CONTINGENT RISK INSURANCE

OUR CAPABILITIES

ABOUT US

HWF partners is an independent advisor and broker of transactional and contingent risk insurance which allow for value creation and risk mitigation. In addition, we provide bespoke insurance solutions that mitigate liabilities that arise as specific issues within the lifecycle of a portfolio company or investment. We are recognised as a market leader.

The team, comprising of individuals who have significant insurance, legal and tax backgrounds with extensive advisory, broking and underwriting experience, have advised on over 4,000 transactions and structured over 1,000 policies in over 50 jurisdictions. In addition, we have offices in London, Dubai, Frankfurt, Munich, Paris, Warsaw and New York and specialists dedicated in their focus on the MENA, CEE and Southern European regions.

This collective expertise allows us to provide specialist insight with an advisory focus, taking ownership of any insurance structured and allowing our clients to focus on the wider transaction.

We would be happy to provide references if required and for further details about us please see hwfpartners.com

£100bn
TOTAL VALUE OF DEALS CLOSED

4000+ DEALS
ADVISED ON GLOBALLY

50+
JURISDICTIONS IN WHICH WE'VE ADVISED CLIENTS

100+
institutional clients advised

20+ DEALS
closed with an enterprise value in excess of £1bn

CONTINGENT INSURANCE

WHAT IS IT?

Contingent risk insurance covers risks that are known – such as pending or issued litigation, a potential or actual regulatory issue or challenges arising from a re-organisation or restructuring.

Typically, an insurer will require that the known risk is quantifiable and capable of legal assessment. Generally, contingent insurance works best in scenarios where the risk is remote (making it insurable) but the potential business impact is severe (making insurance an attractive option for the insured). Pricing is highly bespoke, but typically falls within the range of 2% - 10% of the limit of insurance.

WHY USE IT?

Clients have often utilised contingent insurance to unlock transactions, such as M&A and finance deals, that may otherwise have been derailed by the known risk. Insurance is often a cheaper and more efficient risk transfer mechanism compared to other options, such as a price-chip, indemnity, escrow arrangements or expensive third-party security.

Increasingly, contingent risk insurance is also being deployed outside of the transactional context. For example, to allow a contingent liability or asset balance sheet provision to be released, allowing dormant cash to be utilised and recycled through a business. In this way, contingent insurance is helping clients to unlock upside as well as mitigate downside risk.

HOW WE CAN HELP

In a very wide range of settings, we advise clients on contingent risk insurance solutions designed to meet a variety of challenges, including:

DISPUTES

We structure contingent insurance solutions for disputes that are either active, threatened or which have the potential to emerge in the future.

APPEALS

A business may have been successful in a dispute, but that result could be overturned on appeal. A judgment preservation insurance policy “locks-in” the successful outcome, allowing the business to be sold and/or release accounting provisions connected to the dispute.

CONTRACTUAL UNCERTAINTY

Contingent insurance can provide a safety net where contractual provisions do not provide sufficient certainty - for example, a buyer may lack confidence that it can rely upon a chain of indemnities purportedly in favour of the target.

INSOLVENCY

We arrange insurance that protects insolvency practitioners, creditors and other stakeholders involved in the winding up of an insolvent estate against the risk of third-party claims.

PENSIONS

Buyers can have concerns regarding their liability to fund very significant pension liabilities – a well-crafted contingent insurance policy can mitigate such risks.

ENVIRONMENTAL

Cover for specific environmental liabilities (including known pollution and remediation liabilities).

RE-CLASSIFICATION

A renewables target may be at risk of reclassification such that the preferential price it receives for selling energy would be lost. Such risks, which often turn on a legal issue, are insured with growing frequency.

POTENTIAL TAX ISSUES

Cover for tax risks on M&A transactions, refinancing and restructuring.

TITLE

Cover for ownership risks including on M&A, real estate and infrastructure transactions.

IP

Contingent insurance can be deployed to cover a range of risks, including infringement claims, non-use trade mark revocation and potential gaps in IP assignments.

RESTRUCTURING

Reorganisations can shed light on a range of debt, company and other legal risks that can be addressed by a contingent insurance policy.

ARBITRATION AWARD DEFAULT INSURANCE

Guarantees payment of a legally enforceable arbitral award against asovereign entity within an agreed timeframefollowing the sovereign’s failure to honour it.

OUR PRESENCE AND CLIENTS

Our clients are global PE houses, sovereign wealth funds, secondaries funds, infrastructure and renewable funds, corporations, venture capital firms, litigation funds, credit funds, alternative asset managers and family offices. Our global practice has acted on over 4,000 transactions in jurisdictions including the UK, continental Europe, Africa, Asia, North and South America.

SECTOR EXPERIENCE

Our team of leading individuals have varied and in-depth experience of all industry sectors. We pride ourselves on using this experience to pre-empt potential issues at the outset of a transaction to help deliver efficient and pro-actively managed solutions. Our aim is to control processes and leave our clients free to focus on the wider transaction.

SOLUTIONS

Some of the recent contingent insurance deals that we have advised on, in both M&A and non-M&A settings, include:

	M&A		
Client	US PE Fund	UK PE Fund	European PE Fund
Issue	Target was a cartel whistle-blower. Bidders concerned about potential liability for EUR 100ms of “follow-on” claims brought by customers.	DD revealed that target may be subject to a ROFR in favour of a third party – buyer was concerned that the right could be enforced and the deal potentially unwound.	Renewables target paid a preferential rate for the energy it produced. However, potential non-compliance with a permit could have resulted in that rate being forfeited.
Solution	Policy negotiated to cover “catastrophic” liability for claims above EUR40m.	Policy arranged to pay out up to GBP 40m in the unlikely event that the third party successfully enforced the ROFR.	EUR 3.3m policy agreed to cover the risk of forfeiture and the target agreed to remedial steps to mitigate the risk of non-compliance.

	NON-M&A		
Client	US asset manager	UK PLC	European PE Fund
Issue	Business is subject to significant and vexatious litigation that makes a planned listing on the LSE commercially unviable.	Plc successful in ca. £100m claim against HMRC. Business wanted to release provision but HMRC appealed the case to the ECJ.	Constructor settled claims relating to a failed PFI contract but was concerned that the settlement did not protect it against third party claims.
Solution	Policy negotiated to cover catastrophic liability for claims above D&O policy and modest layer of self-insurance.	Insurance policy paying 90p/GBP 1 in the event of an adverse determination at the ECJ. Provision released.	GBP 20m policy agreed to cover third party claims.

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