HSBC Insurance Brokers

Strategic M&A Solutions: New Ways To Get Ahead

Transactional Insurance

At HSBC Insurance Brokers, we understand that M&A transactions can be complex. Whether buying, selling, leasing or financing, a competitive advantage can be gained by transferring transactional risks using insurance.

Our M&A Risk Advisory team comprises experts in Legal, Environmental and Insurance risk who arrange innovative insurance solutions for those involved in transactions. We provide a full range of advisory and broking services, from improving marketability through to unlocking deals. As leaders in this specialist market, we continue to deliver highly competitive coverage and premiums.

HSBC Solutions

We provide services in a range of M&A transactional scenarios:

Disposal Exposures

Where sellers are concerned about the extent of liabilities assumed as a result of sale negotiations, Sellers' Warranty & Indemnity insurance can offset such exposures.

Typical disposal concerns include:

- a high warranty cap or lengthy time limitations;
- the liquidity of proceeds post disposal;
- where the warrantors have not been involved in the day to day running of the business; or
- selling parties seeking a clean exit.

Contingent Tax Risks

Sophisticated tax planning or structures are increasingly being used to optimise the day to day running of a company and in preparation for disposal. Where tax authorities successfully challenge the tax treatment of an entity or its wider group a significant loss may arise. Typical areas of concern include:

- onshore/offshore domicility concerns;
- SDLT/capital gains issues; or
- pre sale re-organisation.

Tax Opinion Liability Insurance can be arranged to provide protection against these known contingent tax exposures crystallising.

Acquisition Concerns

Purchasers and funders often have concerns about the recoverability of potential losses from warrantors. Common situations where Buyers' Warranty & Indemnity insurance can be utilised include:

- warrantors being in a weak financial position;
- warrantors comprising a group of individuals; or
- warrantors' cap under the agreement being low and the buyer requires some form of additional comfort.

Strategically, sellers may look to get a clean exit by capping their exposures at a low level and then structure a Buyers' policy above their cap to cover the purchasers up to a level that they are comfortable with; this is often utilised in an auction situation.

Insurance Due Diligence

It is vital for the success of any acquisition that the target has adequate and appropriate protection against liabilities accruing after completion. Our Insurance Due Diligence service is an analytical function providing the buyers with:

- advice whether the company has prudent levels of valid protection;
- confirmation whether protections are in place for all material assets and future earnings potential of the business; or
- where we identify any areas of concern, we will recommend the most economically appropriate way of dealing with these.

We present on the reverse a sample of the transactions we have assisted on and, below, a selection of professionals we have worked with.

AUGUST equity

DLA PIPER

Lovells

inflexion PRIVATE EQUITY

NORTON ROSE

HSBC Insurance

Electrical Manufacturer (Buyers)

Transaction: €230 million purchase of a global manufacturing and distribution company

M&A Risk: Buyers unhappy with the size of the warranty cap offered by the Sellers

Solution: Buyers' Warranty policy

Structure: €25 million policy was put in place for 1 year and dropping to €15 million for years 2-7. This policy sat above a €9 million escrow

Benefits: Buyers protected to an adequate level. As there was a sizable escrow in place to be eroded first the premium was very reasonable

US Asset Management Firm (Buyers)

Transaction: $55 million sale of a Pan-Asian office services company

M&A Risk: Management were rolling over and private equity house unwilling to give warranties

Solution: Buyers Warranty policy

Structure: $20 million policy put in place with very low attachment point <1% of deal value

Benefits: Management had very small amount of exposure and above that Buyers were insured up to a level they felt comfortable with

Property Fund (Buyers)

Transaction: £250 million purchase of a UK office building held in an offshore trust

M&A Risk: Possible future challenge by HMRC of an onshore/offshore tax risk was identified

Solution: Tax Opinion policy

Structure: A combined Buyers W&I and Tax Opinion policy was put in place with an aggregate limit of £15 million

Benefits: Buyers protected from both a challenge by HMRC and any breach of the warranties

Global Corporate (Sellers)

Transaction: £200 million share purchase of company with over 70 leased sites across UK

M&A Risk: Several properties considered 'high' environmental risk due to historical use. FRI leases technically passed on freeholder's liability to tenant

Solution: Environmental policy

Structure: 10 year on and offsite cover - with £10 million insured across all sites

Benefits: Concern over contingent liabilities associated with leases removed and deal was able to proceed unhindered

UK Public House Owners / Operators (Buyers)

Transaction: c.£2.5 billion purchase of managed pub estate

M&A Risk: Sellers' deductible and captive insurance status create liability for high levels of future contributions towards the cost of claims already incurred

Solution: Insurance Due Diligence

Structure: Detailed analysis of past years loss histories to arrive at cost estimation

Benefits: Enabling the buyers to ensure that likely costs are factored into the sale negotiations

Private Equity Firm (Buyers)

Transaction: c.£80 million purchase of UK heavy engineering company; the company had grown via a number of acquisitions

M&A Risk: Lack of reliable liability insurance history creates uncertainty for buyers on exposure to uninsured claims from past activity

Solution: Insurance Due Diligence

Structure: Review leading to placement of retroactive liability protection; claims made coverage to respond to losses notified after completion - £500,000 annual aggregate limit

Benefits: High level of confidence that any liability arising from the past activity will be adequately protected

** Specific details have been removed to preserve confidentiality.*

Contact us

If you are interested in finding out more about how the M&A Risk Advisory Practice can add value to transactions you are involved in, please find our contact details below:

Caroline Bromwich
Assistant Director
Tel: +44 (0) 207 661 2244
Email: CarolineBromwich@hsbc.com

Chris Sutherland
Head of Insurance DD
Tel: +44 (0) 207 661 2678
Email: Chris.Sutherland@hsbc.com

Will Hemsley
Project Manager
Tel: +44 (0) 207 661 2497
Email: William.Hemsley@hsbc.com

Rebecca Bradbury
Project Manager
Tel: +44 (0) 207 661 2227
Email: RebeccaBradbury@hsbc.com

Edward Aldwinckle
M&A Developer
Tel: +44 (0) 207661 2667
Email: EdwardAldwinckle@hsbc.com

Daniel Bloom
Project Manager
Tel: +44 (0) 207 905 2688
Email: DanielBloom@hsbc.com

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