the relationships they may have with government, with security agen-

cies, with key players in the banking and commercial sector? In some cases, what is their relationship to organised crime?

Arising force in this space is the London-based firm of Montrose Associates. Founded by former diplomat, Michael Maclay, in 2003, Montrose prides itself on being able to get at what Maclay calls, "the wiring diagram of power." Over the past three years, it has conducted assignments in many supposedly 'difficult' markets such as Russia, China, the Middle East and Latin America, but also in markets closer to home, where the wiring diagram can be just as important in the context of tenders, privatisations, and the current surge of M&As.

Montrose's advisory board boasts a number of senior politicians, including former foreign secretary Lord Hurd, former CEO of Northern Foods Lord Haskins, and Mike Welton, chairman of Hanson plc. On his appointment, Mr Welton spoke of the quality of Montrose's work and "just how operationally useful it can be to international companies."

# Integrated environmental due diligence

"Looking beyond the obvious is always central to our approach. The provision of environmental due diligence as a part of well-integrated advisory services is just one way of delivering more effectively," comments Matt Farnsworth, Head of Environmental Due Diligence Business Development at Atkins after a recent multi-site micro-electronics investment deal in Russia.

Environmental Due Diligence (EDD) has come a long way since the days of solely looking at contamination issues and desk-top reports. Today's approach is radically different, more business oriented and altogether more integrated with other technical disciplines. The advent of new issues such as product liability, producer responsibility, carbon assets/liabilities and ethical supply chain due diligence have all grabbed headlines recently and are now commonplace R&D, board-room and marketing agenda items.

What really adds value is being able to identify when and how new technical environmental issues such as these can be translated into advice that really matters to an acquirer, investor or operational business. We are not alone in this approach; financial advisory and legal teams will also have to grapple with placing either a cost or advising a position on a widening set of environmental business issues.

This is why integrated advice is so important. Choosing a team that works together is key to a successful outcome. Recent initiatives, such as the UK Environmental Law Association's (UKELA) Corporate Due Diligence Working Party (which Atkins helped establish) is an example of how businesses can work together. The working party



▲ Matt Farnsworth, Head of Environmental Due Diligence Business Development at Atkins

brings together transaction advisory professionals from across the various banking, financial, legal and technical sectors to help foster best practice, common approaches and sharing of ideas between disciplines. The result? Time will tell.

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# Due diligence and secure deal rooms

Virtual secure dealrooms offer huge advantages in doing deals, says Brainloop's Oliver Gajek

**b** As recently as five years ago, companies doing mergers and acquisitions (M&A) would maintain a physical dataroom, in which all the commercially-confidential documents that might be of interest or relevance to interested parties would be held. Clearly, any potential buyers had to travel in person to consult the confidential documents in that data-room, imposing huge barriers of time and energy on them. And, access to the data-room was dictated by working hours.

The advent of the internet, ubiquitous broadband and secure encryption has made possible virtual datarooms. These first emerged around five years ago, but have become the de facto standard over the past couple of years.

### Open all hours

Our secure datarooms offer a number of clear advantages over the physical variety. First, the potential field of buyers can be much wider if they do not have to establish a

physical presence where the physical data-room happens to be. Therefore, you can have many more international buyers – a must in an increasingly-global world. Second, the deal process can be accelerated. Instead of having a data-room that is open only during office hours, our virtual datarooms are open 24/7. Third, they offer easy access to all parties working on a transaction.

Bernhard Winterstetter, certified public accountant, tax consultant and partner with Peters, Schonberger und Partner, says, "Our M&A projects benefit tremendously from immediate access to a fully-functional virtual deal-room application. All relevant information is available online, 24 hours a day, worldwide and simultaneously for many bidders. Easy access and reduced travelling times accelerate due diligence considerably"

### Information control

A virtual data-room allows vendors to control exactly what information each potential bidder sees dur-

ing the due diligence phase. Moreover, because Brainloop can track exactly which documents have been seen by potential bidders, our customers are protected in the event that the successful bidder tries to claim that certain information was withheld. Sellers want to ensure that they can show the documents that they have disclosed to bidders under warranties clauses.

"Brainloop Secure Dataroom delivers a secure communication platform, where exchange and viewing of documents occur in a secure and encrypted audit-proof environment. In addition to other security functions, the automatic watermark feature prevents unauthorized forwarding of confidential documents," Mr Winterstetter attested.

Brainloop finds that there are a few different types of client. One is a company selling a subsidiary and looking to solicit bids. A second category that is becoming bigger and bigger is activity in real-estate portfolios. Companies are increasingly rearranging their real estate holdings, moving them off their books and turning them into cash-flow. Brainloop secure datarooms can facilitate the process.



▲ Oliver Gajek is chief executive of Munich-based Brainloop, which provides electronic datarooms