



TOKIO MARINE
HCC

*To Be a **Good Company***

International Group

Transaction Risk Insurance (TRI)

A brief introduction



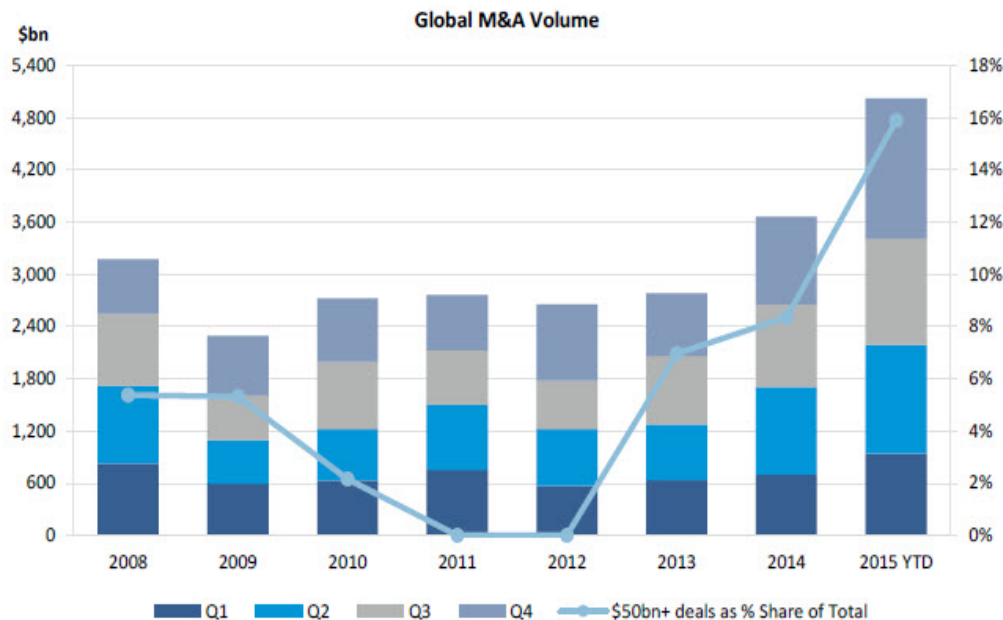
Contents

- Transaction Risks Insurance – Product and History
- TRI Solutions
- TRI Products
 - Warranty & Indemnity (W&I)
 - Tax Indemnity
 - Contingent Risk Transfer
- Underwriting Process
- Case studies
- About us
 - Meet the team

Transaction Risks Insurance – Product and History

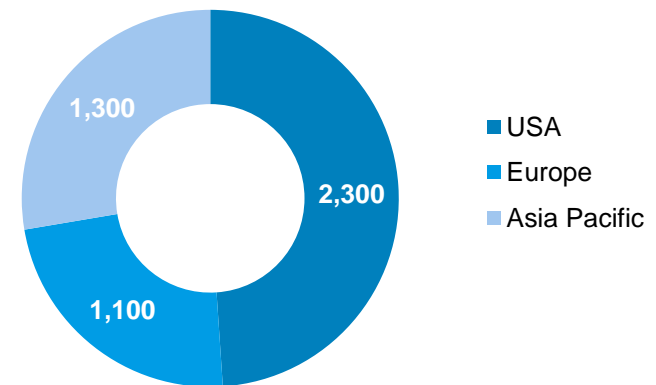
Global M&A Activity – Market Development

- 2015 strongest year on record, driven by Asia Pacific and the US
- Resilience despite global equity market rout: Q4 strongest on record
- Regional shift: Announced deals in Asia Pacific (USD 1,3tr) for the first time overtook Europe (USD 1,1tr)



