

W&I insurance (known in the US as Representation and Warranty insurance) provides coverage for losses arising from breach of warranties and indemnities within the context of an M&A transaction. During M&A negotiations, a gap may exist between the level of contractual recourse a seller is prepared to give a buyer and the level of recourse the buyer will accept, leading to a deadlock between the parties and their advisers. A W&I insurance policy with Allied World can bridge that gap by transferring certain risks to a third party.



### W&I INSURANCE OVERVIEW

W&I insurance can be purchased by a buyer or seller to give the insured peace of mind that insurance protection is in place to cover loss or liability arising from unknown or undisclosed matters in respect of a M&A transaction.

#### 'Seller Side' Policy

- A seller side W&I policy protects the seller (and/or warrantors) from any loss suffered in the event that a buyer brings a claim for breach of warranty or indemnity under the M&A transaction documents, thus ring-fencing the risks associated with the M&A transaction

A seller side W&I insurance policy can be particularly valuable where the seller:

- Offers a monetary cap on its own liability which is lower than the minimum cap the buyer is prepared to accept
- May not be able to meet its own financial obligations under the transaction documents
- Wishes to be relieved of future risk to facilitate a clean exit (particularly relevant to PE investors who are in the process of winding up a fund)

#### 'Buyer Side' Policy

- A buyer side W&I policy replaces the buyer's normal contractual recourse against a seller, protecting the buyer from loss arising from a breach of warranty or indemnity by the seller

The buyer side W&I policy offers the buyer:

- An additional level of recourse where a seller is unable to offer the buyer sufficient financial or contractual comfort
- The ability to assign policy proceeds to a lending bank to form part of the bank's security package (an important enhancement for banks, especially in highly leveraged acquisitions)
- The ability to claim against the insurer rather than pursuing the seller, saving time, money and protecting commercial relationships with the seller or incumbent management
- A strategic advantage in the context of an auction (the buyer can require less contractual recourse from the seller, thus distinguishing – and enhancing – its bid)

### CONTACTS

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#### Allied World

Rated "A" (Excellent)  
by A.M. Best Company  
Rated "A-" (Strong)  
by Standard & Poor's  
Rated "A3" (Good)  
by Moody's

#### Lloyd's Syndicate 2232

Rated "A" (Excellent)  
by A.M. Best Company  
Rated "A+" (Strong)  
by Standard & Poor's  
Rated "AA-" (Very Strong)  
by Fitch Ratings

# MERGERS & ACQUISITIONS ALLIED WORLD SECURE<sup>SM</sup> WARRANTY AND INDEMNITY

(continued)

## KEY COVERAGE

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Allied World's W&I policy is bespoke. We tailor our policies specifically to each unique transaction to give the best coverage available in today's market. We appreciate that time frames are often tight during negotiations and offer our clients access to real-time decision makers enabling a prompt and efficient process.

We can offer the following policy enhancements depending on the transaction dynamics:

- **Duration:** The policy period usually matches the period in the transaction documents but on a buyer side policy can also be extended beyond this period (for example, to extend policy coverage for the general warranties to cover a second audit period)
- **Tax coverage:** Coverage for a tax deed can be included in the policy and may be available on the same basis given in the transaction documents
- **Disclosure:** Warranties given in the transaction documents are typically qualified by a disclosure letter or schedules provided by the sellers; our policy mirrors the disclosure standard set out in the transaction documents to eliminate coverage gaps

## Exclusions

Our W&I insurance policies contain certain exclusions, including an exclusion for breaches that were known or disclosed to the insured, forward-looking warranties, pension underfunding liabilities, fraud of the insured, and matters where the insured has recourse through alternative mechanisms (for example, completion accounts adjustments).

## CAPACITY

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- Company Market: up to \$60M / €52.5M / £40M / AUD \$70M or local currency equivalent
- Lloyd's Syndicate 2232: up to \$20M or local currency equivalent

## PRICING FOR W&I INSURANCE

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- Each transaction is priced on its own merits and parameters. The premium charged is typically a percentage of the total limit of insurance purchased and takes into account:
  - Target business and location
  - Value of transaction
  - Extent of liability under the transaction documents
  - Gap between signing and closing
  - Identity of the buyer and seller and their advisers
  - Quality of the transaction process

## UNDERWRITING PROCESS

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- **Phase 1:** Internal legal review of all documents to assess insurability of risk and provide a non-binding indication
- **Phase 2:** Underwriting, including review of due diligence information and a call with the insured's deal team and key advisers
- **Phase 3:** Provision of binding terms and finalisation of the policy form

## CLAIMS SUPPORT CLIENTS CAN COUNT ON

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Our claims team has significant expertise across numerous product lines and is committed to the highest levels of professionalism, responsiveness and good faith in claims handling.



Coverage is subject to the satisfaction of applicable regulatory licensing requirements and will be provided through appropriately licensed insurance intermediaries. Actual coverage may vary and is subject to policy language as issued. Risk management services are provided by or arranged through AWAC Services Company (Ireland) Limited, a member company of Allied World. **Allied World Europe** Coverage will be underwritten by Allied World Assurance Company (Europe) dac, which is regulated by the Central Bank of Ireland and is rated "A" (Excellent) by A.M. Best, "A3" (Good) by Moody's and "A-" (Strong) by Standard & Poor's. Coverage underwritten within Switzerland is by Allied World Assurance Company, AG, which is regulated by the Swiss Financial Market Supervisory Authority and is rated "A-" (Strong) by Standard & Poor's. **Allied World Syndicate 2232** Coverage will be underwritten by Allied World Syndicate 2232. Syndicate 2232 is managed by Allied World Managing Agency Limited, which is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. The Lloyd's market is rated "A+" (Strong) by Standard & Poor's and "AA-" (Very Strong) by Fitch Ratings. © 2017 Allied World Assurance Company Holdings, GmbH, a Fairfax company. All rights reserved.