

Warranty & Indemnity Insurance and Special Risk Insurance

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Warranty & Indemnity Insurance Overview

The background of the slide features a dark blue top section. Below this, there are three horizontal, wavy bands of different shades of blue and teal, creating a layered, abstract effect. The bottom-most band is a bright cyan, the middle band is a medium teal, and the top band is a darker teal.

Warranty & Indemnity Insurance

Cover for unknown versus known risks

W&I Insurance

Cover for unknown and unforeseen loss

Warranties

Tax Indemnities

Fundamental

Title/Fundamental Warranties

Financial Statements

- Audited Accounts
- Management Accounts / Financial Statements

Business

- Financing
- Material Contracts
- Employees
- Compliance
- Tech/IP
- Insurance

Tax Warranty

Contingent Risk Insurance

Cover for known and contingent specific risks

Tax

Environmental

Litigation

Warranty & Indemnity Insurance Structure and Motivation

Basic structure of buy-side policy

- Claims-made policy
- Insurance coverage aims to mirror SPA
- No action of the insured against seller required for the policy to respond
- Excess cover over insurances existing at target level
- Cover provided for seller's fraud

Motivation

- Clean exit for seller with a low contractual limit on its liability and reduced contractual claims period
- Increased recourse available and extended time limitations
- Enhanced bidder status (sweeten the bid)
- Extended cover of W&I insurance compared to cover under any SPA
- Maintain management relations
- Insurer's solvency and experience with claims handling

Warranty & Indemnity Insurance Costs

Premium

- Between 0.8% and 1.4% of the limit of liability (as basis premium)
- Example: premium for €10m limit amounts to €80k - €140k
- Insurance premium tax applies (19% in Germany, 12% in UK)
- Commission of Marsh will be paid out of premium (i.e. no extra costs for insured)
- Premium due shortly after closing

Costs in case of a failed transaction

- Underwriting fee of insurer (€15k - €80k)
- Break fee of insurer (€10k - €40k)
- Marsh fee (€15k - €20k)
- Amounts of fees depend on deal size and complexity

Warranty & Indemnity Insurance

Standard Exclusions

Exclusions:

- Knowledge of the insured (W&I policies are intended to cover unknown issues only)
- Forward-looking warranties (W&I policies only catch historical liabilities)
- Consideration adjustments and leakage
- Condition of assets / stock (unless full DD was exercised on conditions)
- Anti-bribery and corruption (coverage of low risk jurisdictions possible if sufficient DD)
- Environmental liabilities (in case of sufficient due diligence, some insurers are willing to waive this exclusion)
- Criminal fines and penalties, punitive damages
- Underfunding of pension schemes
- Transfer pricing and secondary tax liabilities

