Marsh

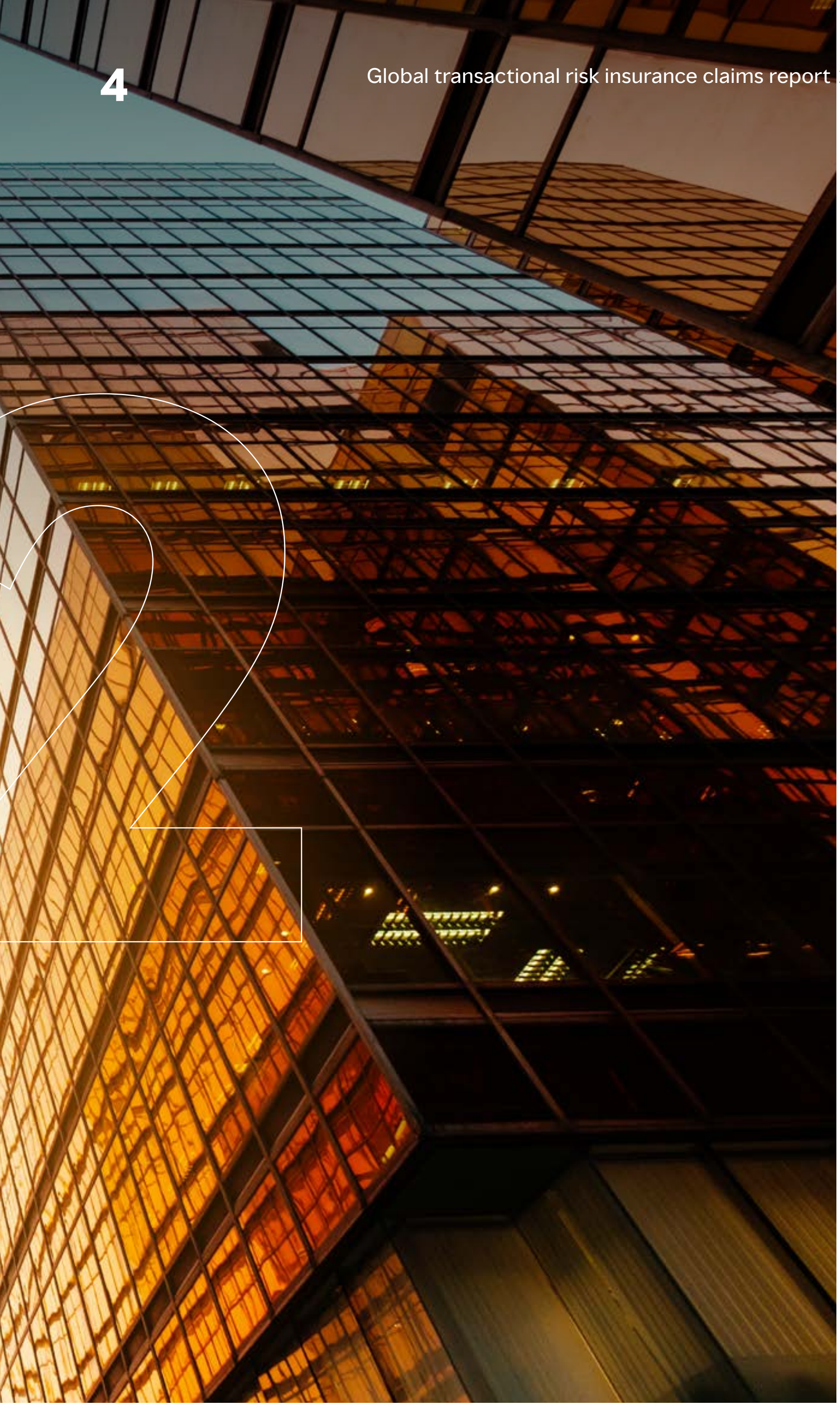
Global transactional risk insurance claims report 2023

Contents

Introduction

The increased adoption of transactional risk insurance as a tool for parties to offload risk in mergers and acquisitions (M&A) has led to a corresponding rise in claims.

The *Global Transactional Risk Insurance Claims Report 2023* focuses on claims made against representations and warranties (R&W) policies — also known as warranty and indemnity (W&I) policies — reported and paid in 2022. This year's report shows how the claims landscape continues to evolve.



Global snapshot

In 2022, claim notifications increased 25% over 2021.

The average time to notification increased across all regions.

The percentage of financial statements claims decreased significantly, while the percentage of claims related to tax, compliance with laws, and litigation increased.

Marsh insureds received over US$232 million in claim payments in 2022.

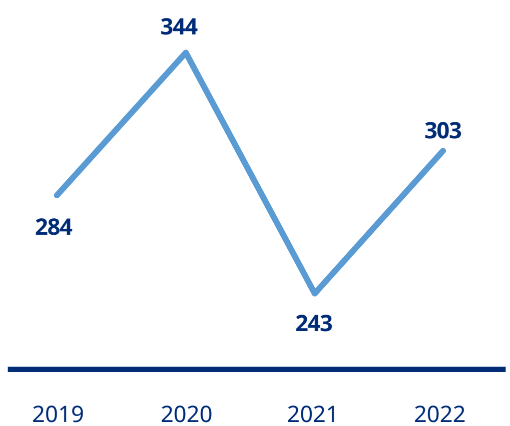
The bulk of amounts paid in 2022 came from financial statements breaches notified in previous years.

Global trends

M&A activity reached an all-time high in 2021, leading many in the transactional risk insurance industry to predict that this would result in significant claims activity in 2022. While there has been a substantial increase in global claim notifications, the expected surge in claim notifications in correlation with policy inceptions has not yet materialized.

Although the number of claim notifications in 2022 was 25% higher than in 2021, this was still below the number of claims reported in 2020. The percentage of insured deals that received a claim varies regionally, with North American deals receiving claims at more than twice the rate of deals in Europe, the Middle East, and Africa (EMEA). But globally, we have historically seen approximately 14% of insured deals receive a claim. If this trend persists, we anticipate claim notifications continuing to increase in line with the higher number of insured deals that closed in recent years.

01| Global claim notifications



02| Percentage of transactions with a claim according to policy year[1]

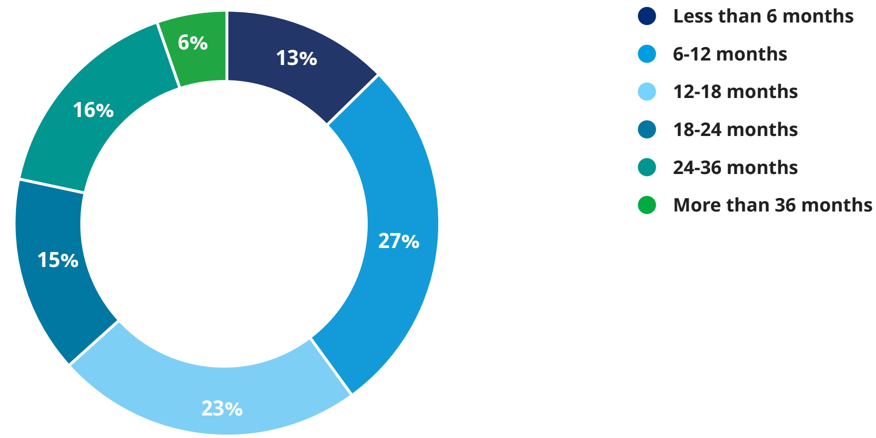
	2018	2019	2020	2021	2022
North America					
	19%	21%	14%	8%	4%
EMEA					
	9%	8%	6%	6%	3%
APAC					
	16%	11%	15%	14%	9%
Global					
	14%	14%	11%	8%	4%

1 Policies closed in 2020-2022 will likely receive additional claims, and we expect the final percentages for those years to be higher.

