

UNDERWRITING ABILITY UNDERSTANDING LIABILITY

Warranty & Indemnity insurance

Liberty International Underwriters (LIU) is a leading underwriter of Financial Lines risks. Our Transaction Liability team has the ability and authority to offer swift solutions for our clients seeking warranty and indemnity (W&I) insurance cover. We can offer limits up to US \$25m on either a primary or excess basis.

The cover

In the sale of a business, the sellers may make contractual representations, known as warranties, to the buyer. If a warranty is not accurate, it is said to have been breached; a buyer suffering a loss as a result of that breach is likely to be entitled to damages from the seller.

W&I insurance can be taken out by either the seller or the buyer. If used effectively, particularly by a buyer, a W&I insurance policy can be a tool in the transaction process rather than simply a source of recovery in the event something goes wrong.

- For sellers, it may cover both the costs of defending a claim for loss and any damages that may be due, provided the breach of warranty was not fraudulent.
- Buyers are insured against loss arising from a breach of warranty but can claim directly under the policy without having to pursue the seller, even where the warranty breach was fraudulent. Buyers may also obtain better cover under the policy than they have agreed with the seller: monetary thresholds can be higher and time limits can be longer.

Our aim is to cover all reasonable warranties so the W&I insurance policy will effectively replace the seller's obligations under the sale contract, providing back-to-back cover.

Policies can be purchased at any time, even after completion if necessary, but will commonly run from signing until expiry of the limitation periods in the underlying sale contract unless an insured wishes to prolong the insurance beyond that date. If the insurance process is started promptly it will run concurrent to the deal. In most cases we will be able to agree and bind a policy within 10 working days of the initial enquiry.

The limit of liability under the policy will be determined by the enterprise value and the insured's risk appetite. The premium charged will take into account the complexity of the transaction, the size of the policy deductible, the nature of the target business, its geographical spread and the quality and extent of due diligence available. Assuming all of these factors are favourable, the premium is likely to be 1-2.5% of the limit provided.

The amount an insured can recover under the insurance will depend on the limit insured and the amount of the policy deductible or 'retention' agreed under the policy. Our starting point for agreeing the deductible will be the claims threshold in the sale contract.



LIU will not generally agree under standard W&I policies to cover losses arising out of matters disclosed or within the knowledge of the insured party; issues covered by specific indemnities in the sale and purchase agreements; fines and penalties which are uninsurable by law; forward-looking warranties; pension underfunding; purchase price adjustments. Specific issues may be covered under a bespoke insurance policy and we welcome such enquiries.

Examples of W&I insurance in use

To enable an investor to achieve a clean exit rather than retaining residual liability under sale warranties, the selling investor (which might well be a fund or an individual) agrees with the buyer that an insurance policy will be put in place. The buyer has recourse under the policy; the investor has immediate access to sale proceeds.

Where a buyer and seller will have an on-going relationship after the sale, the buyer may be reluctant to pursue the seller for warranty breaches. If it has an insurance policy, the buyer's claim will be made against the insurer.

Financial backers of a business purchase may require the buyer to take out insurance to ensure that its investment will be protected irrespective of the financial condition of the seller.

Management selling their personal shareholdings will often receive a very small proportion of the sale proceeds yet bear responsibility for any warranties given. In such cases they may secure sell-side insurance to protect their personal assets.

An overview of LIU

Part of Liberty Mutual Insurance's global specialty unit, LIU provides a diverse range of specialty products distributed through the independent broker network.

LIU is a global specialty commercial lines insurance and reinsurance business, and offers core products in casualty, marine, construction, energy, inland marine, directors and officers, fidelity, global financial risks, professional liability, aviation, property, surety and crisis management insurance. LIU's worldwide operations include 40 offices throughout Asia, Australia, Europe, the Middle East, North America and South America.

Liberty Mutual Insurance is a leading global insurer and the third largest property and casualty insurer in the US based on 2014 direct written premium. Liberty has more than 50,000 staff in 800 offices around the world and is a Fortune 100 company.

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Disclaimer:

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