MARSH

LEADERSHIP, KNOWLEDGE, SOLUTIONS...WORLDWIDE.

M&A Risk Transfer through Insurance
Transactional Risk Solutions

21 April 2016

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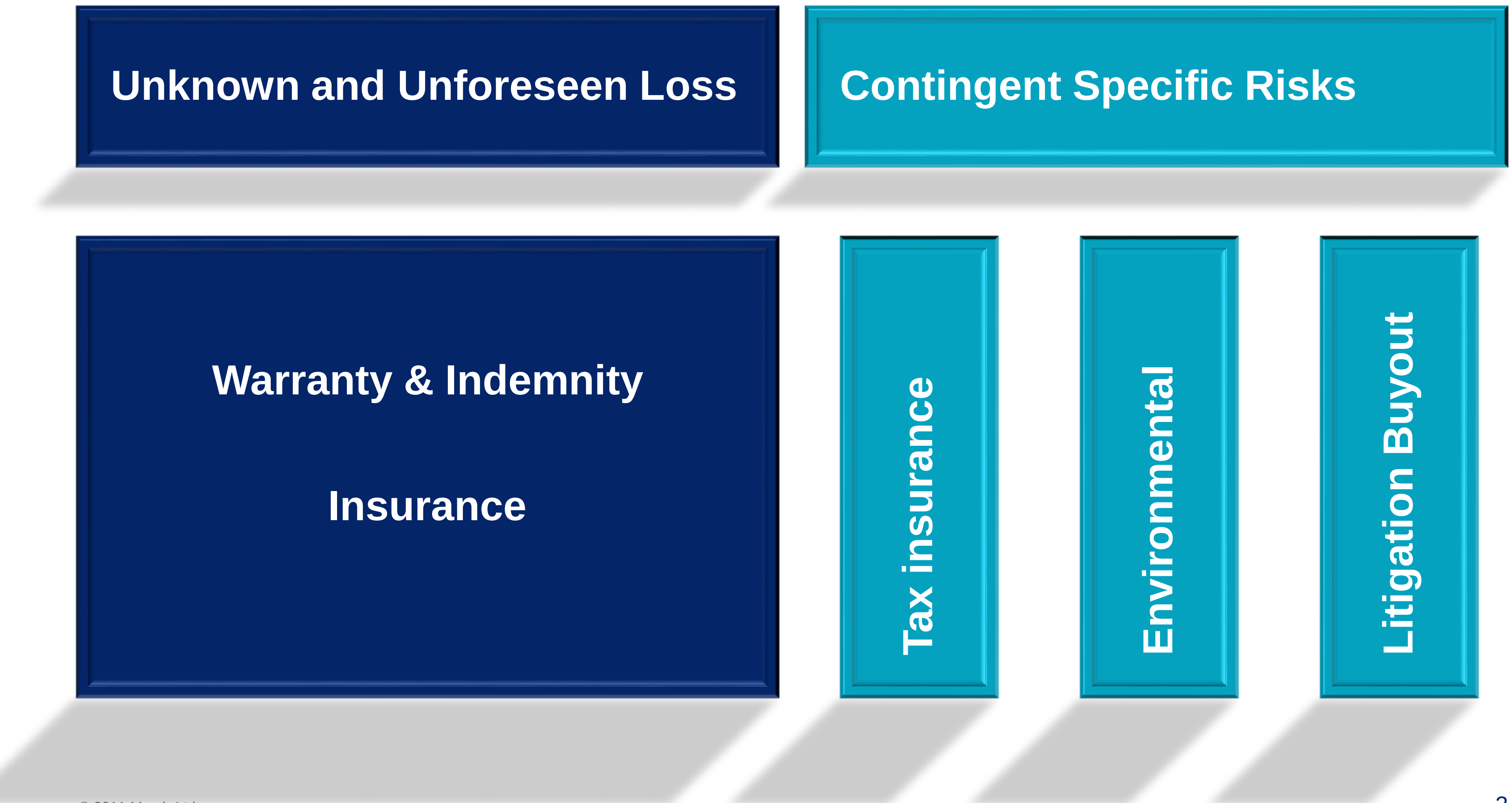
MARSH & McLENNAN COMPANIES