In 2022, the time from policy inception to claim notification was longer than in prior years. In contrast to the period between 2019 and 2021, when insureds reported 49% of claims within one year after policy inception, in 2022 the percentage dropped to 40%, with all regions showing reductions in claims notified within six months. As a result, nearly all other timeframes saw an increase, the largest being for claims reported between 24 and 36 months. This shift may be due to the drop in claims notified during 2021, when insureds were more focused on recovering from the COVID-19 pandemic.

The longer time from policy inception to claim reporting sheds light on the value of the product. Our data shows more than 60% of claims in the APAC region came more than 24 months after policy inception. Since seller indemnities often expire after one year, if the majority of claims continue to arise after the typical indemnity period, R&W policies will provide significant value to insureds who would otherwise have no recourse to recover losses.

03| Time to notification (2022)

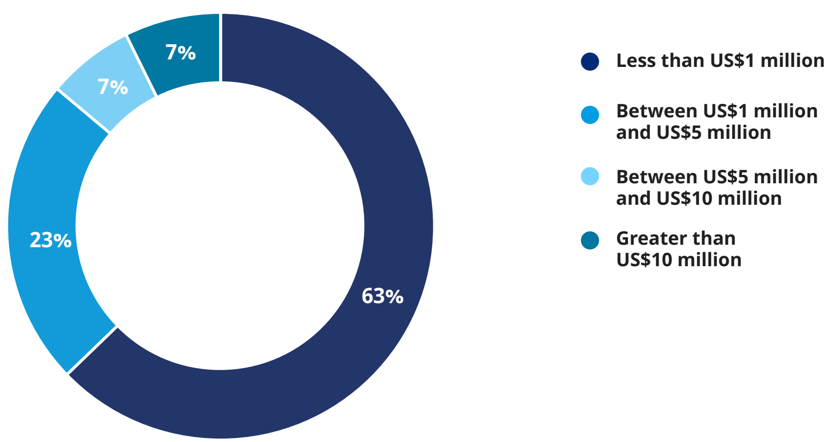


Tax, compliance, and financial statements breaches have remained the top three types of breaches since 2019, although their proportion of overall breaches have changed. Tax breaches were the most common in the period between 2019 and 2021, making up 21% of all breaches; the percentage of claims asserting tax breaches increased to 25% in 2022, which reflects a significant increase in tax claims in the EMEA region. In 2022 we also saw a significant increase in claims asserting compliance with laws breaches, largely coming from North America, comprising 17% of all claims. Financial statements breaches continue to be common, though they represented only 13% of claims in 2022, a significant decline from prior years, with a decrease registered in all regions. This may be due to insureds taking longer to notify, especially considering that financial statements claims are complex and sometimes difficult to uncover. We will continue monitoring whether this trend perseveres.

04| Types of breaches

	2019-21	2022	Difference
Tax	21%	25%	+4%
Compliance	12%	17%	+5%
Financial statements	20%	13%	-7%
Litigation	7%	13%	+6%
Material contracts	11%	8%	-3%
Intellectual property	5%	5%	0%
Operations	3%	5%	+2%
Employment	10%	4%	-6%
Environment	5%	4%	-1%
Fundamentals	4%	2%	-2%
Other	3%	5%	+2%

05| Claimed losses (2022)[2]

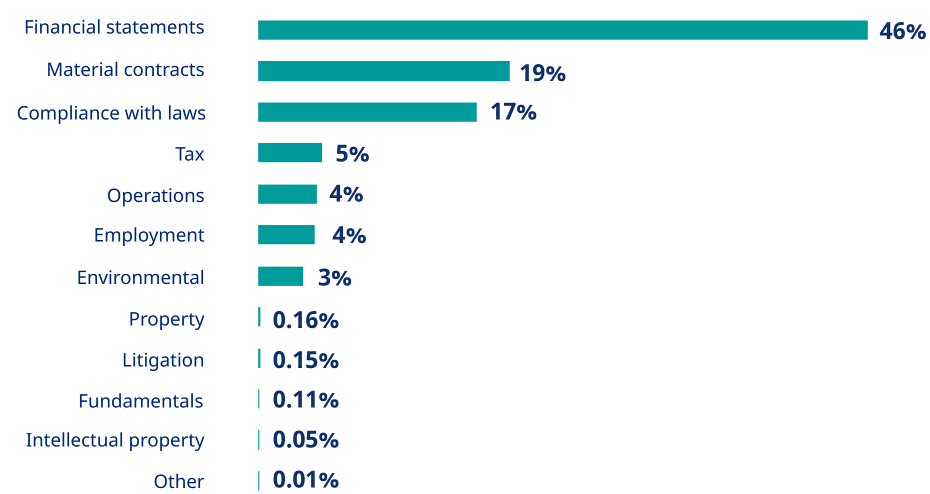


The aggregate loss amounts claimed in notifications made in 2022 totaled nearly US$500 million. Most claimed losses were less than US$1 million, with 7% exceeding US$10 million. While the average loss amount was US$3.3 million, loss amounts varied significantly based on breach type and deal size. Nearly 50% of the total claimed loss amounts came from financial statements breaches, despite representing only 13% of the total claims.

