

# MERGERS & ACQUISITIONS PRACTICE

The Mergers & Acquisitions Practice is an experienced, dedicated team concentrating on assessing and insuring the risks and exposures arising from mergers, acquisitions and other corporate transactions.

Below we detail several case studies demonstrating our value to clients in the transaction process.

## CASE STUDY 1: WARRANTY INSURANCE

### The Transaction

A private equity fund was selling one of their last portfolio companies in their 2005 fund.

### The Issue

After debt, the management shareholders proceeds would be less than 2% of the consideration and therefore the fund were only willing to give warranties capped at 50% of their proceeds (1% of the consideration) for 12 months.

### Impact on the Deal

A price chip or requirement for escrow due to the lack of warranty protection which would impact on the private equity funds Internal Rate of Return (IRR) and ability to wind up its' fund.

### Willis Value

Willis structured a buy-side warranty insurance package with insurers to provide warranty protection for the successful buyer above the management warrantors liability cap and extending beyond the 12 months to a period of 24 months for non-tax and 6 years for tax.

## CASE STUDY 2: WARRANTY INSURANCE

### The Transaction

A new private equity fund was buying a target for £70 million which had 70 individual shareholders. The transaction was not being financed with any external debt.

### The Issue

Many of the shareholders had minority stakes and were not involved in the business. Obtaining warranty protection from 70 shareholders would be difficult and recovery in the event of a warranty claim would be problematic. The key management warrantors (7% shareholders) were only going to receive cash of £500,000 from the transaction and were rolling over their interest into the buyer.

### Impact on the Deal

The transaction was structured as an offer to shareholders. The management warrantors were willing to give warranties under a warranty deed but capped at £500,000. The investment committee decided that the private equity fund could not complete the transaction without warranty protection for at least 10% of the deal. An escrow was not viable.

### Willis Value

Willis arranged a buy-side warranty insurance policy for the buying entity to sit excess of the management warranty cap up to the 10% required protection.

## CASE STUDY: TAX INSURANCE

### The Transaction

A Guernsey property investment fund (buyer) was looking to acquire a large commercial site from a Jersey based Special Purpose Vehicle which was owned by a Jersey trust.

### The Issue

The seller would only sell shares in the special purpose vehicle rather than the asset. Whilst the buyer conducted due diligence and documentary evidence was available to support the offshore status, the buyer and their financing bank was concerned that there remained a contingent risk that the tax authorities could challenge the offshore status of the special purpose vehicle and claim substantial tax.

### Impact on the Deal

The buyer sought an indemnity from the seller for a potential challenge. The seller wanted a clean exit and to return the proceeds to the trust and beneficiaries and was unwilling to provide such indemnity. The banks financing the transaction would not provide finance to the buyer without protection.

### Willis Value

Willis arranged a bespoke tax insurance policy to indemnify the target and/or buyer in the event of a challenge and including the costs of defending such tax claim. The financing bank had their interest noted on the policy. This enabled the transaction to proceed.

## CASE STUDY: ENVIRONMENTAL INSURANCE

### The Transaction

A private equity fund was selling a multi-national industrial engineering business with six manufacturing sites and over 100 warehouse and distribution sites to a U.S. trade buyer. The buyer conducted environmental due diligence on the key manufacturing sites.

### The Issue

The management shareholders were only receiving a bonus on the exit and were therefore only willing to provide very limited warranty protection. The buyer required more extensive warranty protection for any historical environmental exposure emanating from any of the sites.

### Impact on the Deal

The buyer would not complete the transaction. An escrow would impact on the private equity fund's return on the transaction particularly as the buyer was looking for a substantial quantum held for five years.

### Willis Value

Willis arranged an environmental insurance policy for any claim arising within five years of completion to protect the buyer from liability or loss arising from a pollution event at any of the sites.

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# MERGERS & ACQUISITIONS PRODUCTS AND SERVICES

## INSURANCE DUE DILIGENCE

Our consultancy team specialises in Risk and Insurance due diligence and provides a suite of services to private equity, corporate clients and lender groups.

This includes an assessment of all insurance aspects which may impact on the M&A transaction, incorporating historical, current and future issues. Production of a succinct report detailing only aspects which will affect the transaction presented such as those:

- Issues to be addressed pre-completion
- Issues to be addressed within the 100 day plan
- Issues to be considered longer-term

Typical areas of focus include:

- Financial cost
- Current programme audit
- Programme recommendations post-completion
- Compliance with statutory insurance requirements
- Sale and purchase clause relating to insurance
- Assessment of insurability of deal-breaker issues

## TAX INSURANCE

Tax insurance has been developed in order to provide cover for the potential tax liability and the costs involved to defend a challenge by the tax authority. In the context of the transaction, policies of this nature have been used to unblock deals deadlocks and enable successful completion.

## WARRANTY AND INDEMNITY INSURANCE

Warranty insurance provides protection for losses which would fall within the scope of warranties in a share/asset purchase agreement. Cover can be arranged for a seller or buyer:

**Seller-side Policy** Designed to provide cover to a seller and responds to litigation made by a buyer. The policy includes defence and investigation costs.

**Buyer-side Policy** Structured to provide coverage for a buyer where they require an enhanced level of protection through insurance, typically because the recourse against the seller may be limited.

Willis will guide you on policy coverage and the creation of bespoke solutions.

## ENVIRONMENTAL INSURANCE

This is a specialist form of insurance providing cover against losses that could be incurred as a result of third party and regulatory action arising from pollution or contamination. It is increasingly used as an effective mechanism to transfer environmental liabilities associated with corporate and property transactions as well as ongoing operations.

Willis is a market leading broker in this field, ideally placed to provide innovative, robust and cost effective solutions.

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Willis Limited is a leading global insurance broker, developing and delivering professional insurance, reinsurance, risk management, financial and human resource consulting and actuarial services to corporations, public entities and institutions around the world.

With over 300 offices in more than 100 countries, its global team of approximately 20,000 associates serves clients in some 180 countries. Additional information on Willis may be found on [www.willis.com](http://www.willis.com)

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