Transactional Risk Solutions
Drivers for use

Enhancing bidder status High/low warranty cap Maximising deal price	Optimising warranty cap	Maintaining management relations
New territory/ sector	Best practice risk management	Strength of seller's covenant
Reluctance to retain proceeds in escrow	Seller seeking clean exit	Private Equity involvement

Transactional Risk Solutions

Insurance to protect or mitigate from two types of risk typically arising from M&A transactions:



TRANSACTIONAL RISK SOLUTIONS

Warranty and Indemnity Insurance

- Unknown and Unforeseen Losses

Cover for Unknown and Unforeseen Loss
Warranty & Indemnity Insurance

Scope of Cover

Protects against liabilities arising from:

- a **breach** of the representations and warranties, or calls under the tax covenant
- referring to a fact or circumstance existing **prior to signing**
- resulting from **unknown events** at signing

Terms & Conditions

- Can be placed for either the Seller or the Buyer
- Bespoke policies tailored to transaction, designed to follow and dove-tail with the SPA or provide additional recourse
- Pricing in the UK and W. Europe is typically between 1 – 2.5%. The premium is a one-off premium due at completion
- Policy Excess (retention/attachment point) is typically 1% of Enterprise Value
- Limit of Insurance available is between $10m and up to $600m in EU
- Limitation Period up to 7 years (10 years achievable)

Warranty and Indemnity Insurance
Seller-side Policy: Application

INSURED = SELLER / WARRANTORS

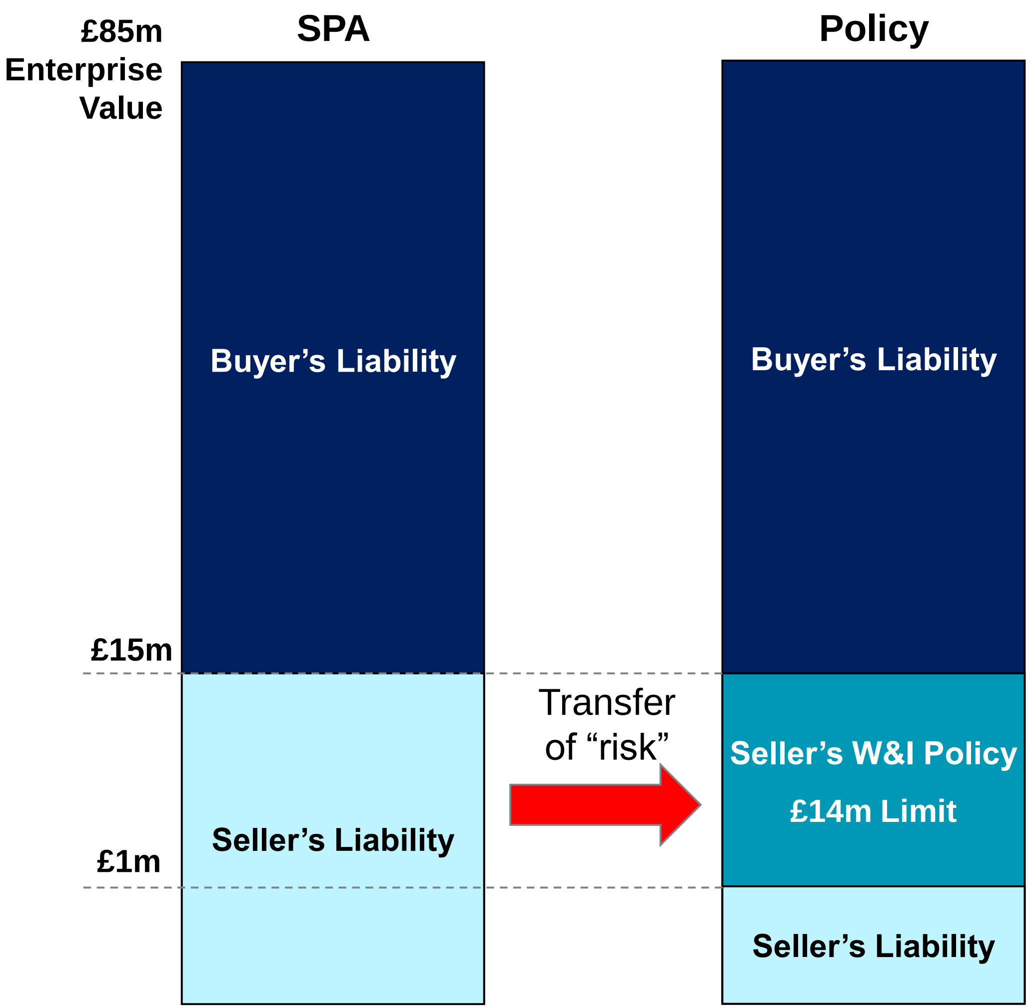
- Responds to agreed contractual liability in the acquisition agreement
- Trigger for policy responding is breach of insured warranties/call on the tax covenant

