Aon M&A Solutions
Transaction Liability Solutions

AON

Risk Intelligence 2012: How to reliably mitigate transaction risk and secure clean exits

Preface

This risk intelligence white paper is part of a series of publications from Aon M&A Solutions. The series focuses on risk management and mitigation and is specifically created to help:

- Chief executives and corporate management board members pursuing growth strategies through M&A, or divesting
- Corporate tax managers, development officers and legal counsel responsible for planning, overseeing and / or delivering planned value from M&A
- Chief executive and chief financial officers of private-equity backed portfolio companies
- Private equity executives, portfolio managers and risk officers
- Corporate finance, accounting, tax and legal advisors servicing corporate and private equity clients

The concepts and content build on fact sheets, case studies and subsequent white papers that can be found at **www.aonamas.com** – where material can be downloaded free of charge.

Risk transfer can be an integral part of a successful transaction. Attitudes to transaction risk are changing, especially because of the cross-border nature of modern day M&A activity, and the changing nature of tax and regulation drivers. These have increased transaction risk even in the more mature markets of Western Europe and considerably more within markets such as Asia. We therefore encourage you to share this white paper with board members, investment and tax colleagues, and senior financial colleagues within your company, as well as appointed professional advisors.

The issues outlined in this white paper serve as a starting point for addressing transaction risk: buyouts, acquisitions or divestitures. For more information, please contact a member of the European, US or Asia transaction liability team or your usual Aon M&A Solutions representative (see page 18).

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Introduction

Private equity-led investments and most corporate M&A activity is designed to generate significant added value. While the value propositions behind each transaction will always be unique, common drivers include sector consolidation, regional expansion, extension of a product or service, acquisition of new skills or technology and strategic bolt-ons. However, regardless of the merits of a stated transaction, the fact remains that relatively few mega mergers are financially successful and less half of M&A transactions deliver the value that investors and analysts expected.* Why? There are no easy answers – price, poor planning, inadequate post merger integration and missed opportunities all play a part.

At the centre of nearly every M&A transaction is planned cash generation, which remains the ultimate objective for buyers and sellers. Realising intended value creation requires careful consideration of all issues which could have a drag effect on earnings, together with how a business is structured and operated because of the possibility of incurring liabilities down the line. The ability for a company to realise planned cash generation, transfer risk off the balance sheet and manage 'long tail' liabilities is key to maximizing shareholder value.

For almost a decade, corporate M&A executives and private equity dealmakers have included insurance capital in their arsenal of tools to get deals done. However, the nature of these solutions and more importantly how they are employed, has dramatically changed in the past few years. These solutions, known as transaction liability insurance, increase the degrees of freedom buyers and sellers have in negotiating through issues that threaten or hamper a deal, frequently resulting in superior deal economics and providing parties with an alternative to escrow. With hundreds of millions of insurance capacity currently available to cover transactional liabilities, transactional liability insurance (TL) is increasingly used around the world by savvy parties to economically close their deals and more importantly de-risk them. Far more than an afterthought to overcome a deal obstacle, TL often now shapes the deal structure.

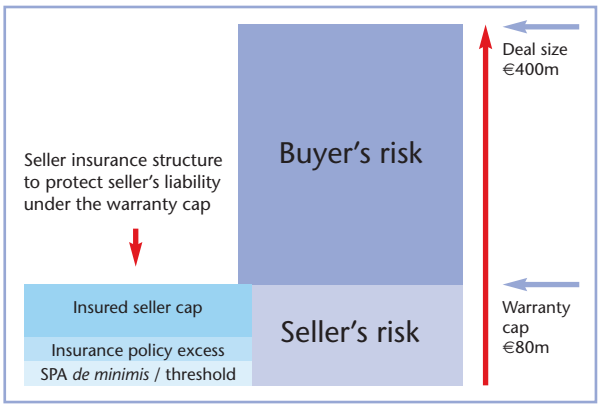
* "Solving the merger mystery: Maximizing the play off of mergers and acquisitions" Deloitte

What is transaction liability insurance?