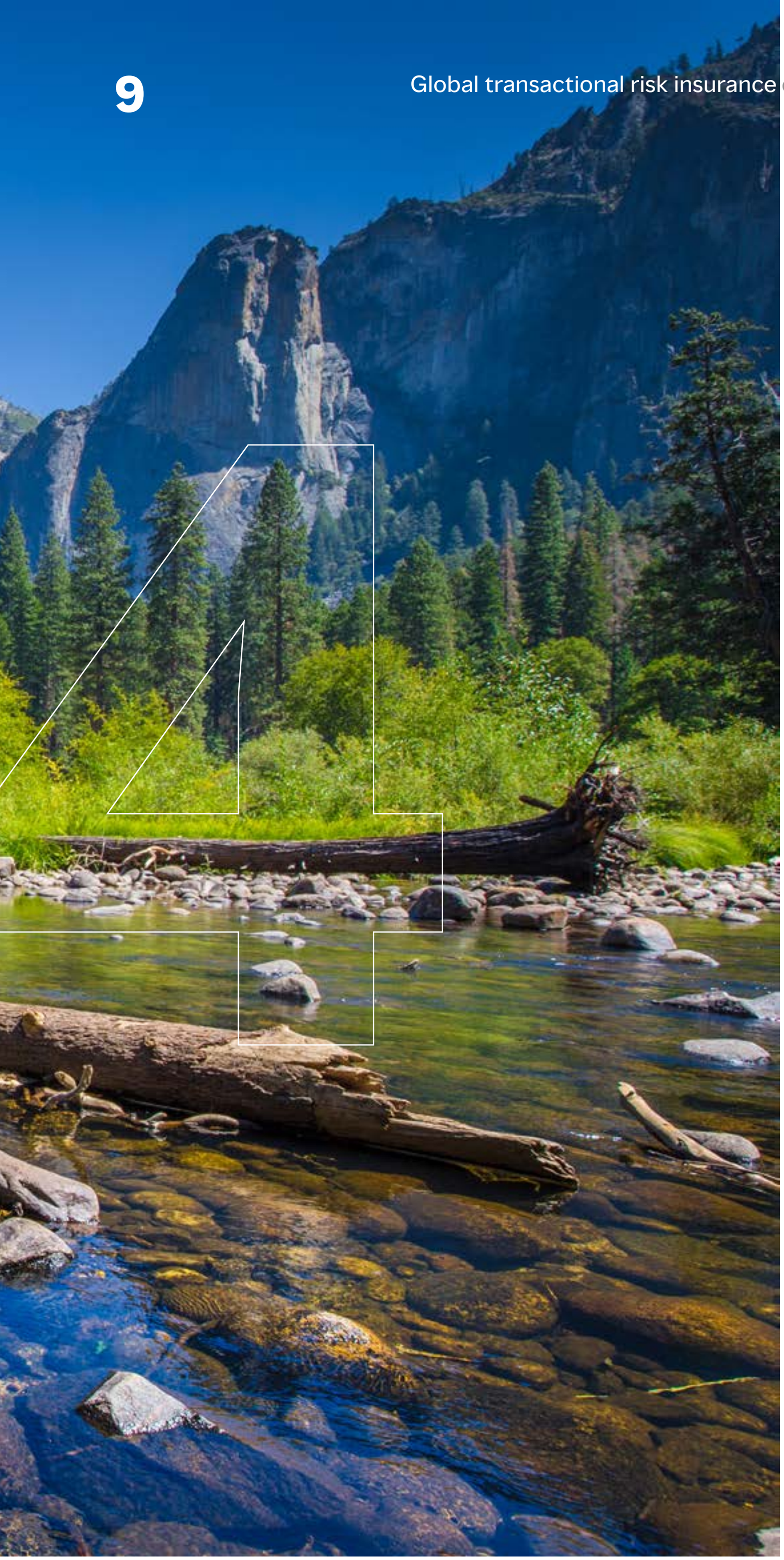
Marsh clients received over US$232 million in claim payments in 2022, a significant rise over prior years. With the increasing number of policies and claims, we expect a corresponding increase in the number of claim payments. The amounts paid, however, may not follow a straightforward trajectory, as loss amounts do not depend on the volume of M&A transactions or claim notifications.

Financial statements, material contracts, and compliance with laws breaches produced over 82% of all claim payments in 2022, with payments for financial statements breaches comprising nearly half of the total. Since financial statements and material contracts breaches comprised a smaller percentage of claims in 2022 compared to historical averages, we will be monitoring whether the reduction leads to smaller amounts being paid. We will also be monitoring whether the increase in compliance with laws claims leads to a corresponding rise in claim payments for those breaches.

06| Amounts paid by breach type (2022)



2 These figures do not account for claim notifications where the loss amounts were unknown at the time of notification, which is common for third-party claims in litigation and tax audits where the outcome is uncertain

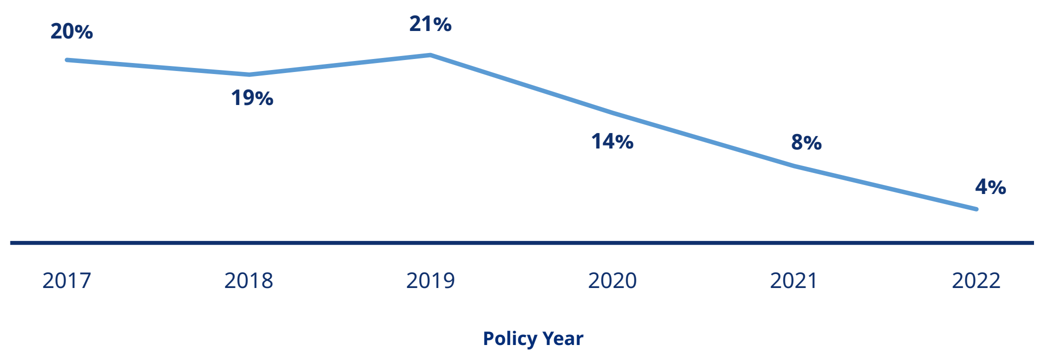


North America

INCREASED CLAIMS NOTIFICATIONS

North America registered increased claims volume in 2022, with 184 reported claims on 119 transactions, compared to 160 claims on 97 transactions in 2021. The increase was not as high as we anticipated given that Marsh placed policies for approximately 1,000 transactions in 2021 and we have historically seen one in five deals receive a claim, most of which are reported within a year of the deal closing.

07| **Percentage of insured deals with a claim[3]**



3 Chart reflects claims reported through the end of 2022.

INSUREDS SUBMITTING CLAIM NOTIFICATIONS LATER

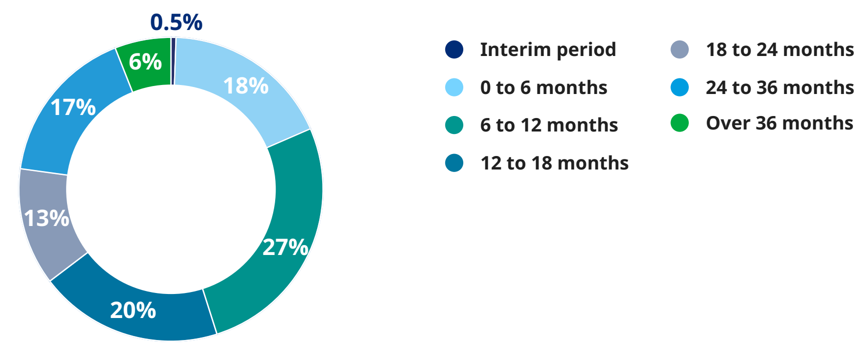
The lower than expected claims volume could be due to later reporting by insureds. For the first time since we started tracking data, a majority of claims came in more than 12 months after closing. In 2022, only 45% of reported claims came within 12 months of closing, in contrast to 58% in 2021 and 53% in 2020. Even when analyzing only first-party claims, which are more likely to arise within a year of the buyer taking control of a business, our data shows a significant decrease (53% in 2022 versus 68% in both 2021 and 2020). We will continue monitoring to determine whether this becomes a trend; so far our data shows this has persisted into 2023.

