



How W&I insurance can facilitate a swift exit

We discuss how Warranty & Indemnity (W&I) and other M&A insurances can be used within a competitive auction process. Over the past decade we have seen a steady increase in sellers inserting W&I insurance into their sale to allow a clean exit. We have built a huge understanding of the issues that should be considered and the range of processes that can be adopted to meet the particular requirements of the sale. This depth of experience ensures minimal disruption to the other transaction works streams for both the seller team and bidders, plus the effective implementation of a policy that will be the best fit for the transaction.

Questions that sellers should consider

- What W&I structure options are available and what will work best for the transaction?
- How should the acquisition agreement be drafted to ensure that the sellers liability is broadly limited
- What scope of cover to make available i.e. policy limit, policy retention, policy period?
- When is the right time within the sales process to introduce the insurance to bidders and what information should be provided?
- Do bidders need to access the M&A insurance market before exclusivity is given?
- What issues raised by insurance underwriters need to be factored into the wider transaction discussions

What are the benefits

Sellers

Sellers limit their liability allowing early access to the full deal consideration. The need for escrow, bank guarantee and hold-back is minimised. The buyer has direct rights of recourse against their policy in the event of a claim and they may not be required to involve the sellers.

Management

“Ring fence” contingent exposure from breaches of warranties and indemnities. Enables a full suite of commercial business warranties to be provided. Re-investment into the target business is safeguarded.

Buyers

Direct access to a M&A insurance policy with a limitation package tailored to the buyer’s requirements from an insurer with a strong security rating. In the event of a claim the target’s management focus remains on driving the business forward without the “distraction” and emotion of dealing with a claim.

Process

The M&A insurance market sees thousands of transactions every year and insurers recognise the need to observe the utmost levels of confidentiality.

Following the decision to sell the target, consider if an M&A insurance option is suitable and if so, the best approach for that particular sale.

We will provide a feasibility report outlining how the insurance process will fit within the wider sale, plus the likely scope, potential structures and costs of cover.

We obtain initial indicative terms from the insurance market and report back to the seller team with the findings. If appropriate a further round of negotiation can be held with the most competitive insurers to refine the indications

Insurance is aligned with the SPA to meet the seller’s optimal exit position.

A note is prepared for the data room that will provide details of the cover that is available and the costs associated with different insurance structures. This ensures that bidders given visibility of the insurance arrangements via a report, a term sheet, or as far as a part negotiated policy.

In the event exclusivity is given to preferred bidder / buyer, control of the insurance process passes to the bidder.

Alternatively if there is a contract race, the seller controls how the insurance process fits into the transaction process and may require multiple insurer options.

- Insurer finalises their underwriting process.
- Policy wording negotiations completed to agree coverage.
- Policy commences at signing - if there is a period to closing, the necessary steps are undertaken at close and policy reaffirmed

Insurance underwriting factors

Insurers need to have evidence of a robust disclosure process, that the buyer is completing thorough due diligence on all material aspects of the target and that the warranties are well balanced and negotiated in good faith by the sellers (regardless of the levels of liability that the sellers / management may retain).

Transaction timetable

Subject to the complexity of the transaction and the nature of the sales process, M&A insurance can meet all the necessary transaction milestones.

When involved from an early stage in the sale process, the insurance timetable will be positively managed.

THE PARAGON M&A TEAM SUPPORTS AND ADVISES SELLERS, BUYERS AND M&A ADVISORS, INCLUDING:

- ▶ Private equity
- ▶ Real estate investors
- ▶ Corporates
- ▶ Infrastructure funds
- ▶ Law firms
- ▶ Corporate finance
- ▶ Accountants

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