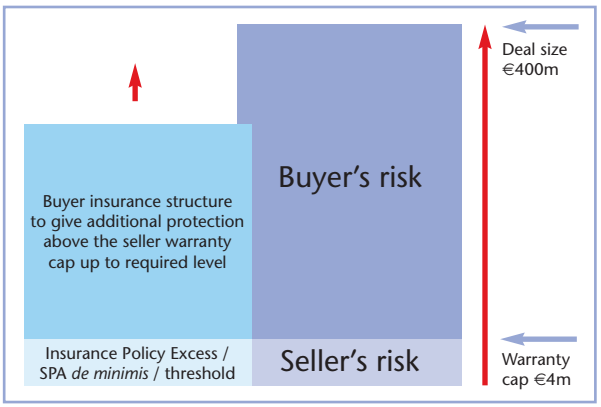
Transaction liability insurance converts specific known and unknown future liabilities associated with your transaction into a one-off premium that transfers the risk to the insurance market. Risks are ring-fenced and can then be removed from a balance sheet for the lifetime of the Sale and Purchase Agreement (up to seven years).

The following example illustrates the principle behind transferring risk.

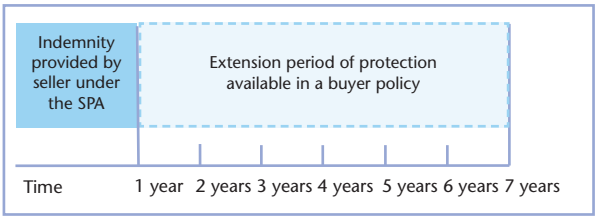
Seller example



Buyer example (financial cap)



Buyer example (time)



A seller policy (for divestments) can indemnify the seller for losses resulting from claims made by the buyer for breaches of reps & warranties, tax, environmental and legal indemnities given in the sale and purchase agreement. A buyer policy can indemnify buyers for losses caused by breaches of warranties and other liabilities (generally unknown or unforseen but sometimes known or identified low risk items) given by the seller in the sale and purchase agreement but capped on either a financial or timing basis (or both) that is unacceptable to the buyer. The buyer policy allows the buyer to enhance the indemnification available from the seller and claim directly from the insurer.

What risks can be mitigated?

Transaction liability solutions are not generally restricted by region, sector, or deal value below GBP2 billion transaction value. Solutions are bespoke to each transaction and often creative in nature. However, risks that buyers or sellers most frequently want to address include:

Warranties and indemnities (or representations and warranties)	Protects the insured against financial losses resulting from unknown breaches of warranties and indemnities which are discovered post-close (or after signing if structured accordingly)
Tax indemnity	Protects the insured from adverse ruling by tax authorities regarding intended tax treatment of a transaction or issue. Can include existing and future tax liability
Litigation buy-out / contingent liability	Provides a 'ring fence' around existing litigation to protect the insured against catastrophic loss that exceeds the expected amount. Can also be employed to 'ring-fence' potential legal liability
Environmental cap	Provides 'stop loss' protection for the insured by capping the expected costs for existing clean-up. Cover is typically designed to include environmental-related and associated legal costs that would otherwise hit the balance sheet
Additional (bespoke) risk transfer	'One off' situations for which traditional insurance is unavailable. This can target specific known and unknown liabilities including successor liability, IP issues, fraudulent conveyance or risks associated with an emerging market or joint venture partner

Warranties and indemnity (or representations and warranties) policies have become the most commonly used among private equity fund managers with some routinely incorporating policies into every transaction. Policies are used to lock-in economic benefits and as an alternative to escrow. Among corporate executives, tax indemnity solutions are most in demand in transactional and non-transactional settings. In M&A deals, a policy can insure specific tax issues, as well as the tax structure contemplated (such as tax free spin-offs). Policies can be combined to wrap every insurable tax contingency in a transaction. Contingent liability solutions and environmental solutions can also be used to address known risks, such as existing litigation or contamination sites, where the scope of the liability is in dispute.

For effective risk transfer, all policies should be tailored to the specific risks of each individual transaction. This accomplishes the goals of both parties, ideally within a collaborative process.

The evolution of transaction liability solutions and pricing in M&A deals

Insurance-backed transaction risk mitigation has been in existence since the late 1990s. Today, the market is dynamic and constantly developing as it responds to clients' needs, competition and underwriting results. While the general intent of the coverage remains the same there have been notable changes to the sophistication of risk transfer, the process involved (including due diligence, benchmarking, modeling, policy wording and acceptance by underwriters) and clients' comfort in how solutions are applied.

