ATLANTIC GLOBAL RISK

MERGERS & ACQUISITIONS INSURANCE

2019 Insights

ROUND UP

The North American M&A insurance market continued to mature in 2019. Despite fewer recorded M&A deals[1], total gross written premium across the North American M&A insurance market increased by approximately 10% year over year, buoyed by increased demand for tax insurance and rising penetration rates for corporate deals.

Actual representations and warranties insurance ("**RWI**") premium rates fell again during 2019 before stabilizing in the last quarter. This halt in quarterly declines was primarily due to increased M&A insurance claims activity and a tightening of terms across the broader (re)insurance market. With certain exceptions explored later in this report, we expect RWI premium rates to remain relatively stable in 2020.

Financial sponsor deals continued to account for the majority of M&A insurance premium generated in 2019, but increased acceptance of the product amongst strategic acquirers resulted in the growth of market share for corporate deals. The theme of corporates encouraging the use of RWI when divesting assets or divisions continued into 2019, and we advised on carveouts spanning a breadth of industries throughout the year.

While RWI remains the most widely used M&A insurance product by a large margin, tax insurance gained a firm footing in 2019 and multiple carriers launched or expanded tax underwriting teams. In 2019, our tax team structured tax policies to cover a multitude of risks within and outside the context of M&A transactions, e.g., risks arising from REIT qualifications and spin-offs. We were able to leverage intensified carrier competition to secure increasingly competitive premium rates and broader cover for tax policies as the year progressed.

With several large RWI claims, 2019 will be remembered as the year in which insurers and reinsurers recalled the need for disciplined underwriting to ensure the long-term stability of what remains an emerging class of business.

At a point of potential inflexion in the market, the expertise, experience and tireless work of our team is of the utmost importance to M&A practitioners and advisers. We are committed to delivering advice and service that adds tangible value, allowing our clients to focus on deal-related activities with the knowledge that we will secure the best terms and cover available.

We look forward to working with you in 2020 and beyond.

The Board
Atlantic Global Risk LLC

[1] Mergermarket Global & Regional M&A Report 2019: The US recorded 5,757 deals worth a combined $1.57tn in 2019, representing a 1.5% increase by value. However, the US recorded 617 fewer deals compared to the prior year.

PREMIUM AND LIMITS

In the first half of 2019, RWI premium rates across all industry verticals continued the downward trend established in previous years. However, the last quarter of 2019 saw rates holding firm for most sectors and, in some cases, rising for the first time in years. The reason for this change is increased claims activity within the M&A insurance class and, perhaps more importantly, a general hardening of terms across the broader (re)insurance market. With certain exceptions, our expectation is for RWI premium rates to remain relatively stable in 2020.

The last quarter of 2019 saw rates holding firm for most sectors and, in some cases, rising for the first time in years.

One industry vertical in which further premium rate reductions are expected in 2020 is real estate. The use of M&A insurance within the sector has historically been dominated by transactions involving the sale of interests in real estate investment trusts ("**REITs**"). However, a growing awareness of the benefits of the product resulted in a more widespread application throughout 2019 than in previous years. In 2019, our real estate team completed placements on a range of transaction structures, including REITs, equity recapitalizations, entity sales and asset sales. As insurers' comfort level with real estate deals rises, we anticipate premium rates to continue falling.

Examining rates on certain industry verticals: as a general trend, the RWI premium spread between sectors continues to narrow. Examples of this narrowing spread in 2019 include Atlantic securing favorable terms from a leading insurer on the acquisition of a residential mortgage company, when historically companies in this sector were not deemed insurable. Atlantic was able to secure terms at 2.6% rate on line ("**ROL**")[2] for a policy with a broad scope of cover. Another example is a healthcare provider with significant government reimbursement risk: in previous years acquisitions of healthcare providers commanded an ROL of 3.5% or more, but we recently secured terms at 2.7% ROL.

