

MERGERS AND ACQUISITIONS (M&A)

INSURANCE FOR IDENTIFIED RISKS

The AssuredPartners team regularly help clients to insure identified risks or balance sheet provisions. This type of insurance is often referred to as “Contingent Risk Insurance” and is designed to protect against a known potential liability or provide catastrophe cover over and above an expected loss. There is no finite list of the types of risks that insurers will cover but typically they come to light during the due diligence of a business during an acquisition or following a corporate restructuring/refinancing process. Insurance can be a hugely useful tool that lets parties ring-fence a potential liability for a fixed premium. As long as there is information that underwriters can review to assess the risk and gauge the potential financial quantum, then insurance may be able to help.

The ability to transfer potential balance sheet liabilities (regardless of how remote) to an insurer can enable transactions to proceed without the need for the buyer or seller to bear the risk. This insurance is often the key to unlocking financing where the lender has stringent indemnity requirements. It is increasingly common for sellers and corporate finance advisers to proactively pre-empt and neutralise potential deal deadlocks by arranging insurance to cover issues that are likely to be identified by bidders. This can circumvent price-chipping conversations, improve execution risk and shorten the timetable.

Insurers' appetite in this area has been steadily growing and we have seen a wide range of issues covered. Some examples include:

- Litigation
- Residual contingencies when winding-up/distributing a fund
- Release of stringent regulatory capital reserving requirements
- Missing/Uncontactable beneficiaries (capital release)
- Shareholder disputes
- Transfer of Undertakings (Protection of Employment) (TUPE)
- Legal interpretation risk for identified litigation/arbitration (particularly appeal risks of favorable first-instance decisions)
- Intellectual property risks
- Specific accounting treatments
- Regulatory exposures
- COVID-19 furlough risks

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AssuredPartners London, Centennium House, 100 Lower Thames Street, London, EC3R 6DL

WHAT INSURERS LOOK AT WHEN ASSESSING AND PRICING A RISK

1. The maximum potential quantum and how it has been calculated
2. Access to and quality of supporting information/expert advice. It is not a prerequisite to have existing legal opinions, as insurers can carry out their own analysis.
3. The triggers that will lead to a loss event (multiple triggers are looked on favourably by insurers).
4. Mitigating circumstances and the available defences to the loss event/claim

WHAT DOES THE INSURANCE COST?

- Low risk/straightforward fact pattern: 2-5% of the maximum potential liability
- Medium risk: 5-12% of the maximum potential liability
- Complex/Catastrophe risks: 10%+ of the maximum potential liability

AssuredPartners has access to all the recognised Identified Risk Insurers and will run a competitive exercise to ensure that the best coverage and pricing are achieved.

TIMING

AssuredPartners understands that identified risks are often uncovered at a critical point in a transaction. We know that it is important to find out as soon as possible whether a risk is insurable in principle, and for what (approximate) cost. The insurers that we work with are quick to respond and, following receipt of a general overview of the scenario, will endeavour to provide an “in principle” response within 24/48 hours.

The overall underwriting of identified risks is entirely dependent on the specific facts of the issue. We have arranged policies in under a week, but 2-3 weeks is more common.

WORKING WITH ASSUREDPARTNERS

We have access to all insurers and extensive experience broking Identified Risk Insurance policies for private equity firms, real estate funds, management teams, advisors and corporates. You can be completely confident that you will have the right advice at the right time with access to the best solutions in the market for your individual transaction. Our clients trust us to make the process of arranging insurance as uncomplicated and efficient for them as possible. They expect full confidence in the policy cover, insurer selection, timing and end-result.

YOUR CONTACTS

BEN CRABTREE

Email: ben.crabtree@aplndn.com

Telephone: +44 (0) 20 3675 0074

FELIX SLOMAN

Email: felix.sloman@aplndn.com

Telephone: +44 (0) 20 3675 0075

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