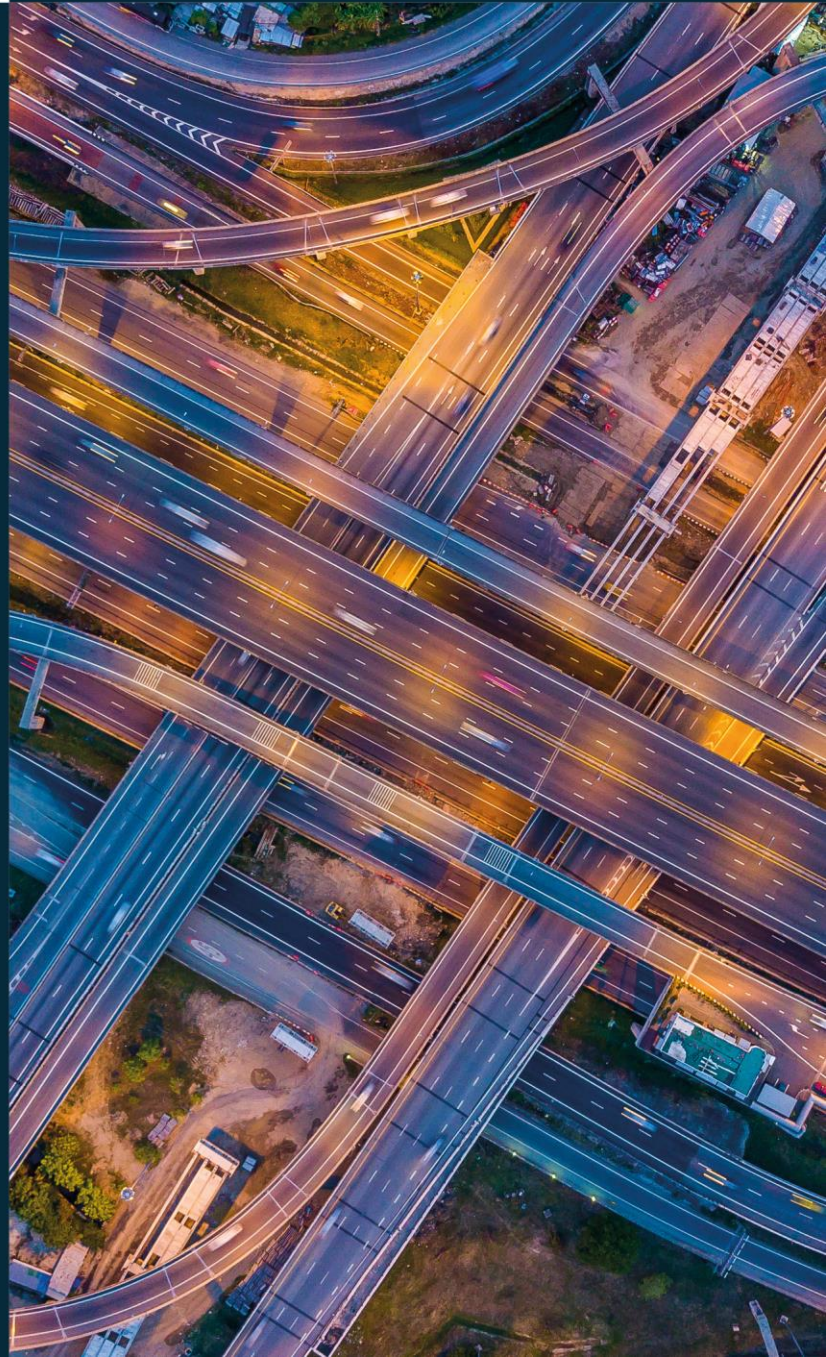




Managing Buyers' Liability: Insurance Options



PROVIDING **CERTAINTY**

Managing Buyers' Liability: Insurance Options

Buyer's warranty and indemnity ("W&I") insurance policies are often introduced to M&A transactions by sellers. However, private equity, infrastructure funds and corporates often use the products on the buy-side to manage their own risks, to obtain broader contractual protection than that offered by the sellers or to enhance bids in competitive processes or pre-emptive situations. This note provides a snapshot of a typical buyer's W&I policy and its strategic uses for buyers as a risk transfer tool.

Structures

HWF's extensive experience allows us to advise clients on the merits of each solution set out in this note and to advise on the best approach and strategy to be followed. Each solution would then be tailored to the specific requirements of the deal.

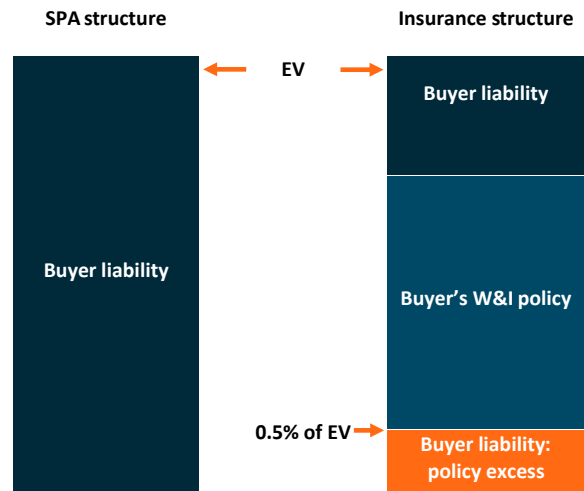
Option 1: Zero or limited contractual liability

Policy type: top-up buyer's W&I insurance.

