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MERGERS AND ACQUISITIONS INSURANCE: ASSESSMENT OF DIFFERENCES IN REGIONAL UPTAKE ACROSS AMERICAS, EMEA AND ASIA FROM THE PERSPECTIVE OF TURKISH MARKET

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MERGERS AND ACQUISITIONS INSURANCE: ASSESSMENT OF DIFFERENCES IN REGIONAL UPTAKE ACROSS AMERICAS, EMEA AND ASIA FROM THE PERSPECTIVE OF TURKISH MARKET

BIRLEŞME VE DEVRALMALARDA SORUMLULUK SIGORTASI: AMERIKA, AVRUPA-ORTA DOĞU-AFRIKA VE ASYA'DAKI BÖLGESEL FARKLILIKLARIN TÜRK SIGORTACILIĞI AÇISINDAN DEĞERLENDIRILMESI

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PREFACE

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TABLE OF CONTENTS

INTRODUCTION 1

CHAPTER I: CONCEPTUAL FRAMEWORK ON INSURANCE 2

1.1. CONCEPT OF INSURANCE 2

1.1.1. Theoretical Approaches to Risk, Uncertainty and Insurance 3

1.2. HISTORY OF INSURANCE 6

1.3. GENERAL PRINCIPLES OF INSURANCE 9

1.4. BASIC EXPLANATIONS ABOUT INSURANCE BRANCHES 13

1.4.1. Fire Insurance 13

1.4.2. Marine Insurance 14

1.4.3. General Accident Insurance 15

1.4.3.1. Personal Accident Insurance 15

1.4.3.2. Burglary / Glass Breakage Insurance 15

1.4.3.3. Engineering Insurances 16

1.4.3.4. Land Vehicles Car Insurance / Financial Liability Insurance ... 16

1.4.3.5. Animal Life / Agricultural Insurances 17

1.4.3.6. Fidelity, Crime Insurances 17

1.4.3.7. Liability Insurance 18

1.4.3.8. Aviation Insurance 18

1.4.4. Life Insurance 19

1.5. LIABILITY INSURANCE 20

1.5.1. Concept of Liability 20

1.5.2. Liability Insurance 21

1.5.3. Place of Liability Insurance in Insurance Sector 22

1.5.3.1. Separation of Active Insurance and Passive Insurance 24

1.5.3.2. According to the Benefits Related to the Subject 25

CHAPTER II: GENERAL EVALUATION OF MERGERS AND ACQUISITIONS 27

2.1. CONCEPTS OF MERGERS AND ACQUISITIONS 27

2.2. COMPANY MERGERS 27

2.3. TYPES OF COMPANY MERGERS 30

2.3.1. Horizontal Merger 30

2.3.2. Vertical Merger 30

2.3.3. Conglomerate Merger 31

2.4. COMPANY ACQUSITIONS 31

2.4.1. Golden Parachute 32

2.4.2. Poison Pills 32

2.4.3. Amendments to the Articles of Association 33

2.4.4. Greenmail 33

2.4.5. Other Methods 33

2.5. REORGANIZATION: REASON OF MERGERS AND ACQUISITIONS 34

2.5.1. Scale an Operating Economies 34

2.5.2. Synergistic Effects 35

2.5.3. Diversification 37

2.5.4. Tax Benefits 37

2.5.5. Administrative Reasons 38

2.6. EVALUATION OF MERGERS AND ACQUISITIONS FROM A FINANCIAL PERSPECTIVE 38

2.6.1. Features Related to Premium in Mergers and Acquisitions 39

2.6.2. Valuation of Mergers and Acquisitions 40

2.6.3. Discounted Cash Flows (DCF) 41

2.6.4. Price – Earnings Ratio (P/E Ratio) 41

2.6.5. Market Value – Book Value 42

CHAPTER III: WARRANTY AND INDEMNITY INSURANCE AND MARKET ANALYSIS 44

3.1. WARRANTY AND INDEMNITY INSURANCE 44

3.1.1. The Difference Between a Warranty and an Indemnity 44

3.1.1.1. Breach of Warranty 45

3.1.2. Warranties and Indemnities Insurance Concept 46

3.1.2.1. Buy Side Policy and Sell Side Policy 46

3.1.2.2. Driving Forces / Motivation Behind 48

3.1.2.3. Policy Coverage and General Exclusions 51

3.1.2.4. W&I Insurance Underwriting Process 53

3.1.2.5. Claims In W&I Insurance 57

3.2. MARKET ANALYSIS 60

3.2.1. Global Perspective 60

3.2.2. Market Trends 61

3.2.3. M&A Worldwide and by Sector Data 65

3.2.4. Major Jurisdiction Aspects by The Regions 67

3.2.4.1. Financial Complexity Perspective 67

3.2.4.2. Rule of Law Perspective 69

3.2.5. W&I Policies Placed by Region 74

3.2.5.1 Americas 74

3.2.5.2 Europe, Middle East, And Africa (EMEA) 76

3.2.5.3 Asia 80

CHAPTER IV: DISCUSSION AND CONCLUSION 84

BIBLIOGRAPY 87

LIST OF ABBREVIATIONS

M&A	: Mergers and Acquisitions
EMEA	: Europe, Middle East and Africa
W&I	: Warranty and Indemnity
IMF	: International Monetary Fund
IAT	: Insurance Association of Turkey
TCC	: Turkish Commercial Code
DCF	: Discounted Cash Flow
WACC	: Weighted Average Cost of Capital
PE	: Price – Earnings Ratio
MP	: Market Price
EPS	: Earnings per Share
SPA	: Sale Purchase Agreement
US	: United States of America
UK	: United Kingdom
HIPAA	: Health Insurance Portability and Accountability Act
BVI	: British Virgin Islands
UAE	: United Arab Emirates
EU	: European Union

LIST OF FIGURES

Figure 1: The Development of Insurance

Figure 2: Company Mergers

Figure 3: Scale Curve

Figure 4: Buy-Side vs. Sell-Side Policies

Figure 5: W&I Financial Statement Breach Type

Figure 6: Lockton Transactional Risk Insurance: Deal-Enabling Risk Transfer Solutions Report, 2017

Figure 7: New W&I Policies Placed

Figure 8: Mergers and Acquisitions Worldwide

Figure 9: M&A by Industries in Number since 1985

Figure 10: M&A by Industries in Value since 1985

Figure 11: Financial Complexity and Rule of Law Perspective in Americas

Figure 12: Financial Complexity and Rule of Law in EMEA

Figure 13: Financial Complexity and Rule of Law Perspective in Asia

Figure 14: Comparison of the Countries According to Financial Complexity and Rule of Law Index

LIST OF TABLES

Table 1: Largest M&A Transactions Worldwide

Table 2: Number and Value of M&A by Target Industry (1985-2016)

Table 3: Industry Specific Underwriting Focus/Concerns

Table 4: Underwriting Process

Table 5: W&I Reported Claim Frequency by Deal Size

Table 6: W&I Reported Incidents by Breach Type

Table 7: W&I Distribution of Average Claim Report Lags from Policy Inception Date

Table 8: W&I Material Claims – Distribution of Counts and Average Size by Claim Size Band

Table 9: W&I Insurance placed by Marsh

Table 10: Most Complex Jurisdictions in The World for Accounting and Tax Compliance

Table 11: Top 15 Jurisdiction

Table 12: Least 15 Jurisdiction

Table 13: W&I Policies Placed According to Market Reports of Major Insurers and Brokers

Table 14: Announced, Pending and Completed M&A Deals in Americas

Table 15: W&I policies placed in Americas According to Market Reports of Major Insurers and Brokers

Table 16: Announced, Pending and Completed M&A Deals in EMEA

Table 17: W&I Policies Placed in EMEA According to Market Reports of Major Insurers and Brokers

Table 18: Announced, Pending and Completed M&A Deals in Asia

Table 19: W&I policies placed in Asia According to Market Reports of Major Insurers and Brokers

ABSTRACT

Merger and acquisition activity continues to be strong across the world with this corporate activity considered as a key source of shareholder value creation for many shareholder groups (Boyson, Gantchev & Shivdasani, 2017). One of the factors that has been to have an impact and influence on resulting merger and acquisition activity, and the financial outcomes from this corporate activity is the liability insurance that the firms and executives have in relation to merger and acquisition initiatives (Lin, Officer & Zou, 2011). Given this influence of insurance on mergers and acquisitions, this research seeks to determine the differences in regional uptake for this particular factor that impacts the extent of merger and acquisition activity.

Mergers and acquisitions (M&A) is a term that refers to the consolidation of companies or assets and the reality is that any transaction of significant scale always contains unknowns and unforeseeable risks. Despite conducting the best due diligence, the unknowns will remain as they were until they may emerge and realized after the deal is closed.

M&A insurance, known as Warranty and Indemnity insurance, in case of a breach arising from the warranties contained in share purchase agreement, will provide an indemnity in respect of the potential financial losses to the insured, (this may be either the vendor or the purchaser) including legal costs and expenses

Covering the Warranties (such as: Financial Statements, Tax, Contracts, Intellectual Property, Employee, Litigation, Compliance, Property, Assets, Environmental, Data, Fundamentals, Information, Insurance, Pensions) of Both Buyers and Sellers with an insurance contract, can significantly reduce both parties' inherent risk in doing a transaction, and in turn help to minimize the time needed to reach an agreement and close the deal.

From the underwriter's perspective, providing insurance coverage for the M&A in different regions requires the understanding of different law, finance and insurance practices per region.

Understanding the Warranty and Indemnity insurance (M&A insurance) requires understanding the potential breaches of both parties and grading them with the perspective of regional law, regulations and financial complexity. This can help capacity providers to assess more or less favourably insurable warranties of a M&A.

The research will have a positivism research philosophy underpinning the research design. Statistical analysis will be used in the assessment of the extent of W&I insurance that is taken up across the different regions. The size of W&I insurance will be compared to the volume of merger and acquisition activity to determine the differences in the uptake of liability insurance that exists among the regions across the world. The research will utilise secondary data for the size of the W&I insurance and volume of mergers and acquisitions across the different regions included in the scope of the research. In this respect, the financial complexities of the countries in the regions are compared with the levels of law and regulatory compliances. As a case study; the laws governing the M&A activity in Turkey and the W&I insurance concept against to potential warranty breaches are emphasized. The issues which can contribute to reach the potential of the market penetration of W&I insurance are discussed. As a minimum, the research will consider the Americas, Europe-Middle East-Africa (EMEA) and the Asia regions as the initial regions to be included.

ÖZET

Birleşme ve satın alma faaliyeti, dünyada birçok hissedar grubu için önemli bir değer yaratma kaynağı olarak kabul edilerek güçlenmeyi sürdürüyor (Boyson, Gantchev & Shivdasani, 2017). Birleşme ve satın alma faaliyeti üzerinde etkisi olan faktörlerden biri, bu kurumsal faaliyetten elde edilen mali sonuçlar ile birlikte şirketlerin ve yöneticilerin birleşme ve satın alma girişimleri ile ilgili olarak sahip oldukları sorumluluk sigortalarıdır. (Lin, Officer & Zou, 2011). Birleşmeler ve satın almalar üzerine sigortanın bu etkisi göz önüne alındığında, bu çalışma, birleşme ve satın alma faaliyetinin kapsamını etkileyen bir faktör olan Şirket Birleşme ve Devralma Sorumluluk Sigortası için bölgesel farklılıkları belirlemeyi amaçlamaktadır.

Birleşme ve satın alma (M&A), şirketlerin veya varlıkların birleştirilmesi anlamına gelmektedir ve önemli ölçüdeki herhangi bir işlemde daima bilinmeyen ve öngörülmeyen riskler bulunmaktadır. En iyi durum tespiti yapılmasına rağmen, anlaşma kapatıldıktan sonra bilinmeyen hususlar fark edilene kadar orada kalacaktır.

W&I sigortası olarak bilinen, birleşme ve devralma sorumluluk sigortası, hisse alım anlaşmasında yer alan garantilerden doğan bir ihlal durumunda yasal maliyetler ve giderler dahil olmak üzere sigortalıya (bu satıcı ya da alıcı olabilir) potansiyel finansal kayıplardan dolayı teminat sağlayacaktır.

Her iki tarafın taahhütlerini (örneğin; Mali Tablolar, Vergiler, Sözleşmeler, Fikri Mülkiyet, Çalışanlar, Davalar, Uyumluluk, Mülkiyet, Varlıklar, Çevre, Veri, Temel Bilgiler, Sigorta, Emeklilik bilgileri vb.) bir sigorta kapasitesiyle karşılamak, bir taraftan anlaşma yapmanın doğal riskini önemli ölçüde azaltırken ve bir taraftan da anlaşmaya varmak ve anlaşmayı kapatmak için gereken zamanı en aza indirmeye yardımcı olacaktır.

Sigortacının bakış açısından, farklı bölgelerdeki birleşme ve satın alım işlemleri için sigorta teminatı sağlayabilmek, bölgelere göre farklı hukuk, finans ve sigorta uygulamalarını anlamayı gerektirmektedir.

W&I (Taahhüt ve Teminat) Sigortasını anlamak, işlemde yer alan her iki tarafın olası ihlallerini anlamayı ve bunları bölgesel hukuk, yönetmelikler ve finansal karmaşıklık perspektifiyle derecelendirmeyi gerektirir. Bu durum, sigortacılara, birleşme ve devralma işleminde tercih edilen ya da edilmeyen sigortalanabilir taahhütleri değerlendirmeleri için yardımcı olacaktır.

Bu araştırmada, çalışmanın tasarımını destekleyen pozitivizm araştırma felsefesine sahip olarak, farklı bölgelerde ele alınan W&I sigortasının kapsamının değerlendirilmesinde istatistiksel analiz kullanılmıştır. W&I sigortasının boyutu, birleşme ve satın alma faaliyeti hacmiyle karşılaştırılarak, bölgeler arasındaki mevcut sorumluluk sigortacılığındaki farklılıkların belirlenmesi sağlanacaktır. Çalışmada, W&I sigortasının boyutu ve araştırma kapsamındaki farklı bölgelerdeki birleşme ve devralmaların hacmi için ikincil veriler kullanılacaktır. Bu bağlamda, bölgedeki ülkelerin finansal karmaşıklıkları, kanun ve düzenleyici uyumu ile karşılaştırılmıştır. Örnek inceleme olarak Türkiye'deki şirket birleşme ve devralmalarını düzenleyen kanunlar ile W&I sigortası konseptleri üzerinde durularak, bu sigorta türünün gelişmekte olan pazarlarda potansiyel hacmine ulaşmasına katkı sağlayabilecek hususlar tartışılmıştır. Araştırma, asgari olarak, dahil edilmesi gereken temel öğeler olarak Amerika, Avrupa – Orta Doğu – Afrika (EMEA) ve Asya bölgelerini ele almaktadır.

INTRODUCTION

Development in technology brought new dynamics to the world's economy. The digital revolution is already transforming companies and even entire industries. One of the many results of this change; "easy access to the knowledge" which is an incentive for individuals to start their own companies, have created an ecosystem with an increasing number start-up as well as increasing number of mergers or acquisitions. In these times of rapid transformation and increasing number of deals, we need insurance to minimize the inherent risks in doing a transaction.

The situation in relation to Mergers & Acquisitions (M&A) activity is as complex as the insurance that helps protect those deals. However, understanding and making the categorization the risk of the deal in different regions can help underwriters and insurance companies to evaluate and decide whether the risks are preferably insurable or which of them are not. When the risks in a M&A are "favourably insurable", a policy can be purchased by either the buyer for its own loss arising from a seller's breach (innocent or otherwise), or the seller to cover claims brought by the buyer for negligent or innocent breaches. However, understanding the jurisdictional differences in the regions are important for the interpretation of the applicable contract therefore potential outcome of the breach.

This thesis which covers mergers and acquisitions liability insurance in terms of the assessment of differences in regional uptake across Americas, Europe, Middle East and Africa (EMEA) and Asia, consists four main parts. In the first part, general information and historical development of the insurance concept including Liability Insurance will be introduced. The second part will cover general information and historical developments in M&A and the types of M&A and general aspects of M&A. Third part will include the Warranty and Indemnity (W&I), W&I insurance in detail, regional market analysis of M&A and W&I policies placed across Americas, EMEA and Asia. This part will also focus on Jurisdiction Analysis from the perspective of Financial Complexity and Rule of Law.

The last part will focus to discuss on the distinctive features of different jurisdictions in the regions to provide better understanding of eligibility of the W&I Insurance across Americas, EMEA and Asia.

CHAPTER I: CONCEPTUAL FRAMEWORK ON INSURANCE

1.1. CONCEPT OF INSURANCE

Everyday life is filled with uncertainty hazards. Since it is not possible to eliminate these hazards completely, people have made various attempts to reduce or mitigate their economic consequences and have laid the foundation for the concept of insurance to divide the damages that may arise in the event of a hazard.

Insurance comes from the word "sicurta", which means "assurance" in Latin. It is a result of the person's need for security. If the person exists, he or she will feel the need to protect himself or herself from the threats (Güvel ve Güvel, 2008: 25).

Risk management methods in modern economic systems are increasingly important. In the past, people have resorted to risk management. Although insurance and other forms of risk management are intertwined, insurance is the most important type of risk management, with the least impact of damage being minimized, and by making the most contribution to individuals and entrepreneurs. The aim is to protect those who participate in insurance-related disputes from the consequential economic damage.

The insurance is to combine the damages that may arise with a group that is under the threat of the same risk together. Only people under the same threat of risk can be brought together through an organization. This organization is insured. Insurance is, in its simplest sense, to ensure that the damage to be incurred from a dangerous future is compensated for in advance payments (premiums) (Uralcan, 2004: 23).

Insurance is based on the idea of preserving the economic existence of people because of a number of events that may lead to a wound. Indeed, if people exist, they face some danger. It is not known in advance whether these threats will happen, when they will happen, or how much damage they will inflict. One's own peril of the consequences of danger often brings economic destruction for that person. The idea of sharing the harmful consequences of the danger and mutual help has led to the emergence of the insurer by creating a community of those who might be exposed to similar hazards. However, the need for people to feel safe, to act forward and to act cautiously also reveals the need for insurance. As a matter of fact, the purpose of the insurance is to remove the consequences of the coincidences with precautionary measures.

Insurance has significant economic and social benefits. First, it assures the person against the possible threats that may occur in the future. Thus, it fulfils its social function by preventing the person from falling into a tricky situation and being a collecting burden. This assurance also contributes to the country's economy by protecting capital and labour. Moreover, it also contributes to making bold decisions and increasing the number of enterprises in the working life. In addition, insurance facilitates the provision of credits and provides savings on persons. Finally, since the premiums collected by insurance companies reach substantial amounts, the protection and evaluation of these funds is also very important in terms of the country's economy. Elements of insurance concept;

- Pre-determination of rules by law or contract
- Measuring the insurance issue with money
- Random (accidental) damage
- Togetherness
- Damage to be measured in terms of material quality and currency (Güvel ve Güvel, 2008: 28).

Insurance institutions are very important financial institutions because of the type of risk management and the funds they have created as a guarantee organization. Funds financed by insurance companies finance investments. Insurance activities contribute not only to the country's economy but also to the world economy in terms of saving and investment. Hence, from a macro perspective, there is a fundamental risk management that the insurer determines in its insurance activities. Funds that arise when these conditions are fulfilled have a significant impact on the country and the world economy.

1.1.1. Theoretical Approaches to Risk, Uncertainty and Insurance

The question of how to make human requests is not only a question of which legitimate and desirable tools are to be chosen to achieve a certain purpose but also of the quality of information about tools. However, it is important to understand that the assumption of rationality is a two-way assumption. This assumption suggests that people not only act based on self-interest incentives but also know exactly what is the most appropriate

way to achieve their goals and maximize their interests. For the price mechanism to achieve balance, it is necessary to take individual decisions in an environment where there is no ambiguity about the aims and means so that the distribution of resources can be achieved in the desired direction without the need to intervene spontaneously. While the uncertainty phenomenon brings the idea that intervention may be necessary, it also leads to serious suspicions about the reality of estimates and explanations about the economic consequences of individual behaviours within the framework of economic theory. Attracting attention to this issue, economists are debating methods that push the boundaries of economic theory (Buğra, 1995: 19).

In economic explanations during the 18th and 19th centuries, when economics began to be established scientifically, abstraction seemed to dominate. It is stated that the economic behaviour is stereotyped and covered by ignoring the differences of time, space and people. This abstraction has helped to understand economic models and theories. However, it is possible to talk about a crisis created by abstraction especially in today's world. For example; the assumption that the policies of the International Monetary Fund (IMF) will produce the same results in every country brings such a crisis. Similarly, submitting goods in one form under the assumption that individuals prefer the same pattern, colour or design of the same kind can create various deviations in terms of demand. One of the reasons behind such deviations is perhaps that they are the first ones; what happens in the inner world of man are perceptions, thoughts and emotions. Therefore, the developments in the intersection of economics, sociology and psychology need to be evaluated in a multifaceted way. (Yalçınkaya & Özsoy, 2003)

Adam Smith has considered the reluctance of the people to pay for an essential element, such as ridiculous economics, against the intensity of gambling desire, which has been talked about the overall success of the famous work "The Wealth of Nations". Adam Smith has said that the probability of losing is undervalued and never over-emphasized, and that the insurance profit can be deducted because it is in a normal position. However, according to Smith, insurance premiums are generally not high and should be sufficient to cover the premium as much as the premium provided by the same amount of hardship that is used in any commercial business that will pay for common expenses and pay management costs. While explaining the importance of insurance, Adam Smith said that the insurance business provided a great deal of

confidence in the private persons' assets and that the damage to the individual was distributed among many people, alleviating such a risk for the whole society, but that the insurer had to be a huge asset to secure this security.

