

Distinctive. Choice.



Warranty & Indemnity (W&I) Insurance

Professional & Executive Risks
(ProEx)

Risk and Insurance Services

Overview

Warranty & Indemnity Insurance, sometimes also referred to as Representations and Warranties Insurance, responds to losses which result from the breach of the warranties or indemnities in a sale and purchase agreement.



W&I Insurance covers both first and third party claims and includes defence and investigation costs.

Who should consider purchasing W&I Insurance?

This type of cover can be purchased by the seller or the buyer in a transaction. A seller side policy would respond in the event that the buyer makes a claim against the seller for breach of a warranty following the completion of the transaction. Correspondingly, a buyer side policy allows a greater degree of protection in the event that the seller is either unwilling or unable to offer comprehensive warranties or indemnities in the sale and purchase agreement.

What does the policy cover?

The policy would cover both first and third party claims and includes defence and investigation costs. Importantly, the buyer side policy also enables the buyer to pursue a claim against insurance without first having to seek recourse against the seller. Although a seller side policy will only indemnify the seller for their own innocent misrepresentations, the buyer side policy also provides cover for fraudulent acts by the seller.

What is excluded?

Generally the policy excludes any issues which are known at the time of the transaction. In practice this refers to any issue/s which are either highlighted in the disclosure letter or identified during the due diligence process. Other exclusions such as fraudulent misrepresentations by the seller (on a seller side policy) as well as any fines, penalties and/or consequential losses, may also be imposed.

Risk and Insurance Services

What are the advantages of the policy?

SELLER SIDE POLICY

- Provides certainty in protecting the proceeds of the sale from future claims
- Allows PE funds to make a clean exit from an investment particularly where they are looking to close off a fund
- In an auction situation, a seller can offer greater warranty protection and thus make the sale more attractive to potential suitors
- In distressed sale scenarios, the seller may be able to secure a sale more quickly if it can offer greater security through a W&I policy
- Protracted negotiations over the mark up of an SPA can often be avoided in cases where an insurance policy provides comfort to both parties
- Avoids the need for proceeds to be placed in escrow allowing for the immediate distribution of funds to investors

BUYER SIDE POLICY

- Allows the buyer to pursue a breach of warranty claim directly against insurers
- Allows investors to protect their investment in cases where recourse may be limited due to the nature of the transaction and/or the seller's circumstances
- Provides comfort to potential buyers and allows them to make a more competitive bid
- In foreign jurisdictions, recourse against an insurance policy can enable buyers to avoid local legal complications
- Protects a buyer in cases where there is some doubt over the long term financial stability of the seller post-transaction
- Enables the buyer to plan for the future without the risk of any unforeseen additional capital injections

About JLT Asia

Jardine Lloyd Thompson (JLT) Asia is a market leader in insurance and reinsurance broking, risk management consultancy and employee benefits services.

Our operations in Asia date back to 1836. Today, JLT Asia is one of the most experienced brokers in Asia, with over 700 staff in 12 locations - China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Macau, Philippines, Singapore, Taiwan, Thailand and Vietnam.

JLT Asia's technical abilities and expertise span a wide range of specialist areas:

- Affinity
- Aviation
- Captives
- Capital Risks
- Construction
- Employee Benefits
- Energy
- Interactive Technology Solutions
- Major Corporate Risks
- Marine (Cargo and Hull P&I)
- Professional & Executive Risks (ProEx)
- Property
- Reinsurance (Treaty and Facultative)
- Risk Management
- Small & Medium Enterprises (SME)
- Wealth Management

Our specialists are renowned for their innovative approach to developing integrated insurance, reinsurance and alternative risk transfer solutions.

Integrity is a hallmark of the JLT organisation. Our quality and compliance regimes are among the most thorough in the industry.

You can obtain more information about JLT Asia at: www.jltasia.com

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