LOCKTON

TRANSACTION LIABILITY

GUIDE TO **WARRANTY & INDEMNITY (W&I) INSURANCE**

Asia Pacific Considerations

WARRANTY & INDEMNITY INSURANCE

W&I insurance can be used for the benefit of both the buyer and seller on an M&A transaction. W&I insurance covers financial losses arising from unknown issues. Other M&A insurance products may cover known issues, such as identified tax issues. Buyers can protect their investment. Sellers can secure a "clean exit" and make distributions. It provides dealmakers it provides increased certainty on valuations and IRR, smooths negotiations, and enhances execution.

Buy-side W&I policies safeguard the buyer's financial interests by shifting seller liability to a highly regulated and financially rated insurer. The policy covers the unknown risks associated with a particular transaction.

The buyer will be protected in the event of a claim arising from a breach of warranty (fundamental, accounts, tax, and operational) and a tax indemnity/covenant.

As the policy benefits both parties, W&I has become a key feature in M&A transactions.

BUY-SIDE VS. SELL-SIDE POLICIES

Over 95% of W&I policies are structured as buy-side policies, as they can be structured to:

- Give the seller a nil-recourse exit
- Enable the buyer to enhance certain coverage terms not otherwise in the SPA (e.g., Time period, limit, lower retention, and lower de minimis)
- Enable the buyer to claim directly against the insurer
- Provide the buyer with coverage for seller fraud

Sell-side policies are less popular for both clients and insurers. They do not give a seller a clean exit, as they will still be contractually liable under the SPA and the seller will need to be involved in claims processes.

BENEFITS FOR BUYER

- Increased indemnification including limit of liability, period of cover, and warranty coverage
- Differentiates a bid in an auction process
- Greater protection from a financially rated insurer and a dedicated claims service
- Provides comfort to investment committees/ boards, lenders, investors, and shareholders

BENEFITS FOR SELLER

- Clean exit
- Maintain valuation and IRR
- Enable distributions
- Avoid escrow and price-chips
- Avoid management burden
- Maximises the return to investors

MUTUAL BENEFITS

- Smooths negotiations
- Maintains relationships
- Enhances execution
- Facilitates transaction completion

W&I ON A SALES PROCESS: SELL-BUY FLIP VS. HARD STAPLE VS. SOFT STAPLE

Sell-buy flip

In Asia, it is increasingly common, and a key driver of W&I insurance use, for sellers to seek a nil-recourse exit and for buyer protection for warranty breaches and tax indemnification to come solely from a W&I policy. This is particularly the approach on auction processes but can be done on bilateral deals. In such cases, well-advised sellers will initiate the W&I insurance process and "flip" it to the buyer at a later stage.

Hard staple

This entails the seller making it a firm requirement of the auction process that the buyer obtain a buy-side W&I policy.

If vendor due diligence (VDD) is available, it can be underwritten and the W&I policy negotiated to a materially advanced position before it is flipped over to the buyer and finalized following review of their buy-side DD reports. Alternatively, a seller may have an insurer review available VDD and prepare a guidance note for bidders to help them ensure their top-up DD includes key scope items in order to provide cover. And in cases when no VDD is available, the seller may still seek to control certain parts of the W&I process.

The seller will control the W&I timing and process and prescribe the W&I requirements to bidders, usually through phase 2 of an auction process.

Soft staple

Versus a hard staple, a soft staple entails a seller leaving more of the W&I process up to bidders/ the buyer, including insurer selection. This might involve completing only the initial W&I pricing steps (so the seller has an idea on the insurability of the deal, premium ranges, and indicative coverage) but leaving the insurer selection and/or underwriting process up to bidders/buyers. The advantage is less work for the seller and that bidders may enjoy the increased optionality, but the disadvantage is less control on timing and execution. Generally this is less advisable for competitive auction processes and/ or if bidders are less sophisticated.

HEADLINE NUMBERS FROM W&I POLICIES

PREMIUM

WILL VARY DEPENDING ON DEAL SIZE, SECTOR, AND JURISDICTION, BUT AS A GUIDE:

JURISDICTION	PREMIUM % OF POLICY LIMIT
Hong Kong, Singapore, Korea, Japan	0.7%-1.2%
PRC, Taiwan, India	0.9%-1.4%
Philippines, Indonesia, Malaysia, Thailand, Vietnam	0.9%-1.4%
Australia, New Zealand	0.6%-1.1%
Compare: U.K. and Western Europe	0.5%-1.0%
Compare: U.S. and Canada	2.2%-3.0+%