Walras considered the insurance as a means of removing uncertainty hidden in all economic activities and defined the insurance premium as the link between the insurance and the non-insurance sector. In his book entitled Marshall Economy, he discussed insurance premiums as the price that must be paid to get rid of the ambiguity evil. The book also benefited from Bernoulli's work in this area.

Knight, Hutchison and Shackle's approach to the subject from the 20th century's great economists also brought about significant exponents in the evolution of economics. In his book, Risk Uncertainty and Profit, Knight used uncertainty as a factor to justify entrepreneurial profit. According to him, profit is the unmeasured risk or ambiguity that the entrepreneur carries because of the impossibility of knowing the future. According to Knight, the difference of uncertainty from the ritual is that the probability of all possible outcomes is unknown.

Knight writes about what Laissez Faire individualism wants at any time in any society. Within the real-world features, there is no theoretical validity. One of the most important reasons for this is that uncertainty, which is the essential feature of the real world, does not allow the process of spontaneous order to be settled in theory. s stated above, "Risk Uncertainty and Profit" is treated as a consequence of uncertainty of profit, the general aim is that, as long as individuals behave rationally in a market system operating under perfect competition conditions, prices are equated with marginal cost, equal share, and the payments made according to the marginal productivity of the producers are equal to the value of the total output, so that the profit is limited to the marginal productivity of the capital is a more realistic explanation than the standard price theory. For this reason, profit and loss cases are considered in an alternative approach. In this approach these phenomena emerge as the consequences of uncertainty. They reflect the changes in the value of all items falling into the income and cost accounts over the period from the start of any enterprise. These changes are not predictable changes. Risk is an element that can be controlled to some degree with the help of an insurance system that is based on the classification of the various entities into the risks involved. Uncertainty cannot be the subject of any calculation, and

profitability arises as the result of this uncalculated and uncertain factor. The degree of uncertainty that leads to the phenomena of profit and loss leads to the shedding of some of the system in favour of some, resulting in socially undesirable results. The system does not work as Adam Smith imagines because uncertainty emerges as a source of power that can go against all social ends (Yalçınkaya ve Özsoy, 2004:1).

For Keynes, the only meaning of your uncertainty, like Knight, is that you are not known. Hence, objective probability calculations are not useful in dealing with the case of uncertainty. As Keynes expresses very clearly " by 'uncertain' knowledge, let me explain, I do not mean merely to distinguish what is known for certain from what is only probable. The game of roulette is not subject, in this sense, to uncertainty; nor is the prospect of a Victory bond being drawn. Or, again, the expectation of life is only slightly uncertain. Even the weather is only moderately uncertain. The sense in which I am using the term is that in which the prospect of a European war is uncertain, or the price of copper and the rate of interest twenty years hence, or the obsolescence of an invention, or the position of private wealth□owners in the social system in 1970. About these matters there is no scientific basis on which to form any calculable probability whatever. We simply do not know. " (Keynes, 1936)

1.2. HISTORY OF INSURANCE

The emergence of the insurance extends to very ancient histories. Societies have met the need for insurance by distributing many legal institutions, even if not in the present sense. Every society; has developed mechanisms to protect itself from its risks according to its cultural, political and economic conditions. These mechanisms have undergone various changes and have been modernized in Europe with modernism, capitalism and industrial revolution.

It cannot be said that insurance has existed in the early ages with today's modern state. The way to cope with the risk has mainly been tried to be overcome through "partnership". This partnership can be defined as a partnership, if it occurs, or as a partnership, if it occurs.

The first practice like insurance was found by Babylonians about 4000 years ago. In Babylon, the trading centre of the time, the lenders to the caravan merchants wiped

away the debts of the merchants in case of carvings peeling or ransom payments, but when they get back from the borrowing merchants, they receive some money over the amount of the main debt as a countervailing risk.

In 3000 BC, Chinese merchants did not load all their merchandise on a ship, but divided them into several groups and gave them to the ships separately. Thus, as all the goods prevented the consequential loss of sea or piracy, they facilitated the collection and provided "insurance" by reducing the minimum compensation required for the transportation. This application is given as the beginning of the Commodity Shipping insurance (Sergici, 2001).

In the time of Hammurabi, ruling in Mesopotamia, BC 1800, a protective material for caravans was placed in the Hammurabi Laws. According to this, the damages of the caravans who were attacked by the bandits were shared among the other caravans. The damage which the bandit (if the robbers were captured) was declared by the civilian authority where the robbery was done.

B.C. In the 600's, the Hindus began to make credit agreements with insurance features. These agreements with simple content exceed the significance of developing the idea of insurance in the society and putting the first steps in insurance. Such credit agreements have also developed in the medieval era, forming the basis of maritime payday and transport insurances. (Insurance Association of Turkey (IAT))

A.D. 1227 Carthaginians, Romans and Greeks were committed to lending on the cargo carried by the gem, and not giving the gem together with the principal, in exchange for the risk of not reaching the port. They were banned after a while when they were not welcomed by the church. This ban has resulted in a genuine insurance idea with collateral coverage.

Premium based insurances have been seen in Venice, Pisa, Florence and Genoa in 1250 AD. The concept of marine insurance emerged with a contract signed as the first insurance policy of M.S 1347 and the load of a ship was secured. M.S.1424 The first insurance company was established in Genoa. M.S.1435 The first Insurance Act of Barcelona was published (IAT).

The outflow of land insurance in M.S.1666 is the big spill that took place in London on September 2, 1666 and caused four days to last for as much as 13,000 houses and 100 churches. This event, which led to the birth of black insurers, has created the

impression that the people have made significant impact and that measures against the consequences of such disasters have been taken. In 1684, the first friendly fire insurance company "Friendly Society" went into operation.

In 1688, a new era in insurance began with the foundation of Lloyd's in England. Many Lloyd's "trade unions" do not welcome or even change their greed. At the beginning of the 19th century, some of the members of the group were to give guarantees for fires, theft, personal accidents except maritime insurance, the precedence was very slow, has become the most reputable and safe institution of world insurance in the branches (Sergici, 2001).

The coffee shop in London, run by a man named Edward Lloyd, has become a venue for exchange of information on maritime trade. After Edward Lloyd's death, they formed a community among themselves called Lloyd's. Lloyd's is a completely unique insurance company that is unique in the world. Most of the customs and customs that have formed in the institution are not seen elsewhere. A lot of detail practice over a 250-year period is the result of experience and is the source of Lloyd's current reputation (Sergici, 2001).

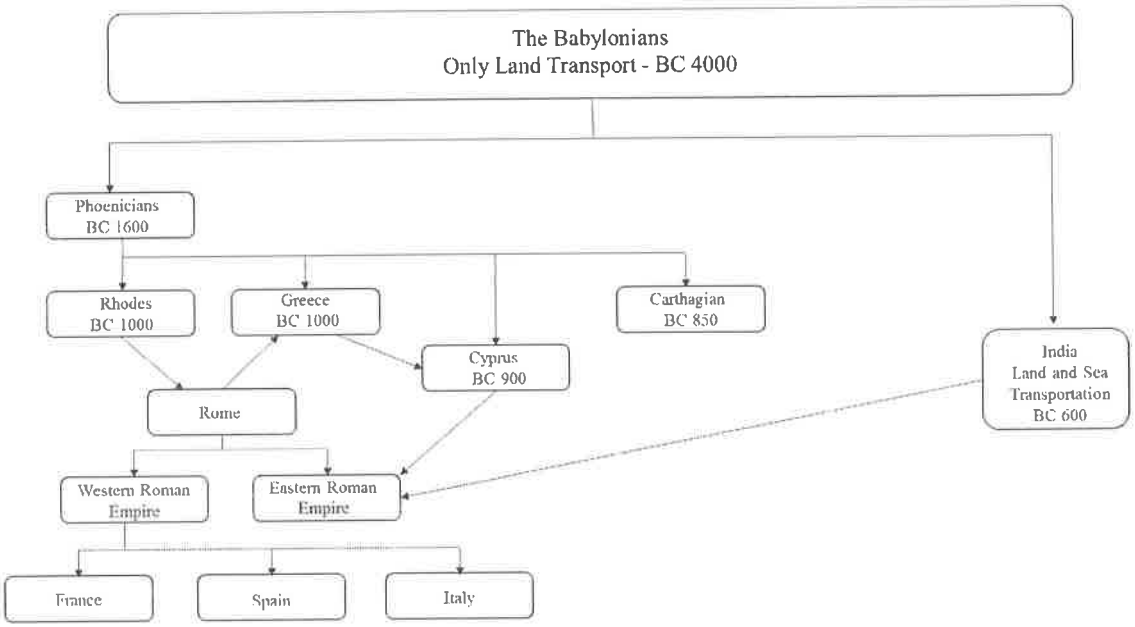
Lloyd's is not an insurance company, it is a community formed by individuals who provide insurance coverage, a union, and at the same time a centre for shipping intelligence around the world. The most distinctive feature of Lloyd's is the fact that Lloyd's members are responsible for carrying all their assets and never have direct contact with the insured, provided that the relationship is made with the intermediary person or firm called "Broker". Brokers register here to work with Lloyd's and follow up on the client's insurance and compensation claims (IAT).

American immigrants founded the first insurance companies in New York City (1787) and Philadelphia (1794). INA, one of these, is continuing. As the policies multiply and the disputes increase with the damage events, the London Transportation Insurance Act of 1906, which includes 2000 controversial events and solutions, has emerged that maintains the most robust resource feature for the resolution of similar incidents up to today (Sergici, 2001).

In parallel with industrialization in the 18th century, the legal principles of the insurances and the insurance types which are in the interest of the state and which are in the interest of the state and which are following the several types of insurance have

been determined and the principles for inspecting the insured rights have been laid down.

Figure 1: The Development of Insurance



1.3. GENERAL PRINCIPLES OF INSURANCE

The general principles of insurance are the basic principles that regulate the legal relationship between the two parties in insurance contracts, and that ensure that insurance transactions are serious, reliable, distracting from all aspects of business life and are stable transactions. These general principles can be listed as follows (Toprak and Coskun, 2012):

1.3.1. Principle of Uberrimae fidei (Utmost Good Faith)

Utmost good faith is a concern in all kinds of contracts. What this means is that the parties should not act fraudulently. However, for most commercial contracts, it is not necessary to disclose specific issues. The parties are presumed to have the necessary knowledge and expertise when making their decisions, but the situation is different in insurance contracts. At this point, the need is maximal good faith. For this reason, insurance contracts have the maximum good faith. It is based on principle. The

"Essential Elements" of the policy are the facts and information that the insurer has the need and the obligation to know, to decide whether to accept the risk, to specify the condition and the price.

So, the doctrine of "Utmost Goof Faith" first appears in the form of saying and declaring everything. The offeror must disclose to the insurer all the "basic matters" that he / she should know or should know about the thing which he / she wants to insure in the negotiations related to the insurance contract and during the period up to the time when the contract enters into force and if the insurer fails to fulfil his duties, the insurer may give up the contract.

1.3.2. Principle of Insurable Interest

Insurable interest is the right to insure a legally binding bond between the policyholder and the insured. In thc case of protection of the value of the insurance "the insurance must be a legal benefit measurable by money. In the article 1269 of the Turkish Commercial Code No. 6762, "the necessity of monetary and legal interest relation between the insured and the insured" is clearly stated.

1.3.3. Principle of Causa Proxima (Nearest Cause)

Because of the damage, the insurer has suffered, it is necessary to determine that the insured's damage has been brought forward by the insurer in the form of a danger or incurred under the policy. According to this situation, which is expressed as a principle of nearest cause, the premium means that if the indemnity is taken as collateral, the indemnity will be paid if the risk occurs.

1.3.4. Principle of Indemnity

Damage that can be measured mathematically and can be assessed with the currency of the insurance policy will give rise to the indemnity of the insurer. In the case of goods and liability insurances, the amount paid in case of insured loss is called indemnity.

All property and liability insurance in the life and liability insurance are indemnification agreement. The issue of the contract is to bring the insured as much

as possible to the previous financial level. The insurance issue is either a property expressing value in business or it may be a legal liability. If the insurer promises to pay compensation for a future danger in the event of a premium, if this risk is impossible, then there is no insurance. For this reason, no insurance contract can be made, and the principle of compensation is not born.

In the case of freight insurance, the policy of the insurer is the boat insurance of the ship or the commodity or the ship which is being built. If it is the subject of fire insurance, it could be a commodity such as a house or a factory. They constitute a subject of indemnity. However, since life and personal accident insurance are human life, they are insufficiently compensated and not insured. There is no insurance value here, as it is in property insurance. The aim of the goods and liability insurance is to bring the insured to the previous financial situation. The insurance contract, i.e. the insurance cost in the policy, indicates the maximum liability of the insurer. The insurance does not aim to bring the insured above the previous financial level of the insured, and therefore the indemnity principle prevents the insured from making profit. This principle is also compatible with the principle of insurable interest.

The obligation to indemnity the defendant is practically implemented by insured payment of the insurer. However, it is also possible for some of the insureds to be liable to indemnity in other forms. These can be ordered as follows;

- Repair and Renovation (Reinstatement)

The insurer may reserve the right to have the damaged property repaired instead of paying in cash. In this case, the insured shall repair the damaged item or part, at its own expense and liability. The compensation obligation shall also be fulfilled by the transfer of the repaired piece or piece to the insured.

- Substitution

Sometimes it is a very practical way to substitute damaged goods, especially personal goods, furs and jewels, in place of jewellery. In this case, usually the insurer is limited to a certain amount, the authority to buy the mentioned goods is given and the insured is paid directly to the seller by the insured in most cases.

The principle of indemnity in property insurance is aimed at maintaining the financial level of the insured immediately prior to the injury and is therefore based on the market value of the property the day before the damage. For the determination of the market

value, the partial differences between the buildings, machinery, stocks and other securities are based on the same principles.

Buildings: Compensation is the cost of repair of the damaged building or refers to repair, not better. If the building has been completely damaged, Reduction is made as much as the share of obsolescence and depreciation.

Machines: The principles of building damage apply exactly.

Stock: The net cost of the insured shall be the basis for compensation. For the manufacturer, labour and cost are added if raw material is required. For the wholesaler, the same goods are purchased from the manufacturer; for the retailer, the amount of compensation from the wholesaler of the same good.

Household goods - furniture and household items: Provided that the share of aging and depreciation is reduced, the replacement of the goods is the basis of indemnification.

1.3.5. Principle of Contribution

The general rule for loss participation is that the insurer requests any of the compensation insurers, and that the insurer also recruits the other insurers after making the payment.

1.3.6. Principle of Subrogation

According to the trade laws "The insurer replaces the person who is legally insured after paying the compensation. If the person entitled to a claim against third parties is entitled to a claim against the third party due to the loss of the insurance, this right shall be transferred to the insurer in proportion to the price it compensates. "

Insurance is not a means of profit and aims to compensate for the damage. If the insured person is exposed to damage by a defect, the insured person has the right to sue and take the damage from him. If the insured person receives the same loss from the insurer, once he / she receives it from the insured person, he / she will be an unfair profitable entity. Since the law docs not allow this, if the insurer has made any payment to the insurer for the damage caused by the insurance, he shall replace the insured person and become his successor. The aim, however, is to prevent the insurer from obtaining more of the damage.

Accordingly, the right of subrogation is a right derived from the law for the insurer. The insurer has the possibility to withdraw all or part of the insurance compensation which he has paid based on this right, because of a rash case. For this reason, the insurer is obliged to furnish the insurer with the necessary documentation to ensure that the insurer can use his / her subrogation through his / her dismissal.

1.3.7. Principle of Loss Minimization

Risk; it is inconclusive or unlikely to happen as death, and it is unclear when it will happen, and it is a phenomenon that may occur in the future outside the will of the insured and the insurer. the parties; i.e. an event connected with the will of the insured and the insurer is not considered a danger. The event that constitutes danger; insurer or any person benefiting from the insurance will not be insured against it if it is born out of a law prohibited or unethical act. The obsolescence due to the proper use of the accent is not regarded as danger. This is depreciation.

1.4. BASIC EXPLANATIONS ABOUT INSURANCE BRANCHES

Insurance is a safeguard that is made to cover the damage that occurs when materially measurable risks occur in life. Payments made by those who are exposed to the same risk are paid on the same fuse, and in cases where the risk occurs, the payment of the claim is covered by insurance.

1.4.1. Fire Insurance

Fire insurance has a wide range of applications in everyday life. There are many risks to this insurance branch from very small buildings and their contents to large facilities and businesses that find trillions of trillions. fire insurance, insured, possessed property, as well as mortgage creditor-borrower, trustee, tenant etc.

The classic fire insurance policy provides damages for fire, lightning, explosion, fire and explosion caused by smoke, steam and heat. but it is seen that some countries have given a limited guarantee for the "explosion" risk in their implementation. the damage

caused by the water that is squeezed during the other activities to prevent or extinguish fire is also covered by the deposit.

Some of the exempted requirements for classical fire insurance policy have been put into practice by insurers in the form of "additional risks" and in addition to fire insurance policy with special clauses. these additional collaterals are numerous and some of them can be summarized as follows:

-Earthquake and volcano eruption

-Self or flood

-Storm

-Sliding

-Strike, lockout, turmoil, popular movements, malicious acts, terror

-Internal water

- Caravans, poultry, sea vehicles

-Self-burning incidents

The common feature of the collaterals mentioned above is that they are "additional collateral" and they can only be given together with the fire insurance policy.

1.4.2. Marine Insurance

Marine insurances are an insurance sector closely related to trade and especially maritime trade in general. The reason why insurance brokers seek insurance for intermediary banks in international transactions, or mortgage buyers of high value boats, make this insurance a "financial" obligation.

The close relationship of transport insurance with trade has given this insurance branch an international character. As a result, in the implementation of the marine insurance in many countries, the special conditions which are prepared by the Institute of London Underwriters in the regulation of the insurance contract and accepted internationally are widely used.

Marine insurance is traditionally divided into freight and hull insurance. Classical freight and hull policies provide a guarantee against maritime and transportation risks in general terms. In addition to these, there is also the possibility of providing guarantees for war, strike etc. The collateral provided is strictly regulated to cover, in

whole or in part, the types of total loss average, such as the habitants, rescue and relief costs, litigation and counting costs and conflict liability.

1.4.3. General Accident Insurance

Accident insurance is an insurance policy that is outside the fire, transport and life insurance. Thus, qualitatively diverse types of insurance have come to an end in an insurance branch. The types of insurance covered under accident insurance are as follows:

1.4.3.1. Personal Accident Insurance

The purpose of this type of insurance is; in the event of death or injury resulting from an accident, to compensate the insured or his / her relatives. The nature of the insurance is more like a life insurance policy. The insurance policy pays a certain amount in the case of death or loss of a person or a permanent disability and a weekly or monthly indemnity for a certain period (such as 104 weeks) in the case of temporary nonworking.

Personal accident insurance policies can be arranged not only to provide an "accident" but also to guarantee "certain" or "all" diseases as well as the accident. However, in such cases, only the accident death is covered by the guarantee and no indemnity payment is made in case of death from the disease.

Individual accident insurances can be purchased individually by the individual, as well as by collective claims for employees and members of the enterprise, club, etc. Thus, with such group policies, the insurer is provided with a single premium and a certain amount of premiums to save management costs, while avoiding the inconveniences of the insurer against the insurer, since they cover many people on the one hand.

1.4.3.2. Burglary / Glass Breakage Insurance

The illegal acquisition of a property belonging to someone constitutes the subject of the theft insurance. This type of insurance provides for theft or damage of portable

goods during theft or theft attempt. However, what is understood from the "theft" action in the policy must be clearly defined.

Separately, the practice of arresting theft insurance policies for private homes has largely been abandoned, as housing package policies provide assurance for "theft" risk. For companies, "stock declaration" or "safe" policies are used.

Theft hazard may be covered in a way that encompasses the luggage of the passenger and personal belongings in the scope of "travel insurance" or in the comprehensive policies of the banks.

Glass breaking insurance provides accidental breakage of windows and mirrors in windows and doors. The most prevailing aspect of this insurance policy, which can be extended to cover the losses that may arise for the shopper, is the immediate supply of the broken part from the insurance company.

1.4.3.3. Engineering Insurances

Initially developed for fuses of steam boilers, this type of fuse extended its field of application over time to include cranes, elevators, various machines and plants, electrical equipment and finally computers.

The guarantee provided covers not only the damage suffered by the insured person, but also the damage to other property belonging to the insured person in transit, as well as legal liability to third parties and loss of profit. In addition to providing insurance coverage, insurance companies working in this area also provide inspection services to prevent damage and many facility owners can benefit from this service even without obtaining insurance coverage. This type of insurance requires specialized engineering knowledge, in accordance with its quality.

1.4.3.4. Land Vehicles Car Insurance / Financial Liability Insurance

This type of insurance, also called automobile insurances, is the most common application area of accident insurance. Car insurance and financial liability (tariff) are divided into two:

-Motor own damage: The motorized road vehicle guarantees damages that your car may suffer. These; it is all the damage that the vehicle burns, stolen, and can come to the finish in the event of an accident. A policy of this nature will take the name of a full automobile insurance. The policy that only provides combustion and stolen is known as partial insurance.

