



Transaction At Undervalue

Case Study

Aon was approached by a large European fund manager who were looking to acquire a significant asset in Asia. The seller was an SPV but there were market rumours that its parent company was in financial difficulties. Despite legal advice that the seller was not likely to be involved in the bankruptcy of its parent, the buyer was concerned about the potential consequences if this was not the case. In particular there was a concern that a bankruptcy trustee could allege that the sale was a transaction at undervalue and apply to the court to have it unwound or set aside. The structure of the deal meant that this was extremely unlikely, but there was a residual risk that the buyer could be required to pay an amount in addition to the agreed purchase price that would reflect the "true" value of the asset. Although the buyer had taken extensive legal advice and could demonstrate a robust pricing negotiation with the seller, it was not prepared to expose its funds and the deal could not proceed.

Working with the buyer and its legal advisors, Aon structured and placed an insurance programme that would respond in the event that the buyer was required to make such an additional payment. The buyer and its advisers estimated the likely amount of the payment which formed the basis of the policy limit of liability plus a further sum to defend a claim for undervalue from the bankruptcy trustee. The policy period matched the statute of limitations for the bankruptcy trustee to bring a claim.



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