1. Source: Dealogic. Deals completed in 2015

2015 Announced M&A in USD bn



2. Source: Thompson Reuters. Differences in total amount due to divergence between announced and completed M&A volume

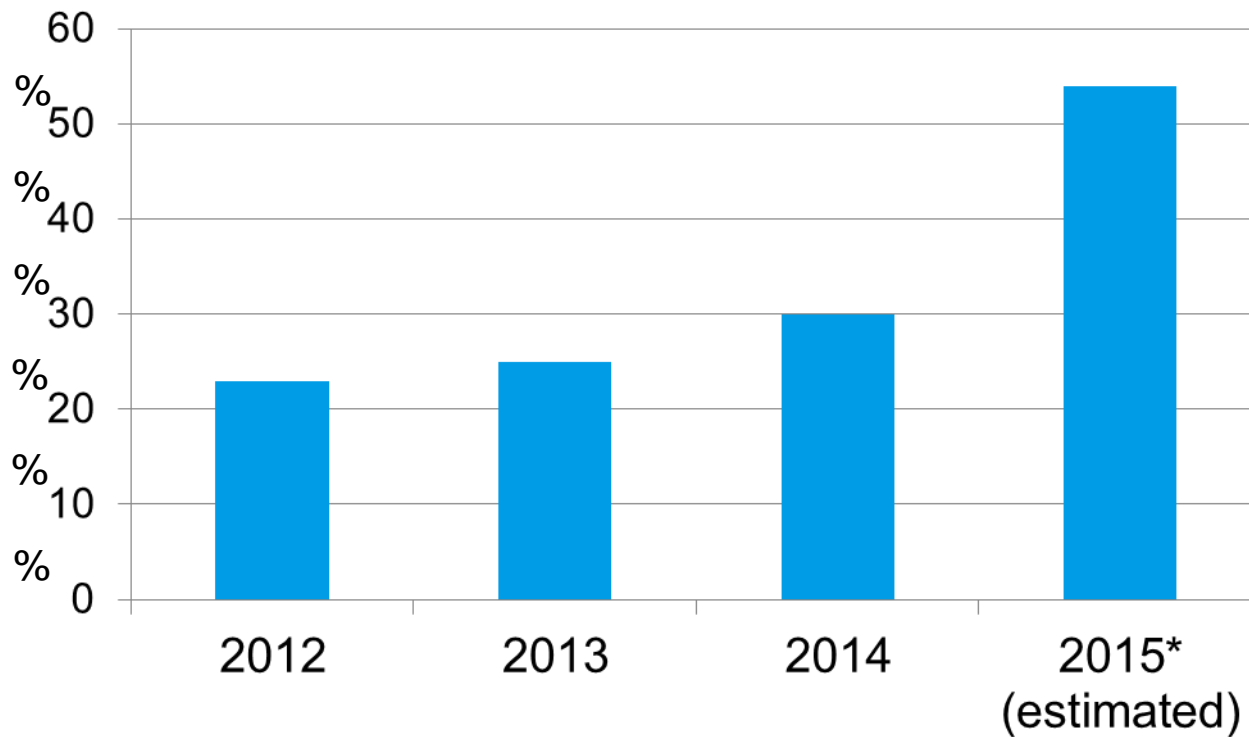
M&A Market Heating Up

- Low interest rates
- Growing consumer confidence
- Mountains of cash

Plus limited opportunities for organic growth

Transactional Insurance – Market Growth

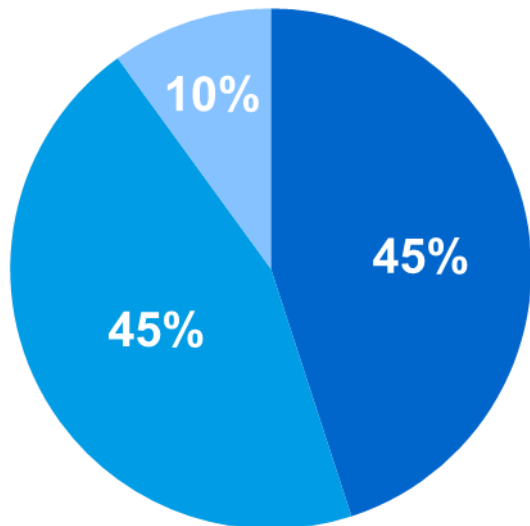
Global Market Growth: Year-on-Year % Change



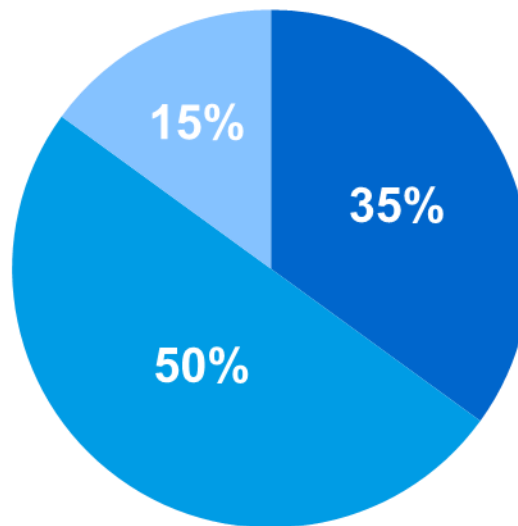
Source: Advisen Report, 2015

Global TRI market size

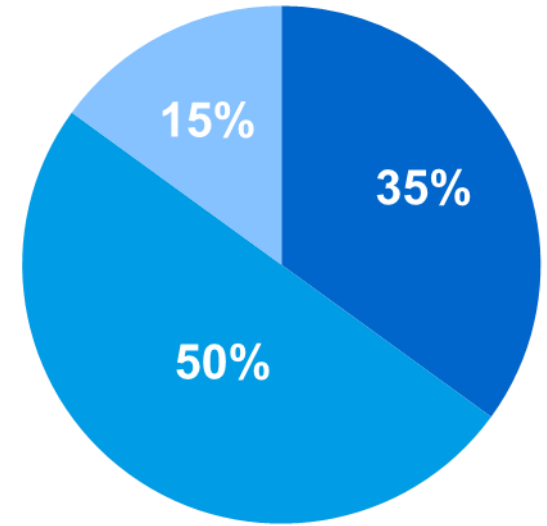
Total Policies Written
1350



Total Limits Placed
\$30Bn



Total Premiums Written
\$925M



■ USA ■ EUROPE ■ ASIA PACIFIC

Source: Advisen Report, 2015

The TRI Market

Historically:

- Few markets, lack of competition
- Originally underwritten by D&O/PI underwriters as an add-on to professional lines book
- High premiums (4 – 7% ROL)
- Very rigid coverage
- Cumbersome underwriting process
- Little to no claims experience