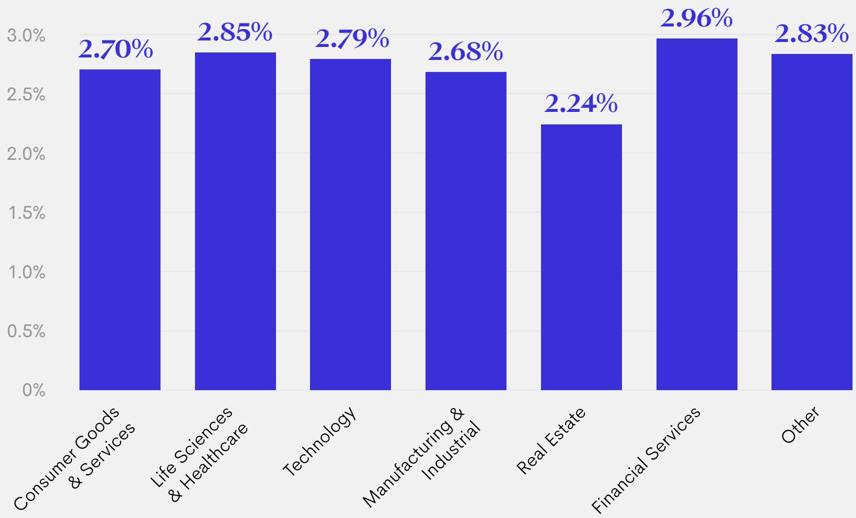
Our ROL statistics tell a story about perceived risk associated with each sector from the perspective of insurers. For example, ROLs for target companies operating in the life sciences and healthcare sector are among the highest (2.85%). This aligns with the fact that these companies are exposed to the potential for significant losses arising from certain matters (e.g., intellectual property, regulatory compliance). Similarly, insurers have a more limited appetite for the risk associated with financial services transactions. As a result, the average ROL for such deals was 2.96%. Our policy limit statistics also tell a story about buyers' perceived risk associated with each sector, for investments in the technology sector are ostensibly seen as riskier. This is demonstrated by the fact that the average policy limit for technology-based target companies is significantly higher than every other sector (19% average policy limit). This seems appropriate

[2] ROL: rate on line is the premium expressed as a percentage of policy limit, e.g., $500k premium on a limit of $20m is a 2.5% ROL.

given the risk profile of technology companies, where IP and cybersecurity risks are especially pronounced.

Insurers' claims drive both underwriting appetite and premium rates. Historically, the impact of claims experience on M&A insurance premium rates has been modest given the influx of insurer capital into the M&A insurance class over the last five years. Given recent claims activity on large deals, we expect this to change in 2020 with ROL increases for $30m primary limits (i.e., the maximum amount that many carriers are willing to commit to the primary layer of a tower of insurance). This is likely to result in higher premium rates across the tower of insurance on deals of $5bn+.

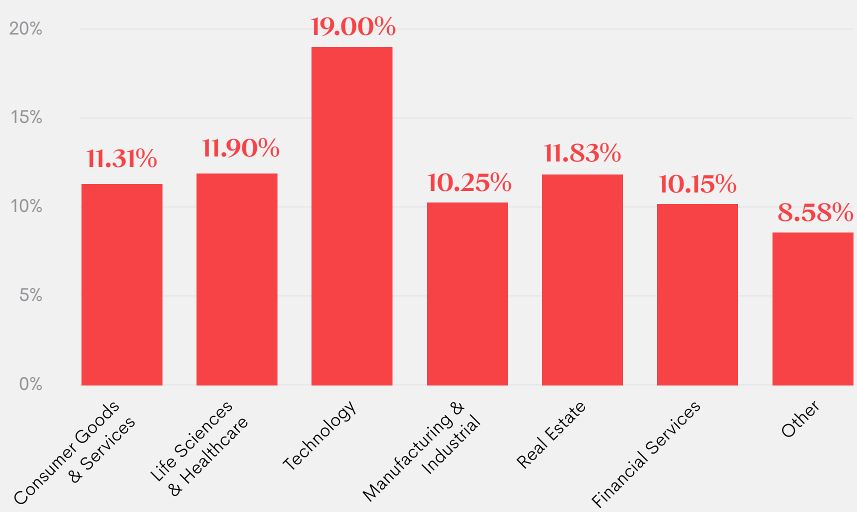
PREMIUM RATES BY SECTOR



AVERAGE ROL BY SECTOR

Statistics based on bound buyer-side RWI policies for North American target companies. For deals that utilized more than one policy, the average ROL across the tower of insurance is used.

