

M&A Insurance in Israel

Protecting your M&A Transactions

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Introduction to Willis WTW



45k+

Traded on the **NASDAQ** and has **45k+** employees across **140** countries in the US, Europe and Asia

Acquired **Leaderim** in January 2022, becoming the

largest global insurance broker in Israel

Established **Willis WTW Israel M&A** in July 2022,

the first dedicated M&A insurance team in Israel.

Collaborating with **50+** dedicated insurance experts in Israel as well as **150+** M&A colleagues across the US, Europe and Asia

Team has built strong relationships with **local law firms, investment banks** and **diligence advisors**, developing a unique understanding of the **key Israel deal-specific issues** that arise on transactions, including in respect of IP, cyber and tax



Clients include most major **financial institutions**

in Israel as well as leading companies across the **hi-tech, infrastructure** and **energy** sectors



Market leading in **D&O, Cyber** and other business insurance lines



Presentation Agenda

Key Objectives



Introduction and Context

Practical Impacts on Deal Execution

Key Policy Terms

Protecting your Proceeds on Exit

Claims – Do Insurers Pay?

Protecting Known Risks

Closing Thoughts and Q&A

Introduction & Market Context

How M&A Insurance is Shaping Israeli Deals



Why M&A insurance is growing in Israel: Sophisticated buyers & sellers, improved terms, increased insurer appetite, proven track record

Sectors most impacted: Tech, life sciences, industrials, financial services

Key drivers for using RWI: Competitive deal environments, risk mitigation, escrow reduction

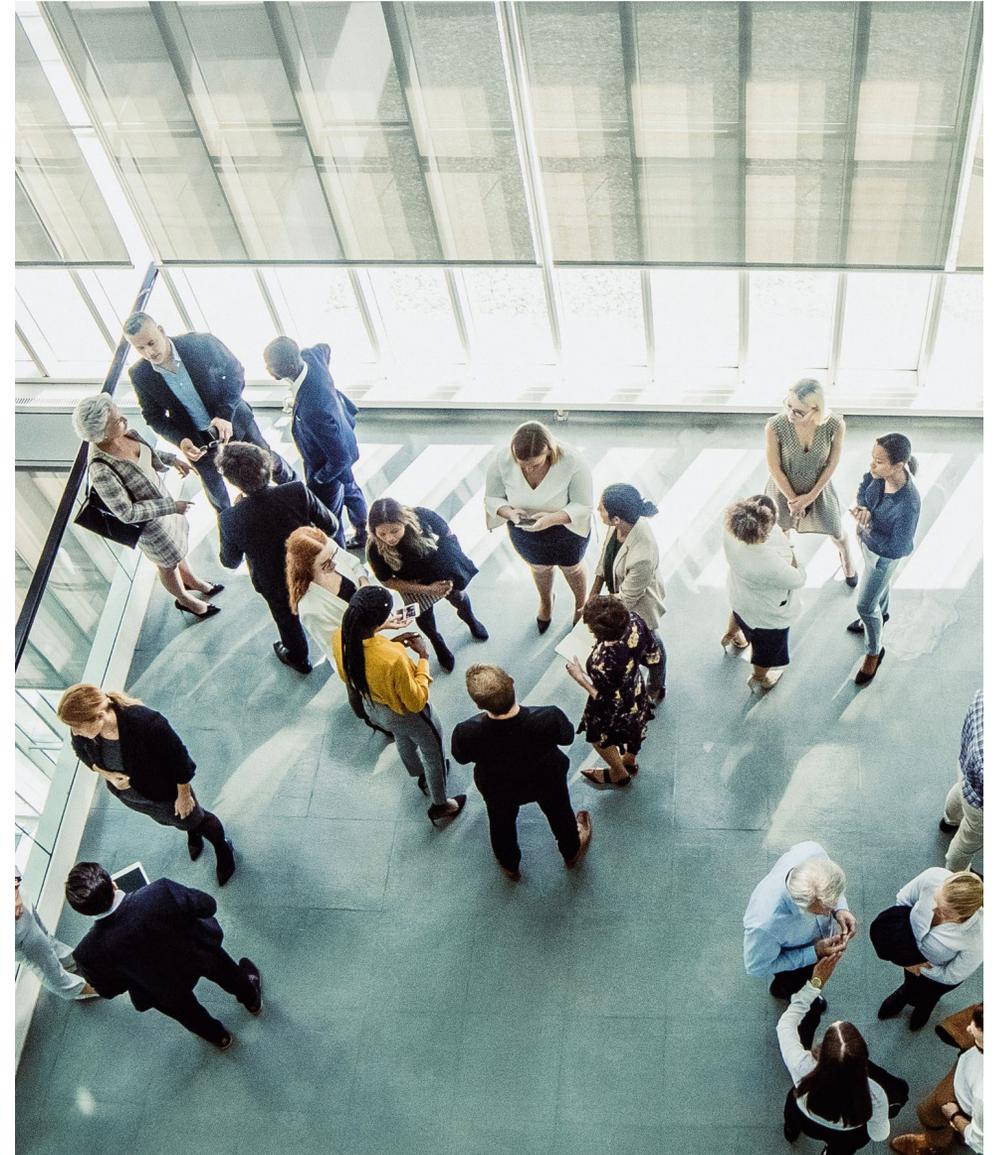
How insurers view Israeli deals: Increased underwriting comfort with regulatory, tax, and IP risks

