



Global FINEX - Mergers and Acquisitions

Mergers and Acquisitions insurance solutions

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

Mergers and acquisitions 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 business can make sound financial sense but buyers often have a concern as to the level, and route of recourse, available via the warranties and indemnities given in the Share Purchase Agreement (SPA). Sellers also increasingly want to reduce their residual liabilities under the SPA to maximise their return and 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, show that the most common incidents reported are breach of the Financial Statements, Tax, Compliance with Laws and Material Contracts. They also highlight an increasing severity of loss trend.

Solving transactional risk issues

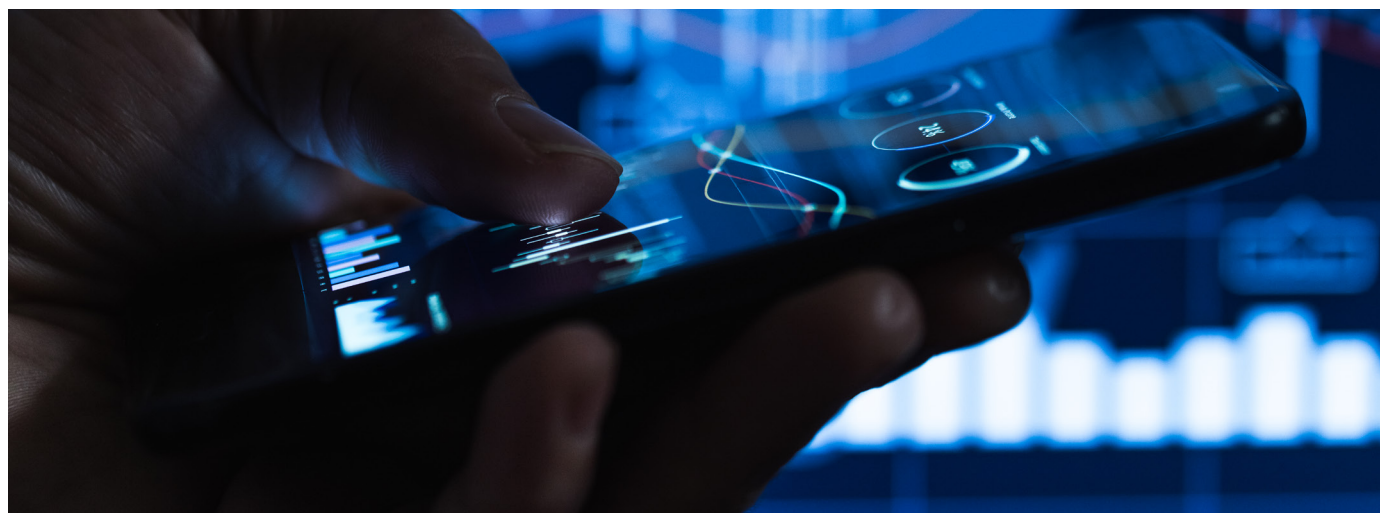
Transactional Risks insurance is an umbrella term which encompasses a number of insurances that can be used as part of an M&A transaction strategically to help gain an advantage or reduce residual risk. The most known of these is Warranty & Indemnity insurance (Reps and Warranties insurance in the USA), 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 & 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 & 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

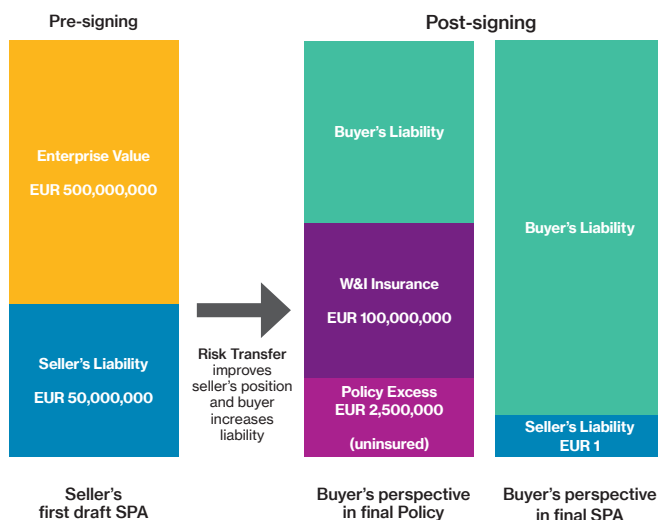
Buyer-Side

- Covers the buyer against 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.

Example of recourse utilising W&I



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.

96% of the W&I policies Willis Towers Watson (WTW) placed in 2020 were buyer-side policies.

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 sellers 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.

Sellers reasons to use W&I	Buyers reasons to use W&I
 Achieve a “cleaner and enhanced exit”	Enhance/distinguish a bid/bridging a warranty gap 
 Use as part of an intra-group or pre-IPO reorganisation	Protect relationships with sellers or warrantors 
 Mitigate, ring-fence or remove general or specific liabilities	Risk management where investing in unfamiliar industries or territories 
 Protect passive, individual or family sellers	Give extra comfort for lenders 
 Risk management tool where a seller is exiting a non-core business division	Mitigate enforcement difficulties where the seller and buyer are in different jurisdictions 

Why WTW?

The WTW Global Transactional Risks team advised on more than 1,000 transactional risks policies in 2020.

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 150+ 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.

Contacts

For more Information regarding our M&A services please contact one of the representatives listed below.



Alexander Keville
Practice Leader
Mergers and Acquisitions, Global FINEX

D: +44 20 3124 8187,
M: +44 7768 099 840
Alexander.Keville@WillisTowersWatson.com



Luolan Dong
Head of Tax
Mergers and Acquisitions, FINEX

D: +44 207 170 295
M: +44 7990 566 706
Luolan.Dong@WillisTowersWatson.com



Andrew Collins
Executive Director
Mergers and Acquisitions, FINEX

D: +44 20 3124 7302
M: +44 7810 296 753
Andrew.J.Collins@WillisTowersWatson.com



David Palmer
Mergers and Acquisitions, Global FINEX

M: +44 7917 400753
David.Palmer@WillisTowersWatson.com



Giles Murphy
Head of Due Diligence Advisory
Mergers and Acquisitions, Global FINEX

D: +44 20 3124 8458
M: +44 7947 740 907
Giles.Murphy@WillisTowersWatson.com

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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 organizational resilience, motivate your workforce and maximize performance. Working shoulder to shoulder with you, we uncover opportunities for sustainable success – and provide perspective that moves you. Learn more at wtwco.com.



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