-Financial liability: This insurance includes the financial and material damages that a motor vehicle will give to a third person. In many countries, the purchase of this product is a legal obligation, and it is also seen that there is no limit for the loss of personal injury. In cases where the law requires limited insurance, the Voluntary Financial Liability Insurance can be applied to exceed these limits.

In practice there are Comprehensive Land Vehicles policies that bring together insurance and financial liability guarantees, as well as personal accident, medical expenses and private property guarantees.

In this insurance branch, various kinds of policies can be arranged for private cars, buses, rental cars and taxis, motorcycles, agricultural vehicles, work machines, cargo vehicles etc. There may also be special policies for businesses such as garages.

1.4.3.5. Animal Life / Agricultural Insurances

Accident or sickness death of farm animals and poultry racing horses and pets is provided by animal life insurances. Mandatory killing and cutting is also usually covered. In recent years, fish farm insurances have also become widespread. Agricultural insurances aim to ensure that rainfall causes loss of crops and damage to crops. The collateral can also cover the material damage due to flooding the greenhouse.

1.4.3.6. Fidelity, Crime Insurances

One of these types of insurances, the Fidelity / Crime insurance, is intended to provide the employer with commodity losses that may result from the flaws and malicious acts of the persons employed by the employer.

The policy may be arranged for specific persons or tasks (cashier, warehouse clerk, etc.) or it may be generalized. The policy may be arranged to cover events that may arise within a certain period (such as 24 months) following the policy period, as it may take some time for the abusing events of the subject issue to take place. Recently, this area insurer has been issuing policies based on "losses discovered", which is responsible for the damage that occurred within the policy period.

In this context, Court Bonds and Government Bonds, which are bail promise, can be mentioned. Court Bonds secures the monetary loss that may result from misconduct or mismanagement of the duties of persons appointed by the court to "guardians". Government Bonds provides financial losses that may be caused by a financial specialist in charge of liquidation in the event of a bankruptcy. In addition, there are insurance policies that protect mortgage lenders who provide mortgage loans.

Credit insurance is another type of insurance that is more financial. The seller is protected against monetary loss that customers may incur due to their inability to pay debts or debts falling into business or payment difficulties. Thus, the seller has largely removed the ambiguity created by the receivables that cannot be paid for a certain premium and raises the financial reputation. The credit insurance policy can be arranged for all receivables of the entity in question, as well as for certain customers.

1.4.3.7. Liability Insurance

In many insurance policies (transportation-marine, aviation, engineering etc.), the guarantee covers the liability for third parties. However, there are also special policies that guarantee the legal liability arising from the damage to third parties. Such policies usually include the costs of the insured's court costs. Detailed information about liability insurance will be given under the title of 1.5. Liability Insurance.

1.4.3.8. Aviation Insurance

The terms and practice of aviation insurances have been largely influenced by transport insurance in terms of historical development. Many of these insurances are covered in the Accident Insurances section.

In the practice of aviation insurances, responsibility is secured against a single policy for both the aircraft (i.e. motor insurance) and third parties (including the younger ones) of the aircraft. Within the framework of aviation liability, the following conditions are guaranteed:

- Liability which may arise against an accidental person or property caused by the fault of the resident or his / her employees,
- The liability that may be faced due to rotten foods and beverages,
- The liability arising from the damage which can be given to the vehicles not belonging to the insured,
- The liability that may arise from damages to the other aircraft in the territory of the insured, supervision and surveillance.

In addition, the responsibilities of aircraft manufacturers or repairers and their maintenance staff, which may arise due to faulty planning and poor workmanship, are widely covered. Because such situations cause financial problems that are so severe that airlines cannot survive.

1.4.4. Life Insurance

There are many ways of arranging life policies in the field of Life Insurance. This difference arises from the characteristics of the future concerns of the individuals to whom they are obliged to look after their own needs. The types of life insurance that are seen in countries where this insurance branch has developed can be grouped into four main groups:

Term Assurance: Term insurance is one of the oldest life insurance. The insurance policy is issued for a certain period and the liability of the insurer arises only if the insured dies within that time.

Whole Life Assurance: These policies are policies that require payment in case of death of the insured person. The premium can be paid for life, but it is also possible for the premium payment to be stopped when the insured person reaches a certain age (such as 60-65), but the insurance policy can pay compensation when the insured dies.

Endowment Assurance: The insured cost is the policy that the insured person reaches a certain age or is paid in death in the meantime. If the death occurs before the

person reaches the foreseen age, the insurance is paid to the his / her heirs. There are different varieties of this policy line depending on the application such as decreasing term assurance, convertible term assurance, family income benefits, child assurance, group assurance and other life assurances.

Annuities: This practice is almost the opposite of the classical life insurance which requires a collective sum at the end of a certain period against the premiums paid for years. In the case of a collective sum paid here in whole or in part, the insurer agrees to pay an annual fee for a certain period or lifetime of the person concerned. The annual payments made by the insurance company are divided into immediate annuities and deferred annuities.

1.5. LIABILITY INSURANCE

1.5.1. Concept of Liability

Liability refers to the obligation to indemnify a specific damage arising from an act or incident. Sources of liability arising from private law; contravening the contract, tort, unjust enrichment, and unfair business and direct debts.

Because of socio-economic and technological developments, the situations that present danger in modern society have become more common than the old ones. It has become inevitable that people will be exposed to these dangers and cause these dangers. New developments in liability law have been experienced to compensate damages coming to the mosque. The concept of hazard responsibility has expanded, and new responsibilities have been adopted. In parallel with the developments in liability, important evolvement also took place in the field of insurance. People are asking for liability insurance for the damages they are responsible for, which they will bring to their property (Eren, 2014). Otherwise, these liabilities may in some cases have the consequences leading up to the destruction of all their assets.

1.5.2. Liability Insurance

Liability insurance has been exposed to violent criticism in the first years of its emergence, contrary to morality. It has been argued that this insurance will encourage the insured to act inattention. Despite the opposing views, it was in the opinion that liability insurance was positive for the protection provided by the victim third parties and defended this insurance. Modern liability insurance first began to be applied in France in the first half of the 19th century in the form of accident and auto insurance (Şenocak, 2000).

Liability insurance is a type of insurance that is intended to remove the burdens (negative changes) that have arisen in the property due to the claims of the insurer claiming liability of the third parties (Şenocak, 2000). Otherwise, it is not an institution that lifts the liability of the insured.

The duty of liability insurance to compensate for the reduction of the insured's assets, i.e. compensation, requires him to be regarded as a loss insurance. However, liability insurance is different from other types of loss insurance because liability insurance does not have the duty of satisfying the claim of compensation which the third victim advocates. There is also the duty to dispose of the request (legal protection) if the third party's claim is unfair. In the case of liability insurance, legal protection is an obligation to act as an actor, in short, the liability insurance provides protection for the third party's rightful claimant's satisfactory, defamatory claims.

When a harmful claim arises, the insurer will first examine whether this claim is justified. This liability, called audit of the liability issue (Şenocak, 2000), constitutes another act of the insurer. This act was organized in the first paragraph of the 1476th article of the Turkish Commercial Code (TCC). According to this provision; "The insurer shall notify the Insurer within five days from the date of notification in accordance with Article 1475, to make necessary legal actions, to take decisions, and to assist in defending, on behalf of the insured, and on behalf of the insured, the insurer will undertake; otherwise the fourth paragraph of this article shall apply. "

If the judgment of a judge (court or arbitrator) that a claimant is in place has been determined by a peace agreement previously approved by the insurer or if the insurer has confirmed the claim with the insurer's approval in this matter, the claim is justified.

The rescue of the insurance from these justifiable claims occurs when the insurer fulfils the indemnification act. The insurer may also ask directly to recover the damage from the loss. In this way, it will be easier to get rid of the damage. As a matter of fact, Article 1478 of TCC. the victim clearly regulated the right of direct action.

If the insurer thinks that the question of liability is unfair or excessive in the result of the examination, the legal protection will be the subject. Within the scope of legal protection, the insurer is obliged to take all the necessary legal procedures for defence as well as undertake defence in the case opened. Other actions required for defence, such as going to the lawyer and taking legal action are examples. It is also the duty of the insurer to cover the defence costs. The insurer's task here is not only to undertake the defence costs but also to make efforts for defence. All these transactions are made on behalf of the insured.

Legal protection insurance can be confused with liability insurance due to the legal protection function which is the subject of liability insurance. Although there are some similarities between legal protection insurance and liability insurance, these two types of insurances are clearly distinguished from one another in terms of the aims and tasks they perform. Once in legal protection insurance, there is no compensation function as it is in liability insurance. It only allows the insured to file legal claims. On the other hand, the legal protection function in liability insurance only applies if there is a claim to be filed against the insured. However, an active legal protection is provided in addition to such passive protection in legal protection insurance. Finally, liability insurance does not appear in the social purpose legal protection insurance for the protection of the victim.

1.5.3. Place of Liability Insurance in Insurance Sector

1.5.3.1.In terms of Insurer's Execution

Especially according to this regulation, which is adopted in the German doctrine, insurance is divided into loss insurance and fixed sum insurance according to the coverage of the demand (Şenocak, 2000).

Liability insurance is a loss insurance. Damage insurance is a guarantee for the loss of damages caused by the occurrence of damages. Fixed sum insurance is an insurance under which the insurer is liable to pay the amount specified in the insurance contract or to perform other acts.

In the case of damage insurance, the limit of the insurer's indemnity shall constitute the damage caused by the realization of the risk. Therefore, it is a matter of meeting a concrete need for injury insurance. In the case of insured insurances, it is not the settlement of the actual loss, but the payment of the amount determined in the contract. Therefore, an abstract need is met, not a concrete damage. In addition to this, it is not always possible for the amount to be affected by the occurrence of the risk in the insurance, and the resulting loss cannot be completely determined. Life insurance is a fixed sum insurance.

The principle which prevails over the damage insurance is the prohibition of enrichment. According to this principle, neither the insurer nor the insurer can claim more than the actual loss incurred. Oversea insurance, subrogation policy, multiple insurance, and the notification burden are rules for the enforcement of the enrichment principle.

The prohibition of enrichment is the reflection of moral rules on insurance. If this principle is not accepted, insurance will be used as a means of earning. The malicious insurer would remain indifferent to the realization of the rival to obtain this gain, and possibly deliberately. Again, for this purpose, unnecessary burden of prevention and reduction will not fulfil the burden of notice so that the insurer will overcome the risk of carrying the risk, which will also result in a premium increase. As a result, the function expected from the insurance would not be able to replace it.

There are exceptions to the enrichment ban. In accordance with Article 1464 of the TCC, it can be said that the insurance of the insured and the insurance of the expected income are organized as such exceptions. The reason for these exceptions is to prevent disputes between the insurer and the insurer, and to eliminate the loss of time and money by facilitating the disposition of the loss.

1.5.3.1. Separation of Active Insurance and Passive Insurance

Damage insurance is divided into active insurance and passive insurance. Surplus assets in assets constitute active assets. Here, active insurance protects the relationship between the insurer and these assets. Another expression assures the reduction of active assets. Active insurance is also called benefit insurance.

Active insurance is divided into four categories according to the subject of interest:

- Property insurance: The insurance protects the value relationship with the asset.
- Credit insurance: Like credit insurance, the insurer protects the value relationship with the right to claim.
- Insurance of other rights: The insurance guarantees the value of the fiduciary with identical rights outside the property.
- Profit insurances: The expected earnings included in the prospective assets are insured.

The passive assets, on the other hand, are relations with negative values. The passive insurer provides assurance against the insurer's liability for the increase in the liabilities of the assets or the consequences of the emergence of new liabilities.

Passive insurance is also divided in four categories according to the subject of interest:

- Insurance against statutory liabilities: Obligations arising from statutory debt obligations are secured.
- Insurances against current liabilities: Insurances liable to contractual obligations arising from contracts are insured. The best-known example is reinsurance.
- Insurance against compulsory costs: A guarantee is provided against not only compulsory costs but also for all costs.
- Insurance against the possibility of concrete loss: Protects against the possibility of loss of future property.

The liability insurance has the functions of eliminating the unjust claims made against insurance (legal protection function) and compensating right claims (compensation function). Liability insurance, in terms of compensation function, insurance against

legal liabilities; it is insured against the possibility of concrete loss due to legal protection function.

A critical issue to be addressed regarding passive insurance is the extent to which the provisions for damage insurances apply to this insurance. According to the approach accepted in insurance law, the subject of the insurance is not the property, but the interest relation of the person with something. The benefit in relation to the economic function is defined as any relationship that may result in material damage due to a dangerous event foreseen in the insurance contract. Disclosure of the concept of benefits in relation to the loss means that the insurer will apply not only to active insurance but also to passive insurance. The insurance value, which is an important concept for the insurance contract, is the value of this benefit. Therefore, passive insurance can also refer to an insurance value, but this value is infinitely large and cannot be quantified. Therefore, the provisions regarding insurance value cannot be fully applied to passive insurances. As a matter of fact, article 1485 of TCC, a single joint insurance provision relating to the value of insurance has been referred to between provisions to be applied to liability insurance.

1.5.3.2. According to the Benefits Related to the Subject

Damage insurance is divided into two parts according to the subject to which the insured interests are concerned, namely the goods insurance and the property insurance. In goods insurance, also called real value insurance, the insured's interest in a good is insured. They will be treated like goods that are assets and subject to property insurance. In this type of insurance direct damages are provided, i.e. the value of the thing being damaged, and the indirect damages are not covered.

The property insurance protects the property of the insurer against the expenses to be made and the loss of profits. Here, indirect damage is covered. In fact, damage to the property on the property, causes a loss in property. What should be noted here is how the damage has come to fruition. If there is a loss in the form of damage or destruction of a property, it is covered by insurance. The property insurance can be linked to a property. In this case, the property is not a "matter of interest" but a risk factor. The property insurance is divided into two categories: expense insurance and loss

insurance. The expense to be made by the realization of the expropriation in the expense insurance now is guaranteed. In case of lost loss insurance, profit losses are guaranteed.

Liability insurance is a property insurance because it protects the assets of the insured against the burden of eliminating the damages for which it is responsible. The consequence of this responsibility being connected to the risk factor, such as a house or vehicle, does not change.

CHAPTER II: GENERAL EVALUATION OF MERGERS AND ACQUISITIONS

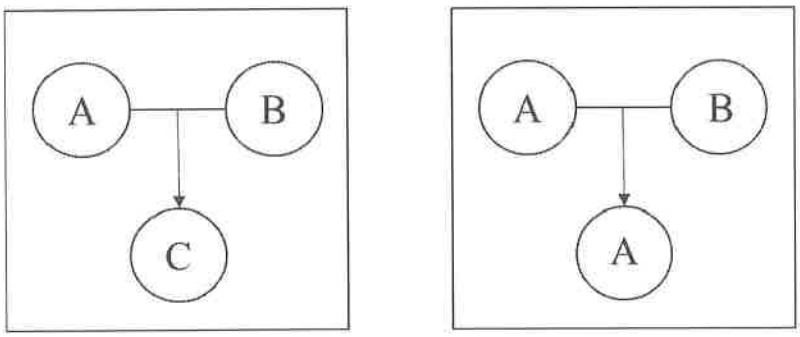
2.1. CONCEPTS OF MERGERS AND ACQUISITIONS

As a term, in practice, purchasing and merging are used in place of each other; it is included in the literature as a gathering of more than one independently managed company under one roof.

2.2. COMPANY MERGERS

In general; the merger of two or more independent legal entities is defined as a merger. All the assets, rights and obligations of the companies in this case will be handled and managed by the company they are legally cooperated with or by the new company they have established. In this case both the acquiring and the acquired companies lose their previous legal entities and become part of a new company. Figure 2 shows schematically the company merger.

Figure 2: Company Mergers



According to Thomson Reuters' Mergers & Acquisitions Review was released in 2017, Largest M&A Transactions Worldwide and Number and Value of M&A by Target Industry tables can be seen as below:

Table 1: Largest M&A Transactions Worldwide

Largest M&A Transactions Worldwide						
Rank	Year	Acquirer	Target	Value (in bil. USD)	Value (in bil. EUR)	Deal Status
1	1999	Vodafone AirTouch PLC	Mannesmann AG	202.79	204.79	Completed
2	2000	America Online Inc	Time Warner	164.75	160.71	Completed
3	2013	Verizon Communications Inc	Verizon Wireless Inc	130.3	100.46	Completed
4	2015	Anheuser-Busch Inbev	SABMiller PLC	101.48	92.27	Completed
5	2007	Spin-off	Philip Morris Intl Inc	107.65	68.08	Completed
6	2015	Anheuser-Busch Inbev SA/NV	SABMiller PLC	101.10	91.93	Completed
7	2007	RFS Holdings BV	ABN-AMRO Holding NV	98.19	71.3	Completed
8	1999	Pfizer Inc	Warner-Lambert Co	89.17	84.94	Completed
9	2016	AT&T Inc	Time Warner Inc	85.41	78.46	Pending
10	1998	Exxon Corp	Mobil Corp	78.95	68.36	Completed
11	2000	Glaxo Wellcome PLC	SmithKline Beecham PLC	75.96	74.9	Completed
12	2004	Royal Dutch Petroleum Co	Shell Transport & Trading Co	74.56	58.49	Completed
13	2006	AT&T Inc	BellSouth Corp	72.67	60.18	Completed
14	1998	Travelers Group Inc	Citicorp	72.56	67.25	Completed
15	2001	Comcast Corp	AT&T Broadband & Internet Svcs	72.04	85.09	Completed
16	2015	Royal Dutch Shell PLC	BG Group PLC	69.45	64.4	Completed
17	2014	Actavis PLC	Allergan Inc	68.45	49.62	Completed
18	2009	Pfizer Inc	Wyeth	67.29	51.88	Completed
19	2015	Dell Inc	EMC Corp	66	51.38	Completed
20	1998	SBC Communications Inc	Ameritech Corp	62.59	56.48	Completed
21	2015	The Dow Chemical Co	DuPont	62.11	56.35	Pending
22	1998	NationsBank Corp,Charlotte,NC	BankAmerica Corp	61.63	56.67	Completed
23	2006	Gaz de France SA	Suez SA	60.86	44.64	Completed
24	1999	Vodafone Group PLC	AirTouch Communications Inc	60.29	51.65	Completed
25	2004	Sanofi-Synthelabo SA	Aventis SA	60.24	49.99	Completed
26	2000	Spin-off	Nortel Networks Corp	59.97	65.51	Completed
27	2002	Pfizer Inc	Pharmacia Corp	59.52	60.02	Completed
28	2004	JPMorgan Chase & Co	Bank One Corp,Chicago,IL	58.66	45.94	Completed
29	2016	Bayer AG	Monsanto Co	56.60	49.75	Pending
30	1999	Qwest Commun Intl Inc	US WEST Inc	56.31	52.80	Completed

Source: IMAA Institute

Table 2: Number and Value of M&A by Target Industry (1985-2016)

Number and Value of M&A by Target Industry (1985-2016)				
Rank	Industry	Number	Value (bil. USD)	Value (bil. EUR)
1	Metals & Mining	48963	3060.03	2434.32
2	Professional Services	46900	1094.98	914.86
3	Other Financials	35446	1388.22	1146.45
4	Food and Beverage	34577	2326.47	1966.13
5	Software	34362	1049.16	898.27
6	Building/Construction & Engineering	33208	758.01	629.42
7	Oil & Gas	32903	4891.34	4044.55
8	Banks	27932	5072.24	4298.55
9	Transportation & Infrastructure	27577	1995.43	1652.94
10	Machinery	26093	891.06	752.26
11	IT Consulting & Services	24648	702.17	594.64
12	Internet Software & Services	21642	911.87	767.59
13	Other Consumer Products	20836	808.01	688.18
14	Chemicals	19930	1594.49	1357.58
15	Other Industrials	18722	636.24	539.62
16	Non Residential	18347	1830.09	1487.68
17	Insurance	18024	2093.54	1779.69
18	Publishing	17488	704.39	613.01
19	Automobiles & Components	17089	1125.88	953.69
20	Food & Beverage Retailing	15702	1033.16	872.94
21	Healthcare Equipment & Supplies	15612	1093.01	891.61
22	Other Real Estate	15436	1017.43	826.73
23	Textiles & Apparel	14525	395.49	335.33
24	Healthcare Providers & Services (HMOs)	13909	773.88	643.44
25	Hotels and Lodging	13846	809.67	677.67
26	Electronics	13808	552.31	468.91
27	Power	13687	2666.72	2197.14
28	Advertising & Marketing	12983	296.25	252.60
29	Asset Management	12542	665.22	541.36
30	Construction Materials	11645	601.36	506.77
31	Pharmaceuticals	11509	2719.03	2274.45
32	Computers & Peripherals	10504	792.41	680.87
33	Telecommunications Services	10277	2538.91	2198.10
34	Other Retailing	9980	455.05	373.07
35	Agriculture & Livestock	9383	268.06	223.72
36	Brokerage	8812	813.18	681.41
37	Semiconductors	8727	815.86	710.36
38	Water and Waste Management	7855	411.60	345.84
39	Motion Pictures / Audio Visual	7822	795.56	704.92
40	Broadcasting	7758	810.19	711.75
41	Paper & Forest Products	7657	514.41	446.03
42	Recreation & Leisure	7363	315.34	262.27
43	Containers & Packaging	7297	325.50	277.60
44	Real Estate Management & Development	7199	286.65	235.37
45	Telecommunications Equipment	6650	528.38	474.24
46	Credit Institutions	5798	637.28	550.17
47	Home Furnishings	5455	128.40	111.35
48	Wireless	5349	2127.01	1844.82
49	Other Materials	5184	102.41	87.01
50	Hospitals	4808	317.31	259.19

Source: IMAA Institute

2.3. TYPES OF COMPANY MERGERS

Merger activities vary according to the activity areas of the firms. There are basically three types of mergers: Horizontal Merger (Strategic Merger), Vertical Merger and Conglomerate Merger.

