



MANAGING SELLERS LIABILITY: STRATEGIC INSURANCE OPTIONS

Negotiations between the parties and deal dynamics have traditionally dictated the level of post completion contractual liability that the seller assumes. There are a number of strategic insurance solutions available to a seller that they can use pre-emptively to achieve significant reduction in their exposures.

Structures

HWF's comprehensive experience allows us to advise clients on the merits of each solution set out here, tailored to the requirements of the deal and to advise on the best approach and strategy to be followed.

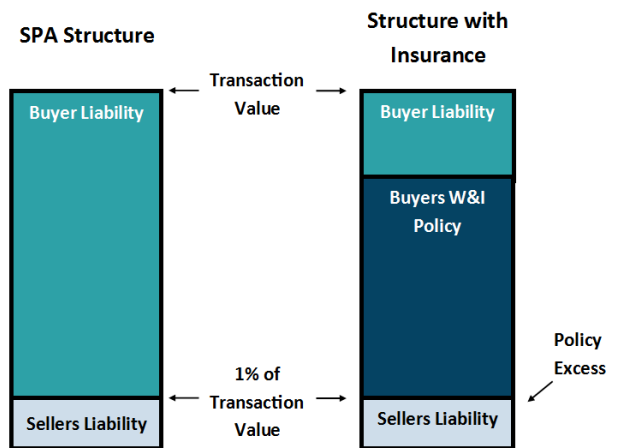
Option 1: Zero or Limited Contractual Liability

Policy type: Top-up Buyer's Warranty & Indemnity ("W&I") insurance

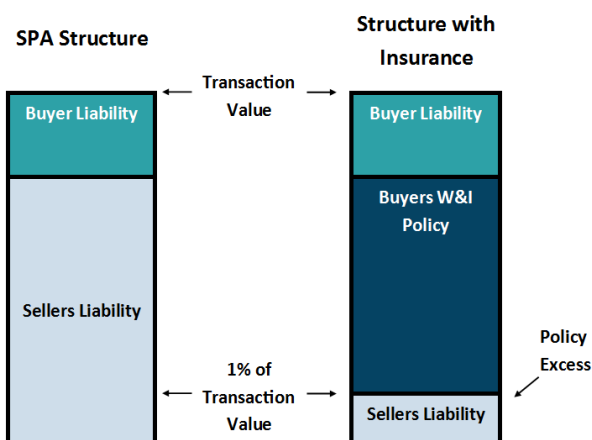
Liability structure: Seller provides a small contractual liability cap in the SPA and the buyer gains its protection via buyer's W&I insurance.

Key benefits to a seller: With no liability above their small cap, sellers have certainty of their post completion exposure in order to distribute proceeds.

This strategic solution is effective in a competitive auction or if a seller is unwilling or unable to give a significant cap i.e. a financial investor or trust.



Option 2: Insurance First Recourse



Policy Type: Parallel Buyer's W&I Insurance

Liability structure: Seller provides a larger liability cap under the SPA and buyer's W&I policy protects the buyer as first recourse.

Key benefits to a seller: While the seller accepts a significant cap, the SPA will provide that a claim must be brought against the policy first. The Seller will only be liable to the extent the loss is excluded under the insurance policy or if they have been fraudulent (as the insurer will be entitled to subrogate for fraud).



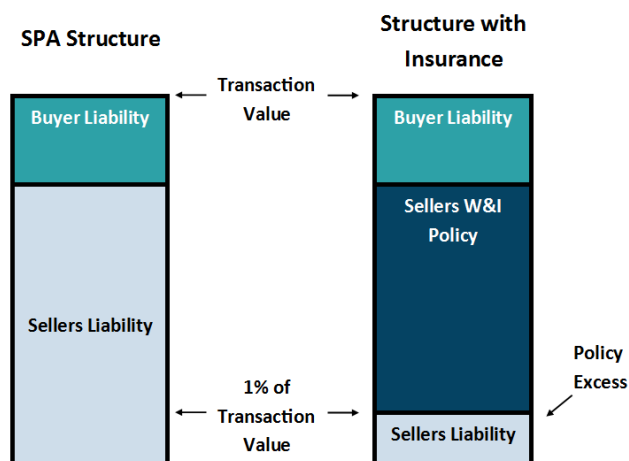
Option 3: Backing up a liability cap

Policy Type: Sellers W&I policy

Liability structure: the seller provides a more significant liability cap under the SPA and purchases a sellers W&I policy providing cover for a successful claim against them by the buyer.

Key benefits to a seller: the seller is in control of the process, negotiates its coverage position and has alignment of interests with the insurers in the defence of a claim.

The policy can be used in parallel with retentions, holdbacks or escrows to give greater financial certainty.



Key Points

- Provides sellers with certainty of the sale proceeds. Certain structures can remove the need for escrows or retention.
- Reduces the likelihood of difficult negotiations.
- The seller can tactically explore each option in turn with the buyer.
- Works well where the limits to be insured are in excess of 10% of the total deal value or over £10m.
- Notwithstanding the above where individuals or management are accepting a cap which is proportionately low but is significant to them a policy can be structured subject to insurers' minimum premium requirements.

About us

HWF is a Specialist Independent M&A insurance broker and advisor led by senior professionals with extensive experience in M&A transactions.

The team has worked with many leading legal and financial advisors in providing services to private equity houses, management teams, real estate firms, banks and corporates.

The partners have a combined 25 years of experience in our market and have advised on over 700 transactions, with values ranging from £5m - £5bn and structured over 400 policies.

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