

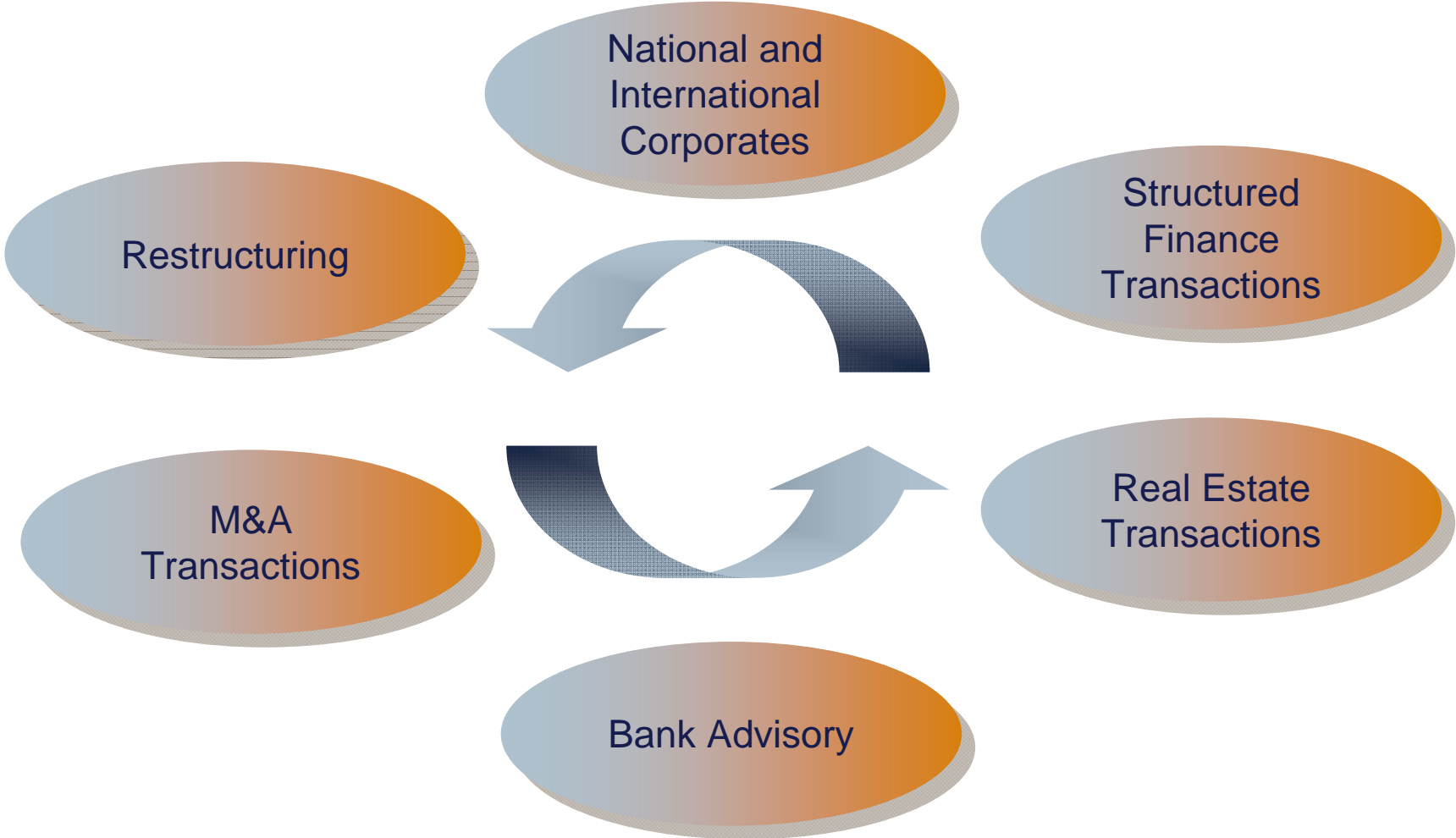
WILLIS GERMANY TRANSACTION SERVICES

München, April 2010

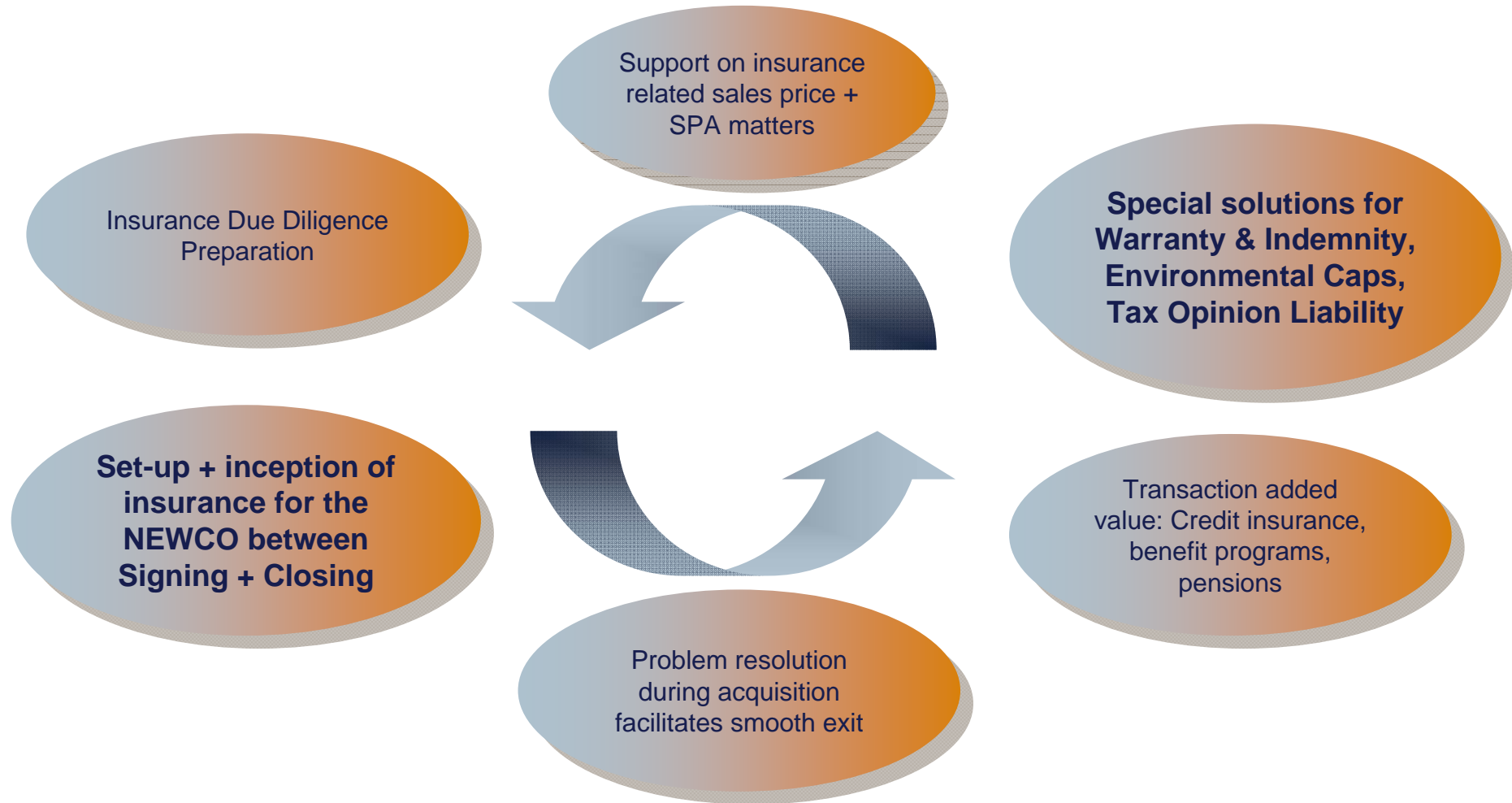
The Willis logo consists of the word "Willis" in a white, serif font, centered within a dark blue rectangular box. The box is positioned in the bottom right corner of the slide, overlapping a yellow and orange gradient background.