Current market:

- Very competitive – premiums being driven down (1 – 2% ROL)
- Dedicated teams consisting of experienced underwriters and legal/M&A professionals
- Coverage is broad / innovative
- Solution-driven flexible products
- Intensive, high-speed, UW process
- Increasing claim notifications but claim payments still low

A Smart Approach to TRI by Tokio Marine HCC

- The HCC Global team's **international profile** offers multilingual skills, local policy wordings (adapted to local language and law) and local legal knowledge - offering swift underwriting and claims handling **wherever your jurisdiction**.
- We offer **customised policies** on a deal-by-deal basis, giving you the required degree of effective and efficient coverage, within the **Tokio Marine HCC** group who has a financial strength rating of AA- by Standard & Poor's, AA- by Fitch Ratings, A1 by Moody's Investors Service and A+ by A.M. Best Company.
- **Financial capacity** of up to EUR/USD 40m, GBP 25m and AUD 48m per policy.

TRI Solutions

TRI Solutions

Corporate financial transactions expose parties to risks that
threaten the deal itself

The **Seller** wants:

- The highest sale price possible
- Immediate access to proceeds
- To mitigate exposure to ongoing risks

The **Buyer** wants:

- Their offer to be well received
- To protect their investment against unexpected financial loss

TRI Solutions

Corporate financial transactions expose parties to risks that
threaten the deal itself

Transaction Risk Insurance provides a solution

Insurance can be used as a strategic tool allowing to:

- Enhance the completion of an M&A transaction by utilising insurance capital
- Facilitate share of responsibility between the parties
- Improve pricing of a deal for one or both parties (i.e. "Auction bid")
- Enhance certainty of outcome

TRI provides a tailored alternative to more traditional security instruments, giving parties a more suitable and convenient method to seek recovery for financial loss arising in relation to a transaction. As such, TRI facilitates the deal, at times playing a strategic role in the negotiation itself.

TRI benefits

Insurance enables **buyers** to:

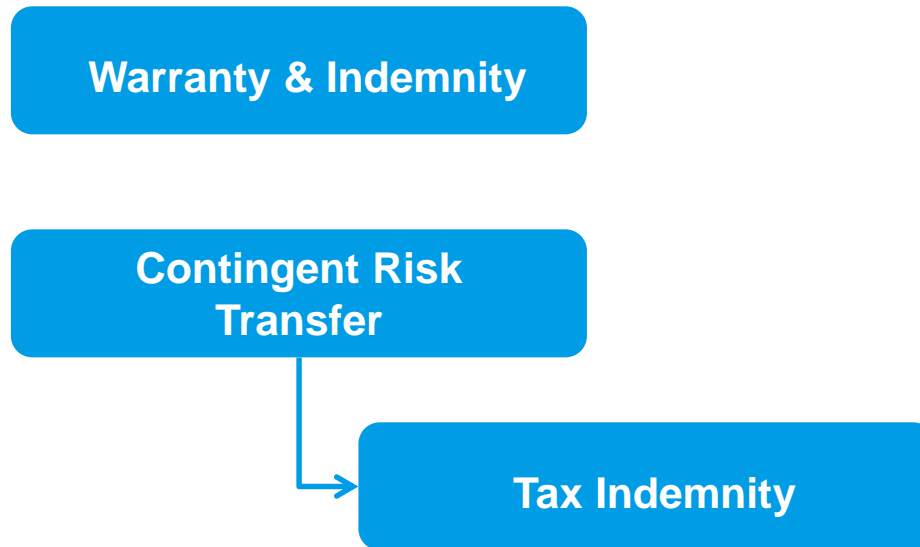
- Increased limits of recourse
- Secure the payment
- Extend the duration
- Distinguish a bid
- Protect relationships

Insurance enables **sellers** to:

- Expedite a sale
- Unlock full value
- Reduce contingent liabilities
- Exit a business cleanly
- Distribute sale proceeds
- Remove escrow account
- Protect passive sellers

TRI Products

Our line of TRI products:



A particular transaction may require just one of these covers, a number of separate policies or a combination within a tailor-made solution.

Warranty & Indemnity (W&I)

A convenient, alternative **risk transfer solution** for either buyer or seller involved in a corporate deal such as M&A; wanting coverage against the potential breach of the warranties stipulated in the corresponding documentation. W&I acts as a **deal facilitator** and a **strategic tool**, enhancing the sale offer (seller-side policy) or the favorability of the buyer's bid (buyer-side policy).