2.3.1. Horizontal Merger

It is among the companies operating in the same sector. Behind such mergers lies essentially the intention to benefit from scale economies in production and distribution, as well as the rise in market forces (Johnson, 1999). The underlying objectives of horizontal mergers can be summarized as follows:

- Ensuring effective use of resources
- To specialize in production and to save production costs,
- To move to an advantageous position in marketing and distribution channels,
- To provide cooperation in production technology,
- Having a competitive advantage,

Horizontal mergers are subject to certain regulations by governments because they create negative effects on competition structure. If this area is not regulated, the number of companies in the sector will decrease and the companies will be preparing for the monopolistic power struggle.

2.3.2. Vertical Merger

Companies may choose to consolidate through vertical integration to ensure all stages of products and services, from quality to production, to sales and service, to have value added profits in this process, to reduce costs, or to secure sales. Firms can grow by purchasing the user of the goods or services they offer (down vertical integration) or by purchasing suppliers (upstream vertical integration) from which they purchase raw materials or services. Vertical mergers are being resorted to when there are cases of scarcity or difficulty in intermediate goods.

2.3.3. Conglomerate Merger

It is the union of companies that do not have similarities in their fields of activity. Two key features can be mentioned. The province is to provide control power to the subjects that are required for companies in various sectors and that require special expertise in the fields of research, production and marketing which are among the business functions. The other is to try to reduce the volatility in earnings and sales and to diversify the opportunity to distribute the risk (Weston & Mitchell & Mulherin, 2003). It is suggested that many merger activities, which are basically mixed, are vertical mergers. Based on this view, it is shown that the agreements seen as mixed mergers fall into the definition of vertical mergers together with the use of the distribution channels of the target firm. Hence, it is stated that the mixed unions are a secret vertical union (Gabrielsen, 2003).

Conglomerate mergers are divided into three subgroups:

- Product Extension Mergers: There is no competition between the products produced. The production or distribution departments of the merging firms are functionally similar.
- Market Extension Mergers: Consolidated companies produce the same product, but market it at different geographic markets. Thus, they can deliver products to a wider area.
- Pure Conglomerate Mergers: There is a relationship between companies in the field of production and marketing. There is a merger between the companies operating in different fields.

2.4. COMPANY ACQUSITIONS

Purchasing is a structuring operation in which a sizeable portion of a small entity's assets or stock is purchased by a large enterprise or a sizable portion of a large enterprise's assets or stock is acquired by a larger and more profitable business. Purchases; the purchase is subject to change according to the purpose of the company. A distinction can be made between favourable purchases and unfriendly purchases. In practice the company can be realized by taking the offer to sell share certificates to the

target shareholders of the company or by purchasing shares in the amount that will provide the market control of the companies traded in the share capital market. Another practice that is rarely seen is to take over the voting rights of the shareholders of the multi-partner companies with the power of attorney and seize the companies by changing the board of directors in the general assembly.

In the case of friendly purchases, it can be realized by going to the deal with the target company and giving cash or share of the purchase price to the partners of the target company. In non-friendly acquisitions, the target company is usually opposed to buying and is trying to take some measures with different methods. These measures can be summarized under the following headings: Golden Parachute, Poison Pills, Amendments to the Articles of Association, Greenmail and Other Methods.

2.4.1. Golden Parachute

The most common method of protection of the target company is the parachute method. The method has evolved to help companies reduce the unemployment problem and reduce the damage created by employees in their interests after the company has taken control. In summary, it is committed that a certain amount of payment will be made to the employees who will be removed from the work after the purchase. It is thought that the net profit of the operation will decrease because the payments to be made in this way increase the cost of obtaining the target company and in this case, it will create deterrence for the buyer (Johnson & Soenen, 2003).

2.4.2. Poison Pills

It is the method used to grant rights to ensure that shareholders have additional shares. In the method, shareholders of the target company are provided with a large discount on the share of the target company (flip-in pill) or the buyer (flip-over pill). Therefore, while increasing the number of shares of target and buyer companies, less cost is created for target company shareholders, and for buyers, the cost increase effect is created for the buyer (Sudarsanam, 2000).

2.4.3. Amendments to the Articles of Association

To minimize the possibility of purchasing, for example, members are trying to establish rules for membership periods and changes. By amending the Articles of Association, the voting rate of the General Assembly for liquidation shall be changed, the number of votes to be used by the shareholders of the class shareholders determined by dividing the share certificates into classes shall be increased to the number of votes to be used for the general meeting, certain privileges can be recognized by provisions.

2.4.4. Greenmail

It is the target company to purchase the shares in large blocks with high price from certain shareholders. It is proposed to buy a higher price for the shares held by an associate wanting to increase the ownership rate in the company by collecting stocks from the market. Thus, it is planned to prevent the increase of ownership ratio of the company (Weston, 2003).

2.4.5. Other Methods

The White Knight method is to prepare a competitive environment between a company that seeks to seize itself by finding a more suitable candidate for the target company, and a firm that it finds itself.

Another method is the 'super majority' method. In this method, many of the shares (approx. 80%) are required to be approved for merger. Although the effect is considered mild, it is also deterrent. 'Fair Value' is called another method. Here, too, the buyer company tries to ensure that all shareholders are paid at the same price. It is explained that if it happens, the super majority condition can be abandoned. The meat of this method is also considered mild.

As a fourth method, new class securities can be distributed to shareholders with important voting rights, but with lower profitability or marketability features. At the same time, shareholders can exchange new shares with existing shares. Thus, managers have most votes without having most ordinary shares. It is accepted that the

deterrence characteristic of this method is strong. In addition to these, there are some methods that can be used after purchase. For example, the lawsuit against the grounds that the antitrust or capital market laws are violated is at least implemented to delay procurement. It has also been developed as an alternative way of selling stocks to existing shareholders through premiums (İçke, 2007).

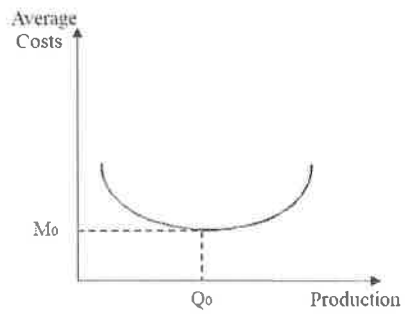
2.5. REORGANIZATION: REASON OF MERGERS AND ACQUISITIONS

In the literature, there are many theories about the reasons for mergers and acquisitions of firms. We can list the factors that encourage mergers and acquisitions as scale and operating economies, synergistic effects, diversification, exploitation of tax advantages, and managerial reasons.

2.5.1. Scale an Operating Economies

Companies engaged in mergers and acquisitions; reduce production costs, increase output, improve product qualities, reach innovative technologies or have new products. Scale economies refer to the long-term decline in the cost of each unit of product, if the firm's scale grows, if all inputs are optimally distributed. There are significant scale curves that indicate this relationship. Figure 3 shows the scale curve over the long-term average cost curve used in microeconomics.

Figure 3: Scale Curve



In mergers and acquisitions, scale economies occur in two ways. In the first case, the economies of scale are the result of the co-ordination of the physical capital of firms that are already separate. This is called long-term economies of scale. The other is short-term economies of scale and a dual separation is being made as rationalization to prevent the double cost which occurs in indispensable elements in scale economies. In the first case, fixed costs, which are inevitable to sustain the activities of the company, are mentioned. It is possible to collect these costs as a common cost under one roof. In the other case, the rationalization of the result of redistribution of production between factories is possible.

In long-term scale economies, if all inputs, including physical capital, are doubled, total output appears to increase by more than two quadrillion.

In the activity economies, on the other hand, scale economies in general are emerging as multi-product firms. With every input that can be used jointly in a multi-productive production process, it is possible to increase the operating economies.

The operational economy refers to providing cost advantage by producing two or more products with the same production factors. The calculation of the activity area economies is shown below.

$$E = [C(q_a) + C(q_b) - C(q_a,q_b)] / C(q_a,q_b)] \qquad (2.1)$$

According to this formula, E is the activity economy; C (q_a) is the total cost when only q is produced, q is the total cost when only q is produced, and q (q_a, q_b) is the total cost when q and A are produced together (Dinler, 2005). Positive activity area economies (E>0) refer to the fact that, at more than one output, each output of the production cost is smaller than the cost of separately producing. Negative activity area economies (E<0) mean that the cost of producing multiple outputs is greater than the cost of producing each output separately. If the equality is zero, it indicates that there is no positive or negative activity area. It is also possible to name the operating economy as activity synergies.

2.5.2. Synergistic Effects

Synergy; the financial, operational and managerial activities of the company or companies resulting from mergers or acquisitions are more likely than the activities

that firms have separately held, so the inherent value of the newly formed company or companies is assumed to be higher than the market value of the companies before merger and acquisition. It is also expressed in the literature as 1 + 1> 2.

The synergy arising from mergers and acquisitions can be attributed to:

- Decrease in operating expenses and increase in profit margins due to increase of activity,
- Decrease in the cost of capital due to the improvement of the financial structure of the company,
- The elimination of the weakness of one or both merged firms in the management activities prior to merger,
- Increasing market efficiency,
- The emergence of the advantages of vertical or horizontal combination,

The term synergy can be examined under two headings: Activity synergies and Financial synergies. Activity synergy is the fact that production and operating expenses decrease as per the produced goods and services as a result of increasing operating profit margin.

Financial synergies can be defined as an increase in the value of the firm after the merger and the improvement in the financial structures of the company or companies that occurred after merger. This synergy can be summarized under three interdependent variables, depending on the improvement in the financial structure, such as a decrease in the cost of capital of the firm, a decrease in financial risk, and an increase in equity profitability by leveraging financial leverage.

Decreasing the cost of capital can be attributed to the fact that the company formed after the merger and takeover will be able to receive cheaper credits due to the improvement in the financial performance, management efficiency and profitability and willing to obtain less efficiency due to the increased trust of the partners.

In the context of improving the financial structure of the company, the decrease in financial risk is thought to be due to seasonal fluctuations in the cash flows of the companies that existed before the takeover, and if these fluctuations are different according to the different seasons of the two companies, merger is expected to prevent cash tightness in some periods by regularizing the cash flows of the two companies.

In addition to this, the financial and economic recovery of the company resulting from mergers and acquisitions may reduce the financial risk. The result of a firm with too much financial power to take over another firm with a low financial direction may face the consequence of increasing the value of the financially weak company by eliminating the financial burden of the company and may see mergers and acquisitions as financial leverage.

2.5.3. Diversification

Diversification, another reason for mergers and acquisitions, could be the risk of distributing risk by taking periodicity or some other factors on firm earnings through the purchase of a firm that is outside the scope of its activity. Diversification is an important variable used to measure economic gain. When two companies in different risk groups are treated individually, they may have more risk than the risk associated with their combined state. In other words, the reduction of risk is emerging as an effect of diversification.

For example, one of the most essential elements in selecting a merger method for a bank is how different it is from the potential partner of that bank. From the manager's point of view, it is possible to carry out various difficulties in bringing together completely different companies. However, this situation can also bring about the benefits of diversification. It limits the diversification effect when it brings less load compared to completely different companies.

In Delong's (2003) study of only bank mergers, firms can find opportunities to increase value through diversification and reduce their costs. For example, if the merger activity created a cost synergy, then expenditure would be reduced. Similarly, diversification is expected to reduce the likelihood of bankruptcy, so fluctuations in earnings are expected to lead to the same effect.

2.5.4. Tax Benefits

Looking at the tax advantages, it is seen that until the middle of the 1980s, significant reductions in tax benefits have been achieved, regarding mergers and acquisitions.

However, according to empirical studies, it cannot be said that the most crucial factor motivating many merger activities is tax advantages.

2.5.5. Administrative Reasons

One of the objectives of the buyer firm's managers is to seize the management of the target firm, which is the result of the efforts to raise management ambition and personal reputation. It is based on the desire to benefit from the potential that exists within that firm by ensuring that an inactive firm is obtained and made effective. Instead of thinking about the interests of business partners, managers should choose to make decisions in the direction of social status and management power, regardless of whether mergers and acquisitions are the best solution for the firm.

In addition to this, company managers are aiming at merger and acquisition activities with the aim of increasing the firm size and reducing the possibility of becoming a target firm.

Another factor can be referred to as the desire to build market power. This factor is the primary motivational component from the last quarter of the 19th century until the first half of the 20th century. For this reason, the increase in mergers and acquisitions has led to the restriction of monopolization and the introduction of limits. Particularly, it is observed that the concentrations in the market are measured and the transactions are followed from this point of view.

2.6. EVALUATION OF MERGERS AND ACQUISITIONS FROM A FINANCIAL PERSPECTIVE

The most discussed and most time-consuming aspect of mergers and acquisitions is the 'determination of business value'. Whether it is merger or acquisition, such decisions are long-term, high-risk strategic decisions. The mistakes to be made in these kinds of decisions have been going on for many years and their costs are high. In this context, the methods of valuation and valuation are discussed.

2.6.1. Features Related to Premium in Mergers and Acquisitions

One of the reasons for the failures in mergers and acquisitions in the investigations is that they are caused by overpayments on merged or acquired businesses.

There are three values that form the basis for the formation of a premium in mergers and acquisitions. These are the lowest value that the other party can accept, the liquidation value, the objective value that will form the base for the market, and the subjective criteria of the opposite party where the actual difference may arise. This value differs for each candidate. Estimates of volume growth, market expansion, product diversification and value increase following merger or acquisition will be made for accurate estimation of the subjective value. In addition, the total synergy expected after the transaction will also be a determinant of the premium to be paid (Sümer, 2000).

There are a few factors that affect premium payable. Synergy is at the beginning of these factors. Besides, many factors such as the performance of the company in the past, the quality of the management, the position of the target company on the market, the competition environment on the market, the type of payment to be made to the target company, the tax dimension are effective in determining the premium. Each element is shown as a factor in determining the price. However, the synergy factor is one of the most discussed topics. The synergistic gains or losses found in the premium are calculated considering potential future situations. The subjective performance expected from the target firm, which is based on the prediction, can be expressed as follows:

$$\text{Net Present Value} = \text{Synergy} - \text{Premium} \qquad (2.2)$$

In this case there are three potential consequences in relation to synergy and premium.

a. Synergy $\geq$ Premium: It shows that the discounted positive synergism is equal to prime or greater than prime. It is a sign of a successful buying activity. It seems that the buyer company has created value for shareholders.
b. $0 \leq$ Synergy $\leq$ Premium: The discounted synergism is positive, but the amount is less than the premium paid. It is known that it is the most common situation in purchasing activities. It is an activity that results in failure. There is a positive synergy. However, from the point of view of the shareholders of the buyer firm,

it is stated that the managers have overpaid and as a result there is a decrease in their wealth.

c. Synergy < 0: Indicates that the result of the activity is not economical (negative synergy). It is a matter of declining value. From the point of view of the buyer company, it is obvious that the target company is a transfer of wealth to the shareholders.

In many purchasing activities, it is known that the target firm has a premium over market value for shareholders. According to the results of Goldberg and Godwin (2001), the shareholders of the target company in mergers and acquisitions are found to have an average of 20% on friendly mergers and 35% on forced seizures. In this case, the primer achieves an accurate and fully calculated value, and the elements of the subjective factors in the accounts reveal the importance of the concept of valuation.

2.6.2. Valuation of Mergers and Acquisitions

Valuation is one of the most searched topics in mergers and acquisitions. In addition to knowing the right value of the enterprises, it is seen that the price to be paid is also very important in terms of success in trying to follow this value. The expectation without a good appraisal is that a value close to the result can be obtained. In the merger or acquisition decision made on behalf of the restructuring, the company's book value, operating value, liquidation value, real value, discounted cash flows value and profit per share should be analysed very well.

For the buyer firm, projects with positive net present value are attractive.

Net Present Value = Earnings - Net Cost (2.3)

It is possible to achieve a positive Net Present Value in the event of the gain exceeding the net cost. In this case, two principal factors stand out. The first is to determine the value of the target company and the other is to determine the gain to be earned from this activity. If the target company is traded on the stock market, it is possible to find the market capitalization of the marketable securities. It is the calculation of the effect of the growing cash flow (net cash flow) of the merger or acquisition activity that is deemed to be most important. This effect is influenced by both cash inflows and cash outflows. However, because of the different risk groups within these cash flows,

different discount rates may need to be reduced to the present value (Peirson & Others, 2011).

Among the valuation methods, there are three basic methods that are most commonly used in practice. Discounted Cash Flows, Price / Earnings Ratio, Market Value / Book Value.

2.6.3. Discounted Cash Flows (DCF)

In mergers and acquisitions, the basic valuation approach is the Discounted Cash Flows' method from the capital budget theory (Eccles and Others 1999). Other methods are based on the current or past performance of the entity, and DCF is based on the future performance of the entity. For this reason, the value of the operator can be measured more accurately with the DCF method.

While determining the value of this approach, which is the most used model for mergers and acquisitions, anticipated future cash flows need to be estimated. These estimates are also known as Free Cash Flows. The sector and market conditions are considered, as well as pro forma statements prepared with the help of operating results and financial tables in the past. Free cash flows are found by deducting the post-tax operating income, the working capital and the increase in fixed assets, by adding depreciation.

The discount rate to be used becomes important when the present value of these cash flows is calculated after the estimation of the cash flow. The Weighted Average Cost of Capital (WACC) is usually used as the appropriate discount rate in business valuation of mergers and acquisitions. However, it is difficult to calculate the WACC depending on the level of development of the capital markets, whether the investor is publicly traded, whether stocks are traded frequently.

2.6.4. Price – Earnings Ratio (P/E Ratio)

Price-Earnings Ratio is the rate at which the price of the share at the beginning or end of the period equals the number of shares per share of that turnover. When the market price (MP) and earnings per share (EPS) symbols of the share are shown;

$$P/E = MP / EPS \quad (2.4)$$

This method assumes that the companies operating in the same sector mostly have close to each other P/E's. It is possible to calculate the market value of a company that is not traded on the market, if the company's earnings per share is known, by this method.

The use of PE in the calculation of the firm value can also be in the form of applying historical data of the company or the standard ratio of the sector to the profit per estimated share of the future turnover of the firm. Estimation of revenue per share can be done by examining the growth trend of the company's past income and income, and estimating the future economic and firm performance of the company.

If the standard ratio does not exist, or if the rates for similar companies cannot be obtained, then the method can be applied if the shares of the company are traded in the secondary market. The actual value of the share price can be calculated by applying a gain per share of the future turnover based on the actual value. With this method, the firm's equity value is misleading for three reasons. First reason; the assumption that the actual PE will not change in the next period may not be correct. The second reason is; only earnings per share for the next year may not represent the future. Third reason; it is necessary to consider the risk that the company has in future periods.

2.6.5. Market Value – Book Value

In this method, it is used to compensate for the difference between the book values of the securities and the market values. The book value can be found by subtracting the debt from the value of an entity's assets. However, calculating such intangible assets in this way may not give the correct result. When operating value is determined, the use of book value may not give meaningful results, except in limited circumstances. For this reason, the relationship between the current value of the business and the book value can often be weak. It may be far from the current value of the business as it shows historical investments made in book value operation. This deficiency can be alleviated to some extent by 'adjusted value' and 'replacement value' by considering the costs of acquiring similar assets of the assets in the balance sheet.

The drawback of taking the book value as an operating value can also arise from the use of different accounting methods. The difference in accounting methods can make the value different even in the same business.

The use of book value is a bigger problem in countries with high inflation. However, it can be used if the book value is significantly higher than the market value of the operator. It may also be appropriate to use the book value if the acquirer is to acquire assets of the other entity that are intended to be merged or acquired.

Another situation where book value may be important is the fact that a sizable portion of assets, such as banks, are monetary assets. In these types of businesses, the assets are closer to the current value due to their cash or cash equivalents.

The market value of an entity is usually measured by the market value of the stocks. It is the value of an operator depending on market value, supply and demand in market conditions.

Market Value / Book Value is a method that is used to show whether the company is underrated or not. The formula for the value is as follows:

Market Value / Book Value = Current price of stocks / Book value of each stock Value (2.5)

Valuation is among the most principal issues in mergers and acquisitions. The methods or methods that are appropriate to the conditions for obtaining a value close to the correct value in merger and acquisition provide data for the decision-making process. It has been found that the successes of mergers and acquisitions in the 1970s have been higher in the research conducted, then this success has fallen. It has been shown that the main causes of this fall are due to overpayments on mergers and acquisitions.

CHAPTER III: WARRANTY AND INDEMNITY INSURANCE AND MARKET ANALYSIS

3.1. WARRANTY AND INDEMNITY INSURANCE

3.1.1. The Difference Between a Warranty and an Indemnity

Warranties and indemnities are frequently used during the negotiations over the acquisition of a company, yet there is often confusion over the differences between them and their ramifications.