Willis

TRANSACTION SERVICES ACTIVITIES



TRANSACTION SERVICES CORE COMPETENCES



TRANSACTION SERVICES KEY EXPERTISE

- Long hands on experience of the team
(all have been in the insurance industry for more than 20 years)
- Over 850 private equity transactions dealt with
- Expertise for judging the current insurance status as well as possibilities to redesign the insurance programs
- Extensive knowledge of worldwide insurance trends
- Access to independently developed benchmark database
- The Transaction Team is the Migration Team, therefore no loss of transaction know-how and the required speed for a smooth migration process

WIDE VARIETY OF TRANSACTIONS

Industries:

- Food Stuffs
- Media Producers
- Automobile suppliers
- Retail Operators
- Textiles
- Cable Operators
- Restaurant Chains
- Computer Manufacturers
- Data Centers
- Mobile Phone Manufacturers
- Health care
- Safety Equipment

Transport

- Railway Light Transport
- Ports
- Parking

Real Estate

- Single Objects
- Portfolios

Renewables:

- Wind
- Solar
- Geothermal
- Biomass
- Hydro Electronic Power

Infrastructure

- Waste Disposal
- Power Generation
- Water Purifications
- Water + Sewage Treatment

Social Infrastructure


- Hospitals
- Retirement Homes
- Catering

Bank Advisory

Willis M+A Reference Projects – A Current Selection

Willis Mergers & Acquisitions Practice
"performed insurance due diligence" on the

"Acquisition of "

H.C. Starck 

by

Advent International
GLOBAL PRIVATE EQUITY

&

THE CARLYLE GROUP

2006
This announcement appears as a matter of record only!

Willis Mergers & Acquisitions Practice
"performed insurance due diligence" on the

"Acquisition of "

R
RODENSTOCK


by

Bridgepoint

February 2007
This announcement appears as a matter of record only!

Willis Mergers & Acquisitions Practice "performed insurance due diligence and structured a transactional insurance product" on the

"Acquisition of "

DYWIDAG-SYSTEMS INTERNATIONAL 


by

CVC
Capital Partners

July 2007
This announcement appears as a matter of record only!

Willis Mergers & Acquisitions Practice "performed insurance due diligence & structured a transactional insurance product" on the

"Acquisition of "


BAVARIA YACHTS


by

Bain Capital

June 2007
This announcement appears as a matter of record only!

Willis Mergers & Acquisitions Practice "performed insurance due diligence and structured a transactional insurance product" on the

Value € 5.3 bn
"Acquisition of "

BRENNIAG 


by

BC Partners

July 2006
This announcement appears as a matter of record only!

Willis Mergers & Acquisitions Practice "structured a transactional insurance product" on the

"Acquisition of "


ProSiebenSat.1 Media AG

by

KKR & **Permira**

May 2007
This announcement appears as a matter of record only!

Willis Mergers & Acquisitions Practice "performed insurance due diligence and structured a transactional insurance product" on the

"Acquisition of "

coperion
Business Management

by

Deutsche Beteiligung AG

May 2007
This announcement appears as a matter of record only!

Willis Mergers & Acquisitions Practice "performed insurance due diligence" on the

"Acquisition of "

TALKLINE

by

debitel & **Permira**

June 2007
This announcement appears as a matter of record only!

Willis M+A Reference Projects – A Current Selection

Willis Mergers & Acquisitions Practice performed vendor insurance due diligence and supported

Advent International
GLOBAL PRIVATE EQUITY

in the sale of

CASA REHA
VON MENSCH ZU MENSCH

to

HgCapital

December 2007
This announcement appears as a matter of record only

Willis Mergers & Acquisitions Practice performed insurance due diligence on the

"Acquisition of"

Takko
FASHION

by

Advent International
GLOBAL PRIVATE EQUITY

3rd Quarter 2007
This announcement appears as a matter of record only

Willis Mergers & Acquisitions Practice supported the

Acquisition of

POHLAND
Bleiben Sie anspruchsvoll

by

AURELIUS

September 2007
This announcement appears as a matter of record only

Willis Mergers & Acquisitions Practice supported the

Acquisition of

ELCOTEQ

by

BAVARIA
Industriekapital AG

January 2008
This announcement appears as a matter of record only

Willis Mergers & Acquisitions Practice performed insurance due diligence on the

Acquisition of

hey tex

by

NORDholding

August 2007
This announcement appears as a matter of record only

Willis Mergers & Acquisitions Practice performed insurance due diligence on the

Acquisition of

JUST

by

Cinven

May 2008
This announcement appears as a matter of record only

Willis Mergers & Acquisitions Practice performed insurance due diligence on the

Management Buy Out of

KADI
Swiss Premium Quality

by Equity Funds managed by

ECM
Equity Capital Management GmbH

June 2008
This announcement appears as a matter of record only

Willis Mergers & Acquisitions Practice performed insurance due diligence on the

Acquisition of

CINTERION
WIRELESS MODULES
formerly known as "Siemens Wireless Modules"

by a consortium led by

GranvilleBaird

January 2008
This announcement appears as a matter of record only

Warrantees & Indemnity Solutions in Private Equity Transaktionen

München, April 2010

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Common security against liability