Warranty & Indemnity Insurance Claims

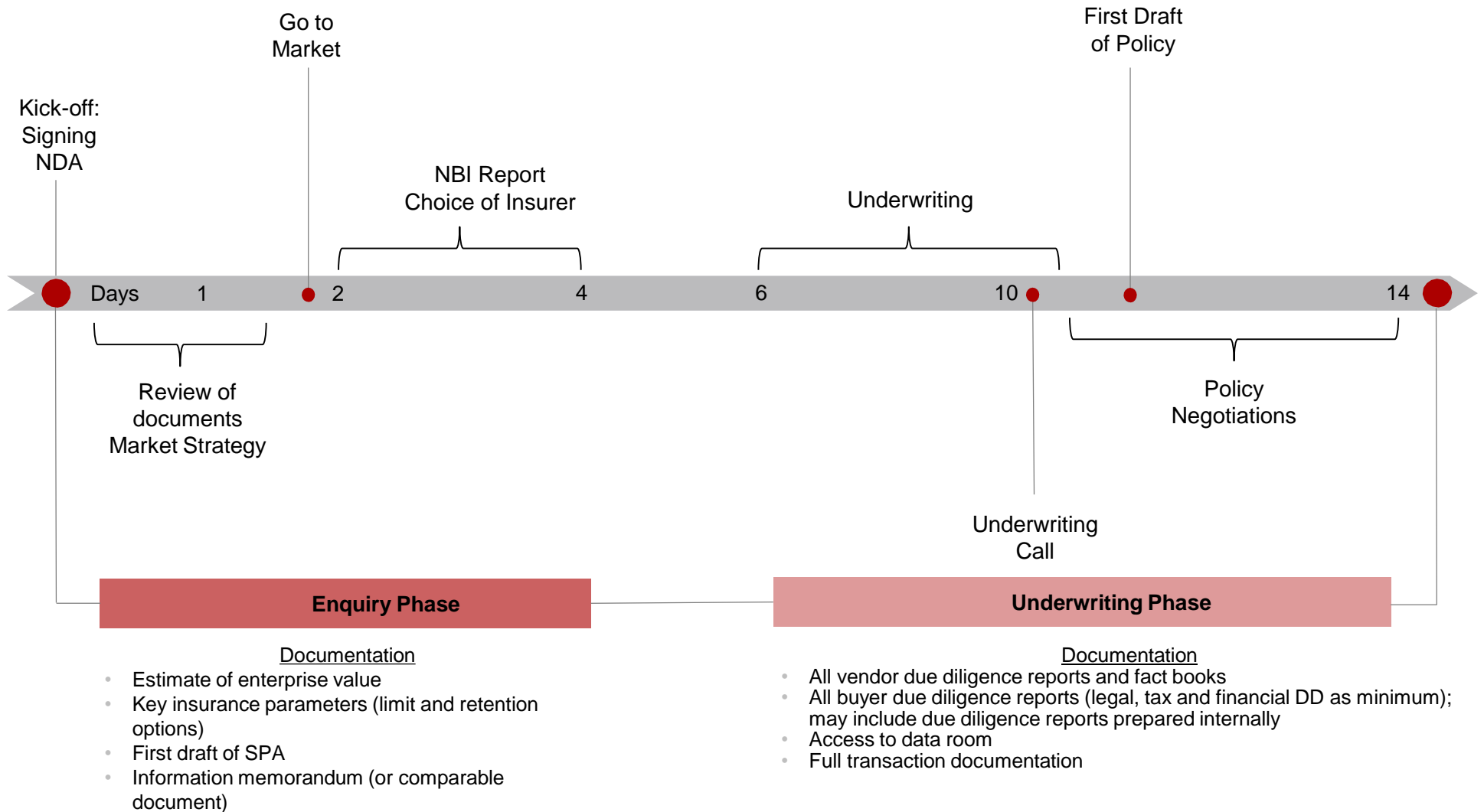
Claims Handling:

- Marsh prepared in-depth study covering EMEA region between 2009 and 2019
- 3 takeaways for DACH region:
 - Insurers paid on 84% of all claims reported to insurers
 - Number of claims increased; claims were made under 17% of all insurance policies placed. Majority of claims relates to accounts warranty.
 - Claims handling process has become faster; currently in average below 6 months after claim was reported.