In the event of a **breach of warranty**:

BUYER → **SELLER/ WARRANTOR** → **INSURER**

- Buyer claims against Seller/Warrantors as defined in the acquisition agreement, Seller claims against policy
- Insurer and warrantors work together to defend the claim
- Key exclusion: Knowledge of warrantors

Warranty and Indemnity Insurance
Seller-side Policy: Case Study



Application & Motivations

- **Reluctance to accept a high liability cap**
- **Reluctance to retain proceeds in escrow**
- **Private equity seller**
- **Optimise transaction value**
- **CLEAN EXIT**

Warranty and Indemnity Insurance
Buyer-side Policy: Application

INSURED = BUYER

- Responds to the buyer’s losses resulting from a breach of warranty under the acquisition agreement
- Trigger for policy responding is loss suffered by the buyer as a result of a breach of insured warranties or call under the tax covenant

In the event of a **breach of warranty**:

BUYER

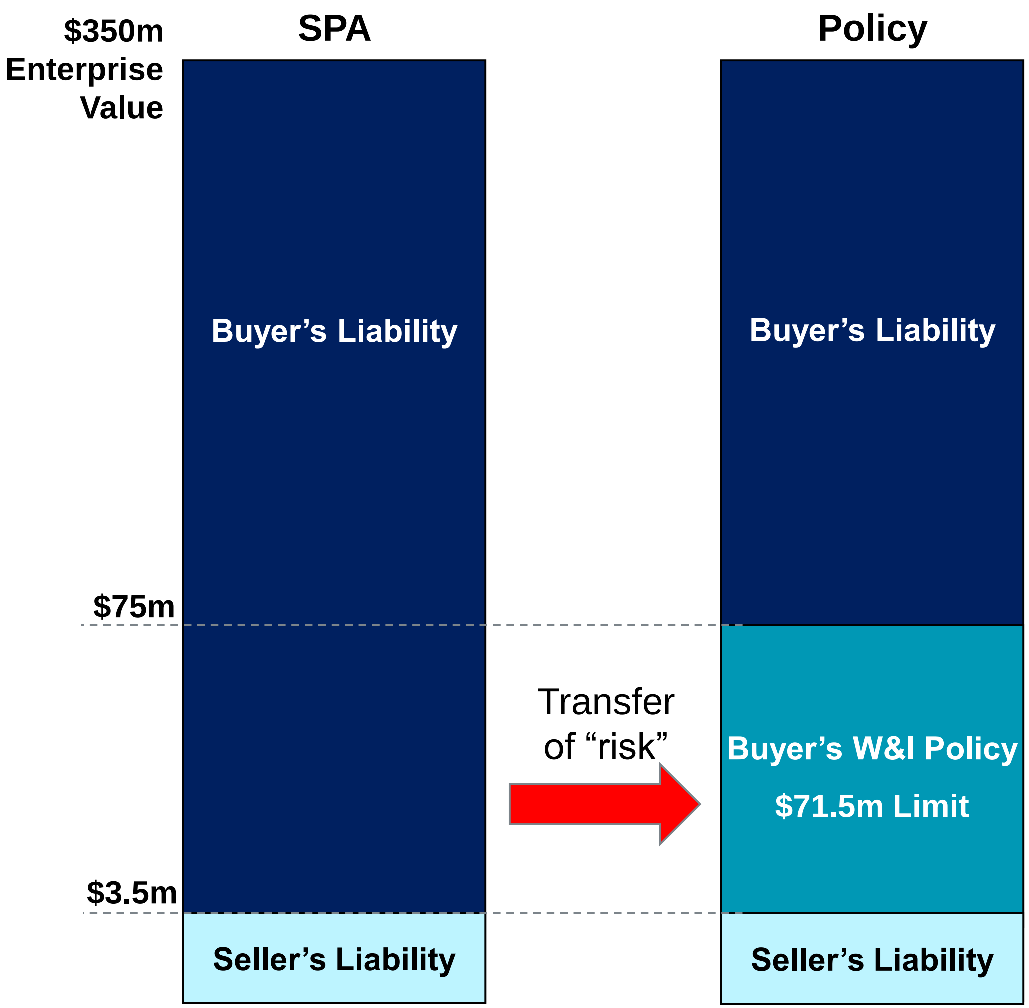
SELLER / WARRANTOR

INSURER

- Buyer suffers a loss and can claim directly against the policy; loss is paid directly to buyer.
- The buyer has full discretion as to whether they claim against the seller
- Buyer has to prove same level of loss to Insurer as they would to the seller
- Coverage for fraud of seller
- Key exclusion: Knowledge of buyer

Warranty and Indemnity Insurance

Buyer-side Policy: Case Study (Top-up Cover)



Frequently policies placed in the name of the buyer are initiated by a seller seeking a clean exit

Application & Motivations

- **Enhance bidder status**
- **Increase recourse available**
- **Extend time limitations**
- **Maintain Management relations**

TRANSACTIONAL RISK SOLUTIONS

Contingent Risk Insurance

- Identified Low Risk Items

Contingent Risk Insurance

Scope of Cover

Protects against known liabilities, can be placed for:

- The seller or buyer where the seller provides an indemnity to address the issue in the acquisition agreement
- The target (if no indemnity provided by the seller)

Pricing is typically from 2 - 20% of limit purchased and dependant on the facts and associated risk profile

Requirements

- Question of legal interpretation
- Robust opinion analysing the facts, case law and statute applicable
- Low chance of crystallisation
- Worse case scenario quantum

Cover for Unknown and Unforeseen Loss
Contingent Risk Insurance

