

“End of Fund Life” Insurance

A strategic alternative

“End of Fund Life” insurance is a useful and strategic tool for fund managers to maximise return, ensuring cleaner exits, more efficient final distribution and promoting faster payments.

Client challenge

Cost and capital efficiency has become increasingly important to private equity firms, real estate funds, venture capitalists and other sophisticated investors. A key concern is how to wind up a fund at the end of its life to facilitate a “clean” exit (other than in certain specific circumstances e.g. seller’s fraud) allowing investment returns to be distributed back to investors at the earliest possible opportunity.

Solution summary

A tailor-made sell-side W&I policy to indemnify the fund for residual liabilities.

- Taken out by the fund manager or general partner of the fund covering (i) residual liabilities relating to the assets held (directly or indirectly) by the fund and (ii) all financial losses arising from warranties provided during different sell-side transactions during the divestment phase.
- Either the seller or the specific investment fund can be the named insured. A liquidator can be named as a beneficiary/loss payee to provide comfort for winding up.
- Can be used to cover both corporate and asset disposals (or a mixture of both).
- The insurer ‘steps into the shoes’ of the entity/fund and provides an alternative route of recourse.
- A one-off premium is payable for a policy term which matches the exposure period for the residual liabilities.
- Can cover claims brought up to seven years from inception of the policy, encompassing multiple jurisdictions (if necessary due to the location of the relevant assets).
- The process for arranging such a policy is generally easier if the majority of the liabilities have expired, vendor due diligence was prepared and/or the fund has identified and ‘tracked’ the life of its liabilities.
- As this sector of the W&I market has matured, the breadth of “ground up” coverage has increased.

Client benefits

- Enables an effective and efficient fund wind up, free from residual liabilities.
- Facilitates voluntary liquidation and avoids or reduces ongoing administration costs (including management, legal and directors’ fees) of the original investment corporate structure (particularly if offshore).
- Facilitates maximum and faster distribution of investment returns to investors to improve investor rate of return (insuring against the risk of clawback in the event of over distribution).
- Allows for any funds flowing from the transaction to be retained by vendors with little to no ‘tail of liability’ and in most circumstances without escrow terms which might have otherwise applied (i.e. until residual or contingent liabilities have expired).
- The premium is often small in the context of the ongoing administrative costs of maintaining the existing structure. It also saves management time signing off/running redundant companies.

Complementary solutions

Other fund operational risks may potentially arise following the termination of the fund where Willis Towers Watson can assist with a bespoke insurance solution:

Tax insurance

The fund may have provided specific tax indemnities ‘after the event’ in relation to identified tax issues and where there are issues over the validity of a tax position. Tax insurance policies can provide retrospective cover in respect of the specific tax indemnities.




Title insurance

Policies usually cover items such as title to underlying real estate assets, title to shares, physical defects and can cover missing permissions, access restriction, defective leases as well as demolition costs.

Environmental impairment liability

This form of insurance provides cover for historical liabilities associated with real estate assets owned by a fund, and would cover remedial work to prevent or limit losses arising out of pollution or contamination.

Case study

	Background	A private equity house approached us prior to the final disposal out of a real estate investment fund. We advised that we could negotiate an insurance policy that would cover any residual liabilities remaining in the selling corporate group, predominantly arising out of historic disposals, to enable the existing structure to be wound up.
	Action	We negotiated an "End of Fund Life" insurance policy with a policy limit of £20M with a policy term of 7 years. The insurer was happy to provide "ground up" cover for residual liabilities which consisted of: (i) potential tax exposures arising from previous disposals; (ii) potential contingent creditor claims; and (iii) extant title and capacity warranties. The liquidator was a named beneficiary of the policy to facilitate the voluntary winding up of the existing structure.
	Outcome and value	The client was able to wind up the fund faster and save on administration costs, ensuring a greater return on investment.

Why Willis Towers Watson?

The Transactional Risks team at Willis Towers Watson is a market-leading, global and experienced team of M&A professionals with significant corporate, legal, tax, underwriting and broking insurance backgrounds that advises its clients, and their advisers, on entering into bespoke transactional insurance products. To provide our clients with the most flexible and competitive insurance solutions, we are able to access all major insurance markets worldwide for every transaction. We advise on the process, market trends and facilitate/negotiate the optimum insurance solution for the insured. On every deal, we utilise our strategic relationships with the insurers or underwriters enabling us to deliver the best achievable results in a timely manner.

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