A warranty is a contract-based statement by the seller, ensuring the buyer as to the condition of the business, with a focus on disclosing any existing liabilities. For this reason, a standard share purchase contract usually consists of many warranties. Warranties are intended to protect the buyer by disclosing all information about a business and by providing a remedy if any statements about the business are found to be incorrect. For the seller, warranties ensure an opportunity to reveal any issues within the target company to the buyer, thereby removing any liability for said issues after the sale is complete.

A warranty should not be viewed as a surrogate for a buyer's due diligence, as breaches of warranties can and do happen, with incorrect or incomplete information being disclosed. In the event of a breach, the buyer's claim is subject to the same legal requirements of proving loss as in the case of a breach of contract.

While a warranty removes liability from the seller by disclosing a business' problems, before the sales is finalised, an indemnity shifts liability from the buyer to seller. An indemnity is effectively a promise by the sellers that they will reimburse the buyer if a specific liability arises. This way, the buyers face lower risk when acquiring the business, as they guaranteed remedy for any matter of concern. Indemnities are usually included in a purchase agreement if there are certain problems or issues of concern to the buyer which could jeopardise the completion of the acquisition.

Indemnities are also common then covering and of the target company's tax liabilities which may not have been included in the latest audit accounts. If there are any specific risk which could seriously deter the buyer, these can be covered by indemnities to

lower the buyer's risk and make it easier to bring an indemnity claim later if needed. Sellers should therefore proceed with extreme caution when negotiating indemnities as part of a purchase agreement. An experienced solicitor should undertake all negotiations at every step of the way to ensure that the acquisition is fair and mutually beneficial to both the buyer and seller.

3.1.1.1. Breach of Warranty

Breach of warranty is no right to rescission but a right to claim damages. The damages that you claim are going to be essentially difference between the value of the assets which was bought, the shares, would have had if the warranty had been true, and the value they've got in the right of the fact that the warranty is false. Value of the warranty **is** through open market value of the share for example, hard to argue that's not the price that the buyer has paid so the quest is what price would have paid if he had known about the breach of the warranty. However, that is not all the warranties are used for. As can be seen at the typical precedent schedule of warranties, that a lot of that wording is not aimed at recovery of damages.

Now lest go back and have a look again at warranties and the question of who gives warranties. Standard precedent starts with the time-honoured words the vendors jointly and severally warrant and represent to the purchaser. There are going to be several categories of vendor who are going to be less than happy to five warranties. The executive shareholders who is the shareholder actively involves in the management and operation of the business also directors as well as shareholders are on the hook. There's very little they can do to walk away. The other shareholders; wives, other family members who happen to hold shares, but they've got nothing whatsoever to the with the business can't say whether these warranties are true or not, they don't know anything about it. Therefore, not prepared to run the risk of the loss. So, there are the potential responses to that. From the seller's point of view who don't want to be trapped into joint and several liabilities.

The first and most obvious one is to put an individual camp on the liability and say that none of the shareholders can be liable for more that the total amount of proceeds

that they receive. That is reasonably good cover for the small employees for example who are only going to get small amount of money out of the deal, so their maximum liability will be to repay the that small amount of money they got out of it and it cannot exceed their profit from the business. The danger is slightly larger for shareholders. Capping liability is because that it is still joint and several liabilities. It's capped but that does not mean it's going to be equally apportioned between the shareholders.

3.1.2. Warranties and Indemnities Insurance Concept

Subject Matter of a Warranty and Indemnity Insurance Policy is the warranties given by the vendor within the share purchase agreement. The policy will provide an indemnity to the insured (this may be either the vendor of the purchaser) in respect of the potential financial losses, including any legal costs and expenses, arising from a breach of one or more of the Warranties and / or Tax Deed within a share purchase agreement.

Cover may be arranged on either a "Buy Side" or "Sell Side" basis. A sell side policy will cover Seller for its own innocent misrepresentations; a buy side policy will cover the buyer against a seller's misrepresentations (innocent or otherwise).

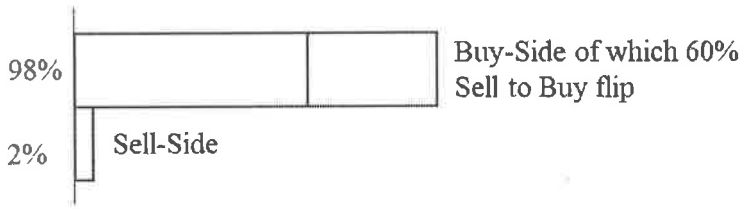
3.1.2.1. Buy Side Policy and Sell Side Policy

W&I insurance can be structured on either buy side where the purchaser is the insured or a sell side where the vendor is the insured. While the underlying scope of cover will largely similar there are potential control and coverage advantages to a buy side structure. From control perspective a buy side structure means that the buyer has far greater ownership over the structure and scope of cover including the policy limit attachment point and indeed the policy wording. This is particularly important from a merger or an acquisition perspective as certain issues for example assignment will be relevant to any future restructuring or refinancing arrangements in addition any policy conditions or warranties such as documentation provision or premium payment terms can with full confidence. The second big advantage of a buy side policy is that in the

event of a claim i.e. the alleged breach of one or more of the warranties or the tax deed under the terms of the SPA, the purchaser will have direct access to the W&I policy. They can bring a direct claim under the policy in their own name whereas under a sell-side structure the purchaser would first need to bring an action against the seller who would then themselves must claim under their own insurance policy. Buy side policy provide a real advantage to the buyer as they do not have to go through the seller in the event of a claim it does and in addition to the control advantage. There are usually coverage advantages to buy side structure as well. Underwriters may be prepared to provide a lower access point in certain circumstances we have managed to arrange W&I policies which provide cover over and above that which is provided under the underlying SPA wording. Last point worth emphasizing is that sell side policies will always exclude seller fraud which is typically included within a buy side policy. In simple terms a vendor cannot ensure their own fraud on a buy side policy. Insurers generally wave all rights of subrogation against the seller except in event of fraud. From a process perspective, policies will often flip from sell side to buy side during the sales negotiation process.

According to the data from the research partaking in Lockton Transactional Risks - Market Update, 2017 report, there was a continual move away from Sell-Side policies with 98% of deals placed in 2015 compared to the previous year, held as Buy-Side policies. In growing trend, Buy-Side policies are placed in the last 3 years. "Sell to Buy Flips" and the company had worked with the Sellers and their advisors structuring as insurance solution to provide the cleanest exit possible before "flipping" over to the Buyer who ultimately held the policy.

Figure 4: Buy-Side vs. Sell-Side Policies



There is a definite trend within M&A transactions for policies to be initiated by the seller to support early sale negations. The policy then migrated to the buy side as the sale negotiation processes. In these circumstances the allocation of relevant premium costs will usually be defined within SPA, but allocations do vary. The premium may be paid full by either party or on a fixed percentage most often 50-50 basis.

The insurance cover is generally structured on a back-to-back basis with the warranties and tax indemnity within the SPA. The policy is subject to many general exclusions, these are typically known or disclosed issues which would normally be expected to be dealt with through the price mechanism or buy a more specific insurance policy. In addition, the insurers will look to exclude any areas in which they have not been able to get comfortable. Typically, this will be due to perceived limitations and respect of either the scope or documentation of the due diligence.

3.1.2.2. Driving Forces / Motivation Behind

W&I Insurance allows unknown liabilities to be transferred for a known fixed cost and provides clean exit.

The most common driver for the purchase of W&I insurance is that potential future liabilities are transferred under the contract of insurance in exchange for a known fixed cost which is the premium.

Reasons for buyer to request coverage:

- Compensation the buyer may require from the seller may not be obtained
- The duration of indemnification the buyer wants, may not be obtained
- Buyer may want to set apart its bid in comparison to other bids in competitive auction.
- Ability to collect on indemnity
- Protecting key relationships
- Supplementation to due diligence efforts

Reasons for seller to request coverage:

- Reducing the risk of contingent liabilities
- Distributing sale proceeds – clean exit
- Supplementation to due diligence efforts and disclosure process.

- Seller is motivated by financial considerations
- Seller needs to address stakeholder concerns

As shown above there are many additional potential benefits to W&I Insurance, falling into one of three categories: mitigation, enhancement and support.

1. Risk Mitigation
    a. Unknown Risks
    b. Counterparty Risks
2. Support
    a. Management Warranties
    b. Joint Venture Structures
3. Enhancement
    a. More Flexible Parameters
    b. Avoid / Reduce Escrow

3.1.2.2.1. Potential Benefits of W&I from the perspective of Risk Mitigation

From a risk mitigation perspective W&I insurance is not a substitute for due diligence. Underwriters will expect to see an equitable set of warranties which have been negotiated at arm's length, supported by a robust due diligence process and a reasonable disclosure process. Whilst this will go some way to mitigating risk exposures there will be significant residual risks which an insurance policy can case. For this will include unknown risks where a breach of a seller's warranty or tax deed may have a material impact on the value of the underlying investment. The cost of bringing an action against a seller for a breach of warranty can be high and potentially difficult to finance. Particularly in organizations where cash flow is tight. The due diligence process will give comfort that the risks have been mitigated. However, inherent limitation in the due diligence process together with a range of unknown factors means, residual exposures may be significant for many buyers or sellers the transfer of these unknown risks for a fixed premium cost is very attractive.

There is also the counterparty risk to consider. A seller's real or perceived credit rating may not be fully aligned with potential exposures at the same time warranties can be given for extended periods, possibly up to seven years which means credit ratings may decline over time significantly reducing the value of any warranties which have been provided. The provision of an insurance policy goes a long way to eliminate in the counterparty risk.

3.1.2.2.2. Potential Benefits of W&I from the perspective of Enhancement

W&I insurance can be used to enhance certain element of the transaction to the benefit of one or more of the negotiation parties. Each party will have a clear view as to what constitutes an equitable set of warranties on a transaction. Individual circumstances and all relative negotiating positions may make it difficult to achieve a position all parties can agree on. An insurance policy can be used to broaden the scope of the warranties and effectively bridge the gap between the vendor and purchaser requirements.

Another big driver for the purchase of W&I is that it helps avoid or reduce escrow requirements. These often represent a significant drain on the resources of an organization particularly where significant funds must be tired up for extended periods. In a lot of the deals, escrow requirements are a significant barrier to achieving a clean exit and their effects can be reduced or eliminated in an efficient way through insurance risk transfer.

3.1.2.2.3. Potential Benefits of W&I from the perspective of Support

W&I insurance policy can also be used to avoid conflict situations. For example, where management warranties are provided, and those same key personnel are expected to be retained or continue their equity participation, the provision on insurance removes the need to bring actions against those individuals who may be key to the business going forward.

Another example is a joint venture structure where the policy provides a cash recourse directly to the purchaser, which is a buy side policy thus eliminating the need to make

a claim against the company it part owns or having potential recoveries distributed to other shareholders.

3.1.2.3. Policy Coverage and General Exclusions

In general terms, the coverage of the W&I policy protects a party from financial losses resulting from inaccuracies in the representations and warranties made about the target company of business regarding transactions, including mergers, acquisitions and divestitures.

A W&I policy;

- Takes the risk off both parties to the transaction,
- Cover fundamental and non-fundamental representations and warranties,
- Can potentially cover other specified indemnities,
- Facilitates mergers acquisitions, divestitures and other business transactions,
- Provides access to the insurance industry's capital and allow the transfer of certain transaction-related risks to the insurance markets.

Subject Matter of a Warranty and Indemnity Insurance Policy is the warranties given by the vendor within the share purchase agreement, as indicated earlier. Policy wording are generally broad but like any insurance policy they will contain number of general exclusions. Typically, these exclusions will reflect any issues which would normally dealt with through other mechanisms such as the purchase price or contractual indemnities together with any points expected to be covered under more specific insurance policies such "latent defect policy" or an "environmental insurance policy". In addition, any areas in which the underwriter has not been able to get comfortable with either the specific wording of the warranty or the relevant scope or documentation of diligence which is being completed, may also be subject to exclusion all restrictions in cover.

The exclusions are any known issues and forward-looking warranties. The policy provides cover in respect of unknown risks at a point in time i.e. the signing date.

Forward looking warranties will always be excluded as underwriters are not seeking to cover any underlying commercial or business risks which may emerge post transaction. Similarly, for lockbox transactions; leakage will generally be excluded. While bribery and corruption risks will always be absolute exclusions because their underlying nature, certain areas such as pension deficit transfer pricing and receivables will be excluded as the complexity of these issues make them very difficult to underwrite.

Professional opinions regarding quantum and probability will often vary significantly and in some areas, there is a real risk of retrospective liabilities being imposed. Tax can be a difficult area while the tax deed will generally be covered, specific tax risks will normally be excluded from a W&I policy. Not because they are uninsurable but more because there a range of specialist taxed insurance products which are able to provide a far more relevant solution. Tax insurance is a specialist area but particularly for high impact low probability tax risks, which are clearly documented and supported by a detailed professional opinion, the insurance market can provide an efficient method of risk transfer.

From the M&A perspective, Sale Purchase Agreements (SPA) often containing relating to the general condition of the business and its activities such as product defects, pollution and environmental risks. All these areas will be difficult to get cover for under a W&I policy as underwriters will expect more specific insurances to be in place. Where these types of risks are covered by a contractual indemnity, a W&I policy may be extended to provide cover but there is generally a limited underwriting appetite to provide cover for indemnities where they are known events.

The scope of due diligence which has been carried together with the specific wordings or language used within a warranty will also have a significant bearing on the potential for insurance coverage where underwriters are unable to get comfortable with a specific warranty, it may be subject to exclusion or else covered on a partial basis only. As may be expected insurers dislike poorly drafted, absolute or sweeper warranties. Where warranties are subject to partial cover the policy language will not be back to back for the SPA which means there will be potential gaps in cover or areas of self-insurance. Proactive communication with underwriters throughout the underwriting

process and the provision of additional information in areas of concern will help avoid partial cover situations and specific exclusions.

3.1.2.4.W&I Insurance Underwriting Process

Competition and innovation has produced a much slicker approach towards underwriting in this specialty insurance market during the years. In today's market insurers employ underwriters who fully understand the sales transaction process and the pressures which as a result. Most W&I underwriters are qualified lawyers. All the W&I insurers are generally well resourced to complete the necessary underwriting process within sometimes intense time pressure.

The W&I process complements the sales transaction process. It is important to think about how warranty and indemnity insurance can be used to support M&A transaction at the earliest possible stage. For organizations who have a pipeline of acquisitions or disposals who can apply a reasonably consistent due diligence process, it may be possible for the client to select an insurer well in advance of any potential transaction based around price cover and service criteria. The underwriter effectively buys into the clients' due diligence and the underwriting process is potentially slicker as a result. The vast majority of transactions although W&I may be thought about early in the sale process, the active broking and underwriting will generally start once the heads of terms have been agreed. At this stage the broker in conjunction with the client will be developing an insurance strategy and thinking about the selection of a preferred market.

Draft transaction documents, in essence a copy of the share purchase agreement which have been turned a few times, information memorandum and the underwriting questionnaire are provided to the broker for initial review and comment. Once the risk transfer objectives have been defined with the client and relevant advisors, the broker will define a broking strategy and identify target insurance markets based on the number of several factors such as risk appetite, the nature of the deal, current pricing trends and underwriting resource levels. An underwriting submission will be then presented to target markets that will then be asked to provide non-binding indications.

When all the indications have been received, the broker will review the relevant options, define the optimum program structure and choice of markets before discussing options and making a formal recommendation to the client. As the sales process continues, the broker moves into the underwriting process and policy negotiation phase. The preferred insurers are given access to all the relevant transaction documents and due diligence information. The majority of which will reside in the data room. Once they've completed the initial underwriting process, an underwriting call will be held which gives the underwriter to the opportunity to ask the client any additional background data or specific underwriting questions which have arisen.

Assuming the underwriting call goes okay, a draft policy is provided and then there's usually some degree of negotiation before the final policy wording is agreed.

Purpose of the underwriting call: It is an integral part of the underwriting process. It allows the underwriter to fully the background and the reasons for the transaction together with the sales process followed and the due diligence process which has been employed. It allows underwriters to address any specific questions regarding any issues which have arisen during their underwriting process. Where appropriate, the underwriter can talk directly to the relevant client due diligence advisors. It also enables underwriters to flag any areas of potential concern and explore solutions or mitigating factors. At the same time from a client perspective, the call allows the client an opportunity to raise any questions they may have about the underwriting process and coverage issues. It is important that the underwriting call is well structured to provide maximum benefit to all parties. A list of insurer questions will be circulated prior to the call and the insurance broker will liaise with the client and underwriter to ensure all relevant parties including the client's due diligence advisors are included on that call.

Prior to exchange, the underwriting process has been completed and the preliminary insurance contract or policy agreed. At exchange, the client provides an execution version of the transaction documents including the share purchase agreement disclosure letter and no claims declaration together with formal instruction to bind the cover. At this point, confirmation of coverage is provided to the client. If there are any changes which occur between exchange and completion there may be the requirement for additional underwriting where changes occur or where they are anticipated, they

should be notified as early as possible to avoid any potential delays in completion. At closing, the client provides the signed closing date representations letter and no claims declaration to the insurer that will then confirm everything is an order and continuity of cover as per the policy. Post completion, there are usually several insurance policy subjectivities which need to be complied with. Typically, these will include the provision of all relevant documentation, including an electronic copy of the data room and premium payment terms.

Assuming the SPA is reasonably well developed when first presented to underwriters and the all relevant underwriting information is readily available, a W&I policy can generally be arranged around 3 weeks from initial inquiry.

Table 3: Industry Specific Underwriting Focus/Concerns

	Energy	Life Sciences	Financial Institutions	Health Care	Hospitality	Real Estate	Consumer Products	Telecom/ Technology	Media	Industrial
Enviromental	■									■
Tax										
Regulatory		■	■	■			■			
Real Estate						■	■			■
Inventory										
Supply Chain							■			■
Third Party Liability				■						■
Data Privacy				■			■	■	■	
Network Security			■	■				■	■	
Intellectual Property								■		■
Employment Characteristics				■	■					■
Financial Condition	■		■							■

Some of the key underwriting factors will include the following:

- Level of due diligence performed, including review of internal and external memos
- "Fairness" of representations (knowledge qualifiers, etc.)
- Appropriate materiality basket
- Level of indemnification
- Length and complexity of warranties & indemnities
- Additional retention/deductible
- Structure of product (above escrow or replacement of)
- Financial stability of target company

As such, a list of underwriting information requested should include:

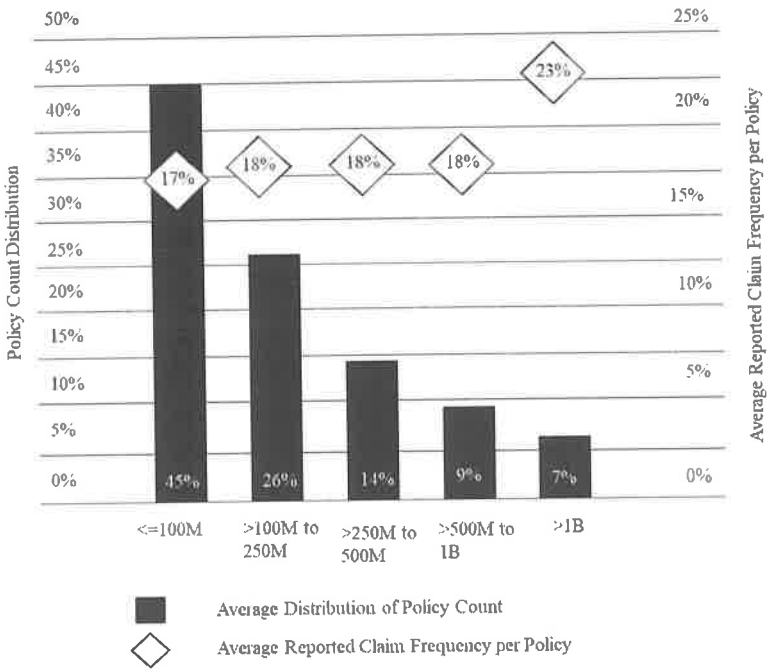
- Copy of purchase and sale agreement
- Financials of the buyer and seller, including pro-formas
- Copy of confidential investment memorandum
- Copy of all due diligence info requested and received
- Summary of transaction, including purpose, deal value, parties involved, advisors and timing
- Intended limits and retentions
- Intended escrow and other indemnifications as applicable

Table 4: Underwriting Process

Transaction Process				
Early Negotiation	Exchange	Pre-Completion	Closing	Post Completion
Warranty and Indemnity Insurance – Underwriting Process				
Underwriting Process and Policy Negotiation	Policy Bound – Insurers on Risk	Additional Underwiring (If Necessary)	Policy Confirmed – Final Documentation	Documentation and Subjectivities
Completion of Underwriting Process: preferred insurers review all relevant transaction documents and due diligence information provided on an "as required" basis Provision of draft policy. Negotiation and confirmation of final "policy" wording	Client provides execution version of transaction documents including Share Purchase Agreement, Disclosure Letter and no claims declaration together with formal instruction to bind cover Confirmation coverage provided to client	In the event that any changes occur between exchange and completion relevant issues will be subject to underwriting and should therefore be notified as early as possible to avoid any potential delays in completion	Client provides signed Closing Date Representation Letter and No Claims Declaration, Insurer confirms all in order and continuation of cover as per policy	Action and completion of any insurance policy subjectivities – typically these will include provision of all relevant documentation, electronic copy of due diligence data and premium payment

3.1.2.5. Claims In W&I Insurance

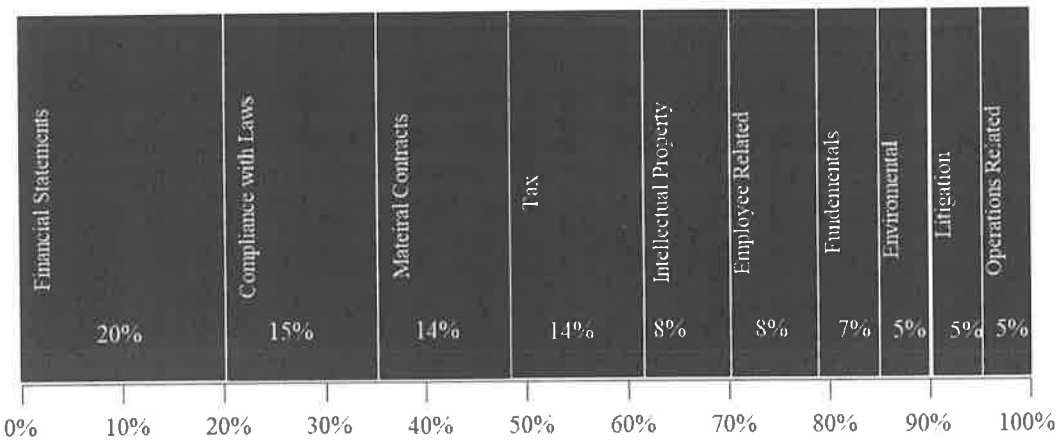
Table 5: W&I Reported Claim Frequency by Deal Size



Source: AIG Global M&A Claims Study 2017

According to AIG's (Historical major capacity provider in W&I insurance market) 2015 W&I claims report, the reported claim against the policy issued is one to seven.