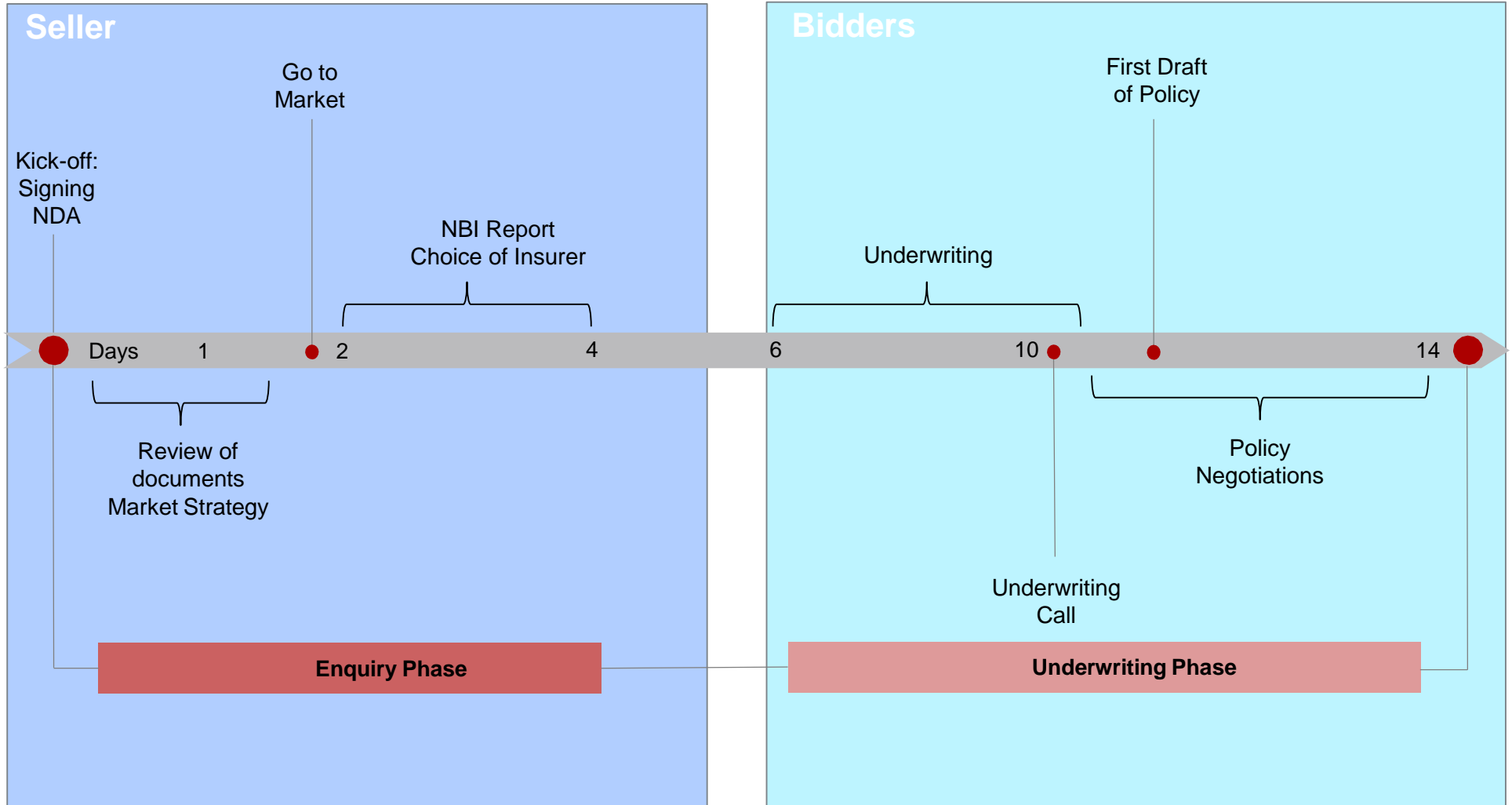
Warranty & Indemnity Insurance Process

The background of the slide features a dark blue top section. Below this, there are three horizontal bands of varying shades of blue and teal, separated by wavy, organic lines. The bottom-most band is a bright cyan color, while the middle band is a lighter, more muted teal. The top band is a dark blue, matching the header area.

