

Transaction Risk Insurance – Buyer’s Warranty and Indemnity Insurance



IFFCO TOKIO General Insurance Co. Ltd.

Global M&A Activity – Market Developments

- Global M&A Activity reached in 2016 it's third highest deal value since 2007, with 17,395 deals, US\$ 3.2 Tn
- US M&A Activity has absorbed half of M&A volume and China has shown strong appetite for overseas acquisitions

The TRI Market

Historically

- Few Markets, lack of competition – AIG virtually Unchallenged
- Originally underwritten by D&O/PI underwriters as an add-on to professional lines book
- High Premium (4 – 7% ROL)
- Very rigid cover
- Cumbersome underwriting process
- Little to no claims experience

Current Market

- Competition setting in – premiums being driven down
- Dedicated teams consisting of experienced underwriters and legal/M&A professionals
- Coverage is broad/innovative
- Flexible solution-driven products
- Intensive high speed Underwriting process
- Increasing claim notifications but claim payments still low

TRI – An Insurance Solution: What is Transaction Risk Insurance?

The **Buyer** wants

- to pay the lowest price possible
- not to accept any more risk than necessary
- to protect their investment against unexpected financial loss

The **Seller** Wants

- the highest sale price possible
- immediate access to proceeds
- to mitigate exposure to on-going risk

TRI provides risk transfer solution to parties involved in a financial transaction: merger and acquisitions, management buy-outs, securitizations etc. Facilitating a deal by removing one of the risks from the negotiation table that could otherwise threaten the deal itself.

Eg: Price negotiation, completion accounts, warranties and indemnities

WARRANTY AND INDEMNITY (W&I)

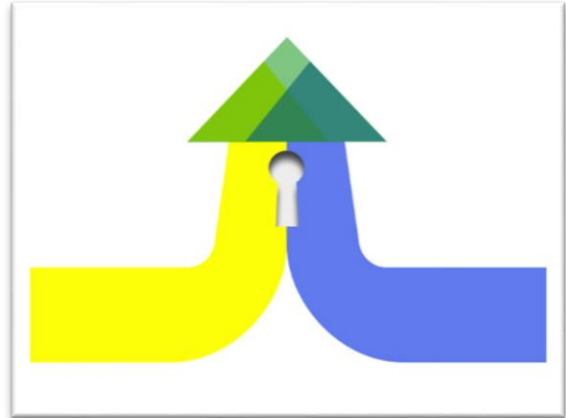
A Convenient, alternative risk transfer solution for either buyer or seller involved in a corporate deal such as M&A: wanting coverage against the potential breach of the warranties stipulated in the corresponding documentation. W&I acts as a deal facilitator and a strategic tool, enhancing the sale offer (seller-side policy) or the favorability of the buyer's bid (buyer-side policy).

Insures: Financial Loss arising out of a breach of the warranties contained in the contractual document (such as an SPA – Sale & Purchase Agreement):

Seller-side: liability to indemnify the buyer of his loss

Buyer-side: the direct loss suffered by the buyer

We offer both buyer-side and seller-side W&I policies customised to match each deal's requirements so there is little-to-no difference between what can be claimed pursuant to the SPA and what can be claimed on the policy



Coverage

Financial Loss arising out of a breach of the warranties contained in the contractual document (such as SPA)

Losses are

- Awards of damages against a warrantor for breach of a warranty
- Sums payable by a warrantor under indemnity
- Sums payable by a warrantor pursuant to a settlement
- Defense Costs

Areas of cover: Examples out of an SPA

- Financials: true and fair view of the accounts, full disclosure of debts and doubtful debts, etc.
- Taxes: Payment of due taxes, No existing or expected tax dispute etc.
- HR: no strike or labour dispute, incentive programs and bonus declarations etc.
- Litigation: No civil or criminal proceedings etc.

W&I Insurance – Scope of Cover

Objectives:

- Cover all representations and warranties of the SPA in a fair negotiation and thorough disclosure process
- Follows the SPA features: Seller's cap, threshold, de minimis, time limitation to offer as a back-to-back cover as possible
- Follow the SPA's language: definitions and concepts to offer back-to-back cover

The policy is only an ancillary contract, the main contract being the SPA



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