- **Objective** : Cover all reps and warranties of the SPA* in a fair negotiation and thorough disclosure process
- **Insures**: Financial loss arising out of a breach of the warranties contained in the contractual document (such as an SPA):

Seller-side - liability to indemnify the buyer for his loss

Buyer-side - the direct loss suffered by the buyer

* Sale & Purchase Agreement (SPA)

Exclusions / ‘possible areas of concern’

Careful negotiation by vendor:

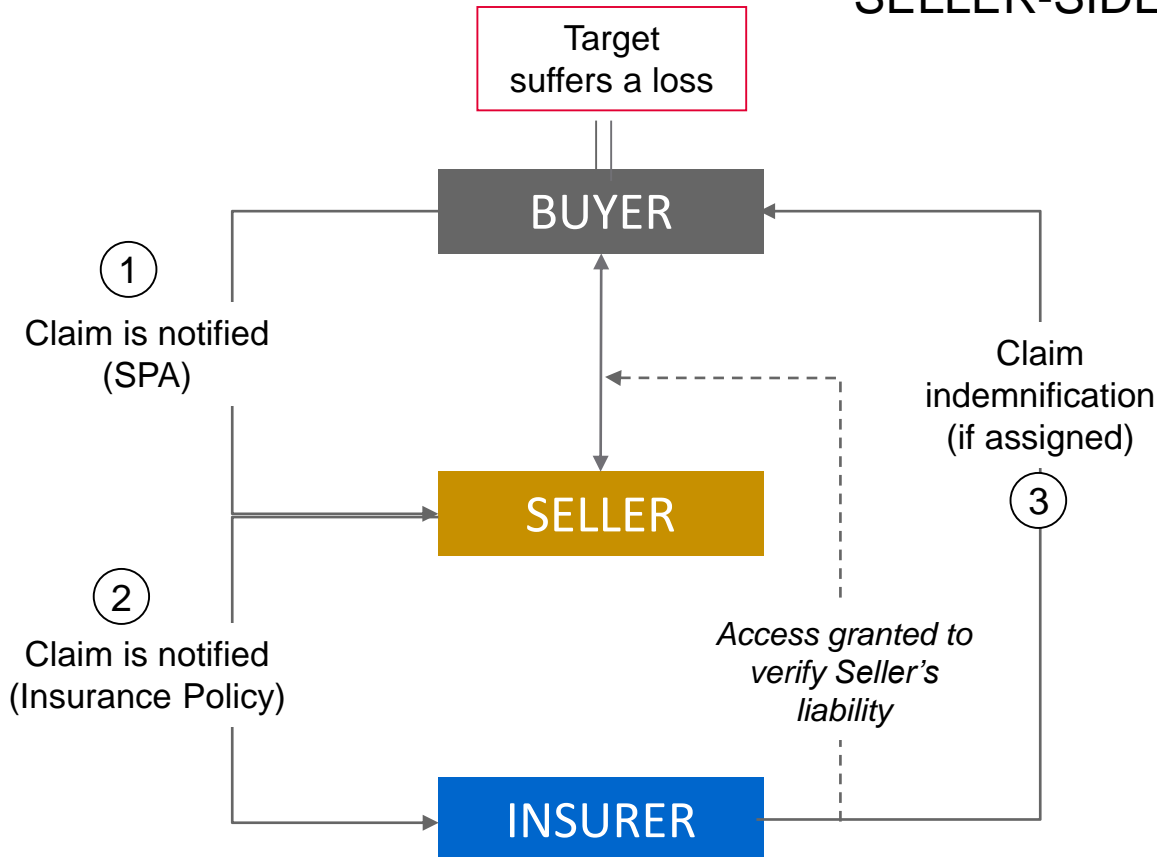
- “Knowledge” by the insured prior closing / matters stated in the disclosure letter/schedules to the SPA (i.e. matters identified under the due diligence reports)
- Forward looking warranties, post closing price adjustments
- Indirect or consequential damages (loss of profit/loss of opportunity)
- Retroactive change in legislation, change in accounting methods post completion

Insurance market specifics:

- Adequacy of pension fund
- Fines and penalties (not insurable by law)
- Transfer pricing
- Secondary Tax Liabilities
- Environment: Conformity reps are covered; existing pollution is excluded but can be covered through specific solution
- Fraud and dishonesty

W&I Insurance - How does it work?