POLICY LIMITS BY SECTOR



AVERAGE POLICY LIMIT AS PERCENTAGE OF ENTERPRISE VALUE BY SECTOR

Statistics based on bound buyer-side RWI policies for North American target companies. For deals that utilized more than one policy, the total policy limit across the tower of insurance is used.

FOCUS ON CARVEOUTS

One key feature of the recent North American M&A market has been the rise of private equity driven carveout deals. Two primary factors have contributed to a growing use of RWI on such deals: (i) private equity sponsors, familiar with RWI from "buyout" deals, are using the product to aid negotiations with corporate sellers; and (ii) corporate sellers, who are increasingly familiar with RWI, are focused on minimizing liability by encouraging the use of insurance.

In 2019, Atlantic's team advised on carveout transactions ranging in value between $200m and $5bn across a variety of industry verticals, including pharmaceutical, technology and manufacturing. To secure broad RWI coverage for carveout transactions, there are unique considerations to address at the onset of the deal process. For example, in many cases, RWI insurers will require that the insured maintains an underlying insurance program with retroactive cover for key areas (e.g., product liability, cybersecurity). Effectively evaluating and/or arranging such cover is essential for structuring a robust RWI policy. Furthermore, an early understanding of the risks associated with any reorganizations being undertaken to facilitate the transaction will enable an efficient underwriting process.

By engaging Atlantic early in the transaction process, sellers or buyers will ensure the deal timetable and RWI process are appropriately aligned. Among other things, our advice includes a review of the scope of assumed liabilities and commentary on how the RWI policy will be impacted. We will also provide detailed advice on how to appropriately scope diligence. This allows both sellers and potential buyers to assess and revise the scope of assumed liabilities, while ensuring effective cover is obtained under the policy. Our advice also includes an analysis of potential successor liability risk (or lack thereof) and an evaluation of the mitigation and/or subrogation provisions included in the policy.

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RETENTION

Although there were reductions across certain sectors and deal size ranges, retention rates remained relatively stable in 2019. The most notable exception to the trend of stability was within the real estate sector, and our real estate team secured increasingly competitive retention levels as the year progressed. In the last quarter, we regularly secured retention levels of 0.25% of enterprise value ("**EV**") and in some cases lower. On certain deals, these retentions dropped to 0% ("**nil**") 12 months following closing. For a subset of representations (i.e., REIT and fundamental), certain insurers can provide a nil retention from the outset. As demand for the product increases and insurers become more familiar with the risks, we anticipate more insurers offering lower retention levels on real estate deals.

The trend established in previous years of insurers offering lower retention levels on larger deals continued in 2019. However, the threshold deal value at which insurers are willing to offer a lower retention changed. Historically insurers were only willing to offer lower retentions for transactions with EVs above $750m. For example, transactions below $750m typically had retention amounts of ~1% EV, dropping to ~0.5% EV after 12 months. However, in 2019, our team secured 0.75% EV retentions on several deals with EVs of approximately $500m, well below the $750m threshold.

We were able to obtain a 0.45% EV retention for a high-profile domestic deal in the leisure sector, as well as 0.5% EV retentions on several deals with multi-jurisdictional exposure. In the case of the multi-jurisdictional transactions, insurers required increased premium amounts in the form of retention "buydowns". Given the general tightening of the (re)insurance market and recent RWI claims experience on larger deals, we expect retention levels to remain relatively stable in 2020.

Whether the buyer and/or the seller is responsible for the retention is reflected in our statistics on seller indemnity provisions. Where the seller was liable, the liability was generally split 50:50 between the buyer and the seller. As demonstrated by our statistics, "public style" or "nil seller idemnity" deals are becoming increasingly common, with 34% of 2019 deals being structured as such. When examining a subset of data limited to sponsor exits, the percentage of "nil seller indemnity" deals rises to 57.14%. This is explained by the fact that carveouts and owner-founder deals are more likely to be structured as seller indemnity transactions.

An analysis of our retention statistics supports the general market consensus: retentions tend to be ~1% EV for lower middle market deals, and 0.75% EV for upper middle market deals. For deals with retention amounts in excess of 1%, this is either because: (i) the buyer requested a higher retention to sit above the escrow; or (ii) it was a smaller transaction for which insurers required a minimum monetary retention amount in excess of 1% to mitigate potential exposure.

