

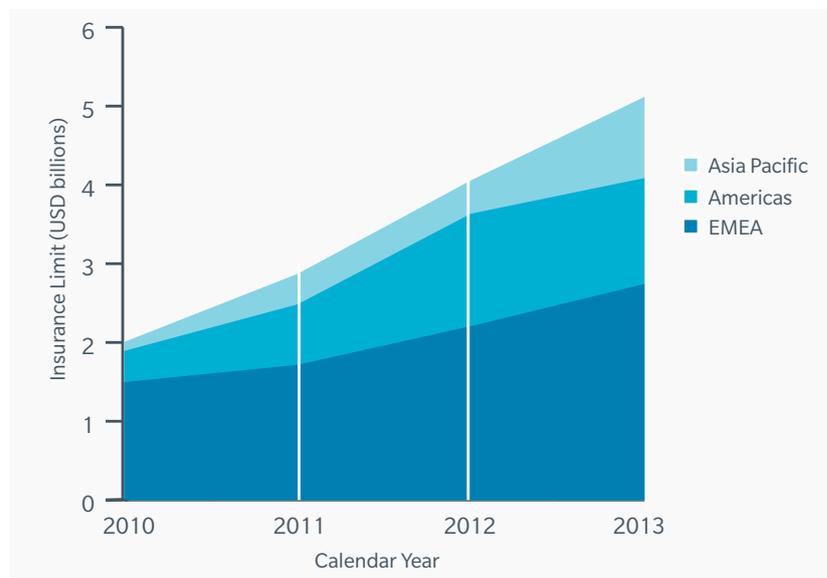
MARSH INSIGHTS:

USE OF M&A TRANSACTIONAL RISK SOLUTIONS ON THE RISE

INTRODUCTION

This special edition of our transactional risks 'Insights' focuses on the increasing use of insurance in M&A deals around the world.

Limits of M&A insurance placed by Marsh, such as warranty and indemnity (W&I) insurance, grew year-on-year by 26% from 2012 to 2013. Although this represents a significant increase in the utilisation of this transaction tool, when viewed historically across a three-year period, the increase is even more noteworthy. As the chart opposite illustrates, 2013 limits of insurance placed by Marsh globally have increased by 155% since 2010.



TRANSACTIONAL RISK GLOBAL STATISTICS 2013

	EMEA	ASIA PACIFIC	AMERICAS	TOTAL
Limits of insurance placed (USD millions)	2,743	1,030	1,344	5,117
Number of transactional risk policies placed	125	52	74	251
Private equity policies (as % of policies placed)	56%	42%	56%	53%
Corporate policies (as % of policies placed)	44%	58%	44%	47%
Buyer-side W&I policies (as % of W&I policies placed)	88%	63%	78%	80%
Seller-side W&I policies (as % of W&I policies placed)	12%	37%	22%	20%

BASED UPON TRANSACTIONAL RISK POLICIES PLACED GLOBALLY BY MARSH

Inside this special edition, we examine some key drivers for growth, including:

- Increased activity in new jurisdictions.
- Motivations for the use of transactional risk insurance.

We also include details of recent articles written by our team and prominent speaking events.



“The greatest growth was experienced by our Asia-Pacific team, with a 143% increase in limits of insurance placed.”

GLOBAL GROWTH OF TRANSACTIONAL RISK INSURANCE: KEY DRIVERS

INCREASED APPETITE FOR NEW JURISDICTIONS

The transactional risk insurance market historically concentrated on transactions in Western Europe and the US, because the insurers based in London and New York were familiar with these jurisdictions, and therefore were comfortable participating on deals subject to these laws and regulatory regimes.

As a global insurance broker, Marsh's focus has always been on the international nature of M&A. The hub teams of transactional risk practitioners at Marsh have responsibility for placement across their regions and have spent considerable time advising clients in conjunction with Marsh local offices on an array of local transactions.

At Marsh, we have advised and placed a number of the first transactional risk policies in jurisdictions, such as the Czech Republic, Hungary, Poland, Russia, South Africa, India, Jordan, South Korea and Qatar.

The transactional risk insurance market is now a global one. A clear testament to this is the increase in transactional risk placements across Asia-Pacific. A few years ago there was a limited number of insurers in the region willing to offer cover, whereas today we can utilise up to 15 potential underwriters.

MOTIVATIONS FOR USE

Some of the motivations for clients using transactional risk insurance have clearly captured the imagination, and we often see clients repeatedly using the solutions on different deals. A good example of this is sellers offering a small, or in some jurisdictions a nil, cap on warranty liability where a buyer-side W&I insurance policy is 'tabled' as part of the sale process. All bidders are then asked to bid on the basis of the W&I insurance being its main or only recourse in the event of a warranty claim.