As the demand for transaction liability solutions increased, insurers focused on streamlining the underwriting process and expanding operations to accommodate clients' needs in terms of the coverage and timing to complete placements. Insurers have hired former M&A and tax lawyers to underwrite these risks on a 'deal time' basis. As a result of their increased comfort with the risks and profitable loss ratios, underwriting flexibility increased with tax opinion, environmental and legal 'tail' liabilities are now routinely ring-fenced to provide complete solutions for buyers or sellers.

The capacity for risk transfer solutions has expanded in quantity and geography. Since mid-2007, several insurance companies have followed the example of others by introducing warranty and indemnity products. These included Lloyd's capacity, Zurich, HCC and AWAC. Some carriers have 'on the ground' capabilities across the globe, encompassing the Americas, Europe and Asia Pacific. Others write policies in a number of jurisdictions from London.

As expected, the entrance of new insurers has created a more competitive environment benefiting buyers of transaction liability insurance with a notable reduction in insurance premium cost. In EMEA and Asia, warranties and indemnity policies can range between 0.75% - 2%. US pricing for 'standard warranties and indemnities coverage' ranges from a 2.5% - 3.5% rate on liability limit. The single up-front premium for a USD10 million policy would now be USD250,000 - 350,000 before tax. This is a 25% reduction from two years ago.

From the insureds' perspective, a number of factors have increased the reliance on these solutions. In Australasia for example, it is commonplace for sellers not to offer indemnities for their representations. Consequently, sellers have incorporated insurance into their vendor package to manage buyers' expectations. It is a phenomenon that is now evident in EMEA, the US and the Middle East - with some sellers exiting with as little as 1-2% of deal value allocated to indemnification.

The decrease in pricing and the streamlined placement process have dispelled historic impressions that insurance-backed risk transfer solutions are too costly and time-consuming. In addition, the sophistication of risk transfer and the capacity provided by insurance underwriters, has enabled insurers to meet the increasing demands of tax managers.

The size of the transaction also plays into the decision to use transaction liability solutions. Transaction values of GBP2 billion and lower are appropriate candidates for coverage given the capacity that is currently available in the marketplace for any one deal (around GBP200 million).

When are insurance-backed risk transfer solutions relevant?

The table below depicts various situations where insurance has been most commonly used to address obstacles in a transaction. In all situations, either the buyer or the seller can be the insured (although in many instances, it makes the most sense to insure a buyer) with costs shared by the parties and factored into the transaction. No one trigger for risk transfer will be the same because it will take on a different significance from the buyer or seller's perspective.

Deal issue	When to think about applying a solution
Where a buyer does not want to escrow funds (typically when a private equity firm wants to return all proceeds to its investors)	Any stage of due diligence
In investment or divestment situations involving corporates where private equity firms find themselves needing to accomodate for higher indemnity caps than private equity firms are willing to provide	Early and pre-deal due diligence
Where the seller will not, or cannot provide sufficient indemnity in terms of amount, scope or time (divestment by a corporate or private equity firm looking for clean exit, insolvency, wind-down, public to private transactions, distressed divestment by temporary bank owner)	Pre-deal due diligence, bid phase, final due-diligence. Particularly useful if the seller anticipates no indemnity and works to incorporate risk transfer into the vendor due diligence anticipating a buyer's needs, ring-fencing value and making the asset a more attractive standalone carve-out
Management buy-out where management will remain post-close. Easier solution to have recourse to insurance for breaches rather than seeking redress from the NEWCO's management team	Pre-deal due diligence, bid phase, final due diligence or post close
Competitive or auction process: buyers can use insurance to enhance or differentiate their bid by removing the need for seller indemnities post-close and avoid 'price chipping'	Early due diligence stage to get to exclusivity and knock-out other bids
Addressing contingent liabilities where parties cannot agree to the probability or severity of a potential liability. Enhances certainty and removes a stumbling block to negotiation	Pre-deal if seller expects a particular issue to become a problem. Bid and final due diligence phases if issues arise unexpectedly – effectively moving the issue to the edge of the deal table and facilitating negotiations