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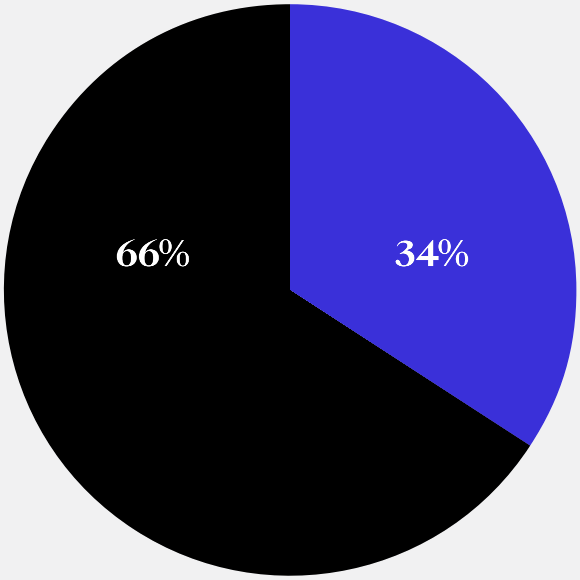
SELLER INDEMNITY

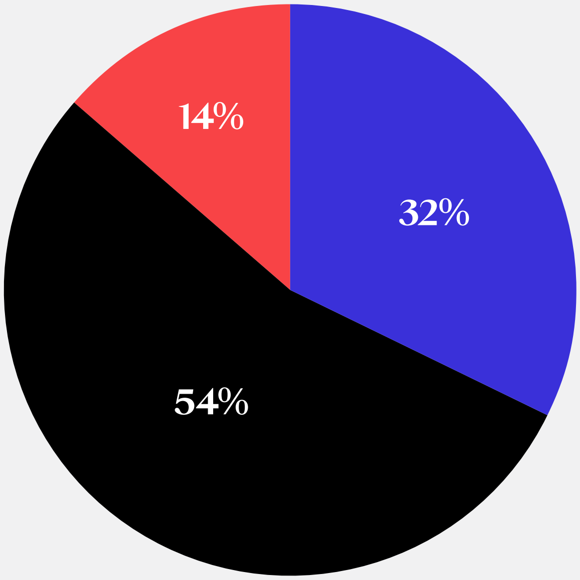


Nil Seller Indemnity: seller is not liable under the agreement for the general or tax representations. The buyer's sole right of recovery is limited to the RWI policy (save for fraud). Seller may remain liable for the fundamental representations and certain standalone indemnities.

Seller Indemnity: seller is liable under the agreement for the general and tax representations. Seller's liability is typically limited to a low monetary amount (i.e., 0.5-1% EV) and a short time period (i.e., 12 months). On a seller indemnity deal, it is common for the buyer and the seller to split the retention 50:50 (i.e., $100m EV, $1m retention, seller liable for $500k).

Statistics based on purchase agreement and merger agreement provisions for deals that utilized a bound buyer-side RWI policy for North American target companies.

RETENTION LEVELS



- Less than or equal to 0.5% EV
- More than 0.5% and less than or equal to 1% EV
- More than 1%

Retention levels as a percentage of EV. The statistics represent the initial retention, which frequently drops to 0.5%, 0.25% or 0% of EV after 12 months. Statistics based on bound buyer-side RWI policy terms for North American target companies.

FOCUS ON CYBERSECURITY

Cybersecurity risk is increasingly cited as a key concern to businesses[3] and several cybersecurity incidents have made headlines. These included: (i) the prolonged and unauthorized access of Yahoo!'s users' account data by hackers discovered shortly after its acquisition by Verizon, resulting in a $350m reduction in the purchase price; and (ii) the theft of Starwood Hotels' guest details discovered after its acquisition by Marriott International, likely to result in losses in excess of $120m. In both cases, the cybersecurity incidents occurred prior to the respective acquisitions, but they were not discovered until after closing. These cases highlight the importance of securing adequate cybersecurity protection under RWI policies.

There is a longstanding debate in the wider insurance market about how to effectively protect against losses arising from intangible assets such as intellectual property and goodwill. Cybersecurity insurance is a good example of the insurance market providing a solution that protects against an emerging type of risk (i.e., cybersecurity), but only partially protects the intangible value associated with this risk. In the event of a cybersecurity incident, pronounced sources of potential loss are damage to reputation and loss of goodwill. Cybersecurity insurance purchased by companies on an annual basis will generally cover direct out of pocket expenses, such as notifying customers and restoring lost data. In certain cases, cybersecurity policies can be extended to cover loss of income for a limited period (i.e., 12 months). However, cybersecurity policies do not fully protect against the full scope of potential losses because damage to reputation and loss of goodwill are notably excluded from virtually all cybersecurity policies.