>Escrow

- >Certainty of availability of funds - strong
- >Risk transfer - none
- >Cost / Administration - medium + dependent upon period of escrow
- >Validity of claim - negotiation based on SPA to establish extent
- >Opportunity cost - lost while funds locked in escrow

>Bank Guarantee

- >Certainty of availability of funds - strong, subject to status of bank
- >Risk transfer - none
- >Cost / Administration - High + impact credit lines / security over assets
- >Validity of claim - negotiation based on SPA to establish extent
- >Opportunity cost - lost while tied to bank guarantee

Transaction Insurance Products

Reps & Warranties (R&W) Insurance	Covers the Insured (seller or buyer), for loss from matters arising from a breach or claim under the representations, warranties &/or indemnities in a sale and purchase agreement (SPA)
Tax Insurance	Covers the Insured (seller, buyer or target) against liability to pay “additional” tax following a successful challenge by the tax authority. Typically relating to a specific contingent tax issue or treatment.
Environmental Insurance	Cover for environmental known and contingent exposures identified in the transaction e.g. indemnities relating to site remediation.
Contingent Insurance	Cover specifically negotiated for contingent liabilities identified in a transaction e.g. contingent litigation risk

R&W Insurance

The Insurer shall, in excess of the **Policy Retention** up to the **Limit of Liability**, indemnify or pay **Loss** to or on behalf of the **Insured** during the **Period of Insurance**

Insured = either the seller or buyer

Loss = damages, settlements, claim or loss including costs arising from a “covered” claim

Limit of Liability = maximum aggregate limit of insurers liability (defence costs erode the limit)

Policy Retention = first amount of Loss which insurers are not liable to pay
- operation of de minimis / threshold with SPA

Period of Insurance = match the SPA or for “Buy-side” extend beyond SPA

Sell-side or Buy-side?

> **Sell-side R&W insurance**

- > Seller / Warrantor gives reps and warranties creating contractual liability to the buyer for loss arising from a matter giving rise to a breach of those reps and warranties, notified within the limitations of the SPA
- > Seller-side policy indemnifies the seller/warrantor for damages arising out of a claim, including defence and investigation costs



Advantage to Seller

Disadvantage to Seller

Advantage for Buyer

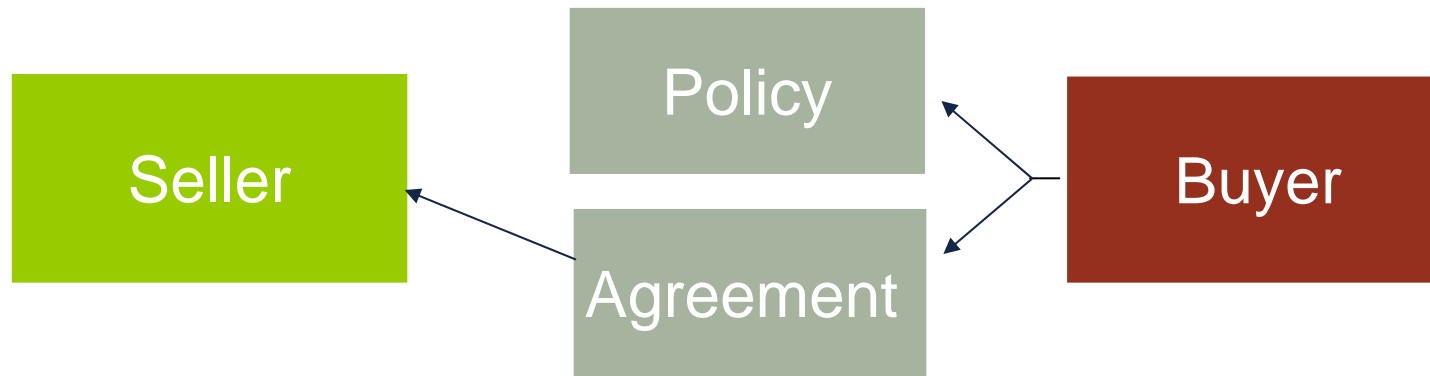
Disadvantage for Buyer

insures contractual liability (ex. retention) plus costs of defence
if a “gap” in the insurance seller retains liability
financial security behind warrantors
seller’s defence costs funded and supported
no direct relationship to policy

Sell-side or Buy-side?

