Brownfield Land and Transactions
Risk Transfer and Environmental Insurance

Dr Simon Johnson

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Agenda

- Brownfield - Risk and Liabilities
- Risk Transfer and Environmental Insurance
- Transacting Brownfield land and property
- Case Studies
- Conclusions
Environmental Risks, Liability and Exposure

Technical

Legal

Contractual

Financial
Legal Liability

- Regulation
  - Existing regulations
    - Environmental Protection Law (no. 137/1995)
  - EU Directives – implementation
    - ELD
    - Soil
    - Groundwater
    - Waste management

- Compliance
  - Licensing
  - Emissions e.g. to water

- Civil law/code
  - Third party actions and claims for damages
  - Nuisance etc.

- International law
  - May apply to inward investors
  - Standard may apply

- Criminal law
- Contracts and contract law
- Insurance law
Risk Transfer

• **Contractual**
  – Warranties
  – Indemnities
  – Deeds
  – Sale and Purchase Agreements

• **Insurance**
  – Environmental Insurance
  – Captive
  – Reinsurance

• **Financial**
  – Discounting
  – Self insurance
  – Risk finance/risk funding
  – Escrow accounts

• **Alternative Risk Transfer**
  – Combination strategies
  – Environmental Annuities
  – Environmental Trust Companies
Environmental Insurance

- Site Pollution Legal Liability (SPL)
  - Policy duration - Maximum 10-years – all insurers for PLL
  - Limits of Indemnity – typically upto $20M for single site
  - Premiums
    - Minimum (UK) typically around $75k+ for a 10-year SPL type policy with up to $5m aggregate limit of indemnity – one-off payment

- Coverage
  - Legal liability

- Deductibles - Usual range $40k to $250k

- Cost-Cap
  - Covers cost overruns of remediation above a set attachment point and up to a set limit of indemnity
  - Schemes over $1M (remediation costs)
  - Attaches above estimated costs plus a self insured retention
Policy Cover & Triggers - SPL

- Claims made Policy
  - Pure risk transfer, typically up to a maximum of 10-years, without a finite element
  - Each and every loss deductible
  - Typical Limits of Indemnity £1m to £10m, (£30+m can be available)

- Policy responds to
  - Regulatory liability
  - Third party civil liability

- Policy indemnifies insureds against
  - Regulatory liability - clean-up costs (including own site and off-site)
  - Third Party liability
    - Bodily injury
    - Property damage – including clean-up
  - Legal and Technical Defence costs
  - Loss of rent receivable/Business Interruption
Site Pollution Legal Liability Insurance – What is covered and What is excluded?

• Covered
  – Unknown conditions
  – Known conditions as specified on the policy/endorsements
  – Migration of contamination from the site affecting off-site receptors

• Excluded
  – Employee liabilities
  – New pollution conditions – different form of policy
  – Known conditions unless explicitly included
  – Known costs e.g. remediation and monitoring
  – Acts of the insured
  – Redevelopment
# The Principal Insurers

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Broking Environmental Insurance

- Understand the deal
- Understand the risks
- Understand the products, the policies
- Understand and know the underwriters
- Understand the market
- Understand how it can make a difference – the sell

*Few markets, few underwriters, many opportunities*
Transaction Strategies

- Retain/take all the risk, maximise sale price/minimise purchase price
  - Insure/transfer retained risks
  - Long-term balance sheet issues?
  - Credit
  - Liquidity

- Contractual transfer - (indemnity/warranty) - negotiate ‘cost – discount’ of transfer within sale price
  - Insure against failure of contract and residual liability
  - Credit of indemnifier
  - Contract out to third party – e.g. liability assumption

- Retain/Transfer (compromise)
  - Insure/transfer retained risks
  - Price/discounts
Case Study 1

Former Industrial Site
Description

- Former industrial use – site appropriate, subject to planning, for regeneration supporting a mixed use urban village.

- Site cleared but residual contamination from fill materials and site wide contamination hotspots.

- Site owned, and being disposed of, by the UK subsidiary of a US Corporate.

Secure transfer of residual liability to create a ‘clean exit’ a requirement

Solution

Environmental Insurance was put in place to for both parties providing additional financial security to strengthen the indemnity provided by the ‘new’ owner – a developer.
Case Study 2: Private Equity

- Portfolio of commercial property in Germany
- Property situated on former industrial parks
- Residual contamination
- Currently suitable for use and occupied
- Bank 75% loan

Bank concerned about environmental exposure including change of law over the 10-year planned investment period

Solution

10-year environmental insurance policy for legal liability across the portfolio to include the Bank’s interests
Cost around €1.5m (deal value > €300m)
Case Study 3: Corporate Disposal

- Large land area (600+ acres) blighted by the presence of a closed landfill (45 acres) operated by the former owner

- Landfill to be left in current ‘safe’ condition – not initially available for redevelopment - risks of contamination from landfill migrating off-site onto owned and un-owned areas

Previous owner as the original polluter/operator required an indemnity from purchaser

**Solution**
Provide an Indemnity backed by a 10-year environmental insurance
Total Insurance costs including fees of the order of $300,000 for a $20M limit of indemnity
Case Study 4: Liability Assumption

- Site in Romania
  - Clean-up required – site polluted

- Land required for new development – possible sale

- Clean-up contractor proposes to assume all liabilities and provides full indemnity including:
  - Remediation costs – fixed
  - All legal liabilities during the clean-up and post-clean-up maintenance period (until sign-off)

- Environmental insurance to be arranged to cover the contractors liabilities – client is also an additional insured

  **Allows client to realise full value of redundant land for sale/redevelopment while being protected against residual liability**
Summary – Insurance Applications

- Property Development
- Property Ownership
- Property Investment and investors
- Regeneration
- PFI Projects – Public/Private Finance
- Corporate disposals – ‘clean-exit’
- Mergers and Acquisitions
- Asset management, accounting and valuation
- Landfill liabilities
- Remediation and ‘clean-up’

Single sites or portfolios
Conclusions

- Every Environmental Risk and liability has creates a Financial Exposure

- Taking a structured strategic approach to the assessment, management and mitigation of environmental risks and liabilities within the Buying and Selling Process maximises:
  - Deal success – facilitation - viability
  - Deal value – asset value – return on investment
  - Asset liquidity – future value/investment
  - Value of Risk Transfer - Environmental Insurance
  - Retained Balance sheet exposure/provisions
  - Institutional / investor acceptance
  - Development potential
Risk Transfer and Liability Management
- Strategic advice
- Financial exposure and risk modelling
- Risk transfer option studies and design of risk transfer programmes

Insurance Services/Broking
- Authorised to place insurance in through London into key European and International markets as an appointed representative of Besso Re
- Retail and wholesale business relationships

Contact:
sjohnson@globalenvironmentalpartners.com
www.globalenvironmentalpartners.com
Tel: +44 (0) 845 603 4578
Mob: +44 (0) 7771 694 409