



GLOBAL FINEX - MERGERS AND ACQUISITIONS

Mergers and Acquisitions Insurance Solutions



Risk issues for buyers and sellers in Mergers and Acquisitions (M&A)

M&A can be complex, taking time and expertise to maximise financial returns and mitigate as far as possible the risks arising from the transaction.

The acquisition of a target company or business can make sound financial sense but buyers often have a concern as to the level and ease of recourse, available via the warranties and indemnities (W&I) given in the share purchase agreement (SPA). Sellers also increasingly want to reduce their residual liabilities under the SPA to maximise their return and to facilitate as clean an exit as possible.

The due diligence process may identify certain specific issues such as a potential tax liability or environmental impairment concerns, which create additional uncertainty.

Sellers face a different set of risks where they might inadvertently breach a warranty given in the SPA and then face a call on monies held aside or in escrow, which are intended to be returned to shareholders/investors. This can quickly escalate into a dispute between shareholders/investors and management.

Annual statistics published by insurers and supported by our own claims data, shows that the most common claims made under W&I policies are in respect of breaches of Financial Statements, Tax issues, non-compliance with Laws and breach of material contracts.

Solving transactional risk issues

Transactional risks insurance is an umbrella term which encompasses a number of insurances that can be used as part of an M&A transaction strategically to help gain an advantage or reduce residual risk. The most known of these is W&I insurance (reps and warranties insurance in the USA), but other solutions for tax liability, contingent risks and environmental risks are available and are now common risk mitigation tools.

Who we work with:

Corporate Clients, Funds and Institutional Investors, Law Firms, Corporate Finance and members of the International deal advisory community.

What do you get:

- Insight, experience and engagement from a Global team of highly qualified Transactional Risk practitioners.
- Advice, selection and negotiation on the most suitable insurance solutions, (including detailed negotiation of the Warranty schedule to be insured).
- Support throughout the deal process.





Warranty and Indemnity insurance (W&I)

- Indemnifies the insured for financial loss for a breach of warranty or the tax covenant in an M&A transaction.
- Covers loss or liability arising from unknown or undisclosed matters only.
- Can be purchased by either a buyer or a seller.



Tax insurance

- Transfers a known or uncertain tax liability from the target balance sheet to an insurer.
- The insurer will indemnify the insured for financial loss arising from a challenge from a tax authority.
- Available both pre or post M&A transaction (or on a standalone basis).



Contingent Risk insurance

- Covers identified or known contingent risks which are typically the subject of a specific indemnity in an M&A transaction.
- May also be provided for identified “one-off” issues which are not necessarily related to an acquisition or a disposal.
- Used to facilitate a future deal, transfer risk or mitigate a contingent balance sheet exposure.

Focus on warranty and indemnity insurance

Buyer-side

- Protects the buyer in the event of the seller’s misrepresentations (both innocent and fraudulent).
- Two key advantages over a seller-side policy:
- The insured can claim directly against the insurer (i.e. without having to pursue recourse against the seller or warrantor(s)); and
- Provides indemnification in respect of the seller’s fraud.

Seller-side

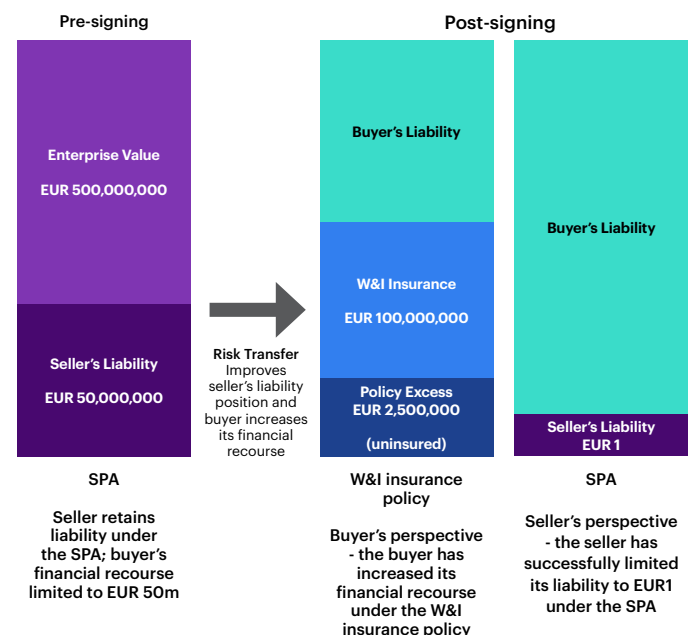
- Offers liability protection to the seller for innocent misrepresentations in M&A transaction documents.
- Designed to respond in the event that the buyer brings a claim for a breach of warranty or a claim under the tax covenant against the seller.
- Enables a seller to ring-fence the risks associated with the disposal.
- Typically used for end of fund life.