Deal issue	When to think about applying a solution
Facilitating cross-border transactions: bridging gaps where significant cultural differences between the parties exist (transaction within an emerging market or where geographical, political, cultural or regulatory approaches differ as to how best to address a liability, including whether it's a liability at all)	At any time during early due diligence or later stage due diligence to bridge the gap between buyer and seller over financial, environmental or legal issues
In situations where there is extraordinary scrutiny or the need for unparalleled comfort to proceed (usually on the part of a corporate management board venturing into M&A or a new market, or because the asset is in bank control and / or in administration or because a lender or financial sponsor requires very particular financial protection - up to 100% of deal value for example)	Any stage of the due diligence

Probable return on investment

When a seller is asked to provide warranties or representations, the buyer also wants to secure its recourse. Consequently, escrows or bank guarantees are often demanded but can be unpopular with sellers and typically only survive for 12 – 24 months. Insurance can be considered as an alternative instrument to an escrow but its incorporation in to a deal structure comes down to cost.

The cost of running an escrow is difficult to quantify accurately, and will be different in every case so care needs to be taken when making comparisons. For instance the cost of capital will depend on how long the escrow is in place and who is seeking the capital. Banks might access at 7%, private equity firms at 8% but a small or medium corporate with a financial sponsor may access at a higher rate. However, an insurance policy employing insurance capital can cost between less than 1% and 3% and can provide recourse to the buyer for up to seven years. This can begin to look attractive especially since it does include risk transfer, whereas any claim on an escrow further impairs returns.

Some key benefits to be expected from employing insurance capital within corporate M&A and private equity deal structures:

Both parties

- Enhanced deal economics
- Clean, swift, mutually collaborative deal negotiation process
- Avoid escrow disputes

Buyers

- Improved deal and capital structure
- Greater financial certainty
- Escrow is enhanced beyond seller cap
- Less expensive than escrow
- Escrow not a viable option in much of Australasia or in many secondary buyout situations
- Strategic tool to differentiate a bid
- Appease a corporate management board, lender or an analyst
- Addresses tax uncertainty and lock-in planned benefits
- Reliable mitigation of litigation, environmental and other liabilities a key component in turn-up or restructuring investments
- Can be 'flipped' for future buyers (within seven years)
- Can de-risk a portfolio company for the lifetime of the private equity investment (assumes less than seven years)

Sellers

- Integral to vendor due diligence and disposal strategy
- If structured properly, will maximise the exit multiple and facilitate a sale
- Enables a clean exit and accelerates distribution of deal proceeds

Case studies

The following case studies are examples of the creative and bespoke risk transfer solutions engineered to enable transactions to complete.

1. No seller indemnity: Final asset in the fund. Auction process initiated by seller (warranty and indemnity, tax and environmental solution)

- A US private equity owner was preparing to sell a USD400 million manufacturing company through an auction process
- The target was the last of 15 divestitures of a holding company which was also the last investment of a fund
- The target / holding company had numerous hanging indemnities from past sales, tax and environmental issues
- The seller wanted to divest on an 'as is' basis and exit cleanly without indemnities post closing
- Before the auction began, the seller structured and obtained quotes for a package of warranties and indemnities, tax and environmental insurance in favour of prospective buyer
- The target / holding company was structured with ring-fenced value and presented as a standalone business without indemnities provided by the seller but with an insurance policy wrapper
- The insurance policy wrapper covered hanging liabilities from prior transactions and representations related to the current divestment
- The sale and purchase agreement had no survival and provided a credit to the purchase price for the insurance cost (less than 1% of transaction value)
- The added benefit was that insurers vetting of these risks made the buyer more comfortable on due diligence
- The vendor actions made the asset more attractive and enabled a higher exit price

2. Cross-border tax re-organisation (tax solution)

- A US private equity fund was considering the purchase of a US company with operations in the UK and Europe
- The buyer wanted to rationalise the complex, cross-border corporate structure and planned to re-organise in a manner that would be tax free in the UK
- The buyer's tax advisors believed the transaction should be tax-free, but the buyer was reluctant to proceed due to the magnitude of the risk (120% of equity invested)
- The seller refused to indemnify the buyer for this risk
- A GBP75 million tax opinion policy was used to insure against an HMRC challenge above a nil retention
- The term of coverage was eight years, including the statute of limitations plus a 1 year statutory waiting period required for the tax benefit
- The cost of the insurance was 2.5% of the policy limit
- The insurance policy provided the buyer with the confidence to proceed with the re-organization

