ICEN

Case Study

Sector: Infrastructure

Jurisdiction: UK

Deal value: c.£60m

Issue: Infrastructure fund buyer requiring covenant strength and wanting to be deliverable from the sellers' perspective

Background:

A private equity infrastructure fund was buying a renewable energy business in the UK from the founder owners (consisting of family members).

Issue:

The process was competitive and the sellers, wanting to be able to use the sale proceeds without the risk of claw back in the future as a result of claims, were very unwilling to provide any financial recourse in respect of the warranties and tax indemnities. In order to be the preferred bidder the private equity buyer understood it would have to accept the sellers' position and so explored the possibility of putting in place an insurance policy to provide it with sufficient comfort in the event of a claim.

Solution:

An insurance policy was issued in favour of the buyer on the signing of the deal with a limited of c.£30 million to both stand behind the warranties and provide the buyer with an additional protection in the event of fraud by the seller. The bidder was therefore able to accommodate the sellers' position and succeeded in the auction process.