The anniversary series

10 YEARS

W&I Insurance – Latest trends and developments

Over the past few years, there has been a noticeable increase in the use of warranty and indemnity insurance (W&I insurance, for short) on the Belgian M&A market. While the use of W&I insurance is already more customary in deals over € 100 million, the uptick in its use in the mid-market segment is a more recent phenomenon. A recent snapshot from Vlerick's M&A Monitor showed that in 2020 W&I insurance was used in a whopping 29% of surveyed deals between € 50 and 100 million, which is even higher than the 15% in surveyed deals over € 100 million.

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Buy-side insurance - The best thing since sliced bread

Based on these statistics, it appears that the use of W&I insurance for mid-size deals is on the cusp of a breakthrough. While the product has already proven its use in our neighbouring countries, parties on the Belgian market are just starting to truly grasp the advantages of W&I insurance. The most often cited advantages to W&I insurance are the following: (i) a clean(er) exit for sellers, (ii) improved relationship between buyer and seller in case of continued involvement of the seller, (iii) no more fraught negotiations on the warranties and security mechanisms under the SPA, and (iv) recourse for the buyer against a surely solvable insurance company. Although cited less often, W&I insurance can also bridge the gap for hesitant buyers to do business in unknown foreign jurisdictions and to acquire companies in financial distress.

Upon closer inspection of these advantages, it becomes clear that they mostly benefit the seller. In a peak seller's market, it isn't hard to understand why a breakthrough of W&I insurance was inevitable.

In the current market, sellers are able to request increasingly seller-friendly terms. Especially in competitive auction processes, sellers are able to impose W&I insurance alongside a € 1 cap, allowing them to walk away from the deal with hardly any remaining liabilities. Some sellers are even able to do so without so much as a soft staple insurance attached to the deal, leaving all of the initiative and related (legal) fees to the buyer. Until recently, such a reduction of the seller's liabilities was unimaginable.

A buyer's market? When pigs fly.

With W&I insurance taking flight, it seems the only scenario that might stall its progress would be a downturn of the seller's market. While unlikely under the current circumstances, there is a chance that buyers may not be as ready to jump on board the W&I train as sellers have been in the event of such a downturn. As mentioned above, W&I insurance is primarily attractive to buyers aiming to court a seller.

Unless W&I insurance becomes so ingrained in the M&A market that people forget what negotiations on warranties used to entail, buyers might not be so concerned with reopening those negotiations in the absence of insurance. In addition, while buyers can of course rely on a solvable insurance company, mechanisms to ensure solvability of the sellers post-closing are still commonplace and easily available as an alternative.

If the market becomes less heavily favoured towards sellers, the use of W&I insurance could take a turn in run-of-the-mill vanilla transactions. This is not to say its use would become completely obsolete. In competitive auction processes, W&I insurance will likely remain a common request from sellers or, alternatively, a way for a buyer to differentiate itself from other bidders.

2021 – The early bird gets the worm

Reading reports from various insurance brokers, it is interesting to note that not even insurers themselves had expected the increased popularity of their product. In 2021, insurers reached their targets within the first six months of the year. As a result, where parties typically received around eight quotes on the Belgian market at the start of the year, in recent months this number dropped to a maximum of four. This is also reflected in Quinz's most recent experiences, where only two insurers submitted quotes during the NBI phase. This is not a uniquely Belgian problem, as this trend can be observed across Europe.

It is expected that such tightness will resolve itself at the start of 2022, or whenever insurers start with new budgets. However, if insurers do not sufficiently adjust their targets to cover increased demand for 2022, this phenomenon will reoccur. Our conversations with Howden, Belgium's #1 broker, indicate that to date they have always received at least one quote for each transaction. However, this remains an uncomfortable position to be in. Under these circumstances, parties may be better off in the first half of any given year, to ensure competitiveness among insurers. Sellers who want to impose the use of W&I insurance should at least consider soft stapling the insurance thereby giving certainty to buyers as to the availability of insurance.

Do you have any further questions on the use of W&I Insurance? Quinz would be happy to answer any questions you may have.

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