TOP BREACH TYPES EVOLVING

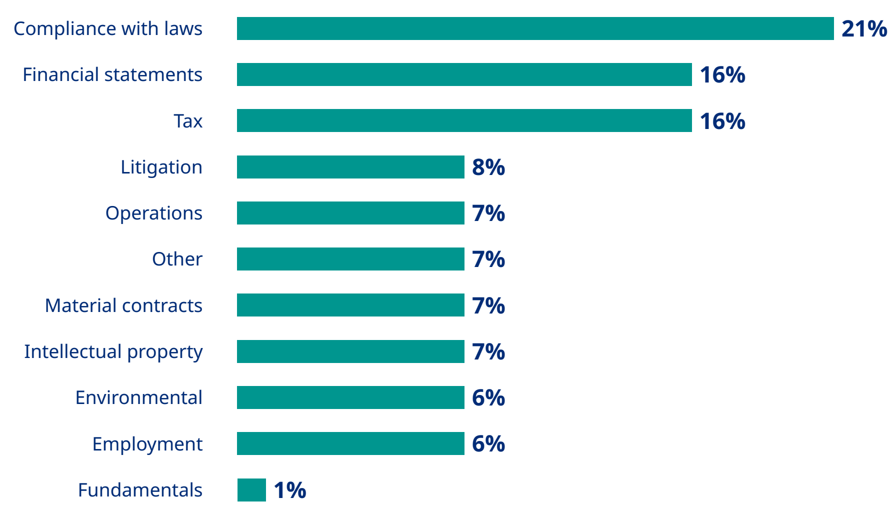
Financial statements and tax breaches continued to comprise a substantial percentage of claims, but the largest percentage of claims in 2022 arose from compliance with laws breaches. While these types of breaches have historically comprised a significant percentage of claims each year, 2022 was the first year it was the most common breach type. In prior years, these types of claims arose primarily from third-party allegations, but the number of first-party compliance with laws claims increased significantly in 2022 and the number of first-party versus third-party claims was nearly even.

The increase in first-party versus third-party claims was not limited to compliance with laws breaches. Nearly 50% of reported claims were first-party claims in 2022; in both 2020 and 2021 third-party claims comprised more than two-thirds of claims. It is unclear whether 2022's increase was due to a greater effort by insureds to uncover breaches or simply a decline in third-party issues. Regardless of the cause, since first-party claims have been the more significant source of claim payments, we are watching how this develops going forward.

08| **Time to notification from closing (2022)**



09| **Claims by breach type (2022)**



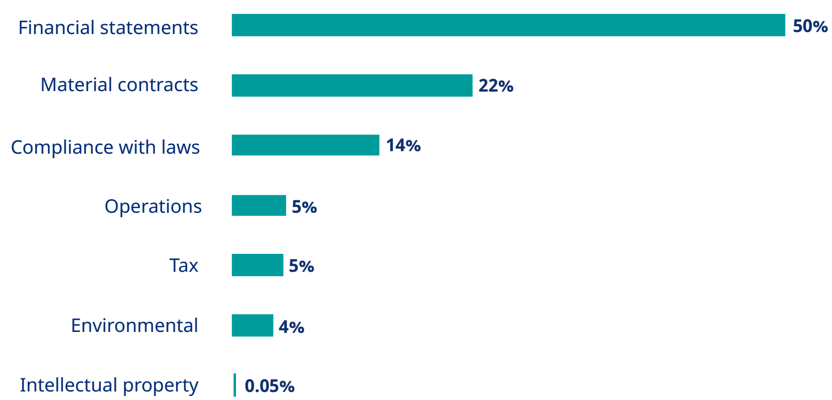
INSUREDS RECOVERED SUBSTANTIAL CLAIM PAYMENTS

Marsh clients in North America received more than US$200 million of payments from R&W policies in 2022. More than 80% of the amounts paid resulted from first-party losses. Approximately 80% of the amounts paid also involved a claim asserting loss based on a multiple of earnings before interest, taxes, depreciation, and amortization (EBITDA).

Consistent with previous years, the majority of paid claims involved a financial statements breach; these types of breaches have historically proven to be the most significant source of losses under R&W policies. Material contracts breaches have regularly produced the second largest payment amounts annually and accounted for 22% of the amounts paid in 2022. Since both financial statements and material contracts breaches can lead to losses based on a multiple of EBITDA, we expect these types of breaches to continue generating the majority of paid claims.

Most claim payments in 2022 came within 18 months of the claim notice, though the timing of payment varied significantly. One client received a large eight-figure payment only a few months after submitting the claim notice, while other clients received payments more than three years after reporting their claims. Although the data does not show a notable change in time to payment over the last few years, the timing for first-party claim payments might accelerate in the future as insureds and counsel become more familiar with the claim process and insurers hire more adjusters to handle the growing claims volume. Third-party claims, however, depend on the resolution of underlying matters, and protracted litigation or lengthy tax audits can delay claim resolutions and increase the average time to payment.

11| Amounts paid by breach type (2022)



INSURED
United States strategic buyer

TARGET
Food manufacturer

LOSS
US$85 million

RETENTION
US$1.3 million

CLAIM PAYMENT
US$20 million

North America claims case study

PRODUCT MISLABELING

Issue

The insured buyer discovered that the target food manufacturer had not been labeling its products with accurate ingredient information. This information was not disclosed to the buyer before the transaction.

Upon discovery, the buyer corrected the mislabeling and disclosed the issue to its largest customer, which pulled products from its stores and demanded compensation.

Since this customer represented a significant portion of the company's revenue, the loss of that account created significant financial challenges for the company.

Insurer's response

The insurer questioned whether the loss of the major customer was permanent or if the food manufacturer would be able to reacquire the customer and limit future losses. The insurer was willing to pay for the documented out-of-pocket costs but was hesitant to pay for future losses that were uncertain.

