

M&A INSURANCE & SECONDARIES TRANSACTIONS

Secondaries transactions are continuing to increase in volume. Coverage of such transactions – whether LP led, GP led or preferred equity financings – is now a well established feature of the M&A insurance market. Many insurers now possess the dedicated capabilities required to service client needs in this area.

WHY INSURE SECONDARIES?

Having placed insurance policies on some of the first secondaries transactions to be insured in the M&A insurance market, the team at HWF in both Europe and the US have continued to build extensive experience across a range of secondaries transactions, including both GP and LP led transactions and fund-of-funds transfers.

CLEANER EXIT

No tail liabilities for selling fund and comfort of collectability for buying fund, as insurers are regulated companies with strong balance sheets.

BROAD COVER

Coverage of excluded obligations and clawback indemnities again facilitates clean exits, gives broad cover and allows winding up of historic fund structures.

RELEASE OF PROCEEDS

Earlier distribution of proceeds to LP with no holdbacks.

RELATIONSHIP PRESERVATION

LPs/GPs preserve valuable relationships as recourse for disputes sits with insurers.

STREAMLINED NEGOTIATIONS

Saving time and cost of negotiations in a process, and allowing parties to focus on key commercial items.

MANAGEMENT EXPECTATION

If management of underlying portfolio businesses are involved in the sale process, W&I protection aligns with their expectations on an arm's length sale process.

WHAT DRIVES SECONDARIES INSURANCE COVERAGE?

Scope of cover will be deal specific and driven by factors including the nature of the transaction, its structure and the number of portfolio assets concerned. Key areas driving coverage will include:

DUE DILIGENCE

If a suite of M&A style warranties is required, insurers will expect ordinary course DD akin to a primary M&A deal with a similar process to W&I insurance. At the other extreme, typically where an interest in a large portfolio of assets is transferring and typical secondaries warranties akin to title and capacity fundamental warranties are being given, insurers will be comfortable with more limited DD or just a Q&A process and underwriting call. Early engagement with HWF to understand available materials will allow us to advise on DD required to achieve coverage expectations.

WARRANTIES

Scope of warranties will be dictated by (i) parties' requirements and (ii) available diligence. Traditionally, warranties on secondaries transactions were limited in nature and scope, primarily focusing on title to the fund interest, ability to sell the interest etc. This remains the case on deals with multiple underlying assets, or a more fulsome suite of warranties may be given on a knowledge qualified basis. However, as the market has grown (particularly on single asset deals) we've seen increased use of M&A style warranties, in which case insurers require more fulsome DD.

MANAGING CONFLICTS / ACTUAL KNOWLEDGE

A GP running a fund will have material knowledge of the underlying fund assets. Issues within insured's actual knowledge will be excluded from cover, so GP knowledge being imputed to the buy-side will be unacceptable to incoming LPs. As well as clean teams on the GP buy and sell side, as both GP and incoming LPs will typically be insured under a policy, knowledge of the GP and LPs needs to be several under the policy.

EXCLUDED OBLIGATIONS / CLAWBACK PROVISIONS

Failure to cover the excluded obligation indemnity ("EOI") and clawback indemnity was historically a material hindrance to insurance on secondaries transactions, preventing a transferring fund from winding up. Various insurers are now able to cover the EOI and clawback indemnity, in many cases with limited or no additional diligence and relying instead on a Q&A exercise.

CONTINGENT RISKS

Alongside the general development of the contingent risk market, HWF are increasingly seeing contingent policies utilised to cover known risks which could arise in a secondaries context. This ensures a transferee fund is able to take on assets that are not pregnant with contingent liabilities, while on GP led-deals ensuring that any transferring fund can be wound up and funds distributed to LPs quickly and efficiently.

OUR RELEVANT EXPERIENCE

Our recent experience includes the following deals:

	DEAL 1	DEAL 2	DEAL 3	DEAL 4	DEAL 5	DEAL 6
<p>Structure</p>	GP led	GP led	GP led	LP led	GP led	GP led
<p>Jurisdiction</p>	Europe	Europe /MENA	Asia	UK	Europe	Europe
<p>Value</p>	c.€700m	c.\$850m	\$1.5bn	£100m	c.€700m	c.€1bn
<p>Portfolio assets</p>	5	11	10+	3	1	50+

ABOUT HWF

The team at HWF consists of senior professionals with extensive experience in providing advice on and placing bespoke transactional risk policies. We operate from offices in Dubai, Frankfurt, London, Munich, New York, Paris and Warsaw.

Recognised as a market leader, HWF brings together individuals from insurance, legal and tax backgrounds who have extensive advisory, broking and underwriting experience, including on secondaries transactions as private practice lawyers. This collective experience on the broking, legal, tax and underwriting side allows us to provide specialist insight to clients.

Our approach is for senior professionals to lead and retain the day-to-day running of transactions, with support from experienced staff where required. We leverage our experience by pre-empting potential transaction issues in order to help deliver an efficient process which we pro-actively manage. Our clients can be confident that they will be provided with the highest level of expertise and focus throughout their transactions.

The information contained herein is of a generic nature and is not intended to be relied upon as specific advice. Hemsley Wynne Furlonge Partners Limited (also trading as HWF and HWF Partners) is an Appointed Representative of Ardonagh Specialty Limited which is authorised and regulated by the Financial Conduct Authority. Registered office: 2 Minster Court, London, EC3R 7PD. Registered in England and Wales with company number 13179703. Copyright © 2023 Hemsley Wynne Furlonge Partners Limited All rights reserved.

KEY CONTACTS



David Wall
Director & Co-Head of PE
 +44 (0)7971 627 060
david.wall@hwfpartners.com



Will Hemsley
Partner
 +44 (0)7703 785 790
will.hemsley@hwfpartners.com



Adrian Furlonge
Partner
 +44 (0)7976 205 251
adrian.furlonge@hwfpartners.com



Rebecca Wynne
Partner
 +44 (0)7785 513 509
rebecca.wynne@hwfpartners.com



Peter de Boisblanc
Partner, Head of North America
 +1 347 621 8916
peter.deboisblanc@hwfpartners.com



David Layton
Director, Co-Head of Private Equity
 +44 (0)7816 352 899
david.layton@hwfpartners.com



James Williamson
Head of Contingent
 +44 (0)7799 228 806
james.williamson@hwfpartners.com



Mark Parrett
Head of Tax
 +44 (0)7966 638 235
mark.parrett@hwfpartners.com



Alex Harding
Head of Claims
 +44 (0)7590 916 950
alex.harding@hwfpartners.com



Ellie McRoberts
Associate Director
 +44 (0)7837 648 492
ellie.mcroberts@hwfpartners.com