3. Securities litigation hampering transaction and debt refinancing (litigation buy-out solution)

- A private equity owner was considering the purchase of a prominent public company that had experienced a market capitalisation decline of USD3.5 billion in one day; class action suits were filed
- The target only carried USD50 million in existing D&O coverage, all of which was expected to 'burn' in defence costs
- The objective was to:
  - 'Cap' exposure and provide financial certainty
  - Favourably impact ability to refinance debt
  - Provide leverage against plaintiff
  - Allow management to focus on operations
- Results
  - The litigation buy out insurance policy placed USD200 million in new coverage excess of USD150 million 'retention'
  - The company successfully refinanced bank debt
  - Wall Street pushed up stock to USD44 (from USD11 in 12 months)
  - CSFB analyst reported 'poison pill removed from stock; new insurance a big plus'
  - Insurance 'vetted' potential damages and helped solve perception issues among customers, shareholders, Wall Street, etc.
  - The claim ultimately settled four years later for over USD300 million

4. A target with known contamination. No indemnity offered (environmental solution covered both buyer and seller within a consultative remedy)

- A Fortune 250 company had owned a property along the Hudson River in New Jersey for 50 years
- The property was originally a manufacturing facility and later used as an R&D facility
- The property had a number of known pollution conditions, three nearby superfund sites and potential natural resource damage liability
- The seller wanted to sell the property 'as is' with all environmental liability being assumed by the buyer. The seller required the buyer to purchase 'blended' combined coverage to assure funding and completion of clean up, no overruns and no legacy liabilities
- The seller was named as an 'additional insured'
- The policy had a USD20 million limit and a 15 year term. The premium was USD4.7 million (USD3 million related to known clean up and USD1.7 million related to a cost cap and pollution liability).

5. **Divestment of final investment held by a private equity firm. No seller indemnity. Corporate acquirer required financial protection (warranty and indemnity and tax solution)**

- A European private equity firm owned by a major global bank required a clean exit from its last portfolio company held in the fund
- Very limited indemnities were available and the bank ultimately wanted to maximise exit proceeds whilst incurring no 'long tail' liabilities
- A buyside warranty and indemnity policy for GBP95 million was initiated for the seller by the corporate acquirer
- Further due diligence resulted in a separate GBP6 million policy being agreed to cover the potential adverse tax treatment of share options
- Insurance capital was used to collaboratively engineer a complete transaction solution which satisfied the corporate acquirer, enhancing the level of financial protection whilst enabling a clean exit
- The seller paid for the policy because they were able to achieve the upper end of their valuation, without any indemnity, whilst de-risking the transaction for the buyer

6. **Corporate break up and divestment with clean transfer of long-tail liabilities to the insurance market. No indemnities offered by seller. Corporate acquirers required warranty, tax and other guarantees. (Multiple risk transfer solutions)**

- A European company with operations in the UK, Continental Europe, Asia and South America came under bank ownership
- The bank decided to run-down the business and sell-off components to maximise proceeds
- The bank required a clean exit without escrow or other assurances
- Transaction risk varied for each overseas business operation
- The group was divided into regional operating business units which were structured as standalone carve-out opportunities
- Additional risk transfer solutions were developed in collaboration with buyers to optimise each carve-out
- Tax, litigation and environmental wrappers were deployed separately to appease respective buyers and written in to sale and purchase agreements
- Risk transfer costs were incorporated in to headline sale prices
- The bank was able to maximise sale proceeds and exit with no 'long tail' liabilities