Table 6: W&I Reported Incidents by Breach Type

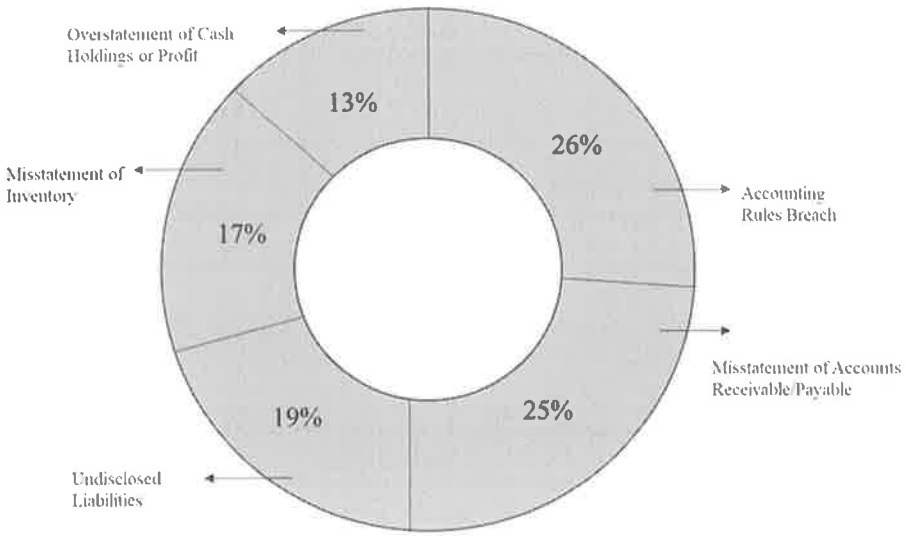


Source: AIG Global M&A Claims Study 2017

Most of breaches are Financial Statements related. However, compliance, material contracts and tax related breaches are covers around 33% of the total reported incidents.

Details of the Financial Statements related to the incidents are show as below.

Figure 5: W&I Financial Statement Breach Type

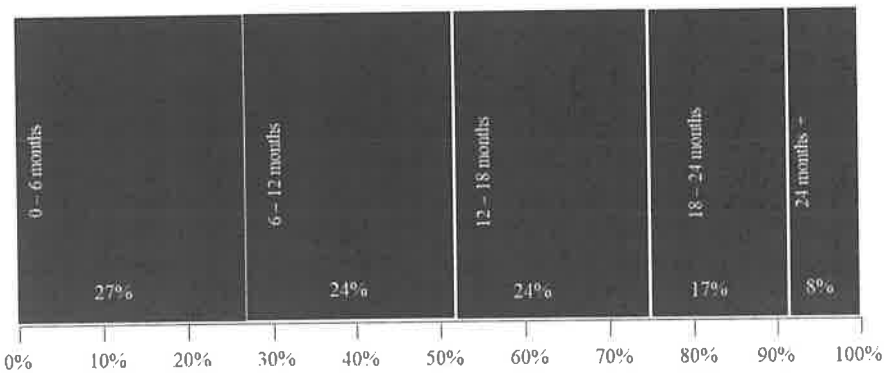


Source: AIG Global M&A Claims Study 2017

According to the Table 7, around 48% of the claims are reported between 6 to 18 months after the policy inception.

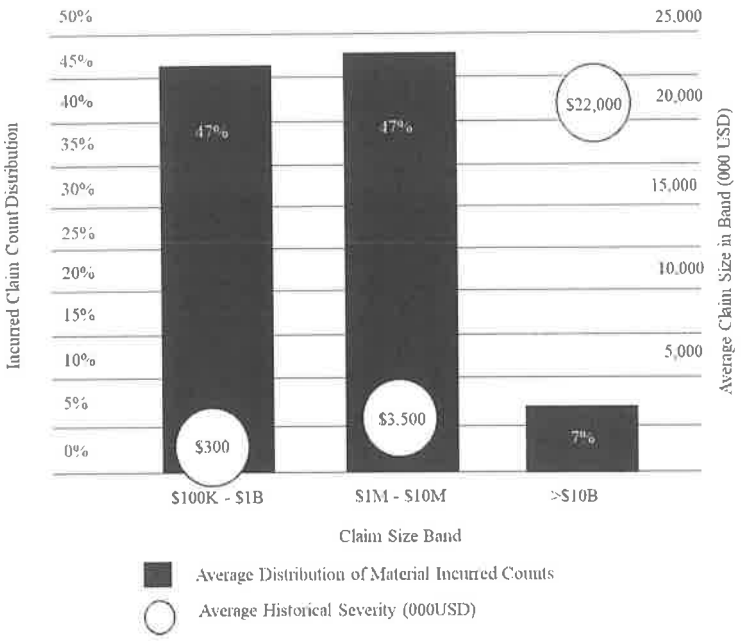
Table 7: W&I Distribution of Average Claim Report Lags from Policy Inception Date

Frequency and severity of the W&I claims are shown in Table 8.



Source: AIG Global M&A Claims Study 2017

Table 8: W&I Material Claims – Distribution of Counts and Average Size by Claim Size Band



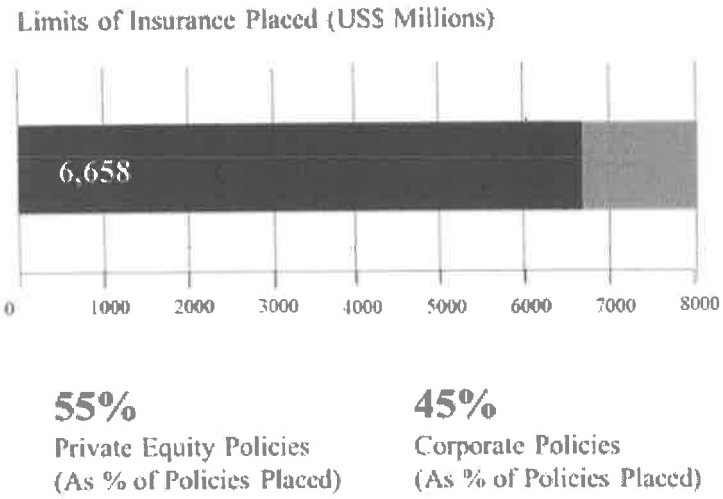
Source: AIG Global M&A Claims Study 2017

3.2.MARKET ANALYSIS

3.2.1. Global Perspective

Demand for transactional risk insurance continued to rise during the first half of 2016, with an overall increase of approximately 65% year-on-year in terms of limits placed by Marsh, a market leading insurance broker.

Table 9: W&I Insurance placed by Marsh

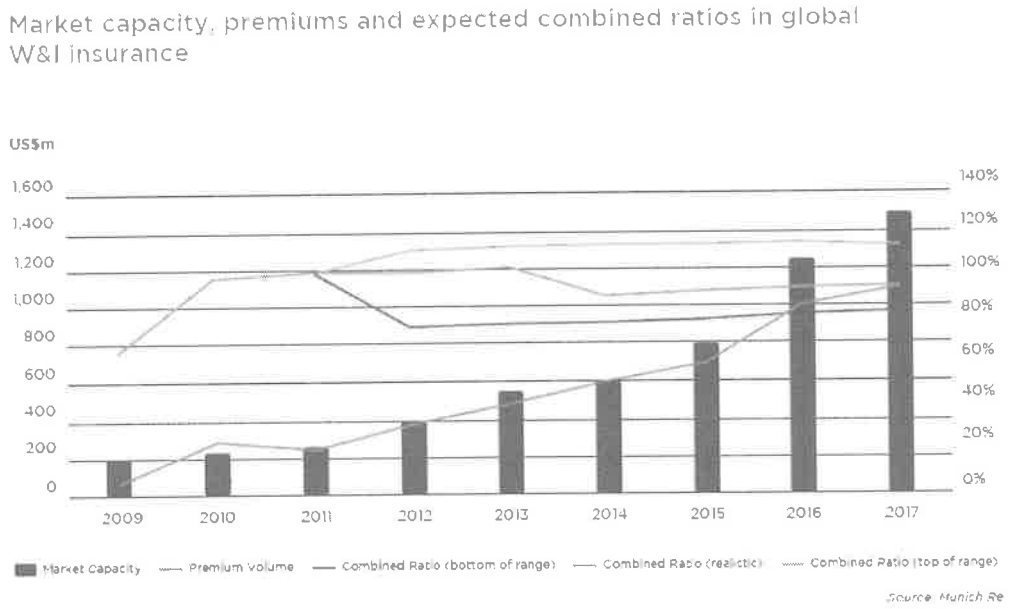


EMEA saw the largest rise in terms of limits placed, which increased approximately US$1.7 billion year-on-year. This has been, in part, due to activity associated with Unites States of America (US) and Asia-based investors exploring acquisitions in European countries, particularly the United Kingdom (UK).

Growth also continued in other regions, with the US and Canada seeing an increase in both the number of policies and amount of limits placed. Awareness continues to grow in the Asia and Pacific regions where market also experienced a rise in the use of the solution by both private equity and corporate investors.

The market has continued to see a shift in the type of clients purchasing transactional risk insurance. Originally used almost exclusively by private equity firms, the number of corporate clients using this type of insurance has been rising.

Figure 6: Lockton Transactional Risk Insurance: Deal-Enabling Risk Transfer Solutions Report, 2017

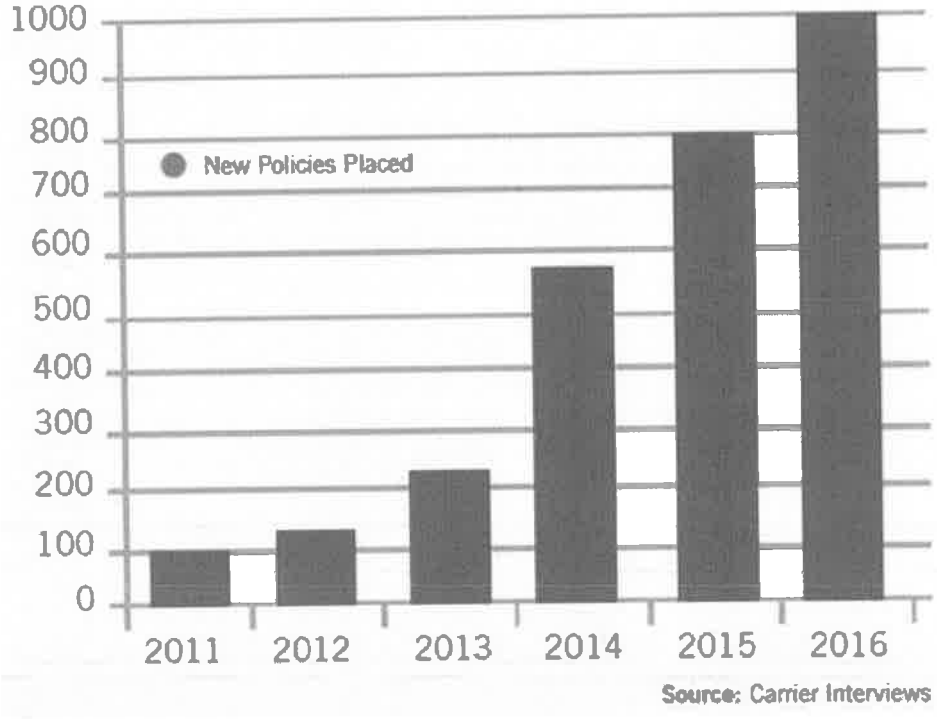


The split became more even in the first six months of this year, with private equity policies representing 55% of policies placed, and corporate policies accounting for remaining 45%. In Europe, the Middle East, and Africa, for example, corporate buyers accounted for nearly half of policies placed in the first half of 2016, but only represented 21% during the same period last year. Strategic investors from Japan and China are increasingly use the W&I insurance when seeing investments opportunities in Europe and the US. These trends are expected to continue as of December 2017.
Warranty and Indemnity (W&I) or Representations and Warranties (R&W) insurance, tax liability, and other contingent liability solutions is now more widely available around the world and has become a common risk-mitigation tool for dealmakers.

3.2.2. Market Trends

Warranty and indemnity insurance is being more commonly used and providing broader cover to a wider range of companies.
The use of warranty and indemnity (W&I) insurance has become an increasingly common feature of mergers and acquisitions.

Figure 7: New W&I Policies Placed



The following trends have identified in the W&I insurance market for 2017:

1) Increasing use of W&I insurance globally

W&I insurance is now used in more than 25% of European corporate deals and around 40% of corporate real estate transactions. Most deals using W&I insurance have a deal value of between £30m-£300m, but insurance policies have been placed on deals worth more than £1bn in the last year.

W&I insurance is now used in more than 25% of European corporate deals.

Similarly, in the US the overall market penetration for W&I insurance is between 15% and 20%, with most deals ranging between $50m and $500m in enterprise value (enterprise value being a measure of a company's total value, often used as a more comprehensive alternative to equity market capitalisation).

2) Increased underwriting innovation

Competition among underwriters is still aggressive, with premiums and deductibles continuing to drop, while coverage positions are being enhanced. There are now 15 active markets (capacity providers) in London, 20 in the US, two in Barcelona, one in Denmark.

Insurers are aiming to differentiate themselves in terms of coverage positions and sectors, with new entrants seeking to provide coverage in areas that historically W&I insurers have been wary of. For example, a recently set up UK underwriter specifically focuses on the technology sector and also targets small and medium-sized businesses. In the US, an insurer has expanded its appetite for industries whose core assets consist of patents and other intangible intellectual property. This will allow coverage for patent infringement, which is often critical for a buyer. New market entrants are seeking to provide coverage in areas that historically W&I insurers have been wary of.

The market has also seen an increased use of W&I insurance in the US for healthcare deals. Historically, insurers have stayed away from businesses that: a) rely on revenues from Medicare/Medicaid programmes; and b) have exposure to HIPAA (Health Insurance Portability and Accountability Act of 1996) and fall within anti-kickback and inducement statutes.

Insurers are now more comfortable with these risks due to their own improved in-house expertise (many insurers have recruited corporate lawyers with sector and jurisdictional focus), an increased network of external advisors., as well as buyers' increased awareness of the need for fulsome diligence surrounding these areas, in order to meet insurers' underwriting requirements.

3) Blanket awareness sweepers

When giving warranties, sellers may look to limit the scope of the warranties with a 'knowledge qualifier' – i.e., the seller qualifies the warranty with 'to its knowledge' language. Some sellers are successful in implementing a general knowledge sweeper across all warranties, known as a 'knowledge scrape'. In some instances, insurers are able to disregard this knowledge sweeper under the W&I insurance policy, only adding specific awareness qualifiers under customary warranties – thus vastly increasing a buyer's ability to bring a successful claim for a breach of warranty.

4) Lowering retention levels

The major trend in the European W&I market in the last year has been the impact of 'nil retention' structures (i.e., no self-insured retention in the insurance contract), which first came into the market on real estate transactions, having a significant impact on private equity deals.

Notifications and claims on W&I policies have increased in the last 12 months. While insurers have been less willing to replicate the 'nil retention' structure in non-real estate deals, insurers have shown a willingness to follow a downward trend in retention levels in the disposal of operational businesses, where sellers are no longer willing to leave 'skin in the game'. Simple manufacturing businesses in Western Europe are most likely to be able to obtain this structure, whereas with IP-heavy or pharmaceutical businesses underwriters will still wish to see more details almost about everything. Average Limit of insurance purchased are increased by around %16 in 2017 with 60% increase in number of policies placed globally and 11% drop in premium rates in prior year. Around 40% of the policies are initiated by the sell-side however 90% of the policies list the buyer as the named insured in the end.

Growth in Germany, Netherlands and Denmark, have noted steady increases in the number of insured deals in the three listed territories. This is expected to continue into 2018.

Fewer "programme" placements (involving multiple insurers) as single insurers look to use their full capacity. Blended cover available for fundamental warranties up to the fell deal value.

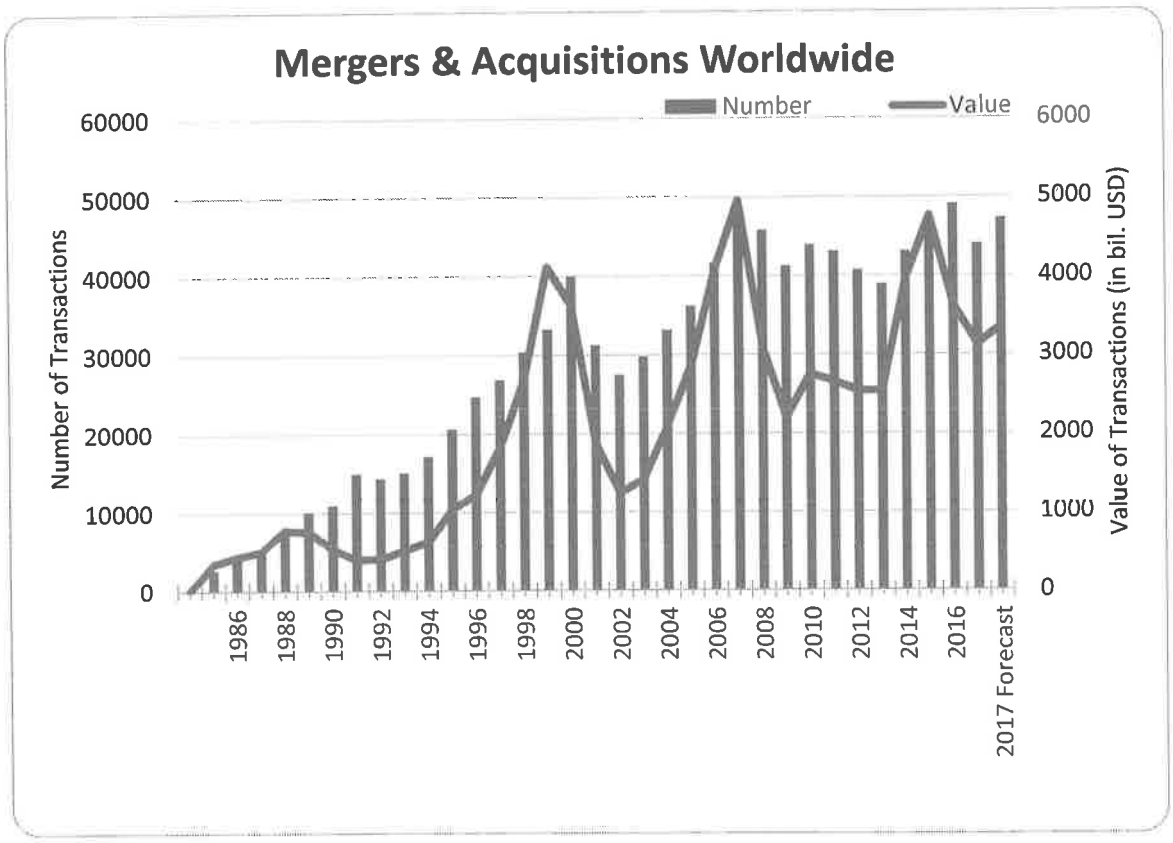
Heightened claims activity and worsening loss ratios for insurers. The market saw an increase in claims notifications and paid losses in 2016. As the number of written policies increases, it is not unusual for claims notifications to also increase. This may impact insurance premium ratings towards to end of 2017.

Increases use of US/Mid-Atlantic coverage positions in Europe deals. Removal of the general disclosure of the data room and due diligence reports adding greater clarity of coverage.

3.2.3. M&A Worldwide and by Sector Data

Historic trend of the M&A in the globe is shown as below.