How it works

- If the identified issue crystallises or the indemnity is triggered, the insurance responds directly to the insured
- Can be a stand-alone policy for one identified issue or part of a wider warranty and indemnity policy

Common Insurable Indemnities

1. Tax
2. Litigation Buy Out

TRANSACTIONAL RISK SOLUTIONS

Data Requirements and Process

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Process: Information Required

- Drafts of Acquisition Agreement (Typically start with 1st/2nd Buyers Draft)
- Drafts of Disclosure letter
- Drafts of Tax Covenant/Deed (if applicable)
- Accounts of the target
- Management accounts of the target (if warranted)
- Vendor due diligence (if commissioned)
- Information memorandum/management presentation (if available)
- Access to online dataroom
- Buyers due diligence reports prepared by professional third party advisers, essential to have:
  - **Legal**, **Tax**, and **Financial**.

<u>Diligence must be performed on all parts of the business where warranties are given</u>

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Process: Timeline

1. Enquiry Phase — 1 - 3 Days

Kick-off Call

- Agree NDA & HHL
- Share transaction documents and vendor DD (if available)

Marsh Review

- Review documents
- Design insurance solution
- Agree Market Strategy
- Prepare Submission to Market

2. NBI Phase — 4 – 8 Days

Go to Market

- Insurers sign NDA
- Send submission to market, with 2nd Draft of SPA and Vendor DD (if available)

NBI Report

- Marsh NBI Report sent to client presenting indications received from insurers

CLIENT ENGAGEMENT

3. Underwriting Review — 9 – 15 Days

Financial Commitments

- Chosen Underwriter's expense agreement
- Marsh's break fee

Insurers Legal Review

- Insurers & advisers to review buyers DD
- Revised SPA drafts

Underwriting call

- Questions to be provided before call
- Insurers to ask transaction specific questions

4. Policy Negotiation — 16 – 21 Days

First Policy Draft

Binding Policy

SIGNING OF TRANSACTION

NCD dated as of signing

Policy incepts simultaneously with signing

TRANSACTIONAL RISK SOLUTIONS

Market Update

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Marsh Stats

	Policies Placed 2014	Policies Placed 2015	% Increase	Total Limit Placed 2014	Total Limit Placed 2015	% Increase
Global	341	450	40%	$7.7bn	$11.2bn	45%
EMEA	148	172	16%	$3.9bn	$4.9bn	26%

