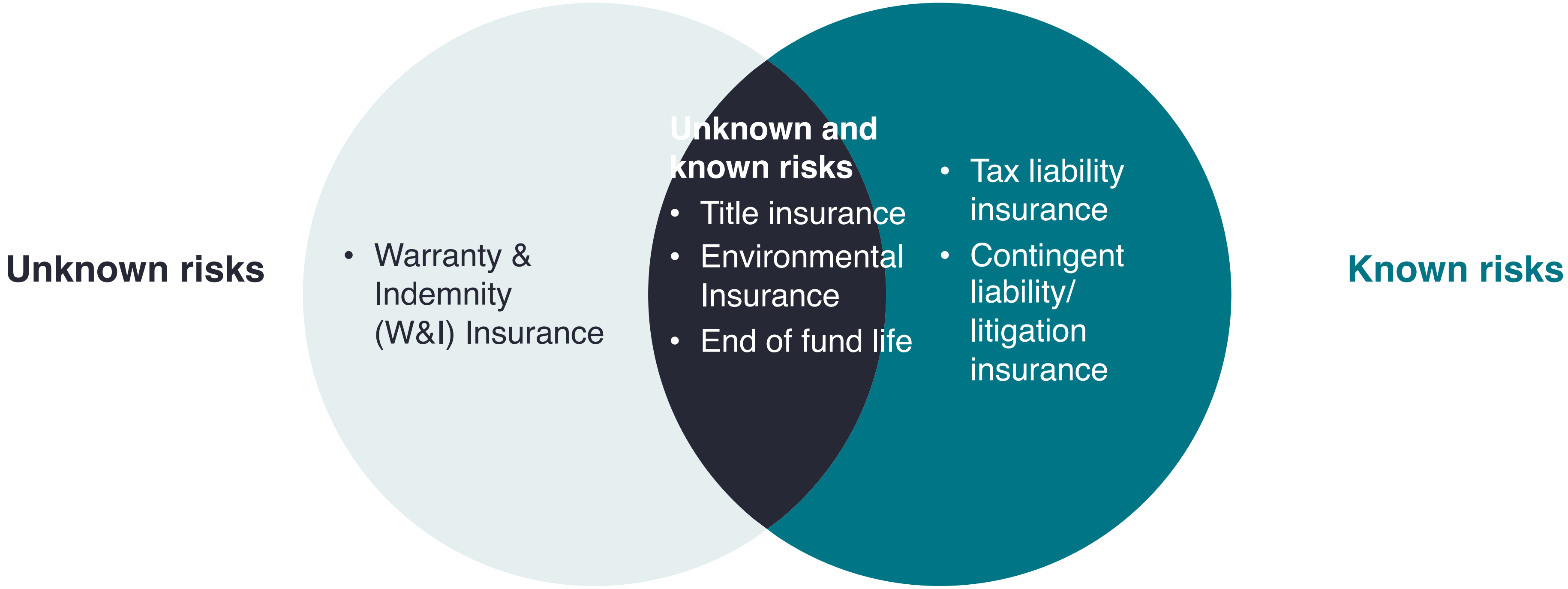
An overview of transaction liability insurance solutions

Insurance markets provide an alternative capital source to de-risk, facilitate and enhance M&A transactions



Bespoke insurance solutions to cover both unknown and known risks

Transaction Solutions I overview

There are multiple solutions that can be leveraged to improving your deal execution and reducing risk

Warranty & Indemnity
(unknown risks)

- W&I insurance allows sellers to provide broad warranties & standard warranty periods to close a deal with limited or no indemnity and can make a buyer's bid more attractive
- Can enhance a buyer's potential for recovery rather than simply replace the typical seller's indemnity
- Strategic use of W&I in an auction context to encourage competitive tension among bidders

Tax
(known risks)

- Reduces or eliminates a contingent tax exposure arising from a transaction, investment or other tax position where the underlying legal conclusions may be subject to future challenge by the tax authorities
- Provides greater purchase price certainty for a buyer in the M&A context by ring-fencing an identified tax exposure
- Enables a clean exit for sellers by eliminating a long-tail contingent exposure.

Litigation
(known risks)

- Enables a client to ring-fence liabilities which may arise from any current or anticipated litigation, arbitration or other dispute
- Particularly useful in the context of a sale of a business where the unresolved dispute would otherwise prevent the sale proceeding or would have a significant impact on the price to be paid
- Insurance takes this uncertain element out of the negotiations

Transaction Solutions I market update

Warranty & Indemnity (W&I) insurance

Improved deal execution through protecting against unknown issues

- **Capacity:** 23+ active carriers
- **Coverage:** >EUR1.5bn per deal (sector/jurisdiction dependent)
- **Pricing:** typically 0.7%-2.5% of limit of liability
- **Key terms:** retentions 0.25-1.0% of EV; cover 10-30% of EV; tenor matches SPA
- **Procurer:** increasingly initiated by the sell-side in auction processes
- **Claims:** > 60% tax or accounting related; c.90% of notifications within 18 months

Contingent tax risk insurance

Improved deal execution through minimizing tax-related uncertainties

- **Capacity:** up to EUR1.0bn per deal
- **Coverage:** protections against additional tax, interest & defence costs
- **Pricing:** relatively steady at 4–7% (depending on exposure)
- **Situations:** existence & survival of carried forward losses, tax neutrality of group reorganisations, VAT treatment, withholding tax, transfer pricing
- **Drivers:** tightening tax legislation & more aggressive approach from tax authorities

Wider contingent risk insurance

Improved deal execution by protecting against known contingent liabilities

- **Situations:** bespoke products to address known contingencies including:
  - outstanding litigation
  - contract disputes
  - end of fund life exposures

AON

- Access to latest market knowledge and insights from broking teams in key EMEA business centres
- Support from across a global network helps identify the best capital for placements
- Locally agreed insurance policies under local law

W&I I buy-side process

- A straightforward W&I broking process may be carried out in the timetable outlined below.
- Delays to the overall project and provision of information impact timetable.
- We are seeing an increase in buy-side policies being engineered by the sell-side in strong seller markets, including initiation of the broking process by the sell-side

Day 1
Engage
AON

Day 4
Select (lead) insurer

Days 11-15
Bind cover

Days 2-4
Obtain non-binding terms from insurers

Days 5-11
Insurer underwriting and policy negotiation

BIND COVER

- Contingent risk policy placement process usually takes longer than W&I
- Tax litigation: between 3 to 4 weeks depending on the information provided
- Litigation buyout: between 4 to 5 weeks depending on the information provided

W&I | sell-side initiated process

'Hard' staple process

- ✓ Facilitates seller's clean exit strategy
- ✓ Sell-side underwriting (based on VDD) and policy negotiation
- ✓ Maintains pressure for longer in competitive processes

- × Increased demand on seller time
- × No guarantee that bidder will take policy, resulting in break fees
- × Sell-side fees are more likely if policy is not taken up

Day 1
Engage
AON

Day 4
Select (lead) insurer

Days 2-4
Obtain non-binding terms from insurers

Days 5-7
'hard' staple

"FLIP" (hard)

4 days (sometimes shorter)
Buy-side 'top up' insurer underwriting and finalise policy

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15

"FLIP" (soft)

BIND COVER

Days 5-10
Insurer underwriting and policy negotiation

Days 11-15
Bind cover

Buy-side / 'soft' staple process

- ✓ Facilitates seller's clean exit strategy
- ✓ Requires less time and preparation from the seller
- ✓ Fewer or lower sell-side fees (if any, subject to process)

- × W&I underwriting process commences later in the deal timetable
- × Less seller visibility on the cost of cover