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Insights

WHAT IS THE FUTURE OF M&A INSURANCE - AS A RISK MANAGEMENT TOOL FOR FINANCIAL INSTITUTIONS?

Apr 07, 2021

SUMMARY

In a world where you never know what will happen next, M&A insurance is one way of protecting your business against the risk of the unexpected. We have been seeing significant changes in the M&A market in recent years – a trend that Covid-19 is likely to exacerbate – meaning that firms that previously would not have contemplated purchasing this type of insurance, might now consider it; and insurers providing this type of cover need to reassess their risk strategies to reflect the level of uncertainty inherent in the 'new normal'.

In the last few years, new features of M&A insurance products have emerged, partly explaining their rise in usage. Examples include:

- **Contingent risk insurance** – which tends to cover "low risk, big number" items. We have seen this used in tax, title, litigation and environmental.
- **W&I coverage enhancements** – for example:
  - "scrapes" whereby the policy disregards awareness or materiality qualifications in the SPA or extends time limits;
  - synthetic policies whereby the SPA contains no warranties but the insurer nevertheless agrees to cover a set of warranties on the sale;
  - zero excess/retention in some sectors (such as real estate) and a small "de minimis"; and
  - "new breach cover" where the insurer covers issues discovered between exchange of contracts and completion.

It is likely that COVID-19 will increase the demand for all these features and drive the creation of new ones as buyers, sellers and insurers seek to allocate risk in a highly uncertain climate. It will be interesting to see whether the current squeeze in M&A volumes changes market dynamics.

All crises drive innovation and change. In a "risk-off" environment, demand for innovation in W&I and contingent risk policies is only likely to increase. The big question is whether the recent drop in M&A volumes and increase in claims will give rise to a more cautious attitude amongst underwriters.

Adam Bogdanor wrote about this in our Emerging Themes in Financial Regulation 2021 publication.

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