How we helped

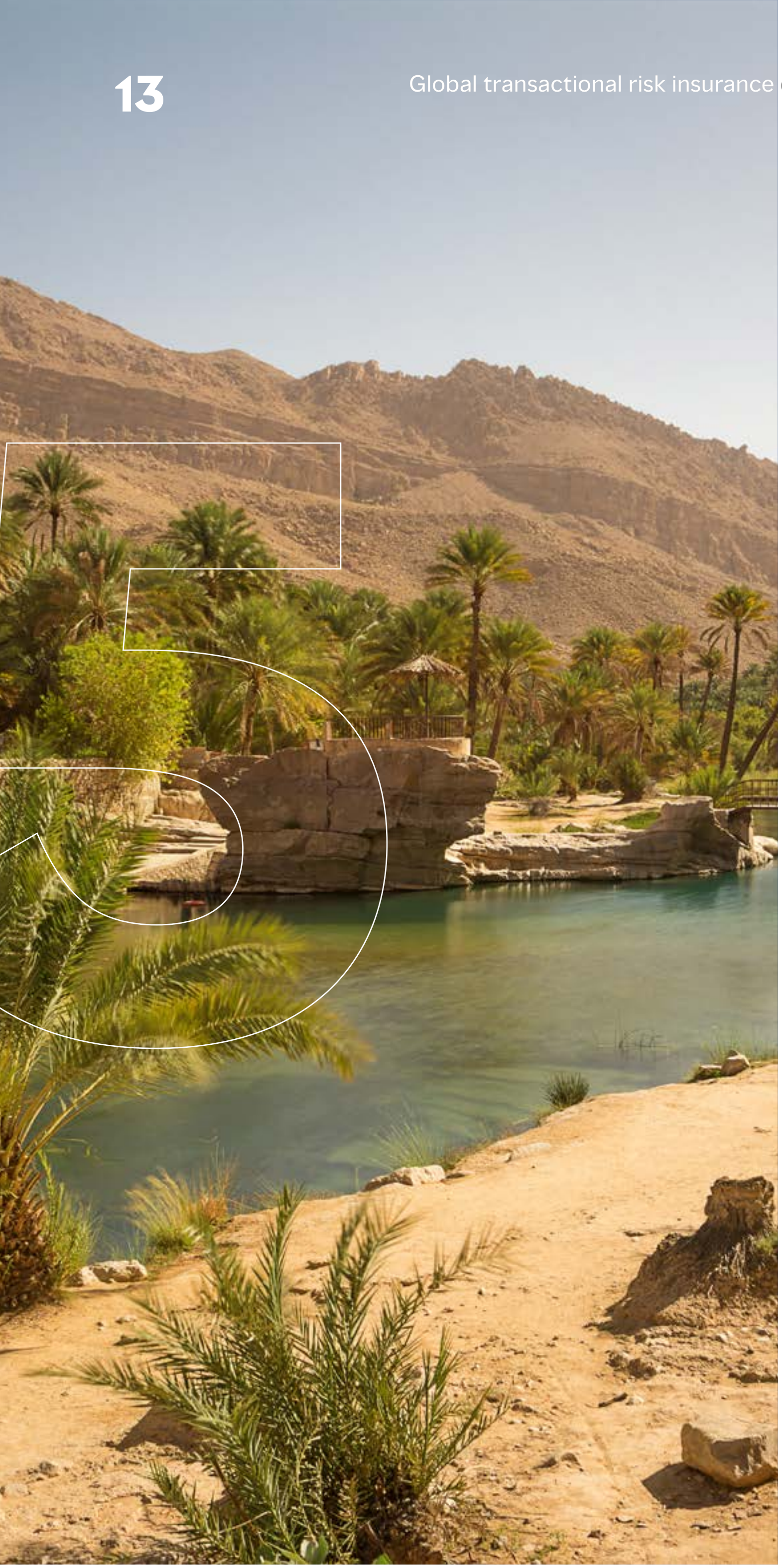
Marsh's forensic accounting and claim service experts helped quantify the loss, including out-of-pocket costs, business interruption losses, and the diminished value of the business.

Through regular communications, Marsh's claims advocates explained to the insurer that the loss of business was negatively impacting the company's finances and urged the insurer to conduct its investigation and pay the claim quickly.

The team also requested that the insurer waive subrogation to avoid a public lawsuit, which could lead to additional losses for the insured.

Outcome

Though strong advocacy on behalf of the insured, Marsh specialists helped negotiate a $20 million payment to the client and the insurer's agreement to waive subrogation rights. Although the payment represented a slight discount from the full policy limit (to reflect the subrogation waiver and uncertainty about future losses), the client was pleased with the result because it not only received the payment quickly without waiting to see if it could regain the customer, but also avoided a public lawsuit over the mislabeling.



EMEA

In 2022, we saw a shift from a promising first half of the year — during which the high volume M&A trend of 2020 and 2021 continued across EMEA— to a more scattered view in the second half of the year, with some regions showing significantly lower transaction volumes, in particular for larger deals. This change largely correlated with the overall drop in M&A activity across the globe, most particularly for the financial sponsor segment.

Claim notifications did not register a similar downward shift in activity, with 2022 seeing a record number of notifications to insurers across the region. However, the policy notification ratio — the percentage of policies that have received one or multiple claims — was lower compared with the other regions.

Formal claims and precautionary claims were generally notified later, although the majority were still made within the first year since policy inception.

In contrast to recent years, tax stood out as the most common breach type in 2022, with more notifications than financial statements, litigation, and material contracts breaches. Most of the actual claims paid (or agreed to be paid) in 2022 were related to tax and financial statements claims.

Lastly, clients' sophistication in the use of warranty and indemnity (W&I) insurance across the region has also increased the interest in and understanding of how individual insurers are dealing with W&I claims in terms of process, claims teams, and responsiveness.

In 2022, we recorded 96 claim notifications across the region, which is a dramatic 65% increase over the prior year.

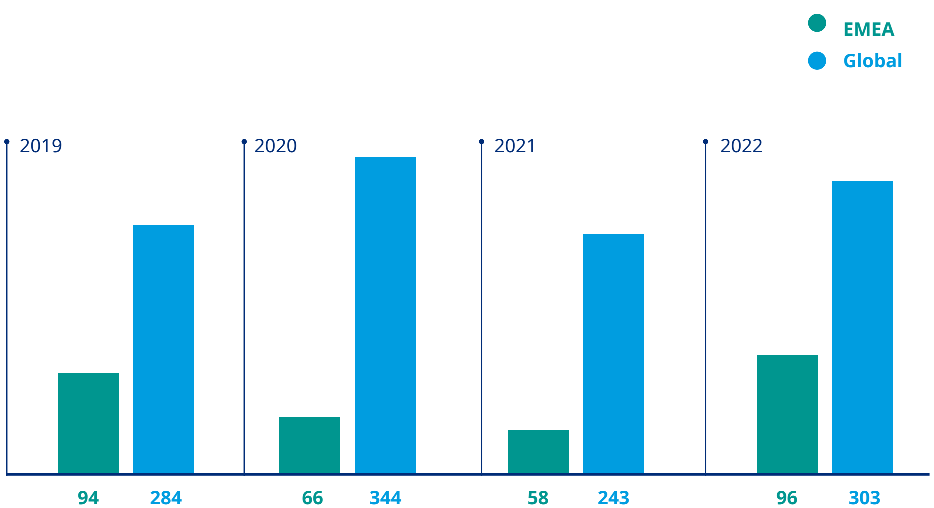
The current surge in notifications is in line with the increase in placed policies, most notably in 2020 and 2021, which — as indicated in last year's report — was an expected trend. We should note, however, that the increased number of overall claim notifications is also explained by the fact that an unusually high percentage of EMEA claims in 2022 were notified to policies which received more than one notification.

Looking at the number of policies placed in 2021 and 2022, and taking into account that the vast majority of claims are being notified within the first 18 months after the policy's inception, we expect the number of notifications to remain stable in the next year.

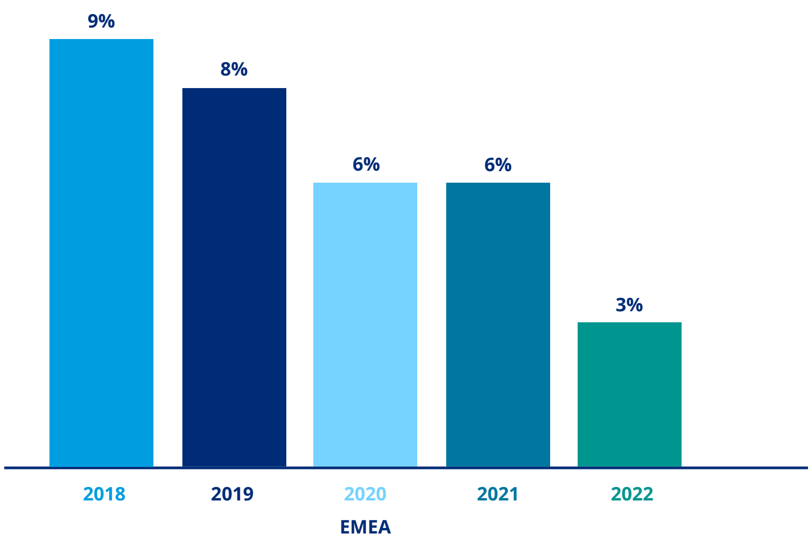
The percentage of policies with one or multiple claims notified during the inception year is lower in EMEA than the global average.

