Seller Introduced Buyer Side W&I Insurance

INTRODUCTION

W&I insurance is a generic name for insurances providing coverage for losses arising from a breach of warranty or in certain cases under an indemnity. The insurance often provides advantages for both the buyer and the seller in M&A transactions as the seller's liability to cover breaches under the SPA is transferred to an insurer. Through a W&I insurance, the seller may limit its monetary liabilities while still providing commercial warranties without affecting the buyer’s possibility to claim for reimbursements. Through strategic measures, a seller introduced W&I insurance can streamline the process and ensure optimal coverage of the warranties.

WHY SHOULD A W&I INSURANCE BE CONSIDERED?

• A “clean exit” for the seller – by strategic use of a W&I insurance, the seller’s liability under the SPA for breaches of warranties are covered through the insurance policy.

• Financial incentives – as the W&I insurance replaces the financial security for warranty breaches, an escrow can be avoided meaning a higher cost efficiency which may contribute to the transaction value by 1% - 2% while the seller gains instant access to the proceeds.

• Well-established counterpart – uncertainties regarding a seller’s ability to reimburse the buyer due to insolvency or liquidations can be avoided in the event of a claim as the insurer assumes the liability in the transaction.

• Relationship-building – facilitates negotiation tools between seller and buyer and eases a continued relationship, especially when the management of the company remains after the transaction is completed.

• Low retentions are available for W&I insurances in M&A transactions provided that the loss amounts to a predetermined level, a so called de minimis.

• Simplifies the claims process in case of breaches if there are several sellers in a transaction as a claim only has to be made against the insurer.

THE SELLER INTRODUCED BUYER SIDE INSURANCE CONCEPT

• If a seller introduces the concept as part of an auction process to multiple buyers, the seller can expect to capture the economics as multiple buyers will be bidding along the same set of expectations.

• The seller can minimize escrow and retained liability.

• As part of the process, the seller can instruct the buyers to bid with or without W&I insurance to identify the most cost efficient solution.

Below, the two most common options to execute a seller introduced buyer side W&I insurance are introduced.

Option 1: Seller selects insurer which underwrites multiple bidders

Option 2: Seller selects insurer which underwrites final bidder
COSTS
Subject to signed NDAs, Aon will approach the insurance market to seek indicative terms, Non-Binding Indications (NBI), on a cost-free basis. Following these approaches, and giving consideration to their reputations and the competitive terms offered, you will, with Aon’s assistance, be able to select the insurer who is best positioned to provide a W&I insurance in respect of the specific transaction. Prior to commencing into underwriting, the insurer requires a signed “Expense Agreement”. The premium in Nordic transactions is usually between 0.7% - 1.4% of the purchased limit. The aggregate limit is normally between 10% and 30% of the enterprise value and reflects the seller’s liability under the SPA.

<table>
<thead>
<tr>
<th>STEPS</th>
<th>COSTS</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>NBI stage</td>
<td>Nil</td>
<td>Aon provides a report which summarizes the NBI’s and recommends an insurer which is best suited for the transaction</td>
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<tr>
<td>Insurer engaged but no insurance is placed</td>
<td>EUR10K-EUR20K</td>
<td>Cost for the insurer’s external legal advisors -- this is normally waived if a W&amp;I insurance is finally placed</td>
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<tr>
<td>If a W&amp;I insurance is placed</td>
<td>0.7% - 1.4% of insured limit</td>
<td>The price is based on Nordic transactions</td>
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Please note that if option 1 above is chosen, i.e. the seller selects an insurer which underwrites multiple bidders, each bidder will be required to sign an Expense Agreement as per table above.

TIMING
NBI-stage (indications regarding pricing and insurability of the warranties): 3-5 days
Risk assessment and W&I insurance placement: 4-7 days
Total: 7-12 days

W&I QUICK FACTS

- **W&I Insurances are used in 25%-30% of all Swedish transactions**
- **The premium costs for W&I insurances has dropped more than 50% during the last years**
- **The amount of insurers has risen from 3 in 2007 to over 15 insurers**
- **Total capacity (insured limit / transaction) for Nordic transactions >EUR750m**

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