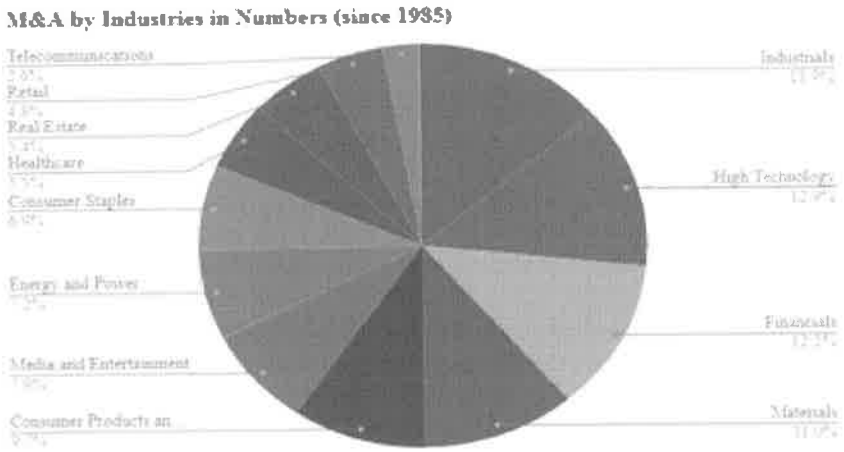
Figure 8: Mergers and Acquisitions Worldwide



Source: IMAA Institute

In terms of number of transactions most of the deals happen in the industrial sector. The sectoral breakdown of M&A between 1985 and 2016 is stated in Figure 9.

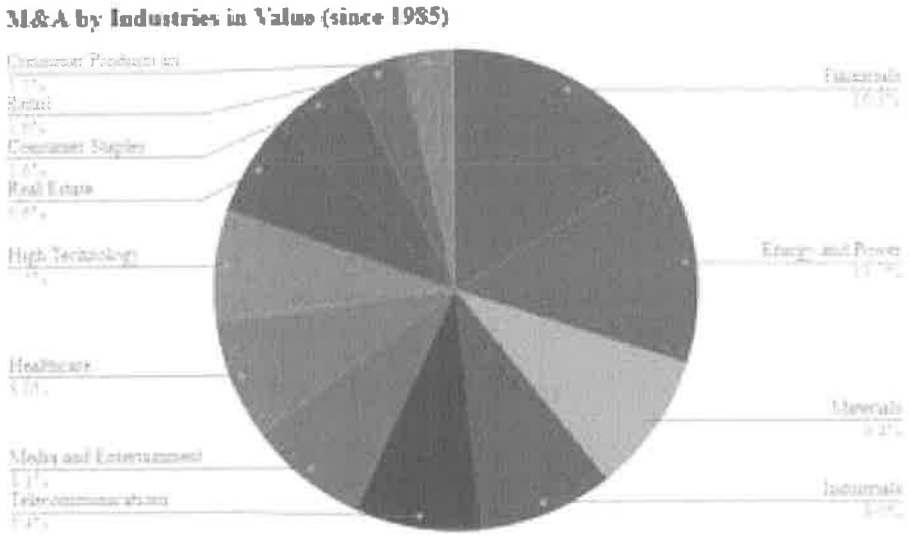
Figure 9: M&A by Industries in Number since 1985



Source: IMAA Institute

In terms of value of transactions most valued deals happened in financial sector.

Figure 10: M&A by Industries in Value since 1985



Source: IMAA Institute

Reasons for M&A activity are categorized and measured according to KPMG Survey Data partaking in Gallagher Management Liability Practice, Representations & Warranties Insurance are shown as below:

- 21% Opportunistic Availability
- 19% Expand Geography
- 16% Expand Customer Base
- 15% Enter New Business
- 11% Value Purchase
- 10% Competitive Need
- 8% Other Reasons

3.2.4. Major Jurisdiction Aspects by The Regions

Number and size of the M&A across the globe vary in many various aspects. However, W&I claims reasons, and the domestic applicability of the W&I policies in different regions are providing distinctive categorisation regarding to regional W&I uptake across Americas, EMEA and ASIA.

3.2.4.1. Financial Complexity Perspective

For accounting and tax compliance; Turkey, Brazil, Greece, Argentina and China are among the top 10 most complex jurisdictions in the world. However, Cayman Islands, British Virgin Islands (BVI), Hong Kong, United Arab Emirates (UAE) rank among the easiest.

Turkey is the most complex place in the world for Accounting and Tax compliance, followed by Brazil, Italy, Greece and Vietnam - according to TMF Group's Financial Complexity Index 2017.

The Cayman Islands came in at 94 as the least complex place for compliance from an accounting and tax perspective.

Table 10: Most Complex Jurisdictions in The World for Accounting and Tax Compliance

Jurisdiction	Global Ranking
Turkey	1
Brazil	2
Italy	3
Greece	4
Vietnam	5
Colombia	6
China	7
Belgium	8
Argentina	9
India	10

Source: TMF Group's Financial Complexity Index (2017)

Results summary:

- Turkey is the most complex jurisdiction in terms of accounting and tax compliance, largely due to the requirement to report in both Turkish language and currency, and the high number of tax articles.
- Italy (3) and Greece (4) have very localised complexities. In Greece taxes are divided into three categories: income, property and consumption tax, while in Italy taxes are levied at a national, regional and municipal level.
- South and Central America has five jurisdictions in the top 15 most complex: Brazil (2), Colombia (6), Argentina (9), Bolivia (12) and Mexico (15). This is largely due to the widespread practice of levying three layers of taxation, at federal, state and municipal level. Argentina scored the highest of all 94 jurisdictions, in 'Reporting' complexity (88%) and Mexico the highest in 'Bookkeeping' (84%).

- Asia Pacific has three jurisdictions in the top 10: Vietnam (5), China (7) and India (10). Complexity around invoicing, filing and the conducting of audits is high with very specific documentation and processes applied.
- The five least complex jurisdictions have simplified reporting requirements and beneficial tax rates to encourage investment: Jersey (90), Hong Kong (91), the UAE (92), BVI (93) and the Cayman Islands (94).

Sample Examination: Turkey

Parties usually appoint accountants and financial advisers in addition to their external legal advisers. It is common in Turkey for small and medium-sized businesses to maintain their books in accordance with Turkish accounting standards only, which standards are tax code-based, and which differ from IFRS and other globally accepted accounting standards. This presents a problem for valuation in deals where an investor prefers to perform valuation based on IFRS calculations. In such cases, the accounting team of the seller (and in some cases of the buyer) works on translating the accounting records into IFRS values that the parties can use for valuation of the transaction. Financial advisers assist with providing valuation advice and performing financial and tax due diligence. In many cases, the tax team and the financial team are separate and prepare separate diligence reports.

3.2.4.2. Rule of Law Perspective

The Rule of Law Index measures a country's adherence to the rule of law from the perspective of how ordinary people experience it. The following pages in this section highlight the overall rule of law scores and rankings for 113 countries and jurisdictions, as well as scores and rankings by income, region, and each of the eight aggregated factors of the Index (World Justice Project Rule of Law Index 2016).

Table 11: Top 15 Jurisdiction

JURISDICTION (TOP 15)	SCORE	GLOBAL RANKING
Denmark	0.89	1
Norway	0.88	2
Finland	0.87	3
Sweden	0.86	4
Netherlands	0.86	5
Germany	0.83	6
Austria	0.83	7
New Zealand	0.83	8
Singapore	0.82	9
United Kingdom	0.81	10
Australia	0.81	11
Canada	0.81	12
Belgium	0.79	13
Estonia	0.79	14
Japan	0.78	15

Source: World Justice Project - Rule of Law Index (2016)

Table 12: Least 15 Jurisdiction

JURISDICTION (LEAST 15)	SCORE	GLOBAL RANKING
Venezuela	0.28	113
Cambodia	0.33	112
Afghanistan	0.35	111
Egypt	0.37	110
Cameroon	0.37	109
Zimbabwe	0.37	108
Ethiopia	0.38	107
Pakistan	0.38	106
Uganda	0.39	105
Bolivia	0.40	104
Bangladesh	0.41	103
Honduras	0.42	102
Nicaragua	0.42	101
Kenya	0.43	100
Turkey	0.43	99

Source: World Justice Project - Rule of Law Index (2016)

Factors of the Rule of Law

Constraints on Government Powers

Extents of the governments' limitations by law are measured by Factor 1. Officials, agents, and other powers of the government are limited and accountable under the law by these constitutional and institutional means. Existence of a free and independent press along with other non-governmental checks on the government's power is also included.

Absence of Corruption

The absence of corruption in government agencies is measured by Factor 2. Corruption is considered in three forms: bribery, improper influence by public or private interests, and misappropriation of public funds or other resources.

Open Government

Factor 3 measures the government's transparency, such requires: sharing of information, existence of tools that empower people in order to hold the government accountable, and fostering of citizen participation in public policy decisions.

Fundamental Rights

The protection of fundamental human rights is measured by Factor 4. It distinct "rule of law" from "rule by law" which is a system of law that fails to abide to core international human rights. Since there are many other indices that address human rights, and as it would be impossible for the Index to assess adherence to the full range of rights, this factor focuses on a relatively modest menu of rights that are firmly established under the Universal Declaration of Human Rights and are most closely related to rule of law concerns.

Order & Security

Factor 5 measures the assurance of security, both of people and of property. Any rule of law society views security as a defining aspect and a fundamental function of the state. It is required for the rights and freedoms of a rule of law society to be realized.

Regulatory Enforcement

Factor 6 measures the fair and effective implementation and enforcement of both legal and administrative regulations which structure behaviours within and outside of the government.

Civil Justice

Factor 7 measures the civil justice system's ability to provide peaceful and effective resolution of ordinary people's grievances.

Criminal Justice

Factor 8 evaluates the criminal justice system. An effective criminal justice system is a key aspect of the rule of law, as it constitutes the conventional mechanism to redress grievances and bring action against individuals for offenses against society.

Informal Justice

Finally, Factor 9 takes interest in customary and informal systems of justice – such as traditional, tribal, religious, or community-based courts – that are used in resolution of disputes. These systems are important in cultures that fail to provide effective solutions for large segments of the population, or in countries with remote, corrupt, or ineffective legal institutions.

Sample Examination Turkey

As a result of "voluntarily obtaining foreign laws" during the westernization and secularization of Turkey, The Turkish Civil Code and the Law of Obligations and the Law of the 1920s and other special Code of Laws were modelled according to the Swiss Codes. The Codes have been rearranged in the 2000s over the years in various jurisdictions (such as Switzerland, Germany, Austria, etc.) and in the light of developments in international contracts. EU legislation and the continental legal system is the model for new laws in many areas of private law in Turkey.

Foreign investment or foreign ownership of shares in Turkey is generally not restricted. Foreign investors and companies partially or fully owned or controlled by foreign shareholders are – with very limited exceptions - the same in the eyes of the law, and has the same legal standing and rights as if they were locals. Accordingly, foreign parties may fully own a Turkish company without any restrictions, with only exceptions in certain sectors such as media and aviation. There are also limited restrictions on the ability of companies containing foreign capital to purchase and hold title to some real estate, and certain post-acquisition clearances of existing real estate ownership by the target company if it becomes at least 50 per cent foreign-owned.

The primary pieces of applicable legislation for the M&A are the following:

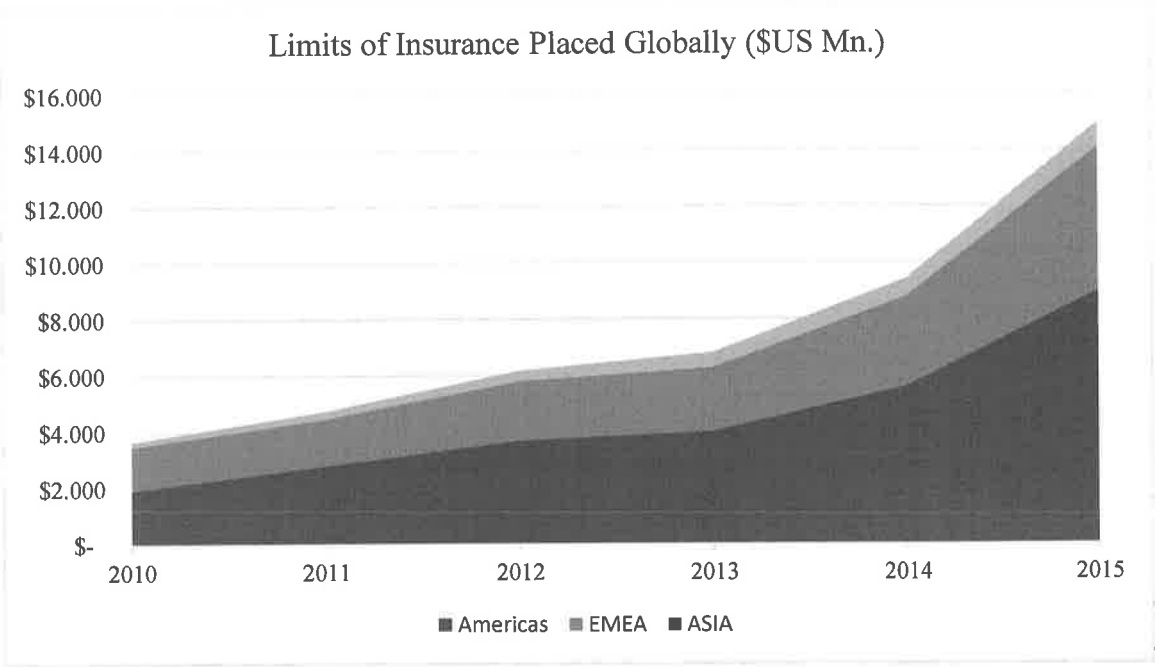
- the Turkish Commercial Code (Law No. 6102);
- the Code of Obligations (Law No. 6098);
- the Corporate Tax Law (Law No. 5520);
- the Labour Law (Law No. 4857); and
- the Law on the Protection of Competition (Law No. 4054).

Other laws (e.g. relating to banking, intellectual property and data privacy) and secondary legislation promulgated under such laws and the laws specified above may also apply to the transaction.

As indicated by article 36 of the Code of Obligations, if a party to an agreement's fraudulent act causes the other party to enter into an agreement, such agreement shall not be binding on the party who was victim to the fraud even if the misleading caused by the fraud is not material. As such, a seller is normally liable for pre-contractual misrepresentations amounting to fraud regardless of any limitations the parties may include in the SPA. That being said, aside from fraud, SPA terms can normally limit a seller's liability for pre-contractual statements, although it may not always be possible to limit the knowledge of the buyer to specific disclosures in cases where the buyer knows or should know of a defect because of statutory limitations.

3.2.5. W&I Policies Placed by Region

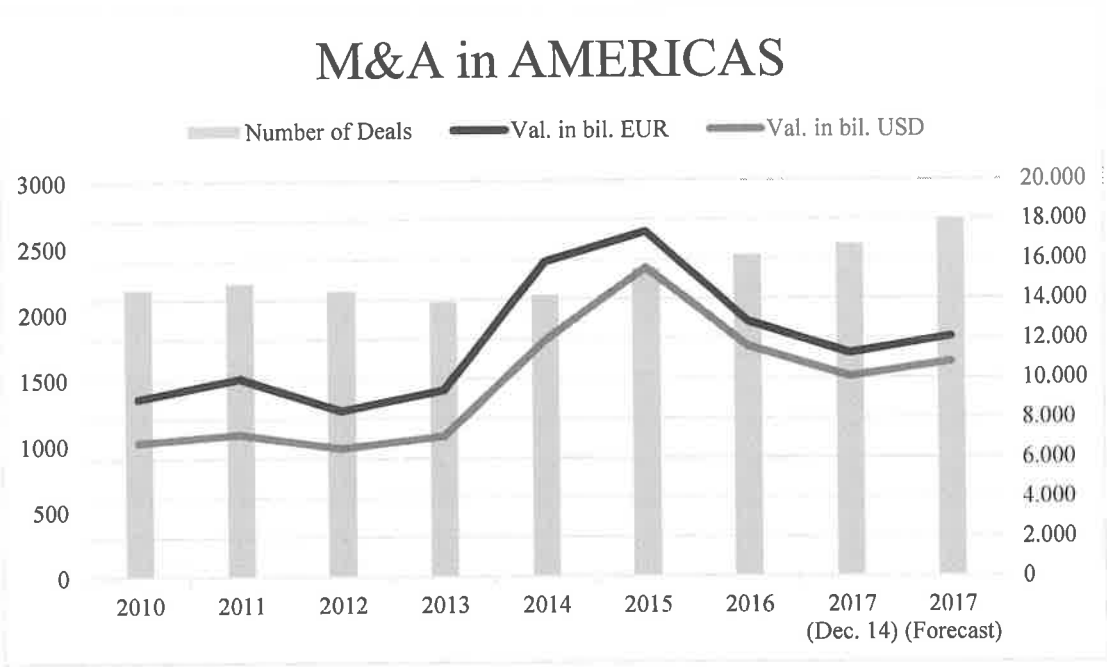
Table 13: W&I Policies Placed According to Market Reports of Major Insurers and Brokers



3.2.5.1 Americas

According to Thomson Reuters' First Half 2017 | Mergers & Acquisitions Report; Americas M&A volume during the first half of 2017 was flat compared to the first half of 2016, accruing US$892.5 billion in activity from 9,488 announced deals. According to estimates, fees generated from completed deals in the Americas totalled US$11.9 billion, a 17.5% increase from fees earned during the first half of 2016.

Table 14: Announced, Pending and Completed M&A Deals in Americas



Source: IMAA Institute

Table 15: W&I policies placed in Americas According to Market Reports of Major Insurers and Brokers

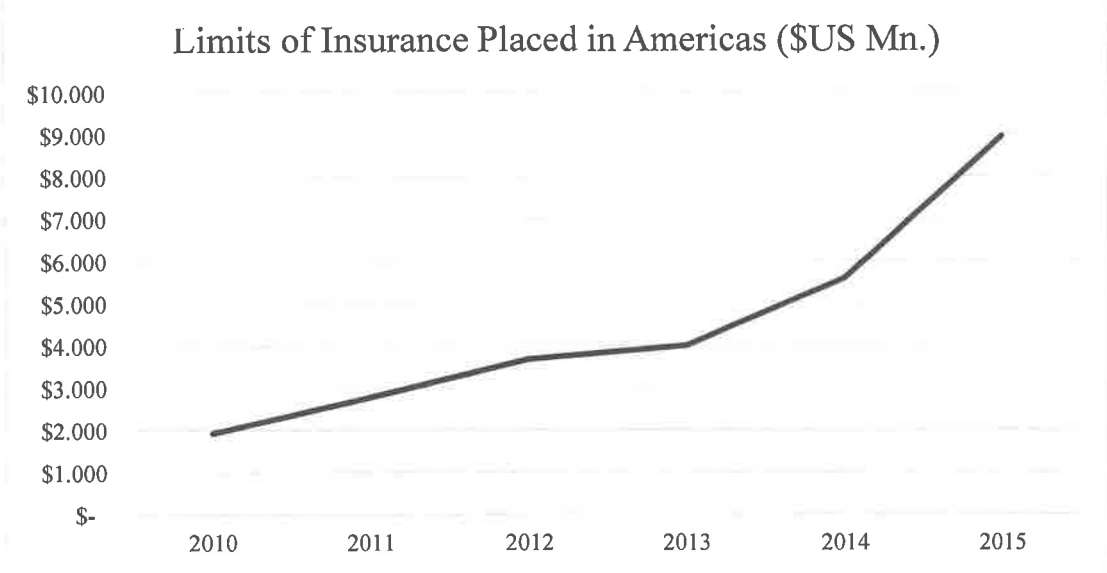


Figure 11: Financial Complexity and Rule of Law Perspective in Americas

	Financial Complexity			Countries with low Rule of Law Index		
Region	Country			Country		
AMERİCAS	Brasil (2.)	Colombia (6.)	Argentina (9.)	Venezuela (1.)	Honduras (12.)	Nicaragua (13.)

Source: to Financial Complexity Index 2017 and Rule of Law Index 2016

Recent headwinds in the overall North American M&A marketplace have not dampen the appetite for transactional risk insurance policies. At mid-year 2016, a significant year-on-year increase in the limits placed has been seen in the market, with approximately more than 300 policies. Comparing to limits placed during the first half of 2015, limits placed are almost doubled.

Corporate buyers accounted for an increasing share of the W&I insurance purchased, with 45% of policies placed coming from these buyers. In addition, there was a rise in the proportion placed by international investors, particularly across Asia and EMEA. The number of insurers providing these lines of insurance has continued to increase, with at least 15 primary insurers offering coverage. This is up from 11 at the end of 2015, as insurers continue to look for growth in specialty and niche insurance classes. Premiums and retentions percentages for this market remain stable, at between 3% and 4% of insured amounts, and 1.5% to 2% of enterprise value, respectively.

W&I Insurance placed in other jurisdictions rather than US and Canada are almost non-existent in Americas.