W&I insurance typically has a policy period of two to three years for general warranties and seven years for fundamental and tax warranties. Because of the long-tail nature of these policies, we expect to see more notifications against policies placed in previous years, especially 2021 and 2022. At the same time, a significant part of the claims notifications that we have seen were made between 18 and 24 months after the policy inception date (see Figure 14), so we can reasonably conclude that there is a low likelihood that policies from the 2018 to 2020 period will receive materially more claims.

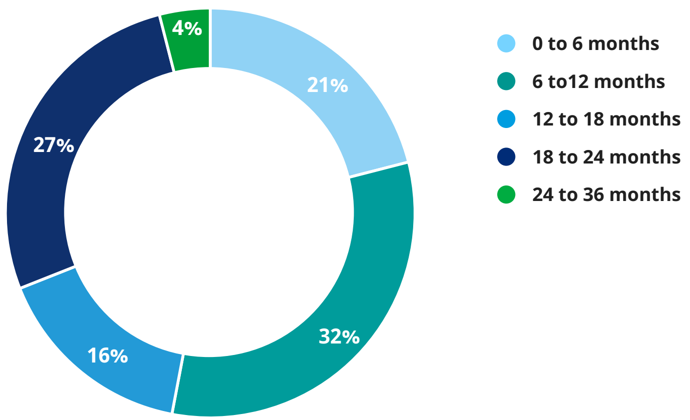
12| Significant increase in notifications since 2021



13| Percentage of deals with claims notifications



14| Timing of notifications



15| A shift towards later notifications

	EMEA		
Time to notify	**2019-21**	**2022**	**Difference**
0 to 6 months	36%	21%	-15%
6 to 12 months	23%	32%	+9%
12 to 18 months	19%	16%	-3%
18 to 24 months	8%	27%	+19%
24 to 36 months	10%	4%	-6%
Over 36 months	2%	0%	-2%

Most claims were notified within the first year after the inception of the policy, which has been the trend in recent years. But the percentage of claims notified within the first six months has dropped substantially, while far more matters have been notified to insurers in the 18 to 24 month period.

16| Tax claims on the rise

Breach type	EMEA			Global		
	2019-21	2022	Difference	2019-21	2022	Difference
Tax	21%	39%	+18%	21%	25%	+4%
Compliance	13%	13%	0%	12%	17%	+5%
Financial statements	24%	11%	-13%	20%	13%	-7%
Litigation	8%	11%	+3%	7%	13%	+6%
Contracts	14%	11%	-3%	11%	8%	-3%
Intellectual property	0%	2%	+2%	5%	5%	0%
Operations	2%	1%	-1%	3%	4%	+1%
Employment	6%	3%	-3%	10%	4%	-6%
Environment	3%	1%	-2%	5%	4%	-1%
Fundamentals	4%	3%	-1%	4%	2%	-2%
Other	6%	4%	-2%	3%	5%	+2%

In 2022, 39% of all notifications in the region were related to tax claims, followed by compliance with laws claim notifications with a 13% share. This marked a dramatic shift from the period between 2019 and 2021 when financial statements were the most common alleged breach type, followed by tax. This year's data is more in line with global trends with tax breaches topping the charts of notifications.

The second half of 2022 saw an increase in the number of tax notifications. This was mainly triggered by insureds receiving audit notices to be carried out by relevant tax authorities, which is a trend that continues in 2023 and at an even quicker pace.

There are two likely reasons for the increase in scrutiny:

- Tax authorities have resumed their activity in earnest as they try to eliminate the backlog created by the slowdown in their activity during the early phase of the COVID-19 pandemic.
- Governments are trying to increase their revenue base in the face of higher expenses.

Aside from tax breaches, the majority of notifications related to breaches of compliance with laws, material contracts or litigation warranties. We expect to see an increase in notifications of breaches of financial statements, material contracts, and litigation warranties in 2023, leading to a more balanced view of breach types.

PAYMENTS SLOWED IN 2022, HIGHER ACTIVITY ANTICIPATED IN 2023

The number of claims that reached a final resolution in 2022 is in line with what we have seen historically, taking into consideration the increased use of W&I policies. There were a number of claims that were accepted by insurers, but not paid out before year's end because the formalities necessary to process the actual loss payments had not been finalized. Since these payments have now been transferred to 2023, we expect an active year in terms of actual claims payments.

We should note that while the number of agreed claims — including those awaiting payment — were at expected levels, the actual value of the claims paid was relatively low in 2022 compared to previous years. This is mainly because while several straightforward claims were accepted and paid, some larger and more complex claims are still pending resolution.

Of all claims notifications accepted in 2022, the largest share relates to tax and financial statements claims. Tax-related claims can be notable in size, while financial statements claims can include multiple components, which may substantially expand the size of the loss suffered by the insured.

INSURED
European investor

TARGET
UK healthcare services

LOSS
GBP750,000

RETENTION
GBP35,000

LIMIT
GBP7 million

CLAIM PAYMENT
GBP550,000

UK claims case study

ACCURACY OF RECORDS AND MATERIAL COUNTERPARTY

Issue

The buyer and seller of a healthcare services company agreed on the target's enterprise value based on financial information disclosed by the seller. After the transaction completed, the buyer discovered that the target was achieving a significantly lower EBITDAR than expected on the basis of what was reported in the Financial Due Diligence (FDD).

Lacking W&I claims experience, the insured submitted the claim notice directly to the insurer. The notification provided a summary of the facts and a list of warranties that could have potentially been breached, but did not explain how they had been breached and did not provide supporting documentation.

Insurer's response

The insurer's counsel made requests for information that were difficult to answer and did not adequately address many of the points made by the insured.

The insurer questioned the insured's interpretation of the meaning and nature of 'material counterparty' and 'records', which were key terms to two of the main warranties that had allegedly been breached.

Additionally, the insurer considered that cover with respect to one of the key misstated records was excluded since the issue was mentioned in the FDD report and was therefore considered 'disclosed'.

How we helped

Marsh helped the insured navigate the letters from the insurer's counsel in order to:

- Provide the required documentation to prove sellers' knowledge.
- Explain the context in which 'material counterparty' had to be interpreted and why one of the key misstated records could not be considered to have been disclosed due to the significant difference in scope with the figures in the FDD.
- Furnish the information required to adjust the loss claimed.

Outcome

Marsh negotiated with the insurer to reach a commercial settlement that reflected the loss suffered by the insured.

The amount paid allowed the client to recover a significant amount of its losses after the retention was eroded. It was also able to avoid the costs of litigation.

European claims case study

MISEVALUATION AND MISDECLARATION OF GOODS

Issue

Merchandise imported by the target company into the United States was valued incorrectly and therefore the values declared to customs were wrong. After the insured's purchase of the target went through, the company was asked to pay EUR3 million in additional customs, duties, and/or tariffs.

The misevaluation and inaccurate declaration constituted a breach of tax and compliance warranties under the transaction agreement.