Eight principles for risk transfer to maximise transaction value

- **Protect and improve** - risk transfer is as much about protecting balance sheets by effectively transferring identified and potential risk, as it is about enhancing opportunities by improving deal economics.
- **Be pro-active** - risk transfer should not be an afterthought. Sellers who are truly able to maximize exit proceeds are those who incorporate transaction liability as part of their due diligence package / auction terms prior to soliciting bids. That way, they give themselves the best chance of identifying and ring-fencing those areas that are likely to concern buyers (losses, pre-sale action to separate the target from the seller's group, supply chain etc.) in a way that creates a standalone business for the buyer. Buyers can use it to improve their bid terms, increase their chances of getting the deal and removing considerable financial risk.
- **Do not be afraid to ask** - the insurer's ability to cover non-traditional known and unknown liabilities is continually growing. When confronted with a liability or potential liability, it is worth a call to investigate whether the risk can be transferred to the insurance market. Remember, insurers prefer high value, low probability transaction risk.
- **Tax managers have an increasingly important role** - the harder a company board presses for deals to deliver the value they promise, the more a critical role tax managers play in identifying and delivering that value. This means that companies' tax functions need to be involved much earlier in the deal process to help evaluate tax risks and opportunities. Also to help select a tax structure through which value is most likely to be realised.
- **Third party analysts' opinion and lender enthusiasm is important too** – confidence in deals can be won or lost through how transactions are presented and how risk is managed. Inclusion of insurance capital can add significant comfort and leverage in presenting a transaction and winning the required support.
- **Do not compromise unnecessarily** - when committing capital in cross-border transactions, especially in emerging markets, you do not need to rely on finding a balance between uncertainty, limited case law and the unpredictability and duration of liquidity verses planned tax effectiveness of an investment. You can underpin known and unknown risk effectively from day one by employing insurance capital within the capital structure of the transaction to provide certainty and financial protection that is locked in.
- **Good communication** – any transaction requires a willing buyer and seller and mutually agreed conditions. Insurance can act as the "second set of eyes" on those conditions. In one instance, a US corporate received 100% equity cover in what was their first overseas M&A deal as a result of communicating that they needed a particularly high warranty cap and would subsidise a top-up to achieve the required level of financial protection
- **Expect the unexpected** – it is not just management board and lenders who are scrutinizing transactions more carefully. Tax authorities and regulators are scrutinising transactions too and have wide-ranging and retrospective powers to rule on tax treatments and valuations. Make sure that your transaction makes commercial sense before the benefit of any tax losses or incentives are taken in to account and de-risk your assumptions and planned transaction benefits at every opportunity.

Conclusion

Despite the continued economic uncertainty and underlying concerns about recession, it is clear that many corporate management boards currently view M&A as a source of growth. In parallel, private equity investors are pursuing buyouts together with buy and build with renewed vigor with every expectation that the 2012/13 vintage will be a good one. Global M&A totaled USD2.1 trillion in the first nine months of 2011, an increase of 22% over comparable 2010 levels (Thomson Reuters).

While the drivers for M&A remain largely unchanged, scrutiny, transparency and expectations regarding the value to be derived from M&A remains intense and is growing. Whether a firm pushes into new or emerging markets, or takes over a rival in a buyout, or simply secures a bolt-on or an inexpensive distressed acquisition, the real challenge lies post-closing in making the investment work through successful integration, tax efficiencies, economies of scale and above all, the generation of retained cash which drives value and shareholder confidence.

Each and every transaction carries risk: financial, strategic, operational, human, environmental and non-financial. It always will. However, how corporate management boards and private equity professionals are responding to this risk is changing, and rapidly. Reliable transaction risk mitigation is about transfering the level of financial risk and enhancing the lifetime of the risk management expressed through sale and purchase agreements. It must be thorough and comprehensive and achievable within tight transaction timescales.

The good news is that much known and unknown risk in the form of misrepresentations or long tail liabilities (tax, litigation, environmental risk for example) can be accomodated upfront within transaction structures designed to underpin sale and purchase agreements. Insurance-backed risk transfer can help protect balance sheets and deliver value from M&A with a higher degree of certainty than was possible say ten or more years ago.

Aon M&A Solutions

Aon M&A Solutions provides risk management and human capital consulting throughout the lifecycle of a transaction. As a result of growing demand for transaction risk mitigation, Aon has placed over USD2 billion of insurance capital for transaction solutions since 2010. The team comprises over 350 private equity and M&A specialists working across 34 countries and four continents. Clients receive deep sector and geographical insights for enhanced investment, pricing and strategic decision-making to facilitate the most complex of cross-border transactions (including buyouts, buyins and joint ventures). Aon's M&A team provides one point of access to identify, manage, transfer or mitigate risks – strategic, operational, financial, environmental, non-financial and human. For more information, visit **www.aonamas.com**

Further reading and information

Aon has published a series of fact sheets explaining how transaction risk can be mitigated through the introduction of insurance capital in to deal structures.

