

# Warranty and indemnity insurance – a buyer's market

**Warranty and indemnity (W&I) insurance is an established tool for M&A transactions, facilitating the path to completion to the benefit of buyers and sellers alike. Jessica Edwards and Tom Jelly of law firm Sidley Austin consider the outlook for some key W&I insurance trends.**

The flurry of M&A activity during the COVID-19 pandemic naturally strengthened a growing W&I insurance market. The pandemic boom outpaced the organic growth of many insurers, who reached their yearly underwriting capacities before the end of 2021.

Part of the reason for this robustness is the growing recognition in the M&A market of the utility of W&I insurance. For sellers, W&I insurance can facilitate negotiations and provide a virtually clean exit on completion by removing escrows, retention agreements and contractual claims under transaction documents. For the buyer, W&I insurance can provide increased warranty coverage and additional or alternative forms of recourse.

Given the current reduced pace of activity in the larger deal segment and the growing competitiveness and capacity of W&I insurers, we expect insurers to offer a wider range of cover on a greater number and variety of transactions. With this in mind, some of the W&I insurance trends and developments we see continuing include the following:

**Distressed transactions:** As the competitiveness of the W&I market increases, there will be greater scope for distressed transactions to obtain W&I insurance despite the obvious risks of a limited and swift sell-side disclosure process. More broadly, we may see a greater willingness from W&I insurers to accept light touch due diligence processes such as red flag reports (subject to a more diligent underwriting process).

**Competitive premiums and customisability:** In the fourth quarter of 2021, the average UK premium rate was over 1.4% (of the policy limit) for operational businesses and over 0.8% for real estate businesses. Since then, these rates have dropped to as low as 0.8% and 0.4%, respectively. Insurance providers are also more likely to be receptive to combined policy enhancements, with insurers developing products to target specific risks (e.g., environmental risks).

**Asia-Pacific growth:** Around 60-70% of M&A transactions in Europe and the US include some level of W&I insurance. In the APAC region, the equivalent figure is estimated to be 15%. However, this gap is expected to narrow, with a number of insurers opening for business in the region in 2023.

**SME coverage:** The lower-mid market has been an area of concentration for W&I insurers. The notification rate for SMEs has more than doubled from 2021 to 2022, suggesting a growing acceptance of W&I insurance across the market spectrum.

**IT and cyber security:** A growing reliance on IT platforms has led to an increase in high-profile cyber-attacks and data-breaches. We expect cyber and IT security to become an area of greater scrutiny for insurers across many sectors, not only in technology-related transactions.

Given the increased competition and capacity in the W&I insurance market, as well as cheaper and more bespoke policies, we believe both buyers and sellers should consider how W&I insurance can facilitate their M&A transactions.



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