

# M&A today



Welcome to the latest edition of *M&A today*. This is our regular update on what we are seeing in the M&A market.

2016 was an eventful, in many ways momentous, year for a number of reasons, not least the vote for the UK to leave the European Union. Whilst private M&A activity suffered in the build-up to the referendum and in its immediate aftermath, a surge in activity in Q4 and the first quarter of 2017 saw a number of high profile, high value transactions complete and overall deal levels have ended up being broadly comparable with previous years.

We hope you enjoy this edition, please let us know your thoughts and views on any of the issues we have covered.

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## Use of Artificial Intelligence in M&A



We have recently deployed Kira Systems' artificial intelligence software to assist in the provision of various services to our clients including M&A transactions.

Kira is an advanced machine learning software that identifies, analyses and extracts provisions and other information from contracts and other documents.

It has built-in machine learning models for common transactional needs, and a tool, that enables users to teach Kira how to identify almost any provision from any document.

Kira has particular application to large due diligence exercises and allows the process to be conducted more efficiently, quickly and accurately.

Please click [here](#) to read more.

## Pensions Regulator – moral hazard powers



A private equity group, and three individuals who worked for it, face a multi-million pound claim against them by the Pensions Regulator (TPR). In its recent judgment in the case of *Grace Bay II Holdings v The Pensions Regulator*, the court dismissed a legal challenge to TPR's use of its "moral hazard" powers. The background to this case shows TPR's willingness to use its powers to make multi-million pound claims against the parties involved in a corporate deal if it considers that the deal terms disadvantaged a pension scheme. Please click [here](#) to read more.

In addition, The Conservative Party have recently announced their plans to give the TPR greater powers to take action on corporate transactions. Please click [here](#) to read the plans in full. If these proposals are implemented any company which is involved in an acquisition of the requisite size will need to have a plan in place to ensure the solvency of any relevant pension scheme.

## Equity wrappers and equity commitment letters

In the last 18 months, auction processes have been more competitive than at any time since 2008 and we have seen an increasing number of private equity transactions sign in a very short period following the grant of exclusivity (often in a matter of days rather than weeks). In this environment where speed is critical, an increasing number of private equity houses are using a combination of equity wrappers and (where there is a gap between exchange and completion) equity commitment letters to gain a competitive advantage and execute transactions within a short timeframe.

The use of an equity wrapper allows detailed management equity terms to be agreed on signing of the acquisition agreement with an obligation on both parties to agree long form equity documents by completion (assuming there is a gap between exchange and completion) or shortly following completion where the transaction completes simultaneously.

An equity commitment letter is an agreement between the private equity fund and the newco formed to finance the acquisition of the target company. Under the letter the fund commits to the newco that it will invest equity at the time of completion. The sellers receive the benefit of being able to enforce these funding obligations against the newco. The letter will be delivered on signing of the acquisition agreement as evidence that the newco has sufficient funds. This then allows the equity financing (and sometimes the debt financing as well) to be finalised between exchange and completion.

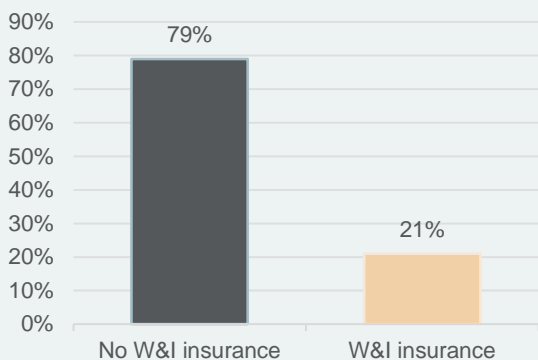
Please let your usual M&A contact know if you would like to find out more about the use of equity commitment letters and equity wrappers.

## M&A Trends

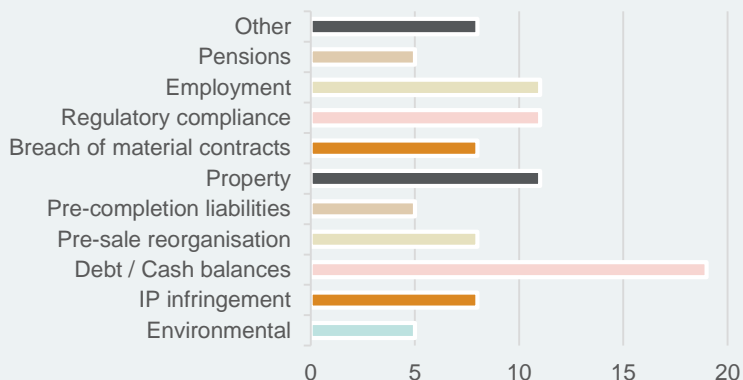
Throughout 2016, as we have done for nearly 10 years, we captured and analysed data in private M&A transactions in which we were involved, to identify key trends and also to reflect on what changes we may see in the private M&A landscape in the coming years. It helps you to fine-tune your own sense of what is 'market' and also to take a step back and consider different approaches and solutions to common M&A challenges.

It contains detailed data and analysis of a range of metrics, covering deal sectors and transaction types, pricing structures and tools, risk areas, risk mitigation (including warranty and indemnity insurance) and limitations. For example:

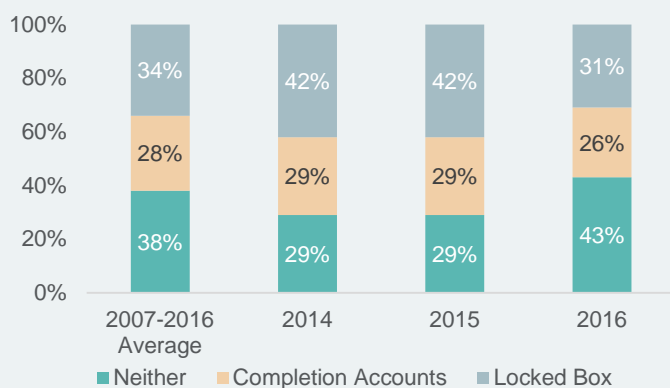
### % of all deals involving W&I insurance: 2016



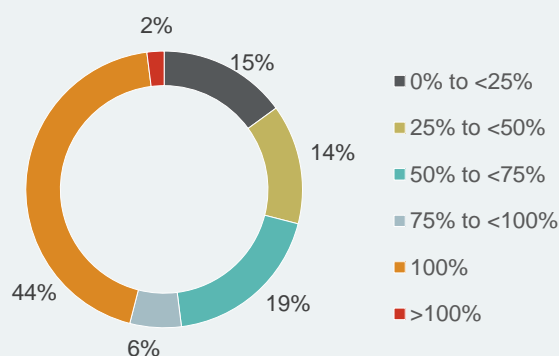
### Indemnified matters



### Testing the Price: completion accounts or locked box?



### Total cap on liability: 2016



We would love to talk you through the report and to compare notes with your own experiences and views. Your usual M&A contact will be in touch to arrange to come and see you.

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