Aon M&A Solutions
Transaction Liability

Reducing or capping transaction risk for private equity professionals

Transaction Liability insurance can help you maximize your sale price and make a clean exit. When buying an asset, it can provide a competitive bid advantage that helps you secure the deal

Transaction Liability (TL) insurance converts the specific risks of your deal into a one-off premium that is transferred to the insurance market. Initiated by buyer or seller, the protection covers the life of the sale agreement survival periods (up to seven years) and can be transferred to benefit future owners too.
It is now widely used by firms as a cost-effective alternative to traditional escrow.

How it works

- TL is instigated by the seller (pre-exit planning) or buyer, or collaboratively to bridge the gap between parties
- Standard deal risks can be quantified and removed from the negotiation table:
  - Reps & Warranties
  - Tax indemnity
  - Contingent liability (eg litigation, regulatory issues, compliance or fiduciary rulings)
  - Environmental exposures
- Risk is ring-fenced and brokered to the insurance market in a one-off cost agreed

The benefits of Aon TL

- Deal enabler
  - It can bridge a gap or impasse between parties
  - It can remove known deal risk and contingent liabilities, turning a potential negative to a transferable 'plus'
- Sellers
  - It can enable a clean exit with full proceeds returned to Limited Partners
  - It can enhance the exit price because the business is sold with warranties
- Buyers
  - It can enhance the level and scope of financial protection and is transferable to future owners
  - It can provide lenders with greater security

When is Aon TL appropriate?

- Pre-exit planning before you appoint an advisor
- When you intend to offer no / little warranty
- During protracted deal negotiations
- As a buyer in a bidding situation when you want a strategic advantage without 'price chipping'
- As a buyer when your lender requires additional financial security
- In situations where you need to accommodate a party's risk appetite that, for jurisdiction or cultural reasons, is very different from your own

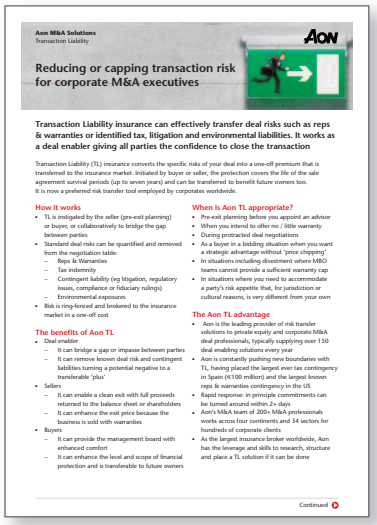
The Aon TL advantage

- Aon is the leading provider of risk transfer solutions to private equity and corporate M&A deal professionals, typically supplying over 150 deal enabling solutions every year
- Aon is constantly pushing new boundaries with TL, having placed the largest ever tax contingency in Spain (€100 million) and the largest known reps & warranties contingency in the US
- Rapid response: in principle commitments can be turned around within 2+ days
- Aon's M&A team of 200+ M&A professionals works across four continents and 34 sectors for over 200 private equity clients
- As the largest insurance broker worldwide, Aon has the leverage and skills to research, structure and place a TL solution if it can be done

Fact sheet for private equity professionals

- Capping and transferring risk
- Use in new investment planning
- Use in divestment situations
- Relevance for lenders and vendor
- Case studies and geography where risk transfer has been used

Go to www.aonamas.com (Transaction Liability)



Aon M&A Solutions
Transaction Liability

Reducing or capping transaction risk for corporate M&A executives

Transaction Liability insurance can effectively transfer deal risks such as reps & warranties or identified tax, litigation and environmental liabilities. It works as a deal enabler giving all parties the confidence to close the transaction

Transaction Liability (TL) insurance converts the specific risks of your deal into a one-off premium that is transferred to the insurance market. Initiated by buyer or seller, the protection covers the life of the sale agreement survival periods (up to seven years) and can be transferred to benefit future owners too.
It is now a preferred risk transfer tool employed by corporates worldwide.