> Buy-side R&W Insurance

- > Buyer negotiates SPA reps and warranties with seller in standard way, additionally seeks insurance to enhance and extend reps and warranty protection – financial / period / language



Advantages to Seller

Advantages to Buyer

Disadvantages to Buyer

cap SPA contractual liability
enable “clean” exit from investment
ability to extend cover beyond SPA limitations
negotiate and have conduct of their policy
claim directly from insurers under the policy terms
limited recourse to seller if policy does not respond

Current Trading

- > **Corporate Sellers** – selling non-core businesses do not want to be hampered with liabilities from past disposal (particularly if distressed)
- > **Corporate Buyers** – concern over covenant strength / ability to recover from sellers, and valuation of targets
- > **Banks / Investors** – not willing to accept contingent risks, heavy credit committee approval requirements
- > **Consolidation** – industry sector consolidation activity
- > **PE Buyers** – unable to use leveraged debt / waiting for value adjustments
- > **PE Sellers** – pressure on IRR and returns to fund – needed to improve performance and aid fund raising

- > Any issue which could impact on value or exposure needs to be considered early

Environmental Insurance

The insurers will indemnify the Insured for **loss** arising from a “**pollution condition**” from “**insured sites**” during the “**period of insurance**”. The Insurer will not be liable for the **policy excess**”

Loss includes damages, settlements and costs arising from a claim (bodily injury, property damage, third party or regulatory requirement to clean-up)

Insured sites - Site specific coverage (so can select the specific site), but will not include unspecified sites (need to consider sites previously disposed of and waste sites)

Period of Insurance: any claim made against the Insured arising up to 10 years (post completion), can include on-going operational cover

Exclusions: (typical)

- Change of Use
- Voluntary Site Investigation

Policy excess: typically each and every pollution event

Tax Insurance

Protect the insured against the liability to pay unexpected tax, typically relating to a specific identified contingent tax issue, i.e. identified in due diligence

Tax insurance is not for personal tax schemes or overly aggressive tax planning

Examples

- De-grouping relief in a reorganisation / transaction
- Challenge for off-shore / domicile status of target
- FIRPTA exposure (US increase in profits)
- Definition of employees: consultants v employees
- Classification of tax
- Tax planning

Contingent Risk Insurance

- > **Case:** Historical shareholder dispute, contingent risk, low risk but financing banks would not complete without protection
- > **Solution** **Litigation Insurance** indemnifies the Buyer arising out of the adverse determination of specified litigation. Banks named as loss payees.
- > **Case:** Property fund scheme of arrangement, shareholders wanted distribution early but unable to provide indemnity to liquidator,
- > **Solution:** **Liquidators Indemnity insurance** provided to indemnify liquidator and enable early distribution.

Bench Mark Pricing

	LOW	HIGH
WARRANTY INSURANCE €10 million limit	1.0% €100,000	3.5% €350,000
TAX INSURANCE €10 million limit	2% €200,000	8%+ €800,000
ENVIRONMENTAL INSURANCE €10 million limit	0.5% €50,000	2% €200,000

Assumptions:

Deal Value €50m – €200m (W&I)

Tax Exposure Value €10 – €20m (Tax)

EIL – 3 years, single site, historic to 10 year multi-site

Summary

>Transaction Insurance

- > Certainty of availability of funds - strong, subject to status of insurer (min S&P A-)
 - > Risk transfer - comprehensive
 - > Cost / Administration - medium, one off policy premium and retention
 - > Validity of claim - negotiation based on SPA and Policy to establish extent
 - > Opportunity cost - funds available to seller
-
- > Protects a seller from residual risk
 - > Enables a seller to get a clean exit from a transaction
 - > avoid escrow, bank guarantee or price chip
 - > early distribution or wind-up
 - > Provides a bidder in an auction the ability to differentiate their bid
 - > Enhance and increase a buyers security for post deal claims
 - > Ability to cap off contingent risk exposure
 - > Avoids need to claim against management post completion