RWI - what does it mean?

Definition:

Representations & Warranties

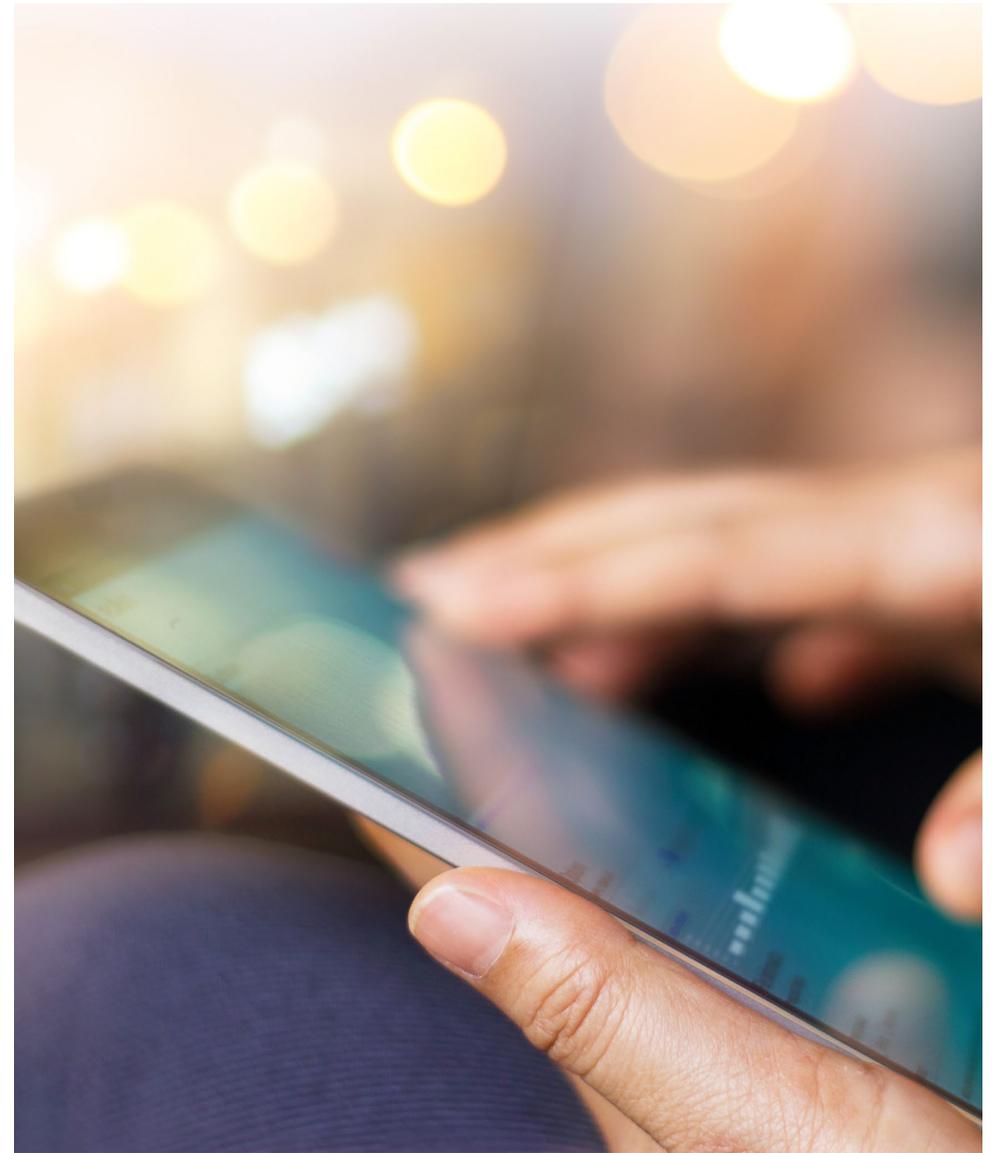
Insurance (RWI) is a **contract between the buyer and an insurance company** that indemnifies the buyer for losses arising from unknown breaches of representations, warranties, and pre-closing tax indemnity in the Sales and Purchase Agreement (SPA).