Insurer's response

The insurer acknowledged receipt of the claims notice on the same day and proposed a preliminary call between the insurer, a representative of the insured, and a claims specialist from Marsh.

Shortly after the call, the insurer followed up with its preliminary view in writing, along with a concise request for information, which was provided by the insured the following week.

Within six weeks, the insurer confirmed coverage and agreed to pay the claimed amount, subject to a mutually agreed settlement agreement. The settlement agreement was drafted and executed within a week. The payment was made three months after notification.

How we helped

Marsh monitored the process to get the insurer to swiftly process and evaluate the claim, revised the insured's correspondence and documentation, and liaised with the insurer on behalf of the insured.

Outcome

This claim is a textbook example of a smooth and fast claims process. The insured was very pleased with the outcome.

The preliminary call shortly after the notification helped create a friendly and collaborative process, allowing the insurer to quickly get a clear understanding of the matter at hand. The rapid turnaround on both ends resulted in a speedy claim process.

INSURED
Corporate investor

TARGET
Manufacturer of electronics

LOSS
EUR3 million

RETENTION
EUR2.5 million

LIMIT
EUR25 million

CLAIM PAYMENT
EUR500,000

Asia Pacific

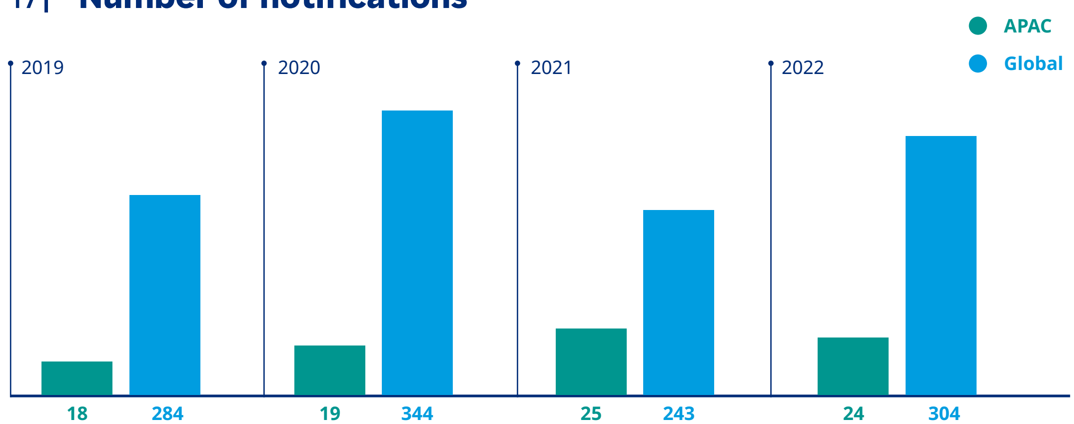
We saw continued growth in 2022 with the entry of various new insurers into the regional market and a general expansion of insurer appetite for Asia-Pacific transactions and related risks. We welcome the domestic expansion and we foresee that a key differentiator for carriers, from a placement perspective, will lie in their ability to pay claims, and to do so seamlessly and expeditiously.

In 2022, we continued to see a correlation between a steady deal count and notifications received on policies placed. We also saw record-breaking claim payments across the region, including several domestic claim payments by local W&I insurers.

Asia-Pacific is still relatively young in its adoption of transactional risk solutions, but as the market stabilizes and matures, we expect an increase in the volume of claims and number of payments.

A total of 24 notifications were filed in the region during the year, almost the same number filed in 2021. Note, however, that notifications overall increased by 30% from 2019, compared to a 7% growth in global notifications, which reflects the growth of the market in the region. We expect to see notifications increase as our placement book grows, before aligning with global rates of notification.

17| Number of notifications



DEALS WITH CLAIMS

In the region, 9% of deals finalized in 2022 received a claims notification during the year. This is to be expected given that clients across the region often file precautionary notifications in reservation of their rights under the policy, even when potential losses are well below the retention threshold. Overall, the rate of claims has decreased over the last two years, mirroring reported statistics across the globe. It is foreseeable that Asia-Pacific comparative rates of claims will continue to stabilize and align with global norms as the increase in the uptake of W&I insurance in the region continues.

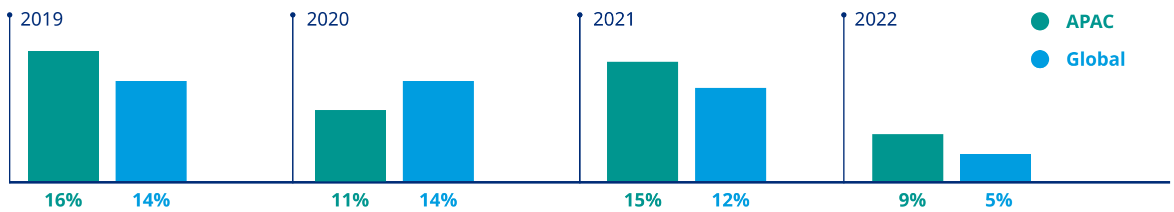
TYPES OF CLAIMS

In recent years, Asia-Pacific claims were predominantly related to tax and financial statements warranties. However, litigation warranties became the leading category of breach across the region in 2022, accounting for 64% of all claims notified.

This finding is unsurprising for several reasons.

First, only 14% of the notifications stemmed from targets located within the region, with the vast majority of filings having originated from cross-border outbound placements in more litigious jurisdictions.

18| Percentage of deals that received claims



19| Breach types

Breach type	APAC			Global		
	2019-21	2022	Difference	2019-21	2022	Difference
Tax	43%	23%	-20%	21%	25%	+4%
Compliance	10%	5%	-5%	12%	17%	+5%
Financial statements	17%	0%	-3%	20%	13%	-7%
Litigation	10%	64%	+54%	7%	13%	+6%
Contracts	5%	5%	0%	11%	8%	-3%
Intellectual property	2%	5%	+3%	5%	5%	0%
Operations	0%	0%	0%	3%	4%	+1%
Employment	10%	0%	-10%	10%	4%	-6%
Environment	2%	0%	-2%	5%	4%	-1%
Fundamentals	0%	0%	0%	4%	2%	-2%
Other	0%	0%	0%	3%	5%	+2%

The majority of breaches reported in the region — 57% — stemmed from a single deal. This unusual occurrence meant that the same deal received double-digit notifications, with the insured claiming that financial statements, tax, compliance, and intellectual property breaches resulted from the same events as the litigation breaches. We should point out that litigation warranty breaches still only accounted for 13% of all notifications filed globally last year. Given that litigation warranty breaches in the region were a minor driver of claims frequency until 2022, it remains to be seen whether the surge in these notifications is an anomaly or a trend to monitor in the future.

Close to a quarter — 23% — of all notifications filed in the region in 2022 related to a tax warranty breach. This is in line with global data, where 25% of all notifications made during the year were in relation to a tax breach. If allegations of financial statements breaches were filed as standalone notifications, rather than concurrent litigation breaches, they would have accounted for around 20% of all notifications in 2022, aligning with global trends for the period between 2019 and 2022.