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Insurers

ambridge PARTNERS

AIG

ANV

ALLIED WORLD

beazley

HCC

HUNTER·GEORGE HG & PARTNERS

IRONSHORE your safe harbour

Liberty Mutual. INSURANCE

Pembroke MANAGING AGENCY

riskpoint

Marketform

DUAL making relationships count

ZURICH

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Market Update

"increased competition means transactional risk solutions…

… cover what is required by clients"

- Broader coverage with the removal of generic exclusions
- Policies written in new jurisdictions and industries
- Merging of US and Non US style for cross border

… are regularly paying claims"

- Economic climate precipitated more claims notifications, more payments by insurers
- Increased competition means greater pressure on them to pay out

… are a cost effective option"

- W&I Premiums 1 – 2.5% in W. Europe
- Specific tax issue 2 – 20%

… now attach at low levels"

- 1% as standard
- Less than 1% possible

… fit with the transaction timeline"

- Mirrors transaction timetable / workflow
- Dedicated broking and underwriting teams, ex-M&A lawyers

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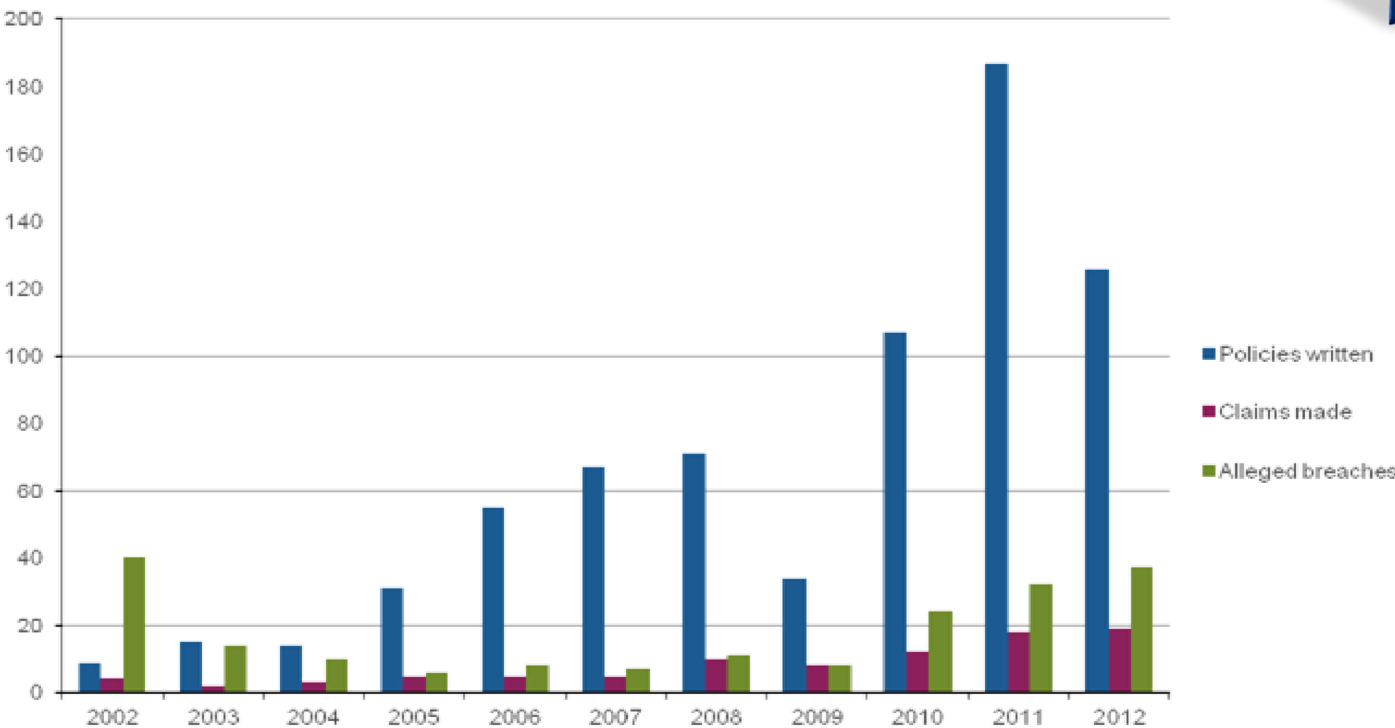
Claims

- Significant increase in claim notifications and payments
- c. 65% of all notifications are made within 12 months of the policy incepting