RWI - Process

Claims Process:

If a breach of representations is identified post-closing, the buyer can file a **claim against the insurance company**. This structure allows sellers to have no (or limited) liability for breaches.



Representations & Warranties Insurance

Transfer of Risk

Placing RWI coverage and transferring the risk to an insurer mirrors a traditional seller's undertaking to indemnify and works 'back-to-back' with the purchase agreement.



Representations & Warranties Insurance

Benefits for Buyers and Seller



Buyer Benefits



Seller Benefits

Easing of negotiations with limited or no escrow needed and reduced negotiation over limitation provisions and representations in the SPA

Extended claim periods under the policy, reducing the periods of liability under the SPA – policy will provide cover for 7 years for fundamental reps, tax reps and pre-closing tax indemnity and 3 years for business reps

Avoidance of length and costly post-closing litigation proceedings, including against sellers remaining active in the company

Benefits from security and 'peace of mind' where there would otherwise be concerns over ability to collect indemnification and/or the risk of being sued and having to pay back proceeds to the buyer

Bid differentiation (increased competitiveness given buyer can agree to seller friendly terms under the SPA and negotiate buyer friendly terms under the policy)

Provides a 'clean exit' by capping liability under the SPA (in some cases to \$1)

Genuine source of recourse against A-rated global insurers and removes need to bring claims against existing management