Warranty & Indemnity Insurance Process Overview 1/2



Warranty & Indemnity Insurance Process Overview 2/2



Warranty & Indemnity Insurance Process

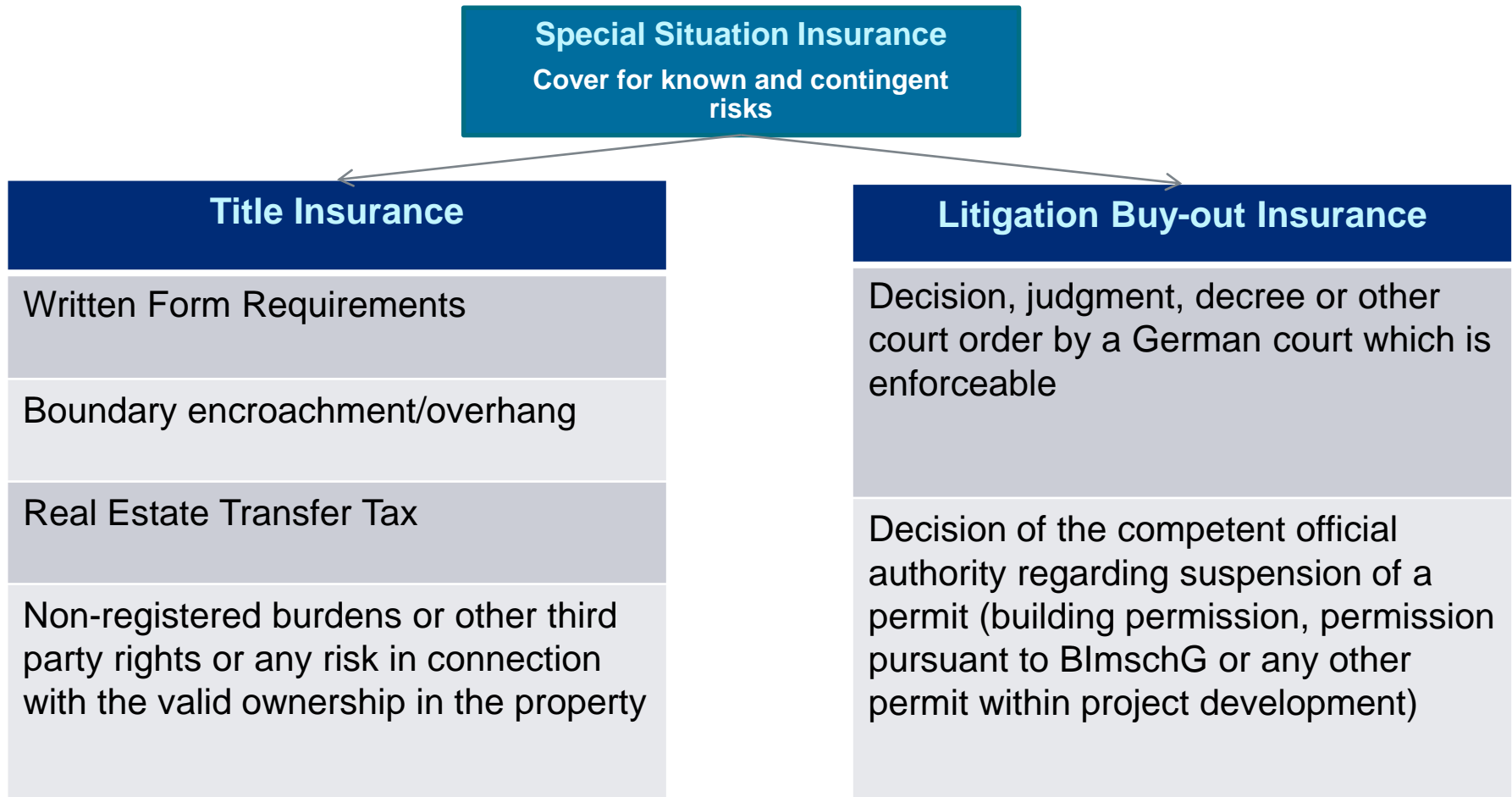
Documentation and information required:

- **For enquiry stage:**
 - Estimate of enterprise value
 - Key insurance parameters (limit and retention options)
 - First draft of SPA
 - Information memorandum (or comparable document)
- **For underwriting stage:**
 - Full transaction documentation
 - Access to data room
 - All vendor DD reports and fact books
 - All buyer DD reports (legal, tax and financial DD as minimum) → Seller needs to provide sufficient information to enable buyer to perform DD review

Special Risk Insurance Title and Litigation

The background of the slide is composed of three distinct horizontal bands. The top band is a dark, solid blue. The middle band is a medium teal color, separated from the top and bottom bands by thin white lines. The bottom band is a lighter, bright teal color. The overall effect is a clean, modern, and professional aesthetic.

