

Beazley

M&A Transaction Liability – Warranty and Indemnity Insurance

Protecting against financial losses that buyers or sellers might incur resulting from inaccuracies in representations or warranties made in share or asset sale and purchase agreements.



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M&A Transaction Liability – Warranty and Indemnity Insurance

Warranty and Indemnity insurance

Warranty and Indemnity (W&I), or Representations and Warranty (R&W) as it is referred to in the US, covers unidentified breaches of warranties or representations (Breaches) documented in a share or asset purchase or sale agreement, as made by a seller (or other warrantor) to a purchaser in the context of an M&A transaction. W&I insurance is increasingly valued by both sellers and buyers.

Key motivations for using W&I insurance

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| <p>The ‘clean exit’ – allows funds flowing from the transaction to be retained by sellers with little to no ‘tail of liability’ and in most circumstances without escrows or significant indemnities.</p> | <p>Enhancement of bid proposal – by structuring W&I cover into the bid, the buyer could propose a reduced seller indemnity cap on the warranties, on the basis that the W&I cover will provide additional recourse for breaches (over and above that given by the sellers in the transaction documents).</p> |
| <p>Seller – buyer disparities – when there are different expectations regarding contractual liability structure, such disparity is often a heavily negotiated matter, and can even cause the deal to collapse. The use of W&I cover can be useful to bridge the gap of expectations in these circumstances.</p> | <p>Protection of family assets – W&I cover is sometimes used as an asset protection strategy, ensuring that proceeds of a sale to an individual cannot be clawed back and helping avoid costly litigation to defend claims for breaches.</p> |
| <p>Limited seller security – using W&I cover, a purchaser can transfer the financial risk of a breach to the insurer. This can avoid pricing discounts or the need for funds to be held in escrow for long periods of time.</p> | <p>Unwillingness to sue the seller – this is particularly important in situations where the seller (or seller’s management) is still involved in the business post transaction. A policy can be structured so that claims for breaches are made directly against the insurer and not the seller.</p> |
| <p>Entrepreneurial exit – a seller policy allows entrepreneurs to sell a business, and do their tax or estate planning with reduced concern over any breaches occurring.</p> | <p>Distressed sales – W&I cover can be used to provide greater comfort in a distressed sale situation. The benefits are significant in the case of a distressed seller looking to provide greater comfort and security to a purchaser.</p> |

Beazley's W&I insurance offers:

- Cover that can be provided to the seller to defend against breaches claimed by a purchaser, or to a purchaser to provide 1st party protection for innocent or fraudulent breaches by a seller
- Broad appetite across different target sectors, deal types, transaction structures and jurisdictions
- Cover offered to private equity clients, selling entrepreneurs, private shareholders, venture capital funds, listed companies and other corporate clients.

What we look for:

- M&A transactions where the underlying warranties are made by a knowledgeable party and accompanied by a full disclosure exercise
- Opportunities to replace risk allocation mechanisms (escrow, indemnity, holdback) on an M&A transaction with insurance capital
- Opportunities to add value through flexible and sophisticated underwriting, either as a lead insurer or working with other markets to achieve the capacity or solution required.

Territories

Primarily focus on transactions in: US and Canada; EU 27 countries; Asia Pacific Region; Latin America; and Middle East and South Africa.

Rating

W&I insurance is written for syndicate 623/2623 which have the Lloyd's Market Rating of S&P A+ "Stable Outlook" and A.M. Best A Excellent "Stable Outlook".

Limits available

Up to:
USD 60,000,000
GBP 40,000,000
EUR 60,000,000
AUD 60,000,000
CAD 60,000,000

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