Removes need for apportionment of liability across sellers and management

Representations & Warranties Insurance

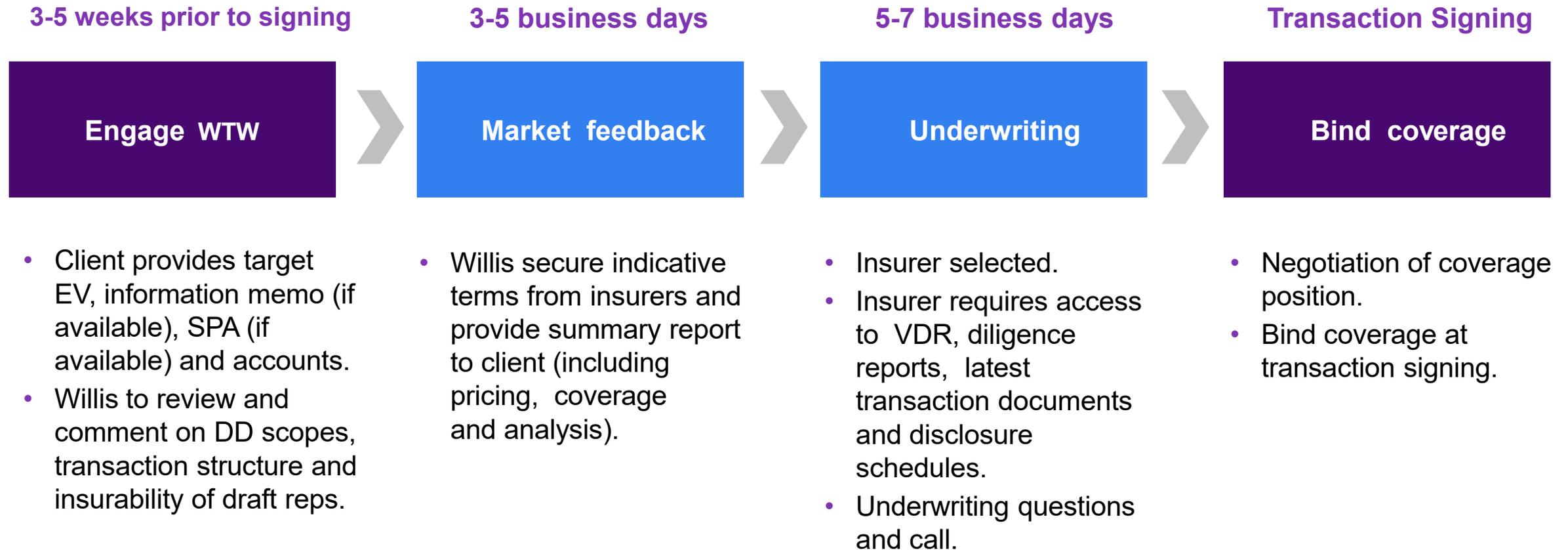
Key Terms and Policy Features

Policy Features	 Buyer & Seller Policies	 Deal size	 Periods of cover	 Liability limits	 Premium	 Retention / Deductible	 Coverage and exclusions	 Subrogation
WTW Comments	<p>Historically placed by the buyer, allowing the seller to retain a ‘clean exit’ and the buyer to claim directly against the policy.</p> <p>Common for RWI process to be instigated by sellers.</p>	<p>Used on deals as small as \$5m and as large as \$5bn+.</p> <p>RWI is used on control transactions, minority investments and public to private transactions.</p>	<p>7 years for Fundamental and Tax Reps and the Pre-closing Tax Indemnity.</p> <p>3 years for Business Reps.</p>	<p>Limits can be taken up to 100% of EV, however common limits are 10-30%.</p>	<p>Driven by the primary target jurisdiction. Typical pricing for Israel is 2% - 3% of the policy limit.</p> <p>Premium is a one-off payment at closing.</p>	<p>0.3 - 0.5% of EV.</p> <p>No retention for Fundamental Reps.</p>	<p>Full suite of business, fundamental and tax reps in SPA, plus any pre-closing tax indemnity.</p>	<p>The insurer has no right to bring a claim against a seller, except in the event of seller fraud.</p>

Representations & Warranties Insurance

Process and Timing

RWI works alongside the **deal timeline** and the policy will go 'on risk' at **signing of the transaction**. Typically, the process will operate as follows (but can be expedited if needed):



Maximizing Value for Sellers

Reducing Escrows & Enhancing Deal Certainty



Key benefits of RWI for sellers:

Unlocking deal proceeds faster

Reducing or eliminating escrow requirements

Enhancing deal certainty & buyer confidence

Structuring policies to protect sellers:

Seller initiated and 'stapled' processes

Determining appropriate coverage limits

Securing favorable policy terms

Managing tax and regulatory considerations

Representations & Warranties Insurance

Representative Transactions

 Enterprise Value	\$700,000,000	 Enterprise Value	\$400,000,000
 Transaction Summary	Acquisition of Israeli gaming company	 Transaction Summary	Acquisition of target cybersecurity company, headquartered in Israel.
 Process	We were approached by the buyer to arrange RWI given seller was offering limited recourse for breaches of reps and warranties.	 Process	We were approached by the buyer to arrange RWI as seller was offering limited recourse for breaches of reps and warranties.
 Outcome	Buyer secured an RWI policy for a limit of \$140m (20% of EV), including with extended coverage periods of IP related breaches.	 Outcome	Buyer secured an RWI policy for a limit of \$85m, including with extended coverage periods of IP related breaches.



Representations and Warranties Insurance Claims Statistics

Willis WTW has been collecting **extensive claims data since 2007**, analysing the nature, trends, causes and cost breakdown of loss events.

Key data points include the following:

- Most frequent claims relate to **tax** (45% of these relating to VAT / Sales tax liabilities). This is followed by **financial and accounting** claims, which are the highest claims by value (due to EBITDA multiple application).
- The highest rate of notifications for outside of tax and financial is losses relating to **commercial contracts** followed by **employment claims** and **compliance with laws and litigation**.
- The average event leading to a claim occurred **c. 2 years** before the acquisition and on average, it takes **c. 6-8 months** for the breach to be identified post-acquisition.