Stapled insurance

- Buyer-side policies are often instigated by a seller who insists that the buyer enters into a W&I buyer-side policy.

- This process is often referred to as “stapling” W&I insurance.
- WTW often works with the seller to ensure a smoother process by commencing the underwriting process on the sell side and then a WTW ‘non conflicted’ team works with the exclusive bidder, or each bidder ‘tree’, to finalise the insurance.

An example of recourse utilising W&I



99% of the W&I policies WTW placed in 2021 were buyer-side policies. Note: for illustration purposes only.








A transaction tool that adds value






W&I insurance supplements and extends protection, from breaches of the warranties. It can be used to increase the amount of financial protection and the scope of agreed indemnification and extend the time period during which a claim can be bought.

For seller's it can be used to simply remove or minimise the need for an escrow or to protect and return the proceeds of a sale to investors earlier than would otherwise be possible.

Seller's reasons to use W&I

-  • Achieve a “cleaner and enhanced exit”
-  • Use as part of an intra-group or pre IPO reorganisation
-  • Mitigate, ring fence or remove general or specific liabilities
-  • Protect passive, individual or family sellers
-  • Risk management tool where a seller is exiting a non-core business division

Buyer's reasons to use W&I

-  • Enhance/distinguish a bid/bridging a warranty gap
-  • Protect relationships with sellers or warrantors
-  • Risk management where investing in unfamiliar industries or territories
-  • Protect passive, individual or family sellers
-  • Mitigate enforcement difficulties where the seller and buyer are in different jurisdictions

Why WTW?

The WTW Global Transactional Risks team advised on more than 1,500 transactional risks policies in 2021.

We often work for buyers and sellers or indeed multiple bidders on a single transaction. We are able to provide segregated teams for each client to give complete confidentiality/compliance and bespoke advice for each bidder.

WTW's M&A team is a highly qualified global team of insurance advisers, many of whom are ex lawyers and accountants, experienced in advising on and negotiating the optimum insurance solutions for each transaction.

W&I insurance is more than a placement process, our expert team assimilate all of the relevant data, anticipate underwriters' requests on key areas, advising on and creating the best available solutions and working closely with the client's other advisers throughout the deal process and beyond in the event of a claim.

The WTW team are experts in cross border deals where we provide W&I, Tax and Contingent insurance solutions globally; providing local knowledge on each transaction.

We work closely with our Insurance Due Diligence team, who give clients a clearer picture on target risk and insurance matters, to help enable better investment decisions, negotiations with sellers and successful post-closing integration.

WTW global M&A practice

A market leading team of 170+ M&A practitioners, many of whom are qualified in either Corporate Law, Tax and Accountancy principles or insurance, working together to help our clients navigate M&A transactions safely. We draw on the full resources of WTW to bring sector expertise, analytics, risk evaluation and insurance placement (where required) to each transaction, in other words delivering the firm and focusing on our client's strategic objectives on a deal-by-deal basis.

We help solve complex risk issues, regularly working to tight deal timeframes. Our transaction related advice and insurance knowledge is valued by our clients, who often use this tactically buy-side and sell-side to enable a successful outcome to an acquisition or divestment.

