



Private Equity Sound Bite

Warranty & Indemnity Insurance

Reed Smith LLP Key Partner Contacts

Perry Yam – London
+44 (0)20 3116 2626
pyam@reedsmith.com

Mark Pedretti – New York
+1 212 549 0408
mpedretti@reedsmith.com

Philip Taylor – London
+44 (0)20 3116 3608
pmtaylor@reedsmith.com

Dr. Justus Binder – Munich
+49 (0)89 20304127
jbinder@reedsmith.com

Marc Fredj – Paris
+33 (0)1 44 34 80 63
mfredj@reedsmith.com

Lucas d'Orgeval – Paris
+33 (0)1 44 34 80 65
ldorgeval@reedsmith.com

Emmanuel Vergnaud – Paris
+33 (0)1 44 34 80 56
evergnaud@reedsmith.com

In a market where deal execution is proving challenging, one of the ways of addressing risk and closing the divide between buyers and sellers is insurance.

Warranty and indemnity insurance is available in private equity and M&A transactions to cover either the buyer or seller for losses resulting from breaches of the seller's warranties or indemnities. This coverage can serve as a complete substitute for or partial supplement to, other forms of financial guarantees for the seller's warranty and indemnity obligations.

A seller policy will typically pay out the indemnity owed as a result of a breached representation or warranty to the buyer. Coverage purchased by the buyer can provide the same protection, but the insurer will have a subrogation claim against the seller for any breach. An insurer can be asked to waive or limit its subrogation rights, enabling the deal to be structured so that the buyer's sole recourse in the event of a breach is the policy, absent fraud. Although policies differ in their wording, they generally provide coverage for defined risks from one specific warranty/indemnity or a whole list of representations and warranties.

Insurers may dispute whether a particular representation or warranty was fraudulent, known to be false, or should have been known to be false before the deal and the insurance purchase. Negotiations can specify that "actual" knowledge of fraud is required to exclude a loss, and the group of individuals at the seller whose knowledge "counts" can be narrowed. If the goal is to set a price for a known risk that has not yet occurred or been quantified, the policy should be written to reflect that.

These policies usually only cover existing or past conditions and do not cover covenants about future conduct or contingencies yet to occur. If there is a concern about ongoing or future risks inherent in an M&A transaction, other insurance policy forms may be necessary, such as coverage for ongoing litigation, an aborted bid, future pollution liabilities, projected profitability or income streams, future tax treatment, and liabilities of officers and directors.

The cost of a policy will vary depending on the nature of the risk covered. Premiums of 1–2% in the UK (and 3–10% in the US) are typical. If one party to an M&A transaction uses this type of coverage without the knowledge of the other party, dramatic savings may be realised. For example, if both buyer and seller are aware of a risk, but dispute its value and who should bear it, one party might negotiate a change to the deal price for accepting the risk that is far greater than the insurance premium. In such instances, the insurance company may seek a greater premium to "share" in the value added to the deal by the insurance policy. For further questions or the opportunity to discuss the solutions provided by warranty & indemnity insurance, *please contact Margaret Campbell, Partner: +44 (0)20 3116 2859, mcampbell@reedsmith.com or John Ellison, Partner: +1 215 241 1210, jellison@reedsmith.com.*

Management Equity Participation



Reed Smith has extensive experience in advising management teams and companies on equity and other incentive plans in the UK and overseas. Our team acts for private equity funds tailoring incentive schemes for their portfolio companies. The delivery of tax-efficient and commercial employee incentives is an important ingredient to the future success of a company. Our group is a leader in the design of bespoke and tax-effective incentives, as well as more standard approved and unapproved plans. We advise on related company law, employment law, regulatory, corporate governance and trust law issues. Jeremy Glover leads the UK Employee Incentives Group which specialises in advising clients on the design, implementation and operation of all incentive arrangements. For questions, *please contact Jeremy Glover at +44 (0)20 3116 3629, jglover@reedsmith.com.*

Transaction Highlights

Deals Across the Team



Advised **Indigo Capital LLP**, the long-established investment management firm specialising in the provision of mezzanine and junior capital to privately owned European businesses, on its investment in AVM Limited which provides design, installation and support for integrated audio visual communications systems. This investment was provided alongside Alcuin Private Equity, with Indigo providing senior term debt as well as investing equity into the business. Perry Yam and Lucy Newcomb advised on the deal.



Advised **Oakfield Capital Partners LLP**, a private equity company focused on special situations in the UK, on a round of fundraising for portfolio company Ingresso Group Limited. Ingresso provides ticketing technology that benefits the suppliers and distributors of tickets, such as venue and event box offices, theme parks and attractions, ticket agents, tour operators, and event producers/promoters. Perry Yam and James Cross worked on the transaction.



Instructed by **Hermes GPE** in the capacity as manager of the BT Pension Scheme in the acquisition of a 13% interest in Thames Water from Macquarie. This is the first transaction that the new Private Equity Team at Reed Smith has worked on with Hermes GPE. Perry Yam and Joanna Hamilton advised Hermes.



Advised **Cosfibel**, international supplier of packaging and merchandising solutions for the cosmetics, gourmet foods and luxury industries, on its acquisition of Solvpack. Solvpack is a €10 million turnover (2011) group specialising in packaging for champagne bottles, with a head office in France and a subsidiary in Hong Kong. This transaction is part of Cosfibel's rapid development strategy in which Reed Smith plays a recurring role. Paris Corporate partner Emmanuel Vergnaud and Tax associate Stéphane Letranchant advised on this transaction.



Events

Paris – The Paris Private Equity team will be inviting clients for an evening of Texas Hold'em Poker 10.October.2012. Players at all levels—from beginners to regular cardsharps—will be welcome at our Paris office to test their skills against their fellow investors. We hope you will be able to join us! *Please contact Marc Fredj or Emmanuel Vergnaud for further information.*



Paris – Reed Smith will serve as a lead, co-sponsor, at a Mezzanine Finance conference organized by the ESSEC Private Equity Club on 18 September 2012. The event will take place in the heart of Paris, at the Jockey Club. Paris Private Equity Partner, Lucas d'Orgeval, serves as the chair of the ESSEC Private Equity Club and will be in attendance with many leading liability panelists at the conference. Reed Smith's Private Equity practice in Paris is consistently ranked among the leaders in the Private Equity industry across France. *Please contact Lucas d'Orgeval for further information.*

Private Equity Practice Recognition

Client Testimonials

Reed Smith's EME Private Equity team has recently earned valuable recognition from our clients, including:

"We have recently started working with Perry and the Reed Smith private equity team and have found them to be pro-active and pragmatic, especially regarding some of the sensitive commercial issues we faced on the deal."

– Risk Capital Partners LLP

"The client comes first attitude is very much appreciated" and "...Innovative, flexible, customer focus."

– Pamplona Funds

"In providing a combination of debt and equity funding in support of Alcuin Capital's recent acquisition of AVM Limited, Indigo was advised by corporate and banking teams from Reed Smith's new private equity group in London. We found their advice and support to be commercial, focused and timely and they contributed meaningfully to the successful delivery of a transaction with a number of complex aspects within a demanding timetable."

– Martin Hook, Indigo Capital LLP

"We were very appreciative of the commercial and strategic advice provided by Perry Yam and his team. They fully understand the mechanics of Equity transactions and their vast experience and knowledge of such structures ensured that we were suitably protected and advised during the course of the negotiations. We very much look forward to working with Perry and his team again."

– Hamish de Run, Hermes GPE