D&O Versicherungen - Hintergründe

München, April 2010

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Willis

HISTORIE DER D&O-VERSICHERUNG

- Schwarzer Freitag führt zur Haftungsverschärfung für Organe in den USA
- Lloyds-Syndikate entwickeln Absicherung des Manager-Haftungsrisikos durch erste D&O-Policen in den 30er-Jahren
- Nachfrageanstieg in den USA in den 60er-Jahren, seitdem gehört das Produkt dort zur Standardausrüstung
- Eintritt amerikanischer Versicherer Mitte der 80er-Jahre in den deutschen Markt – wenig erfolgreich
- Anstieg der Zahl der in Deutschland tätigen Versicherer auf ca. 20 Wettbewerber in den 90er-Jahren
- Heute gehört die D&O-Versicherung für deutsche Unternehmen ebenfalls zur Standardausrüstung

D&O-VERSICHERER IN DEUTSCHLAND

- ACE
- Allianz
- AXA
- Catlin
- Chartis
- Chubb
- CNA
- DUAL
- HCC
- HDI-Gerling
- Hiscox
- Liberty
- Lloyds
- QBE
- Provinzial / Sparkassenversicherung
- R+V
- Victoria
- VOV (Versicherererkonsortium)
- XL
- Zurich

WOMIT WIR UNS SCHON EINMAL ZUFRIEDEN GEBEN MUSSTEN

- Zeitliche Themen
 - Keine Rückwärtsdeckung
 - Keine Nachhaftung
- Innenverhältnisdeckungsthemen
 - Eingeschränkte Innenverhältnisdeckung
 - Gerichtsklausel / Kündigungsklausel
- Ausschlüsse
 - Eigenschadenausschluss
 - Major Shareholder Ausschluss, PPL-Ausschluss
 - Produkte-, Umwelt-, Versicherungsausschluss
 - Insolvenzausschluss
- Sonstiges
 - z.B. Beschränkung des Versicherungsschutzes auf Organe
 - Begrenzte Kapazitäten

UND WAS DER D&O-MARKT HEUTE ALLES BIETET

- Unbegrenzte Rückwärtsversicherung
- Unbegrenzte Nachhaftung
- Reduktion der Ausschlussstatbestände auf wissentliche Pflichtverletzung und spezifische US-Themen
- Diverse zusätzliche Kostenpositionen
- Versicherungsschutz auch nach Shareholder-Wechsel
- Fast unbegrenzte Kapazitäten
- Verzicht auf Schadenfallkündigung
- Nachfragerpreise

