

Financial securities ~ contaminated land transaction



Victor Dries
Remediation Department
victor.dries@ovam.be

Transfer: Why?

- Transfers without “land status report”
- Liability on “guardian of land” for third party damage
 - Optimal protection of new owner
- “fraudulous” transfer by contaminator
 - Protection of government

Transfer of land

- Transfer of any land : soil certificate
- Transfer of land with present or past ‘risk-activity’
 - exploratory investigation
 - descriptive examination
 - soil remediation plan
 - financial guarantee
- Prior to transfer, if not: risk annihilation
- Duties fulfilled by seller or buyer!

Financial security: process

- Person with duty sends in proposal
 - amount
 - time
 - form
- OVAM evaluates within limited time (is end of transaction process, so parties get anxious)
- Financial security may be adapted

Forms of financial security

– Bank guarantee

☺ well known product for trade contracts

☺ banks like product (earn money)

☺ fast and easy!

- classically for short term

- beginning: open end, but unmanageable for banks

- now: limited 5 years, afterwards: pay or extend

☹ relatively expensive for company

☹ blocks credit lines

☹ banks often ask underlying guarantee

☹ time frame after eventual bankruptcy is short

Forms of financial security (2)

– Pledged account

- ☺ money put aside on account dedicated to OVAM
- ☺ money can only be used for remediation
- ☺ very safe, also at bankruptcy
- ☺ earns money for customer
- ☹ money has to be put aside

– Mortgage

- ☺ well known product for long term guarantee
- ☺ linked to real estate
- ☺ relatively safe at bankruptcy
- ☹ certainty land value (at forced sale)?

Forms of financial security (3)

- Third party guarantee
 - ☺ no money is put aside, blocked
 - ☺ “easy” form of guarantee
 - ☺ guarantor=extra party taking “responsibilities”
 - ☹ “value” of guarantee?
 - ➔ first/regular evaluation by independent accountant
 - ☹ evaluation paid by party with duty: costs!
- Any option OVAM accepts; examples:
 - portfolio security for lot of contaminated sites
 - financial portfolio (discussion on guarantee level)

Advantages of financial security

- Money is “set aside” for remediation
- Cost of financial security → fast remediation
- Remediation cost becomes part of land value
- When holder of duty “forgets” to remediate, OVAM takes it
- Extra pressure eg with bank guarantee: letter to bank to warn “activation” of security: bank will push their customer

Uncertainties

- Amount of security
 - estimation by expert
 - evaluation OVAM
 - when “wildcard is used” → little data
 - risk premium: best guess
- Time frame of security
 - make it long enough (>time contract!)
- Certainty of financial product

Conclusions

- Financial securities can work
- Contamination becomes part of land value
- Remediation duty is part of transaction deal
- Limit evaluation time
- Leave enough flexibility
- Managers understand €/€ better than contamination
- Money makes world go round ...