These findings continue our long-held belief that, in certain jurisdictions in Asia-Pacific, it is very difficult to conduct full due diligence on tax and financial statements at the pre-acquisition stage, which will continue to be areas of risk across all jurisdictions. Transactional risks insurance solutions will continue to be seen as a major source of mitigation for these unknown risks.

TIMING OF NOTIFICATIONS

In 2022, a majority of clients in the region filed claims notifications after the second year of their policy's inception. This differs from previous findings that a majority of notifications are filed within the first year to 18 months.

In the period between 2019 and 2021, 40% of claim notifications in the region were filed within six months of a policy's inception. In contrast, in 2022, 52% of insureds filed notifications between 24 and 36 months after the policy was placed. We believe that clients in the Asia-Pacific region would prefer to act promptly and proactively in reserving their rights against the policy, and this delay in notification is largely a function of the types of claim notifications received during the year. A majority of these filings were made on a precautionary basis close to a policy's general warranty expiry date, which in Asia-Pacific is typically three years from the date of completion. This would have been a major factor in the overall increase in the number of notifications received later in a policy's life. Since the product operates on a "claims made" basis, it is to be expected that clients are likely to secure their rights under a broad range of potential breach events prior to the expiry of the policy period.

On the other hand, we note there was a 14% increase in the number of claims filed between six and twelve months after inception. While the overall timing of notifications may have slowed, this does show that many clients are still acting proactively in bringing a notification to an insurer's knowledge promptly in the post-acquisition period.

20| Move toward later notifications

Time to notify	APAC			Global		
	2019-21	2022	Difference	2019-21	2022	Difference
0 to 6 months	40%	4%	-36%	23%	13%	-10%
6 to 12 months	3%	17%	+14%	26%	27%	+1%
12 to 18 months	15%	13%	-2%	21%	23%	+2%
18 to 24 months	18%	4%	-14%	16%	15%	-1%
24 to 36 months	13%	52%	+39%	11%	16%	+5%
Over 36 months	11%	9%	-2%	4%	5%	+1%

CLAIMS PAYMENTS

Claims performance is and will continue to be a major differentiator for carriers in a competitive market, which has expanded in the Asia-Pacific region. For insureds, speedy and seamless claim processes and a commitment to resolving claims are as important as premium cost and the extent of coverage when choosing an insurer. Insurance products are ultimately about claims, and our clients purchase policies with the expectation that the selected market will support them at the time of an insured loss.

In 2022, we helped clients in the region receive close to US$30 million in payment for four claims, including the first domestic payment made under a local insurer’s policy in Japan.

CONTINUED GROWTH EXPECTED

Demand for M&A insurance solutions in the burgeoning Asia-Pacific market remains strong as deal parties look for commercial ways to de-risk their transactions, particularly in light of the current macroeconomic factors that have affected the risk profile of deals across the globe.

Given the continued growth of placements in the region, the strong claims infrastructure offered by insurers, and positive claims response overall, we expect that the high claims activity in 2022 will continue through 2023 and beyond, and will eventually align with global norms.

INSURED:
Japanese corporate

TARGET:
Energy company

LOSS:
US$11.4 million

RETENTION:
US$75,000

LIMIT:
US$11.3 million

CLAIM PAYMENT
US$11.3 million

Asian claims case study

COMPLIANCE BREACH UNDER DOMESTIC POLICY IN JAPAN

Issue

The insured purchased a company that had the rights to develop an energy plant, which was currently under construction. The facility was meant to be built in a mountainous area.

However, the gradient of the slope on which the plant was located was steeper than permitted by local regulations, a fact that was only discovered when a landslide took place.

Insurer's response

The site was under close government surveillance considering the potential public hazard.

Following the compliance breach, the insured filed a claim to quickly access the insurance payment in order to fund the required rectification steps.

The insurers issued a request for further information as they wanted to understand the breach, and the incident.

How we helped

The Marsh team worked with the insurer to explain the need for a speedy payment so that the insured could proceed with the project.

Outcome

The insurer paid the full claim (net of retention) within seven months of the date of notification.

Pacific claims case study

NON-DISCLOSURE OF FINANCIAL AND VALUATION INFORMATION

Issue

The insured purchased a construction company based on profitability margins for several contracted infrastructure and other projects.

After the transaction, the insured discovered project reports that showed a lower margin than what had been put forward by the target.

The insured promptly filed a claim based on a breach of seller disclosure warranties regarding profitability.

Insurer's response

The insurer initially asserted that the claim was forward-looking and did not constitute a breach of warranty.

Subsequently, once the insurer granted indemnity, it argued that an alternate valuation methodology (discounted cash flow) should be adopted in quantifying losses, instead of the methodology (earnings multiple) used by the insured when it acquired the target.

How we helped

Marsh was heavily involved in negotiations between the insured and insurer, successfully demonstrating to the insurer that a breach had occurred, and that the valuation methodology used by the insured was an appropriate basis for the claim.

Our long-standing relationship with the insurer was critical in helping to facilitate the settlement.

Outcome

Based on the constructive dialogue that Marsh enabled throughout the process, the insurer agreed to make a payment that was significantly higher than its own loss quantum analysis.

INSURED
Utilities and transportation service provider

TARGET
Construction company

LOSS
US$6.94 million

RETENTION
US$560,000

LIMIT
US$28 million

CLAIM PAYMENT
US$4.93 million

Trending topic: Insureds focusing on insurers' claims performance

With the absolute number of M&A transaction-related claims on the rise, Marsh's clients are showing an increased interest in insurers' claims execution, process, and performance.

Clients are increasingly concerned with how insurers will handle their potential claims. Given that a claim against a counterparty could lead to a long and costly litigation process, more buyers are looking at R&W insurance as an alternative that can lead to a smoother and faster process. We expect insurers to show a collaborative attitude throughout the process and a willingness to resolve claims and make payments.

For this purpose, Marsh continuously tracks insurers' responses to claims notifications, paying particular attention to responsiveness, flexibility, commercial acumen, and speed in execution. These insights allow us to provide the best advice when clients need to choose an R&W insurance solution provider at the outset of an M&A transaction.

Conclusion

With transactional risk policies firmly established as a critical tool for risk transfer and deal facilitation, more claims are likely on the horizon, despite a reduction in M&A activity.

The additional insurance capacity that has entered the market has led many insurers to offer expanded coverage and reduce retentions, both of which will likely increase future claims volume and claims payments.

Although insurers have already paid significant amounts for covered claims, there is still opportunity to improve the claims experience, and insurers' claims handling and performance is more important than ever. A broker with dedicated claims specialists and experience handling R&W claims can help insureds successfully navigate the claims process and obtain favorable claims resolutions.

Marsh

About Marsh

Marsh is the world's leading insurance broker and risk advisor. With over 45,000 colleagues operating in 130 countries, Marsh serves commercial and individual clients with data-driven risk solutions and advisory services. Marsh is a business of Marsh McLennan (NYSE: MMC), the world's leading professional services firm in the areas of risk, strategy and people. With annual revenue over $20 billion, Marsh McLennan helps clients navigate an increasingly dynamic and complex environment through four market-leading businesses: Marsh, Guy Carpenter, Mercer and Oliver Wyman. For more information, visit marshmclennan.com, and follow us on LinkedIn and Twitter.

Marsh is a business of Marsh McLennan.

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