Atlantic has been at the forefront of educating private equity sponsors and other investors on the pitfalls of RWI policies containing "excess of and no broader than" language that prevents the recovery of damages that would ordinarily be recoverable from a seller. By guiding clients on diligence activities and undertaking a robust review of existing cybersecurity policies and indemnity provisions in customer contracts (an integral part of cybersecurity insurance), we can secure broad cybersecurity cover from RWI carriers. The position we can achieve provides buyers with the opportunity to recover losses from the RWI policy that might be expressly excluded from an underlying cybersecurity policy, including damage to reputation and loss of goodwill.

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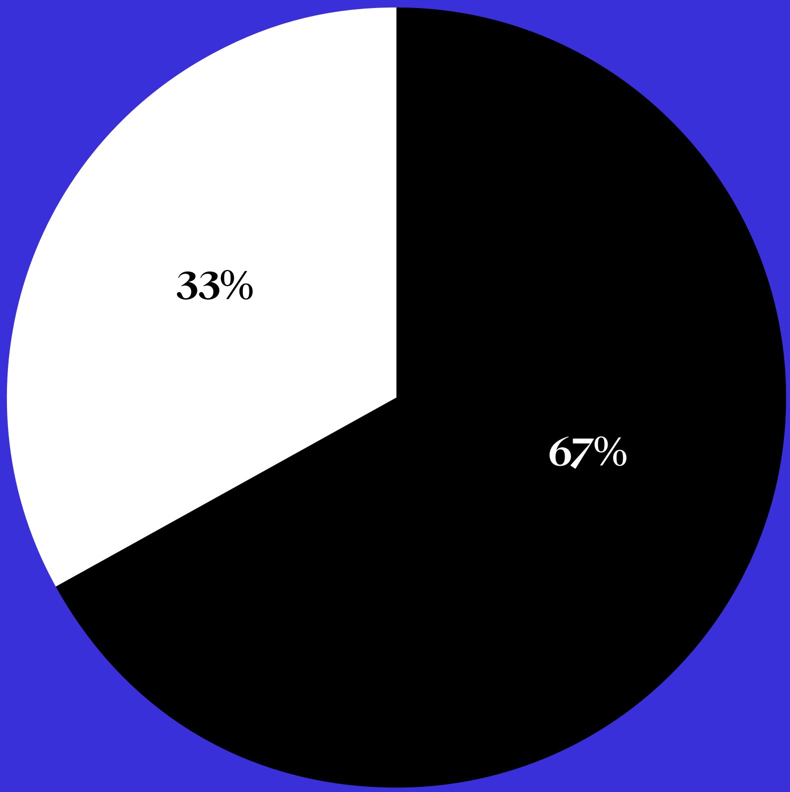
There is a longstanding debate in the wider insurance market about how to effectively protect against losses arising from intangible assets.

[3] RSM US Middle Market Business Index, Cybersecurity Special Report Q1 2018

Absent RWI, sellers have historically sought to limit the scope of cybersecurity and data security representations to include the following: (i) the company has implemented robust policies and procedures to limit access to confidential information; and (ii) the company has no knowledge of a data breach. As demonstrated by our statistics, a significant proportion of insured deals contain the more extensive absolute "no breach" representation, protecting buyers against the risk of an unknown pre-closing breach.

CYBERSECURITY REPRESENTATIONS



Extensive: agreement contains representation stating there has been no security breach (without a knowledge qualifier), but this might be time limited (i.e., no breach within last three years). Any reference to a potential security breach is on an absolute basis.

Limited: agreement contains representation stating adequate systems and/or no knowledge of a data security breach. Any reference to a potential security breach is knowledge qualified.

Only includes deals if agreement contains a cybersecurity representation. Statistics based on purchase agreement or merger agreement provisions for deals that utilized a bound buyer-side RWI policy for North American target companies.

