



## Environmental insurance for transactions

Environmental Impairment Liability policies (EIL) continue to play an important role in mergers and acquisitions (M&As). EIL policies provide cover for regulatory and third-party liabilities arising from historical pollution. They can provide long-term peace of mind for parties buying and selling brownfield land and businesses where there could be historical pollution liabilities.

XL Catlin's team of environmental underwriters has been designing environmental insurance solutions since the early 1990s and is well placed to work on both simple and complex transactions.

### Why should EIL be considered as part of a transaction?

- Owners and occupiers can be liable for pollution they didn't create
- Environmental due diligence may have significant limitations
- Changes in law can alter the liability landscape after the transaction has taken place
- EIL may be an alternative to making a balance sheet provision for environmental liabilities
- Indemnitors may be difficult to locate after a transaction has taken place, or may no longer have the financial backing to honour a claim that arises at a future point in time
- EIL provides cover for directors and officers of a company, as well as the business itself
- Contracts can be scheduled to the EIL policy

### Our EIL Solution

- Insurance for buyers or sellers of potentially contaminated land or businesses
- Policy periods of up to 10 years
- Limits of liability of up to £30m
- Cover for regulatory clean up, including the Environmental Liability Directive
- Cover for third party loss which includes consequential losses and diminution in third party property value
- Cover for own-site and off-site liabilities
- Cover for sudden and accidental and gradual releases
- Ability to schedule contracts such as the sale and purchase agreement
- Ability to add lenders as additional insureds
- Ability to make lenders first-named insured in event of default by the original first-named insured

### Added Value

- Policies are assignable, maximising asset value at point of sale (preventing the purchaser trying to discount the purchase price)
- Insureds may stay on the policy post-assignment, providing a clean exit
- EIL can satisfy the lender's concerns, and facilitate funding for acquisition/development
- A seller may be more attracted to a buyer offering an EIL policy that covers the seller too
- EIL can be used by businesses seeking a clean exit as an alternative to leaving contractual tail-end liabilities
- EIL can be used to maximise marketability of assets to risk adverse purchasers (e.g. institutional investors)

## Example Claims Scenarios

EIL would provide a solution for the following claims scenarios:

- A site is sold with benefit of an indemnity, but the indemnitor becomes insolvent, so liability cannot be compensated for.
- A site is acquired and development takes place on adjacent land resulting in the discovery of contamination that has migrated off-site, giving rise to a claim.
- A site is acquired and unexpected contamination is discovered due to a former site use that was not anticipated based on a review of historical maps during the due diligence.
- A business is acquired that forms part of a larger industrial estate, and the regulator identifies all occupants of the industrial estate as jointly liable for pollution, with a requirement to investigate and remediate.

## Information needed for a quotation

- Details of the transaction - the sites to be covered and who is to be insured
- Details of any anticipated changes to the sites / business activities, post-transaction
- A copy of the contract (if a contract is required to be scheduled)
- Environmental due diligence reports

Environmental insurance can be placed in conjunction with other M&A Insurance such as Warranties & Indemnities or other deal-specific protection, as a full suite of deal insurance protection. XL Catlin has the capabilities and appetite to provide these products.

### Contacts

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