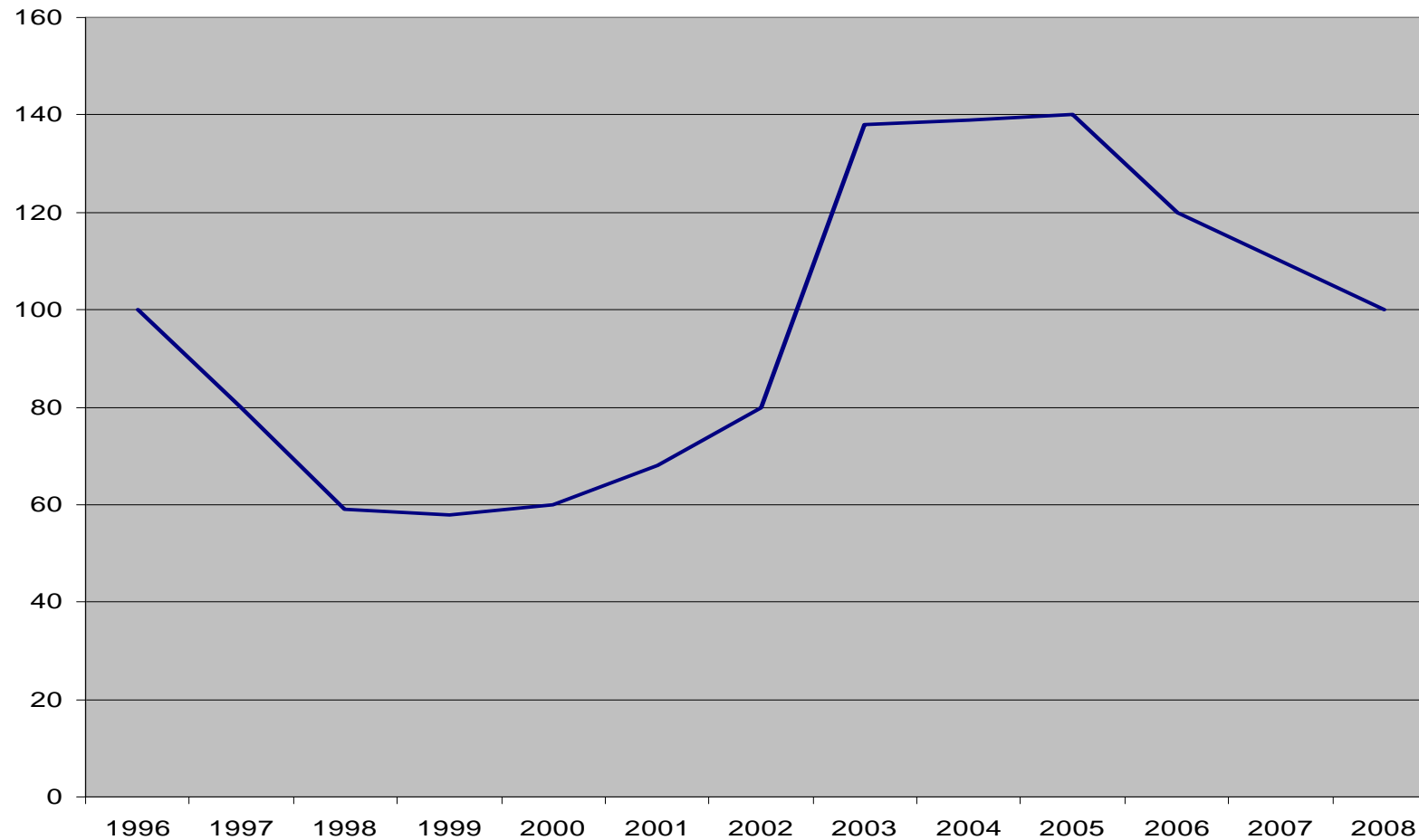
D&O-PRODUKTENTWICKLUNGEN

- Am Beispiel der Chubb: AVBU 86, AVB OLA 1993, 1998, 2001, 2003, 2004, 2006, 2008, in Planung 2010
- Bedingungswerke in 2008 anderer Marktteilnehmer
 - Allianz, Frühjahr 2008
 - R+V, Frühjahr 2008
 - VOV, Frühjahr 2008
 - Victoria, Frühjahr 2008
 - Hiscox, Sommer 2008
 - Chartis, Herbst 2008
- Bedingungswerke in 2009 / 2010
 - Allianz, 2010
 - R+V, 2010
 - Zurich, 2010

ZEICHNUNGSKRITERIEN DER D&O-VERSICHERUNG

- Intensive Risikoprüfung bei
 - Start-ups
 - Börsennotierung
 - Finanzdienstleistern
- Insolvenzprüfung, Solvabilitäts- / Liquiditätsprüfung
- Eigenkapitalausstattung und Bilanzsumme
- Drohende Übernahmen und Fusionen
- Schadenbelastung
- US-Risiken
- Shareholder-Struktur

PRÄMIENINDEX DES DEUTSCHEN INDUSTRIELLEN D&O-GESCHÄFTS



Quelle: Swiss Re Daten

PROGNOSE FÜR DEN D&O- VERSICHERUNGSMARKT 2010

- Rückversicherer haben im Zuge der Finanzkrise einen neuen 11. September ausgerufen
- Bestimmte Branchen des Banken- und Finanzsektors werden Preisanstieg erfahren und stehen unverändert unter Beobachtung der Erstversicherer
- Versicherer werden prinzipiell versuchen, Preise zu erhöhen und Bedingungswerke einzuschränken
- Bedingungswerke der Versicherer werden dennoch weiterhin sehr weitgehend bleiben
- Durch die hohe Anzahl von Marktteilnehmern ist ein Anstieg von Versicherungsprämien auch im Jahre 2010 nicht zu erwarten

AKTUELLE SONDERTHEMEN

INTERNATIONALE PROGRAMME BEI INTERNATIONAL AUSGERICHTETEN UNTERNEHMEN

■ Kvaerner Urteil – Urteil des EUGH

- Auswirkungen
 - Berücksichtigung der steuerrechtlichen Vorschriften bei der Gewährung von grenzüberschreitendem Versicherungsschutz
 - Berücksichtigung aufsichtsrechtlicher Vorschriften zur Vermeidung auch strafrechtlicher Konsequenzen
- Lösungen
 - Abschluss rein lokaler Versicherungsverträge entsprechend den jeweiligen Landesvorschriften
 - FINC-Clause (Zurich); Versicherungsschutz für das finanzielle Interesse der Muttergesellschaft am Erhalt der Wertebeteiligung einer Tochtergesellschaft

