WARRANTY AND INDEMNITY INSURANCE

Warranty and Indemnity (W&I) insurance is a bespoke solution designed to transfer the risks associated with mergers and acquisitions (M&A) to the insurance market. This tailored product, whether held by the buyer or seller, provides financial cover to the insured in the event of a breach of warranty, a claim under the tax covenant or a misrepresentation in the underlying acquisition agreement.

Howden’s dedicated M&A team offers a specialist service to support you throughout the development and procurement of a W&I insurance policy. Our wealth of experience and refined skill set provides the perfect formula for negotiating the cover you need. Through our unique philosophy, we have successfully placed W&I insurance policies on transactions across the globe. We act for a broad range of clients including some of the world’s largest private equity firms and real estate funds.

The Cover

The buyer-side policy allows the buyer to claim from the insurer what they are contractually entitled to from the seller under the acquisition agreement. The policy can be used as a powerful deal tool to streamline negotiations between the parties. It can allow the seller to limit its liability to a low level, whilst also giving the buyer the protection it requires through a W&I insurance policy.

There is no obligation on the buyer to seek recourse from the seller in the event of a claim. The buyer claims directly against the insurer. The insurer will waive all rights of subrogation against the seller, except in the case of fraud or willful misrepresentation.
The Parameters

A W&I insurance policy is designed to mirror the key terms in the underlying acquisition agreement.

**Policy period** – this typically matches the survival periods expressed in the underlying acquisition agreement but a buyer-side policy offers the flexibility to extend the caps set out in the acquisition agreement.

**Policy limit** – this is typically 10-30% (but can be up to 100%) of the purchase price. Insurance is usually provided by one insurer but there is the option to draw on the capacity of multiple insurers for clients who require larger limits. The capacity of each insurer is different and this ranges from £15m - £100m.

**Deductible** – the insurer will require an element of the loss to be borne by the insured. This is usually around 1% of the purchase price but, if higher, it can reduce the premium. There are different ways to structure the deductible including reducing it over time and tipping structures.

**Legal fees** – before an insurer begins underwriting the transaction, the client must enter into an expense agreement to cover the underwriter’s costs. The overall cost depends on the value, complexity and jurisdiction of the deal. Depending on the insurer, this may be payable in addition to the premium or, in some instances, waived upon the policy binding.

**Premium** – calculated as a function of the policy limit. The rate applied depends on factors including jurisdiction, complexity, deductible and the nature of the underlying business. It is typically 1-2% of the policy limit.

**Exclusions** – where possible, cover will be provided which is back-to-back with the underlying acquisition agreement. However, there are some market standard exclusions which the insurers will not cover. These include, but are not limited to, transfer pricing, secondary tax liabilities, forward looking statements, structural defects and pension underfunding.

The Process

**Marketing**

- **Day 1** Howden discuss the transaction with the client and review the Initial Information.
- **Day 2** Howden prepares the submission and approaches the insurance market.
- **Day 3-4** Howden markets the deal to potential insurers.
- **Day 5-6** Howden receives non-binding indications from the insurers, and prepares a report which provides the client with a comparative study of the cover and pricing. Our report also includes our recommendation of the insurer with which to proceed.

**Underwriting**

- **Day 7** The client selects an insurer and executes the expense agreement.
- **Day 8-11** The insurer reviews the Initial Information and the Further Information as part of the underwriting process.
- **Day 12** Howden hosts an underwriting call (1-2 hours) that gives the insurer the opportunity to ask direct questions of the client with a view to gaining comfort on specific risks.

**Policy Negotiations**

- **Day 13-15** Howden and the insurer negotiate the policy wording and coverage position.
- **Day 16** The final policy is issued and the cover from the insurer begins.

Initial Information

1. Acquisition agreement
2. Accounts of the target
3. Information memorandum

Further Information

1. Draft legal, financial and tax due diligence (and any other due diligence prepared)
2. Virtual data room access
3. Disclosure letter and outstanding appendices or schedules to the acquisition agreement

Contact Information

For more information please email m&a@howdengroup.com or call +44 (0)20 7648 7267.