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- Sellers
  - It can enable a clean exit with full proceeds returned to the balance sheet or shareholders
  - It can enhance the exit price because the business is sold with warranties
- Buyers
  - It can provide the management board with enhanced comfort
  - It can enhance the level and scope of financial protection and is transferable to future owners

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- When you intend to offer no / little warranty
- During protracted deal negotiations
- As a buyer in a bidding situation when you want a strategic advantage without 'price chipping'
- In situations including divestment where MBO teams cannot provide a sufficient warranty cap
- In situations where you need to accommodate a party's risk appetite that, for jurisdiction or cultural reasons, is very different from your own

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Continued

Fact sheet for corporate M&A, legal counsel and tax executives

- Reducing M&A risk
- Addressing tax and other liabilities
- Preserving cash by transferring known and future identified risk
- Case studies and geography where risk transfer has been used

Go to www.aonamas.com (Transaction Liability)

Aon M&A Solutions
Transaction Liability

Reducing or capping transaction risk for legal professionals

Transaction Liability insurance can give your clients a significant strategic and financial advantage when buying or selling. It works as a deal enabler giving all parties the confidence to close a transaction

Transaction Liability (TL) insurance converts the specific risks of your client's deal into a one-off premium that is transferred to the insurance market. Initiated by buyer or seller, the protection covers the life of the sale agreement survival periods (up to seven years) and can be transferred to benefit future owners too. In many countries, it is now preferred over traditional escrow as a risk transfer tool.

How it works

- TL is instigated by the seller (pre-exit planning) or buyer, or collaboratively to bridge the gap between parties
- Standard deal risks can be quantified and removed from the negotiation table:
  - Reps & Warranties
  - Tax indemnity
  - Contingent liability (eg litigation, regulatory issues, compliance or fiduciary rulings)
  - Environmental exposures
- Risk is ring-fenced and brokered to the insurance market in a one-off cost

The benefits of Aon TL

- Deal enabler
  - It can bridge a gap or impasse between parties
  - It can remove known deal risk and contingent liabilities turning a potential negative to a transferable 'plus'
- Sellers
  - It can enable a clean exit with full proceeds returned to the client
  - It can enhance the exit price because the business is sold with warranties
- Buyers
  - It can provide clients with enhanced comfort
  - It can enhance the level and scope of financial protection and is transferable to future owners

When is Aon TL appropriate?

- Pre-exit client planning
- When clients bidding for an asset require a strategic advantage without 'price chipping'
- During protracted deal negotiations
- When clients offer no / little warranty
- In situations where acquirers are unable to give your client the required warranties
- In situations where your client needs to accommodate a party's risk appetite that, for jurisdiction, legal or cultural reasons, is very different from their own

The Aon TL advantage

- Aon is the leading provider of risk transfer solutions to private equity and corporate M&A deal professionals, typically supplying over 150 deal enabling solutions every year
- Aon is constantly pushing new boundaries with TL, having placed the largest ever tax contingency in Spain (€100 million) and the largest known reps & warranties contingency in the US
- Rapid response: in principle commitments can be turned around within 2+ days
- Aon's M&A team of 200+ M&A professionals works across four continents and 34 sectors for law firms, corporates and private equity investment managers
- As the largest insurance broker worldwide, Aon has the leverage and skills to research, structure and place a TL solution if it can be done

Fact sheet for transaction and corporate tax lawyers

- Deal certainty tool for clients
- How you can enhance the SPA
- When to use for client bids
- How to use for client divestments
- Case studies and geography where risk transfer has been used

Go to www.aonamas.com (Transaction Liability)

Get a demo on your desktop

For private equity professionals, corporate finance advisors, tax, transaction and tax lawyers and corporate executives, you can get a short one to one presentation on your desktop revealing how to

- Replace escrow
- Lock-in planned deal economics (eg tax)
- Ring fence future risk and potential cash drain
- Appease a lender
- Secure a bid advantage without alienating the vendor
- Exit cleanly, without a liability tail enabling proceeds to be realized immediately
- Determine who pays for risk transfer and what it costs by risk type and region
- Utilize tax and legal advisors effectively and when to adopt proactive risk transfer during the transaction

Book a demo on your desktop at www.aonamas.com/products-and-services/transaction-liability/get-a-demo/

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