GLOBAL REVIEW

EUROPE

Over the last few years, intense carrier competition in the form of new insurers and managing general agents ("**MGAs**") has resulted in significant downward pressure on RWI premium rates in Europe. RWI premium rates were generally down again in 2019, with premium rates falling in most regions (i.e., Central and Eastern Europe average ROL was 1.02%, representing a 11.30% decrease year over year). In certain regions, premium rates were significantly down (i.e., 40.40% decrease in Nordics).

The statistics on page 12 of this report show rising premium rates in the UK. This is primarily due to a large number of deals within the sample involving UK transactions with significant overseas exposure. When examining a subset of data limited to UK middle market deals (with limited overseas exposure), the average ROL falls to 1.03%.

ASIA-PACIFIC

M&A activity for Asia-Pacific was down significantly in 2019, recording the lowest deal count and volume since 2014 and 2013, respectively.[4]

The use of M&A insurance for deals in the Asia-Pacific region continues to lag the rest of the world, with estimated penetration rates of <5%. The only exception to this is Australasia which was an early adopter of the product.

As RWI carriers become more familiar with deals in the region and awareness of the product amongst sponsors and advisers grows, we anticipate penetration rates to rise.

[4] Mergermarket Global & Regional M&A Report 2019. M&A activity in APAC excl. Japan recorded $565.3bn across 3,735 deals in 2019, the lowest value since 2013 and smallest deal count since 2014.

CROSS BORDER TRANSACTIONS

Throughout 2019, our team advised on both North American outbound and inbound cross border deals.

For a European buyer acquiring a North American business, the cover available under a US style RWI policy will be more attractive than what it is accustomed to. However, for a North American buyer acquiring a European business, the cover available under a European style warranties and indemnities ("**W&I**") policy will be less attractive. In particular, the disclosure regime under European agreements and W&I policies (i.e., general disclosure of the data room, in addition to specific disclosure schedules) often causes concern. Our team has significant experience advising clients on cross border deals, ensuring a smooth integration of RWI/W&I into the deal process and bridging gaps in the approach to M&A. For example, securing North American style cover on a European deal requires an early understanding of key considerations (e.g., seller's disclosure approach) so that these can be addressed with the seller and negotiated with the RWI/W&I carrier at the outset of the process.

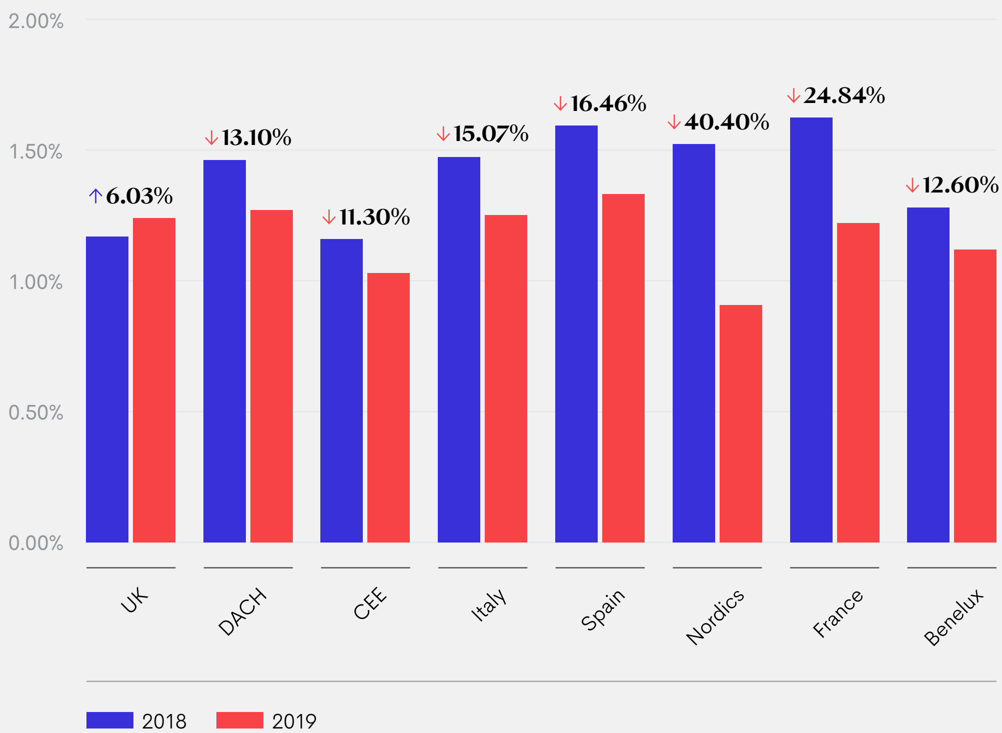
For a North American company planning the sale of an overseas business, introducing a "stapled" RWI/W&I policy to bidders helps minimize execution risk. Our team is able to navigate issues such as how the choice of law impacts the RWI policy, through to the proposed scope of assumed/excluded liabilities on buyer diligence requirements, cover and pricing.