Special Risk Insurance Overview



Basics

Structure and Motivations – Title Insurance

Basic structure of Title insurance policy:

- Covered risk:
 - Any risk in connection with the valid ownership in the property
 - Legal risks only, i.e., the facts have to be clear and the parties are only discussing the legal consequences
 - Exception: The facts are unclear for several years and no objection of a third party or notice of an official authority was filed
- Period:
 - In Principle, as long as Insured or eligible Assignee retains an interest in the Property.
 - The Policy can be assigned once, at no cost, to one third-party buyer within 10 years of issuance

Motivations:

- Abstract risk which has a low probability of occurrence but a huge potential damage → almost impossible to find a suitable allocation of the risk in the SPA
- Clean exit for seller without any pending liability and/or corresponding escrow account
- Carve-out of material risk and potential deal breaker
- Insurer's solvency and experience with claims handling (especially when it comes to alternative solutions with third parties or official authorities)

Basics

Structure and Motivations – Litigation Buy-out Insurance

Basic structure of Litigation buy-out insurance policy :

- Covered risk:
 - Damages in connection with a pending claim against Insured
 - To be defined on an individual case basis as described in the DD
 - In principle legal risks, i.e., the facts have to be clear and the parties are only discussing the legal consequences
- Period: Until a damage is materialised or excluded by a final and binding decision

Motivations:

- Abstract risk which has a low probability of occurrence but a huge potential damage → almost impossible to find a suitable allocation of the risk in the SPA
- Clean exit for seller without any pending liability and/or corresponding escrow account
- Carve-out of material risk and potential deal breaker
- Insurer's solvency and experience with claims handling (especially when it comes to alternative solutions with third parties or official authorities)

Pricing and Key Terms

Pricing

Premium:

- Title insurance: Between 0.2% and 2% of the limit of liability (depending on the involved risk and the likelihood of damage occurrence)
- Litigation buy-out Insurance: 1% up to 3.5-4% of the limit of liability
- Insurance premium tax applies (19% in Germany, 12% in UK)
- Commission of Marsh will be paid out of premium (i.e. no extra costs)
- Premium due shortly after closing

Costs in case of a failed transaction:

- Underwriting fee of insurer (€5k - €12k)
- In principle, no break fee of insurer would apply
- Marsh fee (€20k - €25k)
- Amounts of fees depend on deal size

Pricing and Key Terms

Exclusions

Market Standard Exclusions of Coverage:

- Damage caused by any change in law
- Any inaccuracy, misleading statement or misrepresentation in the Representation Letter (declaration of the insured regarding the circumstances/facts of the contingent risk)
- Fraudulent or dishonest conduct of the Target Company or the Insured
- Compulsory purchase or acquisition, expropriation, nationalization, resumption or similar rights conferred by law, unless notice of the exercise of the right is recorded, filed or registered in the Public Records at the Date of Policy
- Any claim that arises under bankruptcy, insolvency or similar creditors' rights laws
- War, insurrection, riot, civil unrest, act of a public enemy, epidemic, quarantine restriction, governmental restriction of access to or use of the Land, nationalization, acts of God, or other similar causes beyond the reasonable control of, and without the fault of the Insurer

Workstream Documentation

Documentation and information required:

- During enquiry stage:
 - Estimate of invested capital/limit to be covered
 - Description of the contingent risk and the intended transaction
 - First draft of expert/legal opinion
 - Business model
- During underwriting stage:
 - All of the available documentation on which the risk is based (permission documents, legal briefs, statements etc.)
 - All buyer due diligence reports in which the contingent risk is flagged (i.e. legal report)
 - Full transaction documentation (not necessarily)

Case Study – Project Windfarm Bullerbue

- Client: Project Investor (Corporate)
- Equity Value (EV) or invested amount: EUR 30m
- Target: Renewable Energy industry
- Contingent RiskType: Objection of neighbors against construction permission of a windfarm due to environmental risks

STEP 1

Day 1: Buyer (potential Insured) or his Advisor/Lawyer calls Marsh



- Finalizing the NDA

Option 1: Marsh joins an already existing NDA; or

Option 2: The Client and Marsh sign the standard NDA of Marsh; this is already pre-negotiated with the insurers which means that the insurers will sign and send back the joinder to the NDA quickly.