Disclaimer

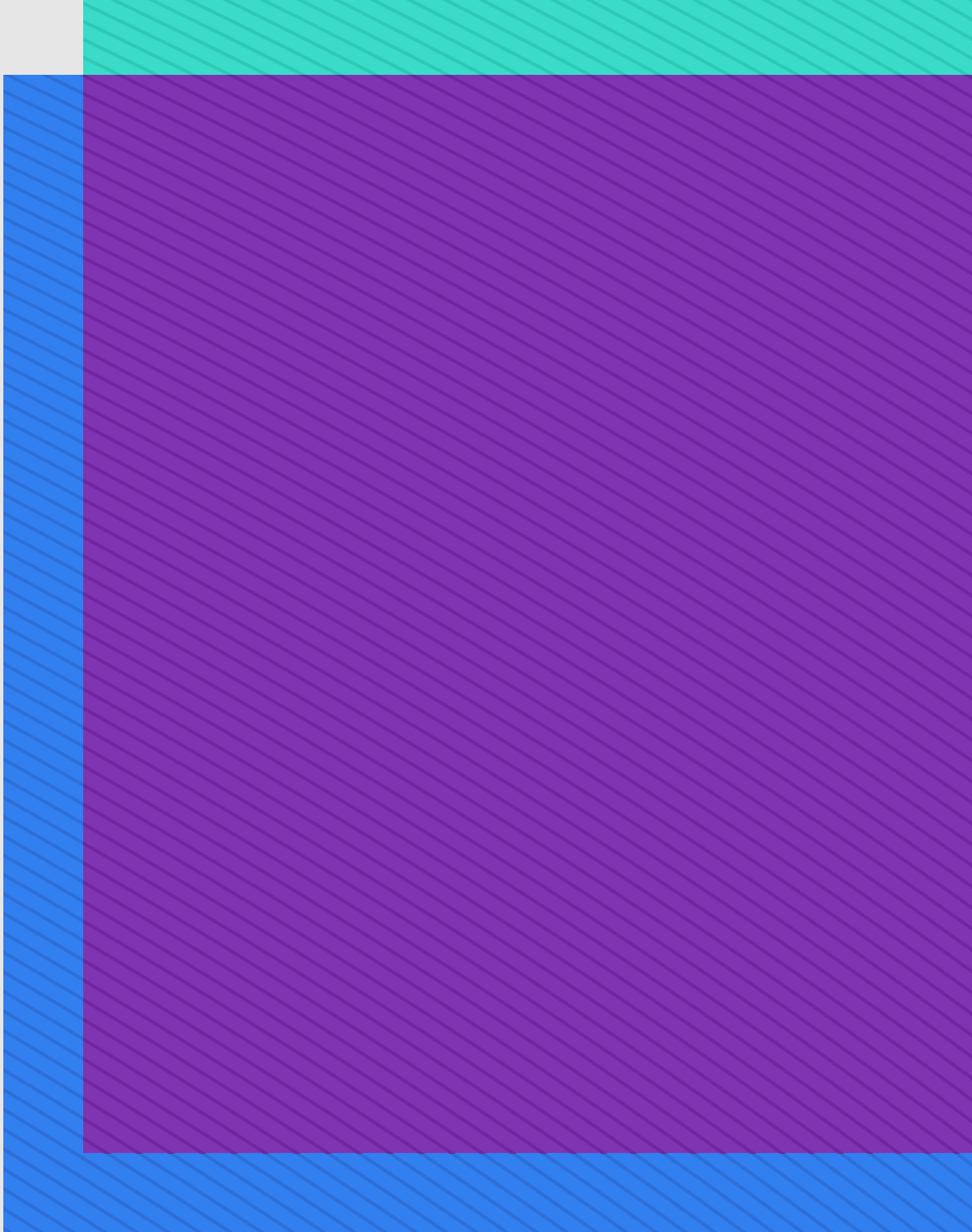
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Our team

For more information please contact our regional colleagues shown below:

International (ex North America)		
Alex Keville Practice Leader, M&A and Private Equity, Global FINEX D: +44 20 3124 8187 alexander.keville@wtwco.com	MENA	Alexandra Wilson Director, Transactional Risks M: + 44 7810 243 172 alexandra.wilson@wtwco.com
UK	Transatlantic and LATAM	Gabriel Ewing Director, Transactional Risks M: +44 7833 046 463 gabriel.ewing@wtwco.com
		Allan Stierle Associate Director, Transactional Risks D: +44 20 7170 3092 allan.stierle@wtwco.com
Luolan Dong Head of Tax D: +44 207 170 2953 luolan.dong@wtwco.com	Israel	Joshua Begner Head of M&A, Israel M: +972 54 628 8284 joshua.begner@wtwco.com
France	Africa	Simla Ramdayal Associate Director, Transactional Risks M: +27 79 536 3532 simla.ramdayal@wtwco.com
Spain	Asia	Terence Montgomery Practice Leader M&A, Asia Singapore: +65 8318 8143 Hong Kong: +852 9666 8598 terence.montgomery@wtwco.com
	Australasia	Steven Torresan Practice Leader M&A, Australasia D: +61 2 9285 4077 steven.torresan@wtwco.com
Germany	North America	
Italy	Mark.A.Rusas Practice Leader, M&A Group D: + 1 212 915 8328 mark.rusas@wtwco.com	
	Peter Miraglia Managing Director, M&A Group D: +1 212 915 8324 peter.miraglia@wtwco.com	
Central and Eastern Europe	North America	Aartie.K. Manansingh Transactional Risks Practice Leader, M&A Group D: +1 212 309 3422 aartie.manansingh@wtwco.com
Nordics		Sheldon Elefant Practice Leader, Tax insurance, M&A Group M: +1 917 796 5884 sheldon.elefant@wtwco.com
Magdalena Kluczek Head of M&A, CEE M: +48 695 910 661 magdalena.kluczek@wtwco.com		
Fredrik Dock Practice Leader, Transactional Risks, Nordics D: +46 8 5463 5914 fredrik.dock@wtwco.com		



About WTW

At WTW (NASDAQ: WTW), we provide data-driven, insight-led solutions in the areas of people, risk and capital. Leveraging the global view and local expertise of our colleagues serving 140 countries and markets, we help you sharpen your strategy, enhance organisational resilience, motivate your workforce and maximise performance. Working shoulder to shoulder with you, we uncover opportunities for sustainable success — and provide perspective that moves you. Learn more at [wtwco.com](https://www.wtwco.com).



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