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Brownfield Land and Transactions

Risk Transfer and Environmental Insurance

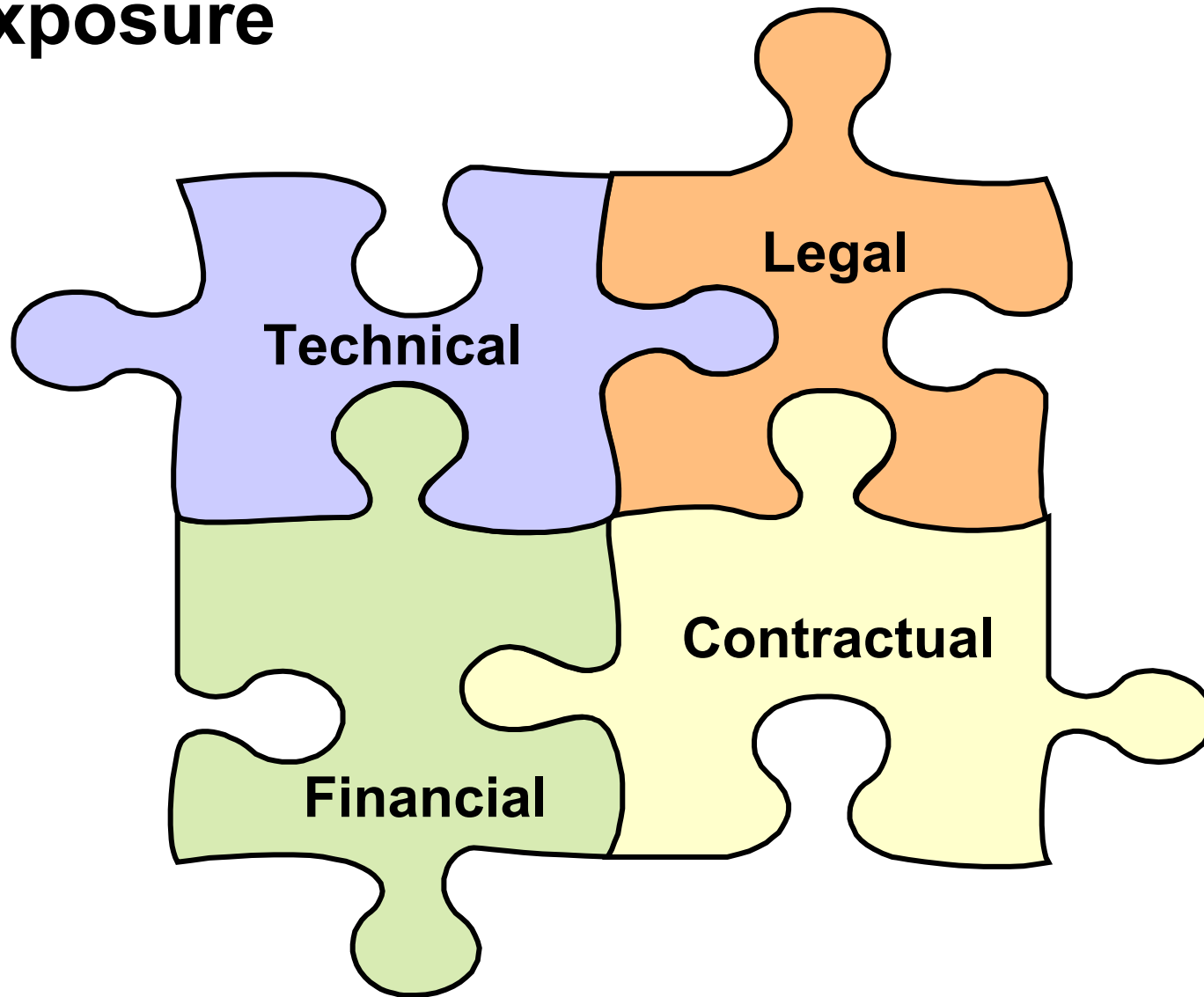
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UNEP FI Outreach Workshop
Sustainable Finance
Bucharest 9th October 2007

Agenda

- ❑ **Brownfield - Risk and Liabilities**
- ❑ **Risk Transfer and Environmental Insurance**
- ❑ **Transacting Brownfield land and property**
- ❑ **Case Studies**
- ❑ **Conclusions**

Environmental Risks, Liability and Exposure



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

Insurer	Offices			Products		Rating A++ highest	Specialist Staff (Europe)
	US	UK	Europe	Full Range	Part Range	AM Best	
ACE	√	√	X	X	√	A (Europe) A+ (Group)	3
AIG	√	√	√	√	X	A+	10
AXA	X	X	√	X	√	A-	2
Chubb	√	√	X	√	X	A++	2
Quanta						Run-off	
XL	√	√	√	√	X	A+	7
Zurich	√	X	X	X	√	A	0

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

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