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TRANSACTIONAL INSURANCE SOLUTIONS FOR PROJECT FINANCE AND M&A

Transactional insurance solutions are playing increasingly essential roles in facilitating complex project- and portfolio-level transactions across a broad range of asset classes in the energy and infrastructure (E&I) space. These solutions can ease negotiations, mitigate credit risks, improve liquidity, establish bankability, and enhance protections available to various stakeholders (developers, sponsors, tax equity/tax credit investors, minority investors, joint venture partners, lenders, etc.).

Tax Liability Insurance (Tax Insurance) for Energy Tax Credit Transactions

Tax Insurance is a highly adaptable solution to remove uncertainty in respect of a potential challenge to a tax treatment by a tax authority – and is most frequently utilized in North America to support project financing and M&A transactions involving energy tax credits. The product has become an essential element in project finance deal-making, especially for transactions involving new and revised credit constructs pursuant to the IRA and increasingly creative financing structures. Tax Insurance is typically utilized to backstop, push-down, or replace guaranty parent obligations – providing investors indemnification from reputable, credit-worthy insurance companies for the full duration of the applicable statute of limitations.

Tax Insurance can be tailored to either address a specific tax treatment risk, or cover a comprehensive scope of risks, including: (i) qualification for the credits (inclusive of adders and bonus credits); (ii) valuation of qualified basis (inclusive of step-up), (iii) structure and allocation (i.e., that the project's investment structure will be respected); and (iv) recapture risk for tax credits subject to recapture constructs. Furthermore, Tax Insurance can be structured to have a hybrid representations & warranties insurance (RWI) construct that provides complementary cover for breaches of representations and warranties given by the seller/company/sponsor.

Representations & Warranties Insurance (RWI)

RWI has emerged as a valuable tool in project- and portfolio-level transactions across a broad range of E&I investments, providing synthetic indemnification for losses arising from breaches of representations and warranties made by sponsors, developers, and joint venture partners. RWI is increasingly being applied to complex financing structures such as project finance, capital recycling, minority sell-down, and joint-venture transactions as a value-add tool to mitigate credit risk, preserve relationships, and safeguard project capital and cashflows. Furthermore, RWI helps to ease negotiations and enhance protections available to buyers - giving them dynamic, fulsome coverage that a seller will not ordinarily provide. Additionally, RWI can be combined with tax insurance to create a hybrid solution that offers extensive protection for transactions involving energy tax credits.

Atlantic has worked closely with underwriters to structure policies and underwriting processes that align with the project development process, enabling longer interim periods and providing meaningful cover that is incrementally expanded between signing and closing, commensurate with project completion milestones and respective diligence workstreams.

Incorporating RWI in project-level M&A and financing transactions has substantial benefits to all stakeholders in a project – protecting relationships between developers, investors and lenders, streamlining negotiations, and reducing the financial impact of unforeseen breaches of representations and warranties. By transferring risk to the insurer, RWI promotes confidence and security in long-term project investments while maximizing valuation and liquidity.

Surety & Insurance-Backed Letters of Credit

Surety and insurance-backed letters of credit (LCs), sometimes referred to as "fronted LCs" can be deployed to satisfy counter-party collateral requirements without impacting liquidity or borrowing capacity. Atlantic is helping its clients deploy these solutions to replace existing cash and LC collateral, resulting in increased liquidity and greater borrowing capacity that improves capital recycling and efficiency. In project-level transactions these tools are used to supplant collateral requirements for asset retirement and remediation obligations, interconnection deposits, PPAs, and any number of other performance and financial obligations.

Credit Solutions

Credit insurance, or non-payment insurance (NPI), is a comprehensive solution that protects creditors from the risk of a borrower defaulting on a loan (or portfolio of loans). NPI can be structured to cover an individual debt owed by a particular counter party or a diversified pool of obligations. For example:

- For project finance lenders, NPI can be deployed across a range of credit structures, including pre-NTP portfolio loans.
- In tax credit transactions, NPI can be utilized to mitigate the risk of default by tax equity or tax credit investors, as well as defaults on sponsor or parent guaranties.
- In project-level transactions NPI can be utilized to improve bankability for projects with sub investment-grade/ unrated offtakers, and to otherwise support levered-financing for acquisitions.

Insurance-backed Reverse Termination Fees (RTFs)

For M&A transactions with competitive bidding, sellers often avoid buyers whose businesses overlap with the target's business, as this overlap can attract antitrust scrutiny, resulting in delays, litigation, and potential deal termination. Foreign buyers face similar challenges with CFIUS risk, which can lead sellers to favor lower-risk bidders, even at a lower price. Buyers allowed into competitive bids may still face the risk of post-closing divestiture if regulators later challenge the merger. Atlantic addresses these risks through contingent risk insurance, which protects M&A parties from financial losses due to regulatory challenges. Where buyers are exposed to reverse termination fees (RTFs), pre-paid deposits, post-close divestiture, or other economic exposures to regulatory approvals, insurance can be put in place that covers buyers in the case of an adverse outcome.

In project finance, RTFs apply when a sponsor must secure regulatory approvals or permits; failure to do so could terminate or reduce the project. Insurance mitigating this risk offers valuable collateral and lender confidence.

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For both M&A and project finance, the goal is to transfer regulatory outcome risks to an insurer for a fixed premium. This approach: (i) facilitates access to M&A and financing despite perceived execution risks; (ii) mitigates catastrophic impacts from blocked transactions or valuation losses; and (iii) provides credit support when sellers or sponsors cannot or will not. Insurers seek transactions where the perceived regulatory challenges are greater than the actual risks involved.

Technology Performance Insurance (TPI)

TPI provides financial certainty for projects where the risk of loss from technological performance failure has a low probability, but high severity. TPI is utilized in project finance to improve bankability, attract equity investors seeking more favorable leverage structures, and mitigate additional costs to early-stage funding. TPI is deployed by OEMs, suppliers, EPCs, integrators, project developers and lenders to address long-term output performance risk, and/or startup "turnkey" risks for newly developed technologies.

ABOUT ATLANTIC

Atlantic is a specialist insurance broker focused on structuring insurance policies that transfer complex legal, tax, and credit risks to the insurance market. More often than not, the insurance solutions are used to facilitate transactions that are impeded by a risk that is dragging on the economic terms (i.e., M&A, financing, distribution, liquidation, restructuring). It specializes in the following products: (i) representations and warranties insurance or RWI; (ii) tax liability insurance; (iii) contingent risk insurance; and (iv) non-payment insurance. Atlantic is one of the largest independent transactional insurance brokerage firms with ten offices across North America and a team of industry outsiders including former litigators, M&A attorneys, tax attorneys, structured finance professionals, and sector experts.

For more information, please go to: www.atlanticgrp.com

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