



# Can insurance mitigate the risk of an E&E transaction?

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Laura Manz

# R&W / W&I Insurance

- Focus on reps & warranties and indemnities
- Frequently used in the UK for quite some time
- has become more common in continental Europe as well

# Reasons for a R&W Insurance

- Seller-side: private equity; no need for holdbacks, escrows or other form of securities; clean exit; dress up your bride
- Buyer-side: Seller is an off-shore company or domiciled in a jurisdiction where enforcement is difficult; sugar your bid
- Both: Helps negotiating regarding the question “who takes the risk”

# What is insured? (buyer's policy)

- Indemnities: insurance shall cover known risks which cannot be determined exactly
- Breaches of R&W for which the seller would be liable
- Different approaches:
  - Back-to-back
  - insurer extends the cap agreed in the SPA / excess must be adjusted to the Seller's cap
  - May extend the survival period of the R&W in SPA

# Exclusions

- Forward-looking statements and projections, covenants, known or disclosed items.
- For E&E transactions: verify that environmental representations are insured.
- Alternative for known risks possible, but expensive



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# Procedure:

- Special need “E&E” R&W → contact a broker who is familiar with E&E transactions
- Provide DD report, draft SPA, annual financial statements, etc. → insurer provides unbinding offer
- The “underwriting”: Deeper investigation (external counsel, E&E specialists), access to data room, SPA
- Policy negotiation, no claims declaration
- Time for negotiating the policy should be considered in the deal’s timetable!

# Costs

- Underwriting / insurer due diligence
- Broker's fee (if not paid by insurer)
- The premium is calculated as a percentage of the total limit of the coverage.
- Figures from “regular” M&A transactions: Europe: 0.9-1.5% ; USA: 2-3% of the policy limit
- As E&E R&W are considered a special risk, the insurance is more expensive.

# Thank you

Laura Manz

Kellerhals Carrard

Switzerland

[laura.manz@kellerhals-carrard.ch](mailto:laura.manz@kellerhals-carrard.ch)

+41 58 200 30 00



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i am **aija**