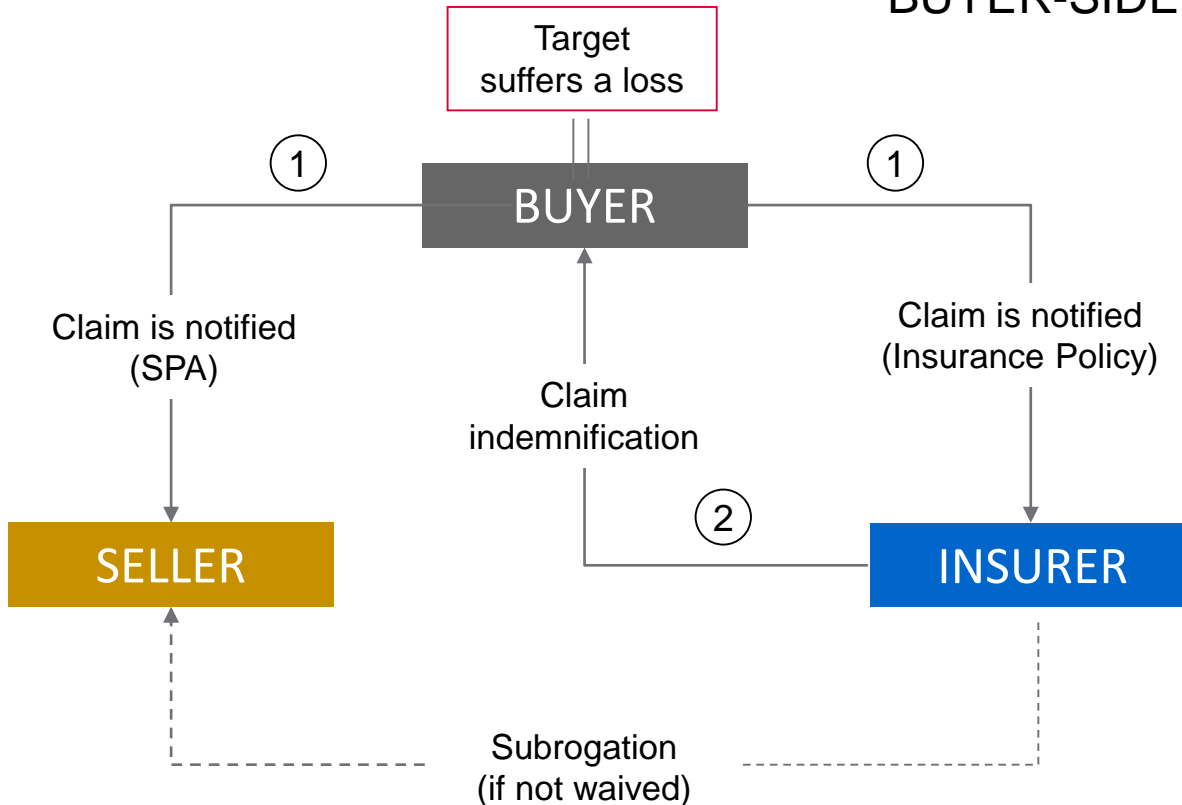
SELLER-SIDE POLICY – path of indemnity



- 'Third-party' insurance
- Insurance claims are paid once the Seller's liability towards the Buyer is verified in the SPA.
- Fraud /gross negligence committed by the Seller is not covered.

W&I Insurance - How does it work?

BUYER-SIDE POLICY – path of indemnity



- 'First-party' insurance
- Insurer offers a 'pre-financing' to the buyer v/s Seller
- The Insured (the Buyer) is unaffected by the Seller's fraud /gross negligence
- The extent of recourse for the Insurer: depends on the package. Often limited to fraud committed by the seller
- Purchaser takes control of / drives insurance process
- Underpins the Purchaser's Due Diligence
- Not a replacement for a properly negotiated agreement

Key Parameters of W&I Insurance

- Limit: Case by case basis – to be tailored to the deal characteristics (minimum approx. 1.5-2 M€)
- Deductible: Case by case basis - generally 1-2% of the Enterprise Value (deductible vs. threshold)
- Policy period: To follow the SPA time limitation – generally maximum 7 years, can provide additional time coverage (buyer-side)
- Premium: 1%-2% of the Insurance Limit – Unique premium, payable at inception
- Time schedule: 2 to 3 days to provide a Non Binding Indication, approx. 8-10 workings days to get a binding quote

Tax Indemnity Insurance

An effective risk transfer solution relating to any tax uncertainty surrounding a corporate transaction, such as M&A, investment or other; by covering the potential liabilities should the tax treatment employed be challenged by the relevant authorities. Contingent tax exposure may hinder the deal itself, and as such this insurance product acts as a deal facilitator.

Insures:

The company subject to the potential tax liability, the buyer, or in some cases the seller where an indemnity has been given; for the actual tax liability determined by the relevant tax authority arising from a set of circumstances previously specified. Coverage can include costs and expenses incurred in defending the claim.

Contingent Risk Transfer Insurance

Any other potential and known risks in the transaction, investment or other, unrelated to tax ramifications or the relevant contractual documentation, are in themselves another factor threatening deal completion. This insurance product offers a further risk transfer solution, bridging the gap between deal parties, again acting as a deal facilitator.

Insures:

The company subject to the contingent liability, the buyer, or in some cases the seller where an indemnity has been given; for a specified set of circumstances identified in the course of a corporate transaction as giving rise to a potential liability. Related costs and expenses are covered too.

Underwriting Process

Underwriting process

Process Structure

Requirements

Key Actions

day 1

Confidentiality and hold harmless

Preliminary UW review

Non-binding indication

Full UW review and external (if req)

