

Warranty and Indemnity Insurance



The UK is developing as an international merger and acquisition (M&A) hub for organisations across the globe. But while the process of buying or selling a business can be an exciting time filled with new opportunities, M&A deals are no simple task. For both the buyer and the seller, there are a variety of key risks to consider.

Specifically, both parties run the risk of suffering costly consequences from a breach of warranty or indemnity following an M&A transaction. Even with a solid contract in place, the risk of a breach is always a possibility during the sale of an organisation. Such a disaster could lead to serious liability concerns for the seller and devastating financial loss for the buyer.

With this in mind, it's crucial to implement proper cover—such as **warranty and indemnity (W&I) insurance**—to protect your organisation during the sale of a business. Consider this guidance to understand the basics of W&I cover and review policy exclusions.

What Is W&I Insurance?

At a glance, W&I insurance protects against the losses arising from a breach of warranty or indemnity in an M&A transaction. This form of cover is available in both a buyer-side and seller-side policy. These policies typically coordinate with the warranties and indemnities outlined in the buyer and seller's shared purchase agreement (SPA).

In a buyer-side policy, this type of insurance protects the buyer in the event of a seller's breach of warranty or indemnity—whether the seller's misrepresentations were innocent or fraudulent. The buyer becomes the named insured and can make a claim directly against the policy, regardless of the rights they have in the SPA

to pursue the seller. Such a policy keeps the seller liable to a specified amount, but allows the policy to 'replace' the seller in a breach of warranty and provide indemnification in the case of seller fraud. Most W&I policies are buyer-side policies.

In a seller-side policy, this form of cover offers liability protection for the seller following an innocent (unintentional and unknown) breach of warranty or indemnity in an M&A transaction. These policies align with the agreed seller liability 'cap' outlined in the SPA. The selling warrantors become the named insured on the policy and can seek assistance if they are required to pay a claim. This allows the seller to protect their organisation's financial assets during a claim and access sales proceeds straight away.

The policy typically lasts from the signing of the deal until the end of the 'survival period' of the warranties and indemnities outlined in the SPA. Premiums range between 1 and 2 per cent of the policy limit.

Key Policy Exclusions

- Fraud or deliberate non-disclosure by the insured
- Liabilities that arise within the knowledge of the insured party, findings in due diligence reports or issues covered by specific indemnities in the SPA
- Changes to transaction agreements or purchase price adjustments without insurer approval
- Fines and penalties that are uninsurable by law
- Forward-looking warranties, such as the ability to collect debts after completion

For more information, contact Sirelark Risk Services today.

Provided by Sirelark Risk Services

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