- The enquiry call is important to discuss the specific contingent risk, its **origin** as well as its **factual and legal background**, the underlying transaction so that we can understand the deal dynamics and the rationale and motivation for using the insurance, along with the required parameters around Limit and Attachment Point (Retention) and the potential insurance solutions that are available in the market.

STEP 2

Day 2: Marsh Review



Analysis of Transaction Documents and Deal Structuring:

- Marsh will review the documentation regarding the contingent risk from an insurance perspective and propose a marketing strategy, based on our experience, outlining the insurers that would be most suitable to underwrite the transaction.
- Proposal in respect of the policy structure:
(Buy-Side) Special Risk Policy with a Nil Retention;
- Preliminary assessment of the premium level:
EUR 600k in case of €30m Limit (rate on line 2%); to our experience the investors usually want to secure their total investment.
- Proposal of Marsh which insurers will be requested.

STEP 3

Day2/3: Go to market



- We will require a summary of the facts and preliminary legal assessment and prepare an outline of the risk to be insured for the market
- Marsh will send the NDA to the selected insurers, which will send the signed Joinder back.
- Marsh will send the outline of the risk along with the transaction documents (legal opinion and description of the Target) to the insurers asking them to review the documentation and provide non-binding indications (NBI) setting out their initial coverage position and pricing under the policy.

STEP 4

Day 7: Summary of received NBIs



- Marsh will review the NBIs received and provide the Client and his Advisors with a summary of the insurance options, including analysis around price, terms, financial security, claims handling, coverage terms and execution risk, as well as a recommendation as to how to proceed.

STEP 5

Day 7/8: Client Engagement



- Finalising the Letter of Engagement between the Client (Buyer) and Marsh.
- In order to proceed into the underwriting and policy negotiation phase, Marsh requires the Insured to select the primary insurer they wish to proceed with.
- The selected insurer(s) will generally require a signed expense agreement to engage in this step of the process as they will need to commence their underwriting of the transaction to engage in policy negotiations. Many insurers will waive their legal fees (approx. EUR 5k – EUR 12k) in the event that a policy is purchased.

STEP 6

Day 8: Client Engagement



- Marsh will engage the selected insurer(s) to conduct their underwriting for the contingent risk. The insurers will require access to all documents relevant for the assessment of the contingent risk (including the initial permit, legal briefs, legal opinion etc.)
- All hold harmless/non-reliance letters required by legal advisors who prepared legal opinions / dd reports on the contingent risk
- Insurers and their external legal counsel will review documents and prepare underwriting questions which are clarified during the ongoing underwriting procedure

STEP 7

Day 15: Policy Negotiation



- Following the underwriting procedure, the insurer(s) will issue the first (binding) draft of a policy.
- Marsh will prepare a mark-up of the policy to ensure it responds to the loss according to the contingent risk description and negotiate the coverage position to obtain cover as broad as possible under the policy.

STEP 8

Day 30: Binding Policy



- Once the policy is fully negotiated, coverage will be put in place at the time agreed with the parties.
- Buyer will sign the finalized SPA and/or investment documents as well as the finalized binding policy draft.
- Once the transaction is closed, Marsh will invoice the premium to the Client. The original insurance policy will finally send to the Client (Insured).



Sitz: Frankfurt am Main; Handelsregister: HRB 12141; Amtsgericht: Frankfurt am Main

Geschäftsführung: Siegmund Fahrig (Vors.),

Oliver Dobner, Thomas Olaynig

Vorsitzender des Aufsichtsrates: Dr. August Joas