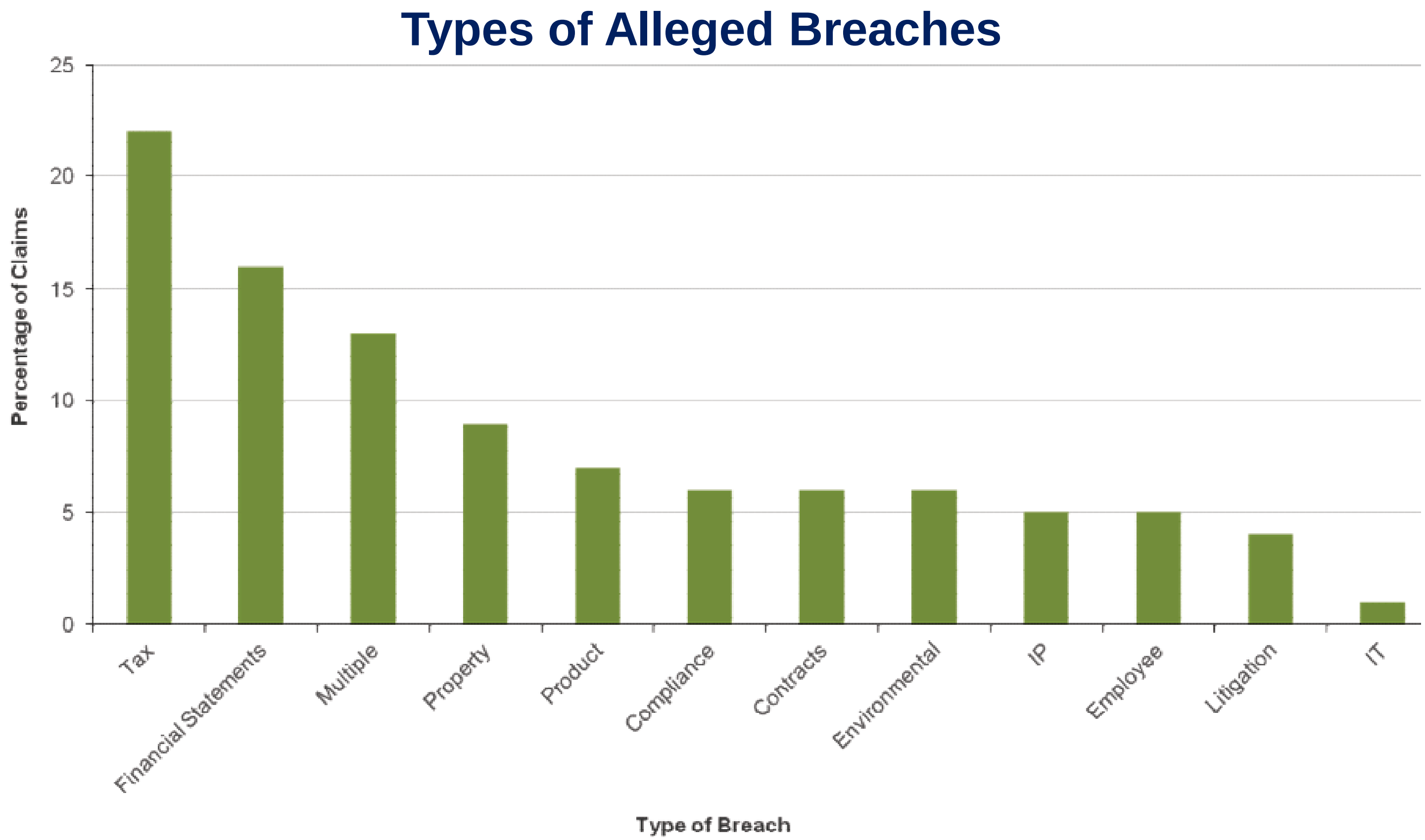
12% notification rate on all policies written in EMEA Vs. 23% for N. America

Frequency of Claims made across EMEA and APAC



Data provided by AIG Europe Limited 2015

Transactional Risk Solutions
Claims



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Marsh Private Equity and M&A Practice
Contact Details

The Transactional Risk team at Marsh has been a leading force in developing M&A risk insurance solutions in the European market over the last decade and is one of the most experienced broking teams in the market for this class of insurance.

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