Representations and Warranties Insurance Claim Examples

- **Taxation:** Notification made by insured in relation to VAT tax assessment issued to target. Tax assessment initially only related to 1 year but subsequently expanded to cover a 4-year period. Insured settled tax claim for a significantly discounted value and insurers indemnified them for the settlement and legal expenses incurred.
- **Accounting:** Claims notified by insured when they discovered an under reporting of activities by the target company. The activities were subject to a charge for a consumer protection fund and, as a result of the under reporting, the profits of the company were detrimentally impacted. Acquisition price paid by insured was based on a multiple of EBITDA. Insurers paid out the entire policy limit.



Representations and Warranties Insurance

Claim Examples cont.

- **Commercial:** Following completion date, insured discovered that a key customer handed in notice to terminate prior to closing of the acquisition. The notice was not disclosed and the customer formally ended the relationship one month following closing. Acquisition price paid by insured was based on a multiple of EBITDA and insurers paid out on this basis.
- **Legal Disputes:** Insured was notified that a product shipped by the target had no authorization for the environmental agency. Insured had purchased the product from a vendor with the relevant authorization but subsequently this was retracted and this was not disclosed by the seller. Target was subsequently fined and this was paid by the insurer together with the defence costs incurred by the insured in dealing with the environmental agency.



Contingent Liability Insurance

Insuring 'Known' Risks

- RWI cover **unknown** breaches of reps and warranties; it does not cover '**known risks**' identified in respect of target. Such known risks can be addressed through a **contingent liability policy**.
- Historically confined to insuring **identified tax risks**, we now have policies covering a wider range of liabilities, including in respect of **IP, pensions, regulatory** and **environmental** issues.
- Policy converts contingent liability into a **known cost** (i.e., the premium), providing a buyer with a **source of recourse** in the event of crystallization of risk (removing the need for specific indemnities or escrows in SPA).
- To be insurable, it requires: (i) **quantifiable exposure** and (ii) **diligence** supporting a low/medium risk profile.
- Cost will be fact-dependent – typically within **1.5% to 20%** of policy limit.



Tax Insurance

Insuring Known Tax Risks

Tax insurance is designed to cover **known** tax risks identified by the buyer in a transaction. Key features:

- **10+ insurers** underwriting tax risks in the London market with up to **\$600m of insurance capacity** available.
- **One-off premium payment** typically between **1% and 5.5%** of limits purchased.
- Policy periods can be up to **10 years**.
- Key criteria include: (i) tax risk relates to a **single issue**, (ii) tax **diligence/legal opinion** available to support position, (iii) tax risk **not yet finally determined** by tax authority.
- Examples of **insurable tax risks**: Availability of carried forward assets, Transfer pricing, Tax residency/withholding tax issues, Group reorganizations, Secondary tax liabilities and Payments of advanced tax.



Tax Insurance

Case Study

- **Risk:** Client was looking to acquire a company with significant carried forward ring-fenced corporation tax losses (c. \$400 m). Client wanted to ensure the risk that the carried forward losses in the company could not be utilized post-acquisition. The losses represented a significant part of the value being attributed to the target group.
- **Solution:** We adopted a global placement strategy approaching insurers in London, Europe, Asia and the US and a **bespoke insurance policy was created to cover the specific tax liability.**

Closing Thoughts

Final Takeaways



Key Lessons:

The evolving role of M&A insurance in Israeli transactions

Legal counsel's role in optimizing policy terms

Best practices for maximizing value from RWI

Next Steps:

Engaging early with brokers & insurers

Leveraging insurance to create deal efficiencies

Preparing clients for a smoother underwriting process

Willis WTW Israel M&A team

Key Contact

Joshua Begner leads the Willis WTW Israel M&A team, bringing extensive expertise in transactional risk insurance. Before joining Willis WTW, he spent a decade as a senior corporate attorney at Willkie Farr & Gallagher LLP. In 2022, Joshua relocated to Israel to establish and lead Willis WTW's Israel M&A practice. Since then, he has been instrumental in shaping the market, estimated to have led approximately **75% of all RWI** policies placed on Israeli transactions over the past four years.

Willis WTW has advised on many of the most notable transactions in Israel, with Joshua having placed over **\$5bn** of insurance capital across **70+ Israeli** deals in the past four years.

Thank You



Be in touch

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