Quotation

Binding policy

SPA + Attachments
Info Memorandum

Data Room Access
Due Diligence Reports

First indication of cover
position and pricing

Policy Draft negotiation
Underwriting call

Warranty Spreadsheet

Issue Final Policy

day 7-14

Data Request

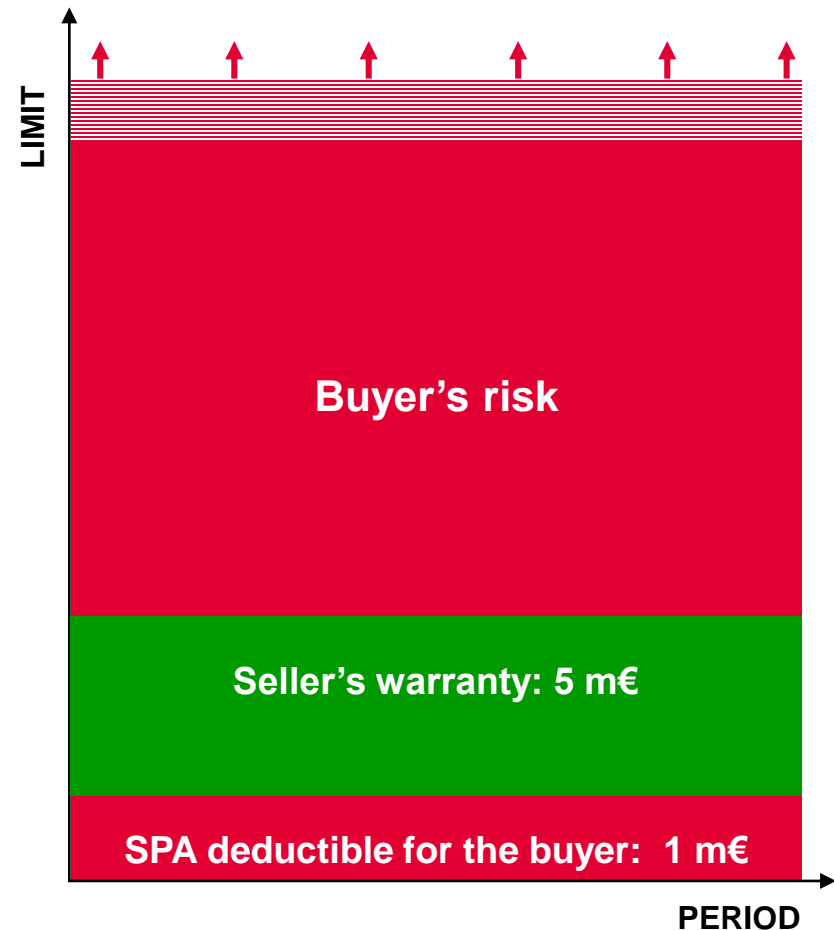
- Broker submission memo
- Share Purchase Agreement (SPA)
- Information memorandum/Vendor Due Diligence reports (if available)
- Disclosure Letter, if applicable, or exhibits to the SPA
- Tax Deed, if applicable
- Due Diligence request list / responses
- Data room index
- Buyer Due Diligence reports including Legal, Tax & Financial, Environmental, Intellectual Property... if writing a buyer-side policy
- Accounts for last 3 years
- Interim Accounts

Case studies

Top-up cover 1/2

Without any insurance solution in place

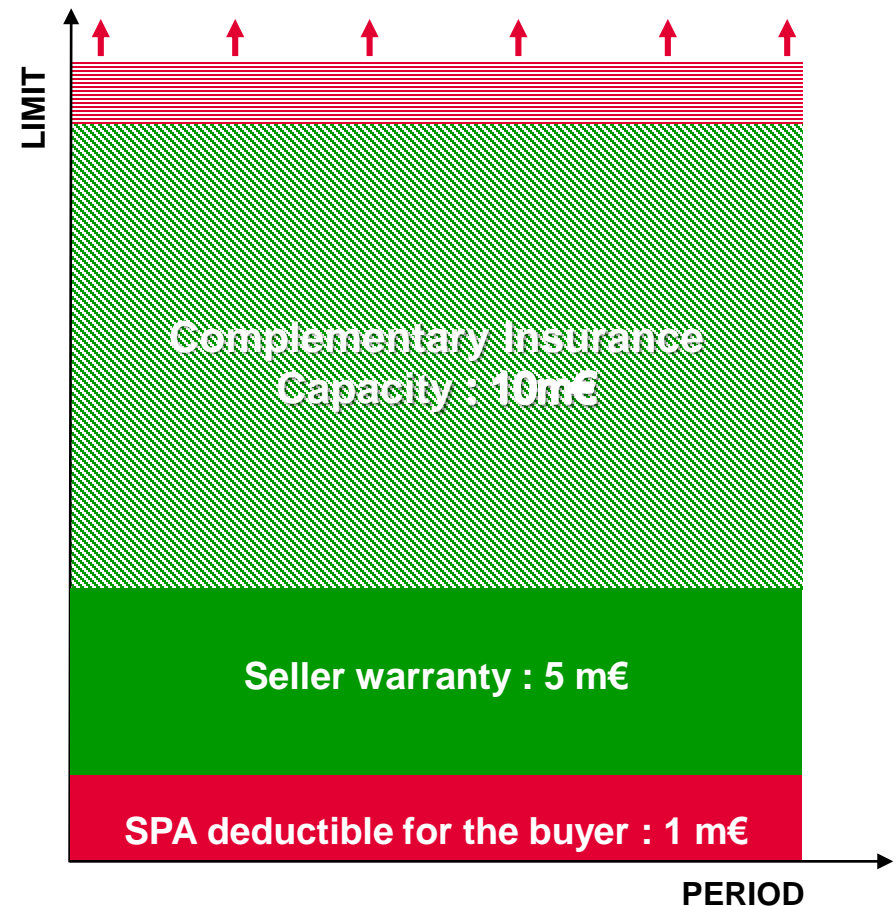
- An industrial group is engaged in a large divestiture program
- Among the objectives of the board are the reduction of debt and limitation of off balance sheet commitments
- On a 100 M€ transaction value, the seller wants to limit its liability to 5 M€ while the buyer is requiring 15% of the purchase price i.e. 15 M€



