

Warranty & Indemnity Insurance.

Warranty and Indemnity (W&I) policies are used as a strategic risk transfer tool to give protection to either the buyer or seller against financial losses suffered as a result of an unexpected breach of warranty or claim under a tax indemnity. Tailored protection is provided by the insurance market to the insured for unknown issues such as financial statement errors or undisclosed regulatory matters.

W&I insurance can be purchased by either a buyer or a seller however the buy-side policy is largely used to afford the seller a clean exit and provide the buyer a direct means of recourse as an alternative to pursuing the existing warrantors in the event of a claim.

Buy-side policies are often initiated by a seller (or management team, private equity firm, infrastructure fund, bank, real estate firm or corporate) as part of an auction process and the policy is then 'stapled' to the transaction.

Process

The BMS Private Equity, M&A and Tax team will work with you to ensure that the W&I process works as efficiently as possible in tandem with the M&A transaction timeline.

The policy is designed to support rather than replace the underlying transaction and insurers will require a robust due diligence and disclosure process to be carried out.

Premium

The premium is calculated as a rate-on-line of the policy limit being purchased. There are various factors which will affect this rate such as the nature and jurisdiction of the target business being bought, the governing law of the transaction, the scope of the warranties and whether any specific enhancements to the policy are required.

These variables will be discussed at the outset of the transaction and the one-off premium will be payable once completion of the transaction has occurred.

The benefits of using W&I

Buyer benefits

Mitigates risk of seller covenant strength.

Extends out insufficient SPA limitation periods.

Satisfy corporate governance requirements.

Certainty when investing in a new asset class/geography.

Bid differentiation in competitive auction process.

Proceeds of claims can be assigned to a lender.

Protects ongoing business relationships with management.

Seller benefits

Clean exit/nil recourse.

Balance sheet protection post completion.

Immediately realise sales proceeds.

Prevent price chips or hold-backs.

Mutual benefits

Removes significant obstacles.

Bridges gaps on uncertain exposures.

Synthetic packages may be utilised.

Mitigates difficult negotiations.

Affirmative cover for certain known risks.

Exclusions

W&I insurance policies will usually exclude matters that are known to the insured including matters disclosed by the seller or within the buyer's actual knowledge. Forward looking statements, certain fines and penalties, pension underfunding and post completion purchase price adjustments are often excluded. There may also be deal specific exclusions depending on the underlying transaction i.e. target industry, jurisdiction or a specific risk that has been identified in the due diligence process.

Claims

We work with those insurers who have a strong track record of dealing with claims in a collaborative and swift manner.

In case of claims, we involve our experienced team of claims advocates who pride themselves on effective claims management, negotiation, and resolution to help navigate complex M&A insurance related claims.

This is an integral part of the service we offer so that you are supported throughout the lifecycle of the policy.

Complementary BMS solutions

- Tax Liability Insurance
- Contingent Risk Insurance
- Litigation Buyout Insurance
- Title Insurance
- Liquidation Insurance
- Cyber Insurance
- Intellectual Property Insurance



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