POLICY LIMIT

TYPICAL RANGE FOR POLICY LIMIT IS **10%-30%** OF ENTERPRISE VALUE (EV)

$5M-$1B+ (USD)

RETENTION

SOME INSURERS OFFERING TIPPING TO NIL RETENTION STRUCTURES

EXCESS/RETENTION IS CALCULATED AS **0%-1%** OF EV

CURRENTLY **0.1%-0.25%** OF EV RETENTIONS COMMONLY OFFERED

DE MINIMIS

THE **SMALL CLAIMS** THRESHOLD

CURRENTLY **0.01%-0.05%** OF EV, BUT SUBJECT TO THE MATERIALITY THRESHOLD OF DD

CLAIMS

GENERAL WARRANTIES: **3 YEARS**

FUNDAMENTAL WARRANTIES & TAX WARRANTIES: **7 YEARS**

PREMIUM TAXES

USUALLY DEPENDS ON THE JURISDICTION OF THE INSURED
(e.g., Cayman, BVI, Hong Kong, Korea, and Mauritius all nil, Singapore is 9% GST)

COVERAGE

The exclusions on a W&I insurance policy are tailored to the specifics of the transaction itself.

STANDARD W&I EXCLUSIONS

- Risks/issues known to the buyer
- Disclosed matters:
  - U.K./Europe general disclosure — data room, DD reports, specific disclosure letter
  - U.S. disclosure — specific disclosure schedules
- Forward-looking statements
- Purchase price adjustments (e.g., leakage/ completion accounts)
- Structural defects if owned real estate

GENERAL TAX EXCLUSIONS

- Secondary tax liabilities
- Transfer pricing
- Valuation of tax assets

TRANSACTION **SUCCESS** IN **ASIA***

* including representations led by our team members prior to joining Lockton

HAVE PLACED INSURANCE FOR
>100
SUCCESSFUL TRANSACTIONS

HAVE BOUND
>$100B
IN DEAL VALUE

HAVE PLACED
>$15B
M&A INSURANCE LIMITS (USD)

JURISDICTIONS

Hong Kong and China > **USD $25B**

Korea > **USD $25B**

India > **USD $20B**

Japan > **USD $10B**

Southeast Asia > **USD $20B**

Outbound — Asia investment into U.S., Americas, U.K., and EMEA > **USD $15B**

W&I SECTOR **EXPERIENCE**

- ✓ MANUFACTURING
- ✓ CONSUMER
- ✓ HEALTHCARE
- ✓ PHARMA
- ✓ EDUCATION
- ✓ TELECOMS, FIBRE, DATA CENTRES
- ✓ IT & IT SERVICES
- ✓ FINANCIAL, CORPORATE, BUSINESS SERVICES
- ✓ INDUSTRIALS
- ✓ INFRASTRUCTURE
- ✓ TRANSPORT
- ✓ ENERGY
- ✓ RESOURCES
- ✓ REAL ESTATE

THE **W&I PROCESS**

	DAY 1	DAYS 3-4	DAYS 4-10	DAYS 7-10
LOCKTON	• Review information, provide initial advice on coverage and appropriate insurers • Submission to insurers for nonbinding **terms**	• Advise on NBIs received • Recommend and engage preferred insurer(s)	• Insurer review of data room and due diligence • Respond to insurer's underwriting questions • Negotiate policy wording and coverage	• Agree and sign SPA • Finalise and bind W&I policy
INSURED/DEAL TEAM	Provide information for submission: • SPA if available • IM if available (otherwise a summary of the target) • Enterprise value • Due diligence	Insurer selection and sign underwriting agreement	• Respond to insurer's underwriting questions • Provide any SPA and DD updates	Confirm execution of the SPA, sign W&I no claims declaration, and provide binding instructions

At Lockton, our Transaction Liability Practice is the certain solution for transactional risk. We have advised on thousands of deals and are recognized as an industry leader in crafting and negotiating policies that cover unknown breaches of representations and warranties, as well as known tax, legal, and intangible asset risks. Our leadership team has been at the forefront of the transaction insurance industry for the past decade.

Collectively, we bring more than 50 years of experience as both corporate attorneys and transaction liability advisory insurance brokers, specializing in private equity and corporate acquisitions across all industry sectors. With our global footprint and deep cross-border expertise, we seamlessly support clients on international transactions, delivering consistent service and market insight wherever deals take place. When clients bring us into their transactions, they trust us to be true advisors — ones who will do everything in our power to streamline deals and provide thoughtful guidance without introducing execution risk.

Contact the Lockton team for more information today.

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