For a North American company planning the sale of an overseas business, introducing a "stapled" RWI/W&I policy to bidders helps minimize execution risk.

PREMIUM RATES BY REGION

Average ROLs by jurisdiction across all industry verticals excluding real estate.

Statistics based on bound buyer-side RWI policy terms and includes data from Howden M&A Ltd.



NOTES TO ALL CHARTS:

Statistics represent policy and/or underlying agreement terms from deals that utilized buyer-side RWI/W&I policies in calendar year 2019.

Data based on bound policies placed by Atlantic Global Risk LLC and its affiliates and, where noted, Howden M&A Ltd.

FOCUS ON ENVIRONMENTAL

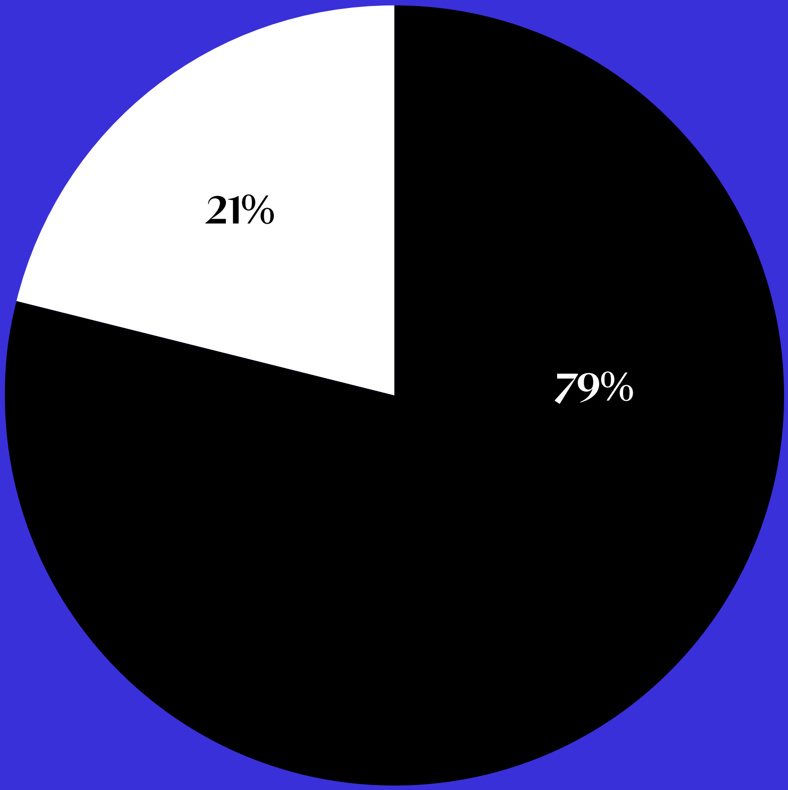
The RWI market's appetite for environmental matters has expanded significantly in recent years. In 2019, we frequently secured environmental cover for companies and industries that historically would have been "off-limits" to RWI carriers. As with other risks, an RWI policy will cover environmental matters if there is a breach of an environmental representation in the underlying agreement.

From an environmental perspective, the key representation is the one that addresses release of hazardous materials. The seller's position will be that, while it can give a representation to matters within its control or knowledge, it is unable to give one on the absence of any historic release of hazardous materials at sites owned, leased or occupied by the company (on the basis that a third-party will historically have owned and/or operated from the site prior to the seller's ownership). If the seller prevails in this stance, the buyer will not be protected against pollution which existed prior to the seller's ownership. Our team will work with the buyer's attorneys to highlight this risk and the benefits of securing the broader representation. However, as evidenced by our statistics, sellers often tend to resist this (e.g., 79% of 2019 deals contained the more limited environmental representation).

