

CONTINGENT LIABILITY INSURANCE – DEAL IN REVIEW

DIVESTITURE ENABLED WITH CONTINGENT LIABILITY INSURANCE

THE TRANSACTION

A large, publicly-traded UK company (“parent”) was looking to divest its German subsidiary (“subsidiary”) and to announce that it had no further exposure in Germany as a result of the divestiture. As subsidiary had generated losses since its establishment, parent continually made loans to support it. In addition, parent had provided a number of guarantees in respect of contracts entered into by subsidiary. A buyer had been found and a price agreed.

THE PROBLEM

In connection with its strategy to reduce its loss-generating operations across Europe, parent publicly announced that it was completely withdrawing from the German market and, as a result, needed to be certain that, following the divestiture of subsidiary, it would have no future exposure in Germany. However, under the local insolvency regime, if subsidiary went into liquidation within a fixed period following the closing date of the transaction, there was a possibility that subsidiary’s prior repayment of certain loans to parent and the release of parent’s guarantees (resulting from parent’s payment of the underlying obligations) would be regarded as a preferred payment to a creditor (i.e. parent), which amounts parent would be liable to repay. The present value of this liability was approximately €150m, decreasing by a specified amount annually throughout the statutory limitation period.

SOLUTION

Parent’s insurance broker approached Chartis to lead a €150 million insurance program. Chartis, working with the insurance broker, coordinated and led the insurance market’s due diligence review of the transaction and the particular risk in question, which involved both UK and German counsel. A quick response from the insurance market was needed as the timing of the announcement of the divestiture to the public markets was critical to the parent.

Within the required timeframe, Chartis completed its underwriting and offered binding terms to parent on a €150 million specific indemnity insurance policy that provides cover for parent for the statutory limitation period in the event that subsidiary becomes insolvent and parent becomes liable for the repayment of the “preference” amounts discussed above. As a result, parent was able to announce that it had exited the German market with no ongoing exposure.

HOW TO CONTACT US

To learn more about contingent liability insurance and other transactional insurance products, please visit our website, www.ChartisInsurance.com, send us an e-mail at MAInsurance@chartisinsurance.com or contact your insurance broker.