Top-up cover 2/2

With W&I insurance in place

- The buyer accepts to negotiate a limited warranty up to 5 M€
- In parallel, the buyer takes out an insurance policy with a limit of 10 M€ : in case of a breach, the insurer will indemnify the financial consequences in excess of 5 M€ up to its limit
- The buyer gets full protection
- The seller has been able to limit its off balance sheet commitments with no impact on the purchase price



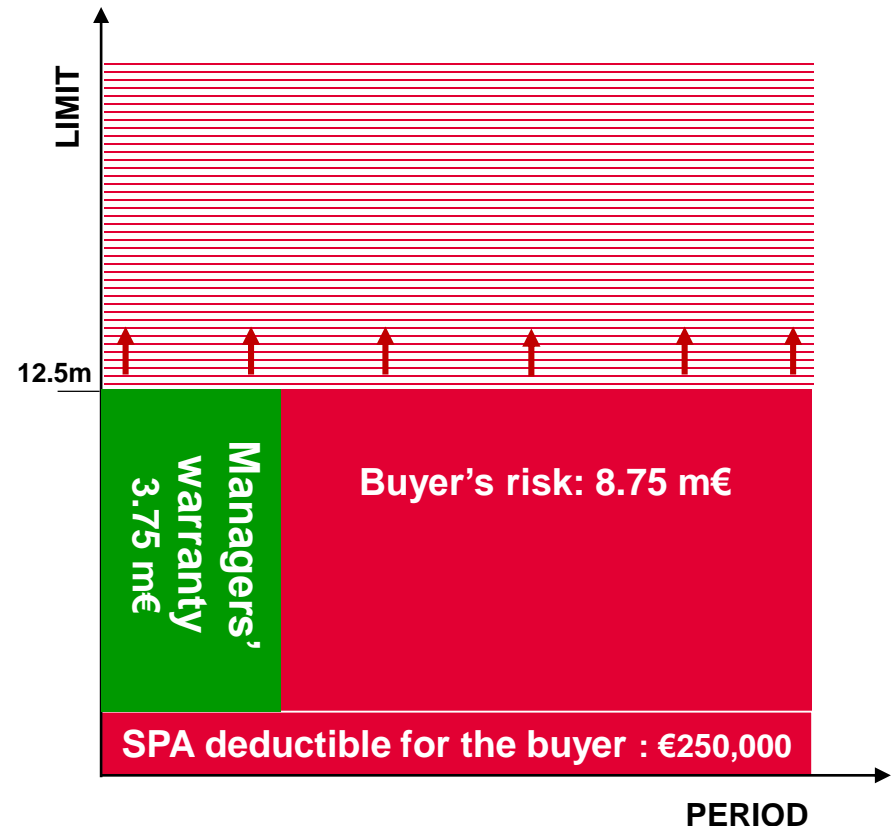
Divestiture of a portfolio company by a Private Equity Seller (1/3)

Without the insurance solution

- A target owned by a PE fund and managers was to be divested by the PE (EV € 25m)

Issues at stake:

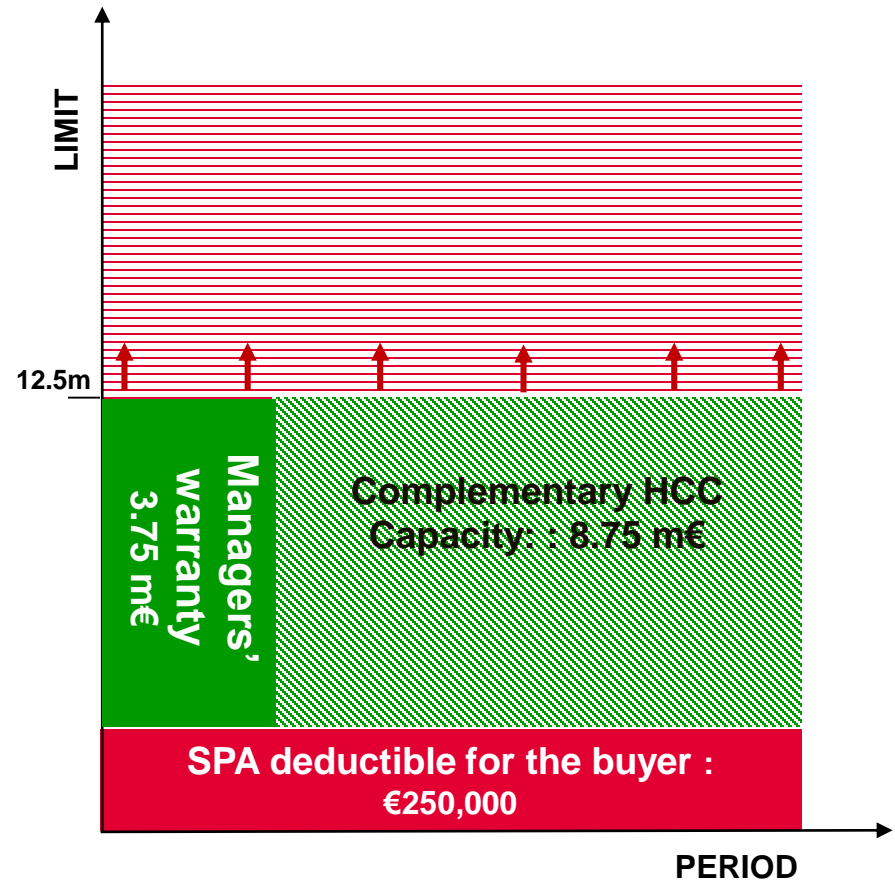
- Limited number of Warrantors vs. number of Sellers/shareholders
- The fund was to be closed in the coming months
- The PE seller did not want to give any warranties, managers had agreed to give warranties up to their share percentage with the target company (15%)
- Following an auction process the best offer required a limit of warranties up to 50% of the purchase price