Liability structure: seller provides a small contractual liability cap in the SPA (often as low as £/€/ \$1) and the buyer gains its protection via a buyer's W&I insurance.

Key benefits to a buyer: buyer has direct recourse against the insurance policy and does not need to bring a claim against sellers or ongoing management teams. Insurers will waive subrogation rights against the warrantors save for fraud.

When to use: best used 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: Bid Differentiation

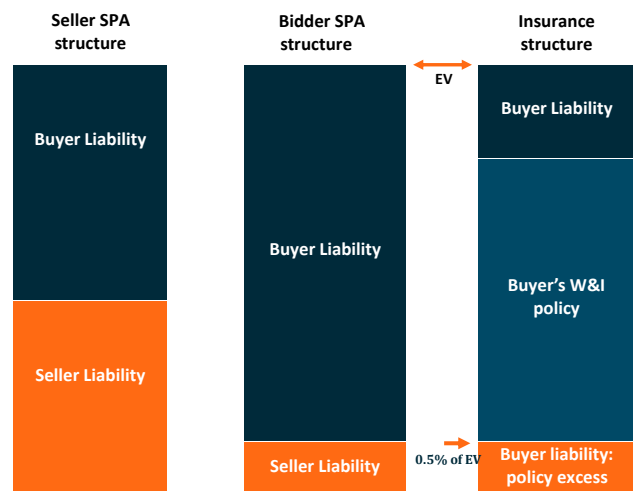
Policy type: top-up buyer's W&I insurance.

Seller liability structure: seller offers a meaningful liability cap under the SPA.

Buyer structure: buyer offers to reduce the sellers cap to a nominal amount and takes out a buyer's W&I policy for protection.

Key benefits to a buyer: the buyer is able to win the auction with favourable contractual terms and avoid difficult negotiations.

When to use: best used in a competitive auction or in pre-emptive situations.



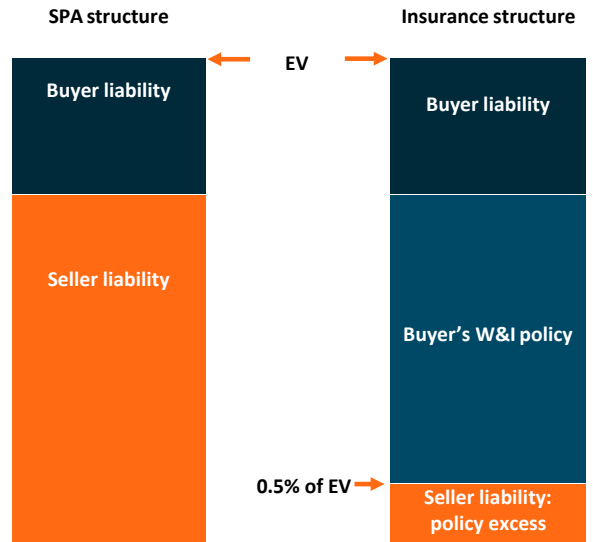
Option 3: Insurance first recourse

Policy type: parallel buyer's W&I insurance.

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

Key benefits to a buyer: while the seller accepts a significant cap, the SPA normally provides that a claim must be brought against the policy first. The seller will then 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).

When to use: where the buyer does not want to be liable for the policy exclusions or there are concerns around the strength of the seller's covenant.



Key points:

- Provides buyers with a recourse mechanism for warranty breaches and claims under the tax indemnity.
- Reduces the likelihood of difficult negotiations.
- The earlier we are involved, the more value the insurance will add to a transaction.
- Mitigates seller solvency risk/covenant strength.
- Protects rolling over management teams.
- Mitigates uncertainty when investing in a new asset class or geography.
- Satisfies requirements of lender or internal risk management.

BUY-SIDE ENHANCEMENTS

Using a buy-side policy strategically allows a buyer to:

- Differentiate their bid in auction processes.
- Enhance protection using a "knowledge scrape" or synthetic tax deed.
- Extend time limitations for claims under the policy.

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 works with many leading legal and financial advisors and provides services to private equity, infrastructure funds, corporates, management teams, real estate firms and banks.

The team have over 100 years of combined experience in this market and have advised on over 2,000 global M&A deals, with values ranging from £5m - £10bn.

KEY CONTACTS:

Will Hemsley
Partner

Tel: +44 (0) 20 3637 2201
Mob: +44 (0) 7703 785 790
Email: will.hemsley@hwfpartners.com

Rebecca Wynne
Partner

Tel: +44 (0) 20 3637 2202
Mob: +44 (0) 7785 513 509

Email: rebecca.wynne@hwfpartners.com

Adrian Furlonge
Partner

Tel: +44 (0) 20 3637 2203
Mob: +44 (0) 7976 205 251

Email: adrian.furlonge@hwfpartners.com

Rowley Higgs
Partner

Tel: +44 (0) 20 3637 2204
Mob: +44 (0) 7977 125 420

Email: rowley.higgs@hwfpartners.com