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M&A
Warranty and Indemnity

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Warranty and Indemnity (W&I) Insurance

W&I insurance is a highly adaptable M&A insurance product designed to cater for unforeseen liabilities arising from corporate transactions. A policy facilitates the negotiation of the sale and purchase agreement (SPA) warranties and can remove the need for lengthy debate over the allocation of risks associated with a breach of the warranties or a claim under the tax indemnity.

Most W&I policies list the buyer as the insured party allowing the seller a clean exit at completion. However, sellers frequently begin the process by structuring W&I insurance into the transaction, particularly in the case of auctions. A seller can also take a policy for their own benefit if they have material SPA liability.

In its standard form W&I insurance will mirror the key provisions of the SPA. For a seller, the aim is to have back-to-back protection in the policy with their warranty exposure in the SPA. On the other hand, buyers frequently enhance policy cover beyond the SPA position. Some examples of the improvements include:

- Extending the policy period over that agreed in the SPA limitations
- Introducing a "synthetic" tax indemnity at the policy level if there isn't one in the SPA
- Introducing an indemnity basis of loss
- Carving back the policy exclusion for known matters to affirmatively cover certain (lower risk) due diligence items
- Applying a "knowledge scrape" to warranty cover in the policy
- Disapplying the general disclosure of the data room in the limitations

Other Key Features Of W&I Insurance

Policy limit of liability:	The limit of insurance, expressed as a % of the overall purchase price, will vary but is often between 10% and 40% for buyer policies and will usually match the SPA cap for sellers.
Policy excess:	Insurers will apply an excess to most W&I policies. A notable exception is real estate where a nil excess may be achievable. The excess level will depend on the deal but may be circa 0.5% of the total deal size.
Premium:	Expressed as a % of policy limit, premium rates range upwards from 0.5%. Various factors impact cost such as sector, policy excess and jurisdiction. The premium (plus premium tax) is payable in full soon after completion.
Policy period:	The policy usually becomes live at signing of the deal but can be arranged any time after that. The policy will last 7 years but can also be extended beyond this if needed.

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Process and Timing

There are two main stages to the process, which runs in tandem with the deal up to signing.

Stage One

At stage one, we discuss policy options and priorities, collate required documentation and present the risk to the insurance market. We negotiate non-binding indications with insurers and provide a concise comparison of the best option(s) along with a recommendation of the most suitable insurer(s) to take into full underwriting.

Stage Two

In order to carry out full underwriting (stage two), insurers require an expense agreement to cover their costs (e.g. legal fees). Insurers then review all key transaction information and documents, including the data room. We host an underwriting call where insurers ask the key deal team and their advisors about the transaction. We also negotiate the policy wording and the cover offered. The policy will usually become live at signing.

Signing

Timescales vary depending on different deal factors with a typical process taking two weeks. This can be shortened as needed. It is always preferable to involve AssuredPartners as early as possible to ensure a smooth process, that we maximise the outcome and that other important underwriting requirements are addressed properly in the deal (e.g. due diligence scope).

W&I with AssuredPartners

We have access to all insurers and extensive experience broking W&I insurance policies for private equity firms, real estate funds, management teams, advisors and corporates. You can be completely confident that you will have the right advice at the right time with access to the best solutions in the market for your individual transaction. Our clients trust us to make the process of arranging W&I insurance as uncomplicated and efficient for them as possible. They expect full confidence in the policy cover, insurer selection, timing and end-result.

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