Divestiture of a portfolio company by a Private Equity Seller (2/3)

With the insurance solution in place

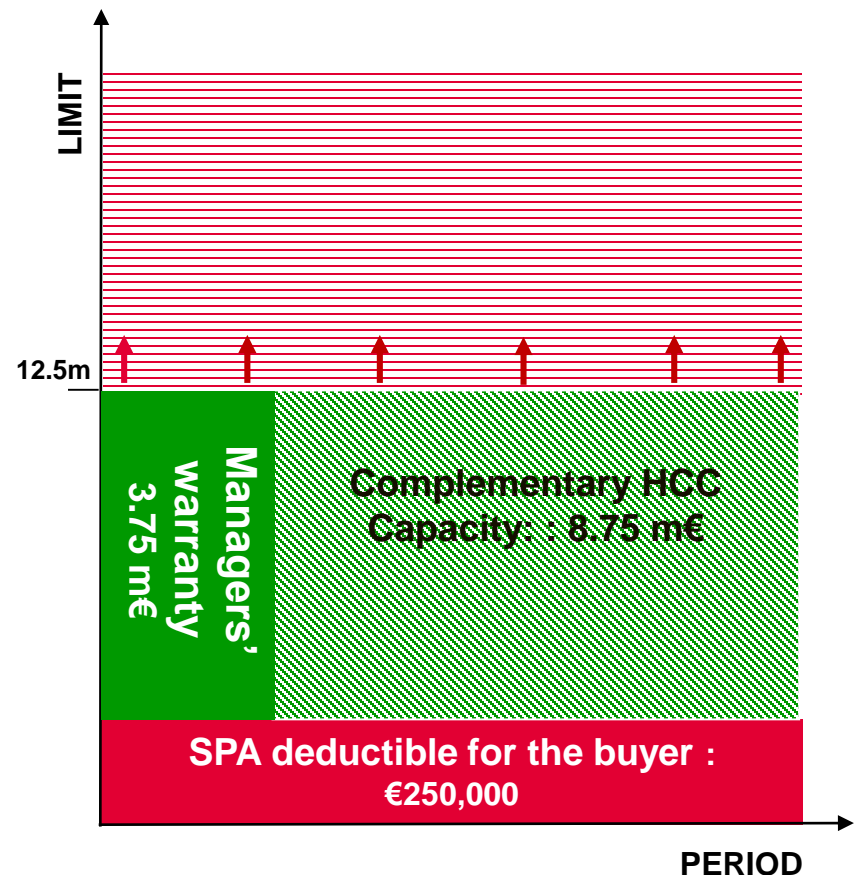
- The seller proposed to the buyer to take out a W&I insurance policy
- HCC would indemnify in case of a breach of resp and warranties on a 'quota-share basis' with management (additional limit up to 35% of the purchase price)



Divestiture of a portfolio company by a Private Equity Seller (3/3)

Benefits from the insurance

- The policy was structured to match the deductible provided under the SPA
- The policy was structured on a non-recourse basis against the seller
- No price adjustment linked to a low limit of warranty
- The buyer was satisfied by HCC's financial rating and did not require an escrow account anymore
- The PE Seller did not retain any liability following completion and was able to close the fund and distribute the proceeds accordingly



Sale by a debt-burdened Seller

Situation

- A company suffering from financial difficulties is divesting part of its activities
- A 15 M€ W&I is required. Due to the seller's weak financial position, the buyer wants to secure the warranty and requires an escrow account
- The seller is hoping to receive as much in sale proceeds as possible

Solution

- The seller proposes to the buyer to take out a W&I insurance policy: the insurer will indemnify in case of a breach
- The buyer is satisfied by the insurer's financial rating and does not require an escrow account anymore
- The seller receives 100% of the purchase price

Clean exit

- W&I insurance can provide for a “clean exit” on the seller side while enabling sufficient protection on the buyer-side
 - The policy will be structured so that the policy attachment point matches the deductible provided for under the SPA
 - The policy is structured on a non-recourse basis against the seller
 - No price adjustment linked to a low limit of warranty
 - Seller retains no liability following the closing
- Assumptions
 - Involvement of insurers at an early stage in the process
 - Attachment point in line with insurance market requirements
 - Thorough negotiation process associated with appropriate disclosure process

About Us

Meet The Team

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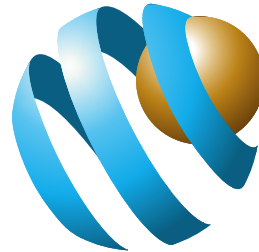
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