Regardless of whether a buyer can obtain the more extensive environmental representation, RWI carriers will not cover identified pollution or recognized environmental conditions ("**RECs**"). If a buyer's diligence identifies RECs, the traditional solution has been to obtain a specific indemnity from the seller or account for the issue by adjusting the purchase price. Our team frequently advises clients on bespoke environmental policies to protect against identified RECs, with demand for such policies increasing in 2019. An environmental policy provides both first-party costs (e.g., remediation, business interruption) and third-party costs (e.g., bodily injury, property damage, third-party clean-up costs). By structuring standalone environmental policies, we have helped our clients increase the attractiveness of their bids by avoiding the need to discount the purchase price or demand specific indemnities from the seller.

Our team frequently advises clients on bespoke environmental policies to protect against identified RECs.

ENVIRONMENTAL REPRESENTATIONS



Extensive: agreement contains absolute environmental representation confirming no historic release of hazardous materials.

Limited: agreement contains environmental representation but any release of hazardous materials will be qualified by knowledge, time limited or restricted to matters within the control of the company and/or seller.

Only includes deals if agreement contains an environmental representation. Statistics based on purchase agreement or merger agreement provisions for deals that utilized a bound buyer-side RWI policy for North American target companies.

2020 OUTLOOK

Despite an election year and continued political uncertainty, consensus amongst commentators is that the M&A outlook for 2020 is reasonably positive. Financial sponsors have raised record levels of capital, and, as the largest users of the product, we expect premium volumes to grow once again in 2020, albeit closer to the more modest growth rate witnessed in 2019. Corporate divestitures are likely to continue apace and RWI will play an increasingly central role in these deals. We expect that an increasing number of sellers and their advisers will see the benefit of instructing brokers to procure RWI terms before launching an M&A process. This is what is known as a "soft staple" insurance package and can be made available to bidders to help facilitate negotiations. In 2019, we began supporting asset sales arising from insolvency proceedings (e.g., section 363 sales). We expect this trend to continue into 2020, especially within the energy sector.

The growth seen in the issuance of tax insurance policies over the previous year will likely continue into 2020. We expect lower pricing, increased insurer appetite and growing awareness of the benefits of tax insurance to result in significantly higher premium volumes for tax insurance in 2020. M&A insurance carriers have existing exposure to the changes brought about by tax reform (i.e., our team has ensured that mandatory repatriation calculations pursuant to section 965 of the Internal Revenue Code are covered within RWI policies, subject to reasonable diligence). However, the tangible impacts of tax reform are still emerging, and we anticipate increased demand for tax insurance to ring-fence potential liabilities arising from structuring opportunities. In addition, we expect growing demand for tax insurance to protect against valuation risk (i.e., insuring proper valuation of taxable spins, appropriate 311(b) gains and worthless stock deductions).

There will likely be increased demand for RWI from the real estate sector as investors and advisers continue to recognize the value of the product in aligning the interests of the seller and the buyer to "get deals done". Finally, we anticipate a growing demand for contingent risk insurance to ring-fence identified risks (including environmental and ongoing litigation), particularly if the M&A market becomes more buyer friendly.

We expect RWI premium rates to stabilize and, in certain instances, to experience an increase in 2020. The main exception to this is likely to be real estate, in which further decreases in premium rates are to be expected. We anticipate limited reductions in RWI retention levels given recent claims experience. The outlook for tax insurance is different, and we anticipate achieving further reductions in tax premium rates in 2020, with carriers' willingness to assert more underwriting weight to "discovery risk".

ABOUT ATLANTIC

Atlantic Global Risk is a specialist insurance broker with offices in New York City, Boston and Toronto. With a market leading reputation for thoughtful advice, innovative solutions and firm negotiation, our clients include many of the world's leading private equity sponsors and strategic acquirers.

Our experienced team includes attorneys, investment bankers, insurance professionals and tax and accountancy experts. We have an established track record advising clients across a multitude of sectors and transaction structures, including acquistions, divestitures, carveouts, growth equity investments and other matters.

Our advice and products cover all aspects of insurance in the context of M&A, including representations & warranties, tax liability, litigation buyout, environmental and other contingent risk insurance policies, along with comprehensive post-closing claims services. Through our partners, we also provide insurance and employment due diligence services.

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