There are advantages to both sellers and bidders. For the seller, nil or limited warranty recourse is achieved while insurance keeps otherwise sceptical and cautious bidders in the process.

In some jurisdictions, stapling a buyer-side W&I insurance policy into an auction process in this way has been by far the most common motivation for using W&I insurance in recent years. In other emerging jurisdictions, the most common utilisation will be overseas buyers investing for the first time in a particular jurisdiction. Their unfamiliarity with doing deals in certain countries can lead them to take a much more cautious approach to warranty exposure. We have worked for clients who will take out buyer-side W&I insurance when investing for the first time in some countries, even if the seller is offering a 100% warranty cap as they are concerned about the solvency of the seller and/or the enforceability of any claims.

UPDATE ON POLICY PARAMETERS

Another factor which has significantly driven the growth of the M&A insurance market is the evolution of the parameters of the policy and coverage provided.

Premium pricing and retention levels have both fallen over recent years. A decade ago, it was not unusual to see rates for W&I insurance at 4% to 5% of the limit of insurance purchased for Western European deals. In Europe, the Middle East and Africa (EMEA), the average premium rate we saw was 1.55% in 2013.

Insurers use the retention under the policy as a buffer mechanism before policy coverage begins. Again, a decade ago retention levels in Western Europe were typically moving down from 3% to 2% of the transaction value. Currently in EMEA, we typically see 1% of the transaction value as standard, but for some transactions insurers are happy to lower this, particularly for transactions in the real estate sector.

As premium rates and retention levels have fallen, policy coverage has typically expanded. The entrance of a number of new insurers in this area over the last few years has resulted in insurers looking for new ways to differentiate themselves and their offering. Boilerplate exclusions have generally contracted, and points of expanded coverage, such as specific indemnities, can often be wrapped around a standard W&I policy.

Coverage for tax is a very good example of the evolution of this specialist area of insurance, for example:

- Insurers are now more willing to provide cover for certain identified tax issues within a W&I policy.
- For certain risks, policies are now able to respond to situations where an advance tax payment is required in order to challenge a tax authority's assessment.
- Certain insurers are able to offer a 'synthetic' tax deed, providing a degree of cover for buyers in the situation where the seller is unable or unwilling to enter into a tax deed.

FURTHER READING AND PROMINENT SPEAKING EVENTS

"M&A Insurance Goes Mainstream: Lower Premiums and Policy Changes Increase Use of RWI."*
The Deal, December 13, 2013.

Click here to view the article:
<http://bit.ly/1fq12hg>

"W&I Insurance: A Win-win Solution".
Option Finance/Option Droit & Affaires, October, 2013.

MARSH PRESENTS AT M&A ACADEMY

In November, our London colleagues presented to more than 60 of Norton Rose Fulbright's clients at their M&A Academy.

IDENTIFYING RISK, PLANNING FOR SUCCESS

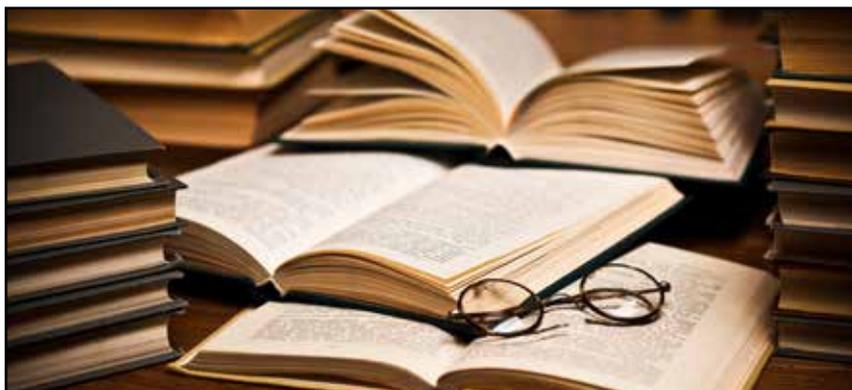
Colleagues from our team in Asia-Pacific participated on a panel of M&A experts at Mergermarket events held in Tokyo in July and Singapore in August.

EUROPEAN CLIENT SEMINARS

The Marsh Central and Eastern European (CEE) team held seminars in Warsaw and Prague in Q3 and Q4 to profile the availability and application of transactional risk solutions in the region. The seminars focused on the theme of "Managing M&A Risk" and were held in conjunction with partner private equity firms and a prominent local law firm.

BORENIUS BREAKFAST SEMINAR

Marsh presented on M&A insurance at the Borenius private equity breakfast seminar in Helsinki in September 2013, an event which was attended by a wide range of delegates from private equity and investment banking.



"In 2013, our worldwide teams placed more than 250 insurance policies with a combined limit in excess of USD5 billion into the M&A insurance marketplace."

* representations and warranties insurance

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