

Environmental Insurance for Real Estate



HSBC Insurance Brokers' Environmental Risks team comprises experts in transactional insurance, due diligence and technical environmental risk. We are highly experienced in advising clients and arranging environmental insurance for those involved in the investment, transfer and development of Real Estate

The Need

Pollution liability is an increasing risk for all involved in Real Estate across Europe. This is mainly due to tightening environmental regulatory standards and the strict enforcement of historical pollution clean-up.

Who is affected

Owners, funders, lenders, developers and tenants of Real Estate can all be held liable for clean-up, and other associated losses, even if they were not the original polluters.

HSBC solution

We can arrange Environmental Insurance (also known as 'Environmental Impairment Liability' or 'Pollution Legal Liability' insurance) to protect against such liability. Policies are typically assignable to future purchasers and their backers, and are therefore particularly attractive in transactions involving Real Estate.

The benefits

Environmental Insurance policies are available from some of the World's largest insurers, are usually written for between 1 and 10 years duration, can attach to a single site or a portfolio of sites, and can be tailored to address specific risks. Policies also cover for changes in legislation.

Coverage

- New Pollution and unknown historical conditions
- On and off site clean up costs
- On and off site 3rd party liability (property damage / bodily injury)
- Insured's business interruption
- Legal defence and investigation costs

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Background

The risk of landowners having to pay for the clean up of their land, even where they were not the original polluters, has increased as a result of environmental legislation introduced in the UK and across Europe. Environmental Due Diligence has therefore become a routine exercise during property transactions. However the Phase I and/or Phase 2 assessments conducted by consultants are rarely conclusive, often due to tight timescales, and some residual environmental risk is frequently transacted along with the Real Estate.

The traditional approach has been to 'take a view' on this residual liability, negotiate a price reduction based on a best guess estimate of the liability or to rely on the professional indemnity insurance cover of the consultant. Neither approach provides much in the way of protection against potential environmental claims in the future and the blighting impact of pollution on the asset's future marketability. Environmental Insurance is an effective tool to cover for such risks.

Case Studies

Disposal of Polluted Site – A sports club, with associated grounds, was put up for sale. However, during negotiations with an interested purchaser, it transpired that the club was located upon an old landfill.

The purchaser was concerned that the site may need to be cleaned up in the near future because of new UK legislation enforcing the clean up of historical land pollution. A one-off Environmental Impairment Liability insurance policy was arranged within 2 weeks and allowed the smooth transfer of the property. The policy was addressed to the purchaser, his loan provider and the seller and covered for the risk of the regulators requiring clean-up during the term of the policy.

Historical Pollution Liability can revert to the current land owner, even if they were not the original polluters

Enhancement of Real Estate Portfolio – A pension fund with a portfolio of 150 sites across Europe, being a mixture of industrial, distribution warehouses, retail and offices. In light of legislation being introduced across Europe, the Trustees were concerned that they were at risk of having to clean-up historical pollution at a number of their sites, despite not being the actual polluter. An aggregate environmental impairment liability policy for the whole portfolio was procured, and provided protection against these potential losses.

The policy also serves as a commercial asset as future purchasers or tenants can be named as beneficiaries in relation to relevant sites.

Environmental Insurance can be used to enhance the marketability of commercial real estate.

Protection against remediation cost overruns – A local authority stipulated the clean-up of contaminated soil prior to the development of 100 houses on old brownfield land. An estimate of the clean-up costs was made, however, the project financier was concerned that the remediation was at risk of going over budget and being delayed due to undiscovered contamination.

A clean-up cost cap insurance policy protected against this risk, along with cover for consequential losses.

Estimating soil or groundwater clean-up costs accurately is very difficult, as it based upon limited investigation data.

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