3.2.5.2 Europe, Middle East, And Africa (EMEA)

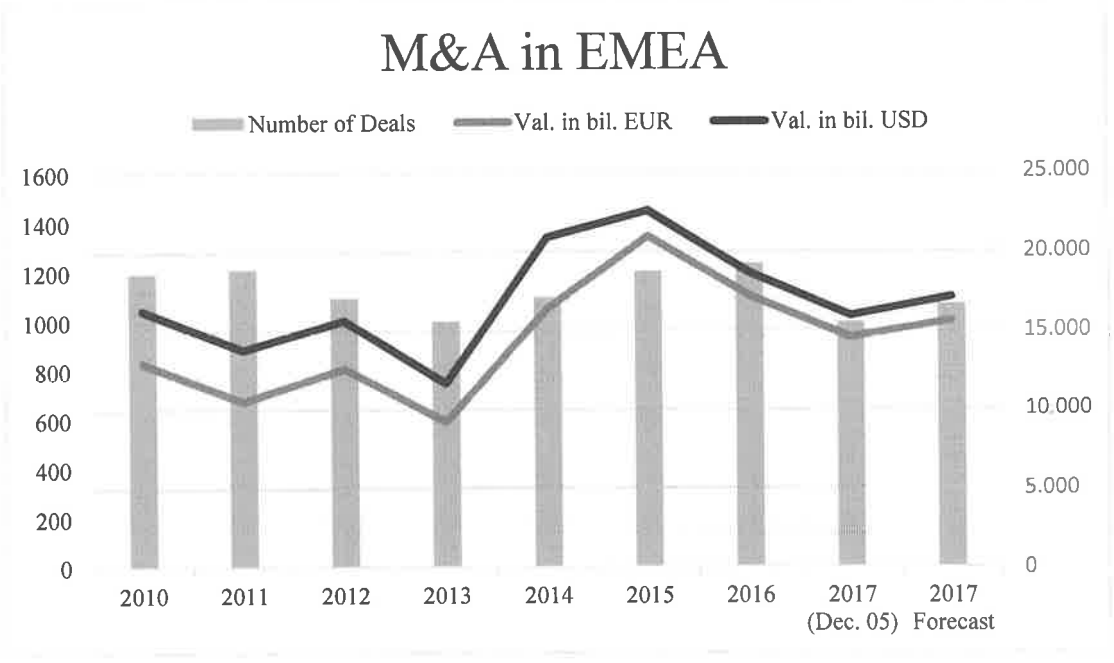
According to Thomson Reuters' First Half 2017 | Mergers & Acquisitions Report; Announced M&A activity with EMEA involvement totalled US$650.9 billion from 8,621 deals in the first half of 2017, up 19.2% compared to the US$546.2 billion reached in the same period last year.

Estimated fees accumulated on EMEA deals completed in the first half of 2017 were up 2.5% compared to the same period last year, totalling US$6.6 billion.

The Industrials sector led the EMEA marketplace, with 1,368 deals totalling a combined US$115.1 billion, including the acquisition of Abertis Infrastructures SA by

Atlantia SpA, which was the largest European deal of the first half of 2017, valued at US$34.7 billion. Healthcare accrued US$75.8 billion, and Consumer Staples yielded US$73.8 billion of activity.

Table 16: Announced, Pending and Completed M&A Deals in EMEA



Source: IMAA Institute

The market for transactional risk insurance continued to expand in the EMEA region during the first half of this year, with a 42% increase in the policies placed versus the same period in the prior year. The amount of limits placed during the first half of 2016 was nearly double that of the first half of 2015, at more than US$3.5 billion.

Table 17: W&I Policies Placed in EMEA According to Market Reports of Major Insurers and Brokers

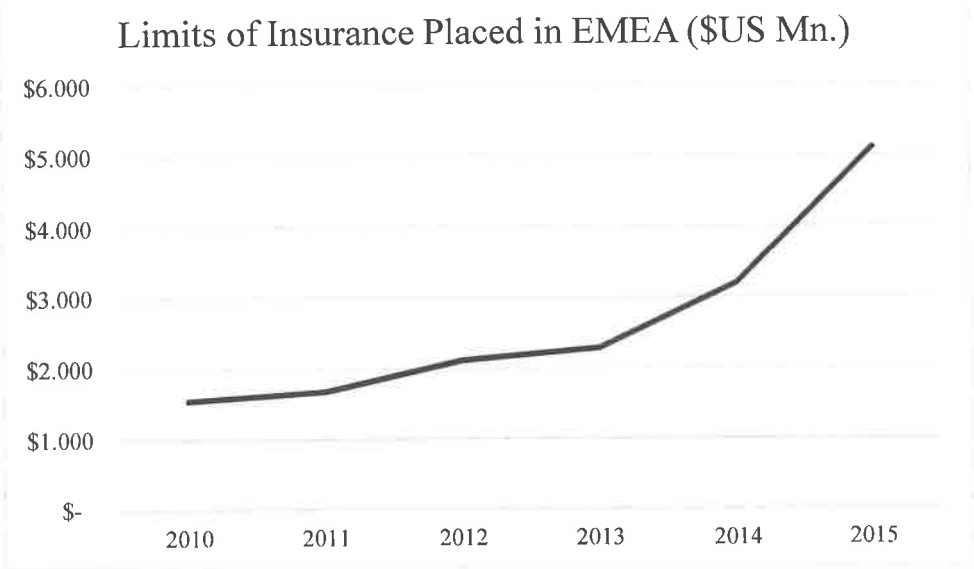


Figure 12: Financial Complexity and Rule of Law in EMEA

	Financial Complexity			Countries with low Rule of Law Index		
Region	Country			Country		
EMEA	Turkey (1.)	Italy (3.)	Greece (4.)	Afganistan (3.)	Egypt (4.)	Cameroon (5.)

Source: to Financial Complexity Index 2017 and Rule of Law Index 2016

The take-up of contingent liability policies increases markedly, with the number of policies placed in just the first half of 2016 equal to the total number placed during the whole of 2015. Of particular note was the increasing number of policies placed to manage tax risk. While these policies remain in the minority compared to W&I solutions, this suggests both an increase in the appetite of clients to explore solutions for known matters, as well as growing interest from insurers to offer viable solutions. An expansion of the market can be seen, into previously less penetrated jurisdictions such as Romania, Israel, and Turkey.

Sample Examination: Turkey

Main piece of legislation that binds the insurance activities in Turkey is The Insurance Law. Insurance products, and the establishment, management, operation, supervision

and audit of insurance and reinsurance companies, agencies and brokers are all regulated by this law. The framework applicable to Turkey's insurance sector is also constituted by The Insurance Law. The branches of insurance in which an insurance company can operate are listed under The Communiqué on Insurance Branches and licensing requirements for each branch are also established by it. Insurance policies which are not specifically listed in the communiqué cannot be offered by Turkish insurers.

Expansion of The EMEA market is as a result of increased education, greater awareness among deal communities, as well as insurers seeking greater yield outside of the more competitive and traditional jurisdictions for transactional risk.
The EMEA insurance market continues to attract capital. There are now 19 potential primary insurers with an aggregate market capacity available in excess of US$1 billion per transaction on a syndicated basis for the right deal. This makes for a continually competitive market in which rates are still declining. Meanwhile, the vote by the UK to leave the European Union has, thus far, had insignificant impact on interest in transactional risk policies, as we have seen no significant decline in the number of enquiries or policies purchased for UK deals. Market will continue to see growth in cross-border activity from Asia and the US into the EMEA region. Considering Brexit and other macro headwinds, the mix of target businesses being shown to the market in terms of industry has shifted. For example, there has been less of a supply of real estate assets and targets reliant on discretionary consumer spending (such as retail) and a greater interest in financial technology, healthcare, and renewables. As the vote occurred near the end of the first half of the year, it will be interesting to see if we witness continuing change in the portfolio mix for transactional risk solutions in the coming year and beyond, and how that tracks against general deal trends.

UK

- Economic uncertainty and political change resulted in a fluctuating market in terms of deal timings and insurance policy requirements.

- New insurers and increasing competition drove down pricing and policy relations across a number of sectors.

- Expresses coverage of known issues became increasingly common as clients sought to insure insignificant risk issues arising in due diligence.

- The real estate sector continued to be one of the main users of insurance; however, activity slowed after the European Union (EU) referendum.

- Seller introduced deals in grew in prevalence once again as W&I insurance was commonly brought into the deal at an early stage, particularly in an auction sale process.

Northern Europe

- The region saw a %50 increase in the number of insured deals during 2016 compared to a previous record number in 2015.

- Whilst private equity deals still represent most of insured transactions, industrial and retail markets are becoming increasingly frequent users.

- The seller often facilitates the issue of insurance very early on in the deal process to optimise its exit from the transaction.

- Real estate continued to account for the largest share of transactions and written premium, although the product was used across numerous business sectors.

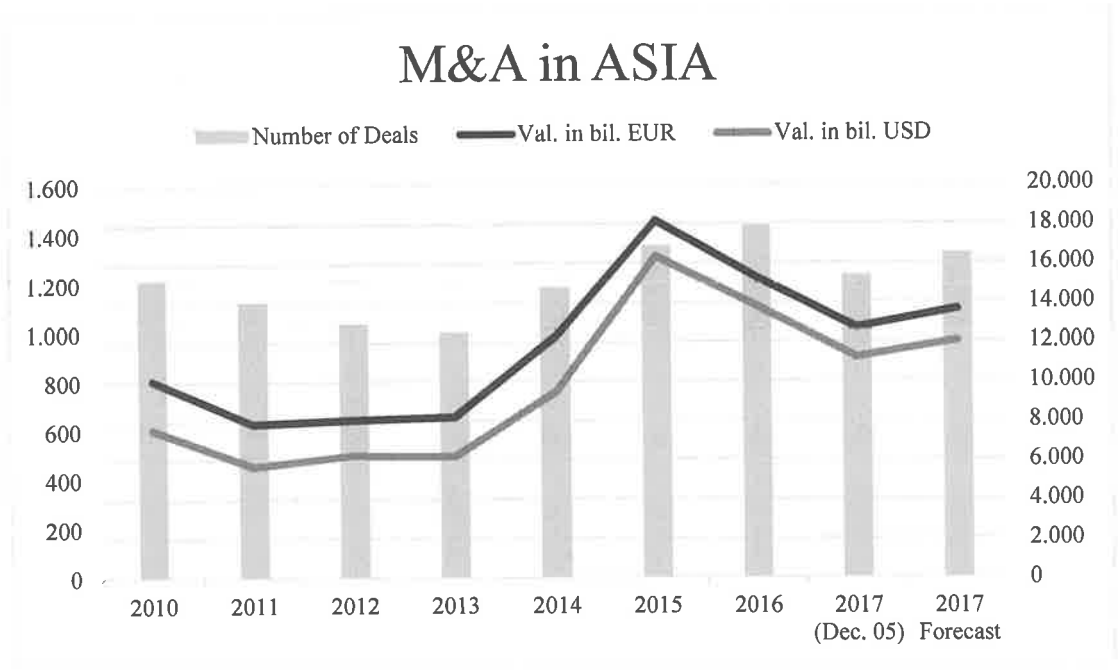
- A number of policy improvements were developed and employed, and this trend is expected to continue in 2017.

3.2.5.3 Asia

According to Thomson Reuters' First Half 2017 | Mergers & Acquisitions Report; Announced M&A volume with Japanese excluded Asian involvement for the first six months of 2017 decreased by 14.2% compared to the same period in 2016, accruing US$432.8 billion in value from 6,204 deals. With a combined market share of 48%, Real Estate, Industrials and Financials were the most active industries in 2017. Real Estate took an 20% market share, while Industrials and Financials recorded 14.1% and

14% shares, respectively. Japanese M&A activity totalled US$62.8 billion during the first half of 2017, a 13.1% decrease from comparable 2016 levels and the slowest first half volume since 2013's US$58.4 billion in value. 13 Japanese involvement deals over US$1 billion were announced during the first six months of 2017, totalling US$36.1billion in aggregate and down 22.6% compared to the first half of 2016. Overall, 1,605 deals were announced during the first half of 2017, an 9.5% decrease in deal count compared to last year.

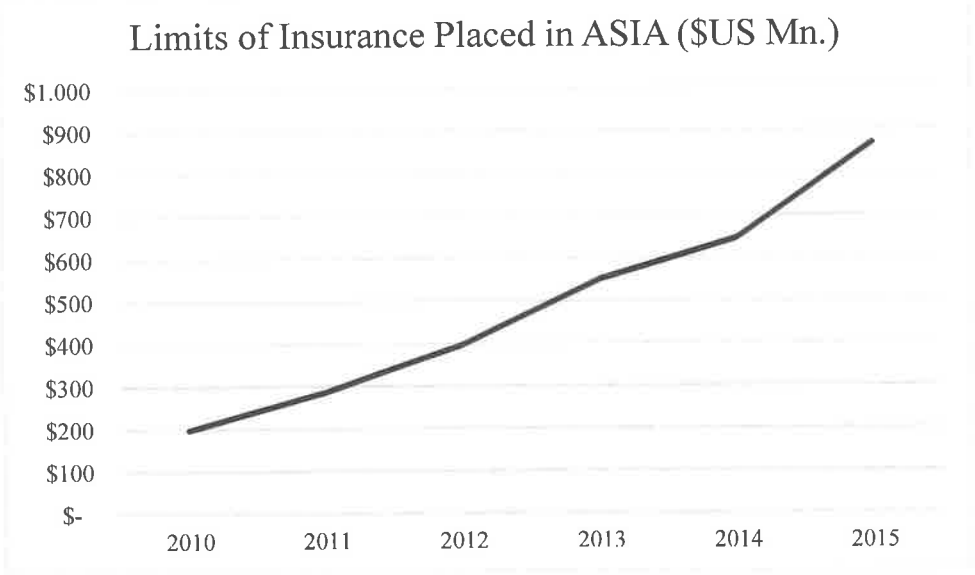
Table 18: Announced, Pending and Completed M&A Deals in Asia



Source: IMAA Institute

The Asia-Pacific market has continued to see an increase in limits of insurance placed during the first half of 2016. While the limits placed are still a fraction of those in EMEA and the US and Canada, at approximately US$870 million, it remains a fast-growing region, as the awareness of transactional risks and the number of deals taking place in the region continue to pick up pace.

Table 19: W&I policies placed in Asia According to Market Reports of Major Insurers and Brokers



Premium rates remain competitive for mature jurisdictions such as Singapore and Hong Kong. For emerging markets such as China and India, rates continue to hold due to a lack of insurer appetite.

Figure 13: Financial Complexity and Rule of Law Perspective in Asia

	Financial Complexity			Countries with low Rule of Law Index		
Region	Country			Country		
ASIA	Vietnam (5.)	China (7.)	India (10.)	Bangladesh (11.)	Philippines (40.)	Vietnam (43.)

Source: to Financial Complexity Index 2017 and Rule of Law Index 2016

Interest increased from Japanese and Chinese corporate clients due to a rise in outbound deals. Overall, the insurance market in Australia and New Zealand is highly competitive. Small- to mid-market transactions have accounted for most of the activity in Australia and New Zealand, and premiums rates in these markets continue to fall, driven by new insurer entrants. Policies placed continue to offer among the most insured-friendly coverage outcomes globally. Retentions of 0.5% of deal value are commonly available, as are retentions which tip to zero. In some cases, policies are available that apply no retention to certain subsets of warranties, such as tax and title.

We saw a significant uptake in private equity policies, which accounted for 68% of policies placed. This is up from 56% in the first half of 2015. Meanwhile, corporate policies accounted for 37% of policies placed. Retentions were below 1% for most deals in mature markets in Asia, such as Singapore- and Hong Kong headquartered deals. Deductibles can go as low as 0.5% and tipping retentions are offered.

Asia:

- Real estate continued to dominate the Asian market; however, other sectors grew in popularity including the food and beverage sector.
- Sellers were the main drivers of insurance, requiring a clean exit from transactions with nominal residual liability.
- Whilst most of the deals were seller initiated, most of these resulted in policies taken out the name of the buyer.
- Majority of the insured deals caused by the Japanese outbound investors in late 2016.

The use of W&I insurance across Asian markets is relatively new compared to other markets where it has been a feature of transactions for some time. In addition, Asian jurisdictions have their own particular features that make the use of W&I insurance unique in these markets. The way due diligence is conducted determines how W&I policies are structured and the more thorough the due diligence, the fewer exclusions the policy will have. For instance, a buyer may be comfortable not carrying out complete due diligence on an aspect of the business, for instance a small, non-core business unit. But the insurer may require due diligence to be performed on this part of the company to extend cover to it. The risk is that if due diligence is not performed on this part of the business, it will not be covered under the policy. So, from the outset, it's essential for the buy-side to be upfront about the extent of due diligence it has done on the acquisition, to ensure the W&I policy meets its expectations.

CHAPTER IV: DISCUSSION AND CONCLUSION

W&I Insurance market is relatively new to the market and will remain as a niche type of insurance for its complex status. Market penetration of the product is estimated to grow in following years, as the awareness and the need of the W&I Insurance and it's becoming more significant.

Historic statistical data which indicates the number and the values of the M&A deals in following regions are overwhelmingly remained low compared to the rest of the world. These regions are: South America, Eastern Europe, South East Asia / ASEAN, Gulf Cooperation Council (GCC), Middle East & North Africa (MENA).

Despite the set of samples (M&A activity) in related to transactions in these regions are remain few in total, question of the applicability of W&I insurance in some of the jurisdictions in these regions should also be asked. When the M&A activity in the region is low, naturally, W&I Insurance placement will be few. However, another important discussion regarding to market penetration is should be in terms of the applicability of insurance in that jurisdiction.

Figure 14: Comparison of the Countries According to Financial Complexity and Rule of Law Index (World Rankings are shown in brackets)

	Financial Complexity			Countries with low Rule of Law Index		
Region	Country			Country		
AMERICAS	Brasil (2.)	Colombia (6.)	Argentina (9.)	Venezuela (1.)	Honduras (12.)	Nicaragua (13.)
EMEA	Turkey (1.)	Italy (3.)	Greece (4.)	Afganistan (3.)	Egypt (4.)	Cameroon (5.)
ASIA	Vietnam (5.)	China (7.)	India (10.)	Bangladesh (11.)	Philippines (40.)	Vietnam (43.)

Source: to Financial Complexity Index 2017 and Rule of Law Index 2016

M&A activity in the regions are indicating a similar pattern with the Financial Complexity and the Rule of Law Index ranking of the counties. World's most complex financial systems and the lowest ranked countries in the Rule of Law Index list are taking part in Figure 14 across the regions.

Financial Complexity of the country has a distinctive importance from the perspective of W&I Insurance. There is a strong correlation between financial complexity of the country and the number of W&I policies issued in that jurisdiction. For example, tax

related claims are the leading type of the claims made under the W&I policy. Tax related issues under the W&I Insurance and easily find capacity in the less complex financial systems but it will be quite opposite in highly complex financial systems such as South America or MENA. However, this reason alone, does not preclude issuing policies related to that financial system in terms of the applicability of W&I Insurance. For the W&I policies issued regarding to transactions that is involved in more complex financial systems, the insurers can apply broader exclusions, narrower conditions, lower limits or higher retention levels. This can be done for the other significant claims types as well. Which may in the end, can affect the attraction to the policy for the vendor or purchaser, but still the policy would had covering many of the other potential breaches related to the warranties specified in the SPA.

Another and more important indicator for the applicability of the W&I Insurance is the "law and regulation compliance" of that country. Whichever law will govern the contract, will also have the determinant effect regarding to W&I policies placed in that law's jurisdiction because the W&I policies are structured to back-to-back basis with the warranties partaking in the SPA. That means unique policy wordings per deal since the transactions and the status of all businesses are different. This function is especially important in perspective of the governing law of any contract. Practically, W&I Insurance shall be governed by and construed in accordance with the law of the same jurisdiction as the SPA. However, underwriters are required to understand the potential outcomes when issuing a policy in different jurisdictions. The enforcement of liabilities, which may arise from the warranties given under the SPA and W&I in any event of breach will be subject the governing law of the contract. Wordings and special conditions of both contracts should also have the presence of provisions in the laws of the related jurisdiction. Which means the enforcement of the process have been already identified or practically recognised by that jurisdiction. Therefore, there is a strong correlation between the W&I policies placed and the applicability of it. In the countries with a poor rule of law and complex financial system, forecast of a potential breach is harder to comprehend for the underwriters. Therefore, both number and the capacity placed for the W&I insurance will remain low in the countries with a poor law and regulation compliance and highly complex financial regulations.

Eligibility of applicable law to the insurance contact is often related to general conditions defined by the local regulatory bodies. Naturally, insurers would like to forecast the outcomes in the event of a warranty breach covered under the W&I Insurance. If the law and regulation compliance is relatively poor in one country's jurisdiction, the results of the same type of breaches can vary with wide fluctuations in the end. From the perspective of underwriter, the forecasts of any market in that regard, would be very hard. This is something any insurer would be uncomfortable with. From the global scale, this situation is creating many different law perspectives and potential combinations of unique jurisdictional outcomes. However, uncertainty of the forecasts can be avoided as much as possible with the identification of a general conditions regarding to W&I Insurance by local regulatory bodies. Which in turn, can help to define outcomes of breaches, making the forecast more accurate and as a result, increase market penetration of W&I Insurance further.

From the perspective of Turkish Market, W&I insurance is a new product. W&I insurance is believed to be under the scope of general liability insurance by scholars and insurance practitioners, despite the lack of general conditions. W&I insurance is not yet regulated under the communiqué as an insurance branch by the regulatory body of treasury. Thus, Turkish insurers do not issue this policy type locally. Laws and sanctions which are important for W&I as well as M&A activity are defined in Turkish laws. Therefore, if the policy remains purchasable, no formal problems are predicted when issuing policies with well-structured coverage scope for the underwriters. Although the financial system is complicated in Turkey; because laws regulate M&A in a well-mannered way, insurers can still issue the policy by applying broader exclusions and specific limitations on financial issues. However, this might not be the most cost-effective way for the policy holders at the same time. Because the gap between the cost and risk needs to be well balanced. Whether the premium to be paid is worth the simplification of indemnification procedures by the product should be more foreseeable. This efficiency issue can be disregarded as much as possible with the acceptance of a general conditions under the general liability insurance branch.

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