

## WARRANTIES: WORTHLESS OR WORTHWHILE?

To continue our popular breakfast briefing series, on Thursday 9 March 2017, Addleshaw Goddard hosted a briefing which explored how risk management options in M&A transactions are **evolving**, how warranties and indemnities can be used effectively and the increasing prevalence of W&I Insurance. This briefing follows an in-depth analysis of recent M&A disputes in order to see what patterns and lessons emerge. As part of this briefing we asked our attendees for their views and insights into **current trends**.

The largest category of respondents to the survey at the briefing were **corporates**, with the remainder made up of financial investors, banks, brokers and insurers.



Our audience had a lot of relevant experience with **over 65%**

of the respondents regularly involved in drafting, negotiating or advising on warranties and over  $\frac{1}{3}$  having been involved in at least one warranty claim.



**Financial warranties** is where almost **44%** of our respondents focus their efforts when they are preparing an SPA, followed by **business and trading** and **compliance and regulatory** warranties.



This focus may be because, in accordance with the findings of our analysis, **you accurately expected** the majority of claims to arise from financial and business and trading warranties.



These results are perhaps unsurprising given that broad, well-drafted financial warranties can capture breaches spanning a number of different areas outside of pure financial or accounting issues.



The **total cap on liability** was correctly considered by our respondents to be the most relevant limitation on claims, where we found that a

**50% cap**

(as against consideration) was sufficient to cover the value of the claim but a lower cap of anything around

**30% or less**

exposed buyers to a **higher level of risk**.



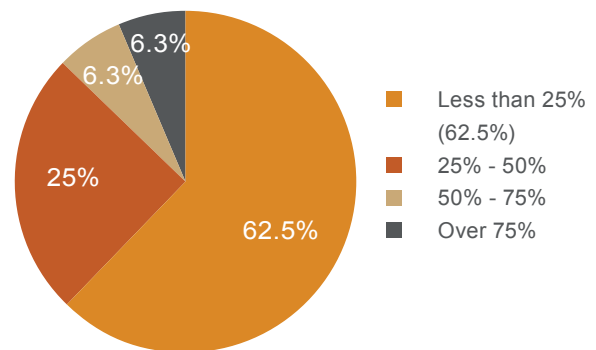
**De minimis** levels and **time-frames** came in joint second in our respondents' views on relevance but given that de minimis levels rarely posed an issue in our review of claims, this may be an area parties can strategically give a little on in order to negotiate a better position on cap.



Warranties are only one way in which buyers mitigate their risk. Increasingly, the risk management package includes W&I insurance, but this is still a **GROWTH** area.

**96%** of all W&I insurance policies that are taken out are **BUYER-side** policies. There was a **55% increase** in the number of policies placed in 2015.

#### IN TRANSACTIONS YOU HAVE BEEN INVOLVED WITH, HOW OFTEN HAS W&I INSURANCE BEEN USED?



However, W&I insurance is still not very widely used in M&A transactions, according to our survey.

The majority of respondents have come across W&I insurance in **less than 25%** of their matters with around **20%** of those giving rise to a claim being made under the policy.

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