AKTUELLE SONDERTHEMEN

PFLICHTSELBSTBEHALT FÜR AG-VORSTÄNDE

§ 93 Abs. 2 Satz 3 AktG ist am 5. August 2009 in Kraft getreten:

„Schließt die Gesellschaft eine Versicherung zur Absicherung eines Vorstandsmitglieds gegen Risiken aus dessen beruflicher Tätigkeit für die Gesellschaft ab, ist ein Selbstbehalt von 10 Prozent des Schadens bis mindestens zur Höhe des Eineinhalbfachen der festen jährlichen Vergütung des Vorstandsmitglieds vorzusehen.“

Für bestehende D&O Verträge gilt die Regelung ab dem 1. Juli 2010.

AKTUELLE SONDERTHEMEN

PFLICHTSELBSTBEHALT FÜR AG-VORSTÄNDE

- Anwendung auf alle Aktiengesellschaften
- Anwendbarkeit nur auf Innenverhältnisschäden
- Anwendung nur auf D&O-Versicherungen
- Anwendung nur auf Abwehrkosten
- Begrenzung auf das 1,5-fache Jahresbruttofixgehalt
- Anwendung auf Pflichtverletzungen nach dem 05.08.2009
- Berücksichtigung der Selbstbehalts-Klausel im D&O-Konzernvertrag
- Kein Abschluss der Selbstbehalts-Deckung durch das Unternehmen

AKTUELLE SONDERTHEMEN

PFLICHTSELBSTBEHALT FÜR AG-VORSTÄNDE

Wie sollte eine Selbstbehalts-Versicherung ausgestaltet sein?

- Einzelpolice (Rahmenvertrag des Unternehmens mit individuellen Beitrittserklärungen erweckt den Anschein einer Gesetzesumgehung)
- Separate Deckungssumme, keine Anrechnung (Kumulklausel) auf die Konzern-Police
- Unmittelbare Leistung aus der Selbstbehalts-Police, keine Vorleistung mit Regress unter der Konzernpolice
- Bedingungen der Konzern-Police und der Selbstbehalt-Police müssen identisch sein
- Deckungssumme: mindestens das 1,5-fache des Jahresbruttofixgehalts

AKTUELLE SONDERTHEMEN

PFLICHTSELBSTBEHALT FÜR AG-VORSTÄNDE

Welche Aktivitäten sind vom Vorstand bzw. vom Unternehmen derzeit umzusetzen?

- Prüfung der Vorstandsverträge hinsichtlich etwaiger Selbstbehaltsregelungen im Arbeitsvertrag
- Prüfung, ob Selbstbehalts-Versicherungsschutz steuerlich absetzbar ist
- Entscheid über die Selbstbehalts-Anwendung für Aufsichtsräte (Empfehlung der Corporate Governance-Kommission)
- Bei Neugestaltung von Vorstandsverträgen, Anpassung dieser Arbeitsverträge zur Erfüllung des § 93 Abs. 2 Satz 3 AktG
- Berücksichtigung von Fremdmandaten

Warum D&O-Versicherungsschutz?

- Vollständige Übertragung der persönlichen Haftung von Organen auf die Versicherungswirtschaft und damit Schaffung der Kalkulierbarkeit des persönlichen Haftungsrisikos für das Organ
- Vorhaltung von Experten (z. B. Kanzleien, Steuerberatern, sonstigen Sachverständigen durch die Versicherungswirtschaft)
- Reputationsschutz
- Prüfung der Haftungssituation durch die Versicherungswirtschaft mit anschließender Abwehr unberechtigter Ansprüche bzw. Befriedigung berechtigter Ansprüche
- Sicherheit des Unternehmens auf Solvabilität des Organs im Schadenfall
- Erhöhtes Haftungsrisiko durch neue Gesetze (z.B. VorstAG)
- Verändertes Inanspruchnahmeverhalten
- Anstieg der Inanspruchnahmen
- Einstellungsvoraussetzung

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WILLIS GERMANY TRANSACTION SERVICES

München, April 2010

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