

# Transactional Risk Insurance

Warranty and Indemnity Insurance

Tackling the changing tides  
Navigating forwards together



# Transactional Risk Insurance

Transactional Risk Insurance is an umbrella term which encompasses Warranty and Indemnity insurance (“W&I”), Tax Insurance and Contingent Risk Insurance.

## Suite of products



### Warranty and Indemnity Insurance (“W&I”)

(known in the US as representation and warranty insurance)

- Indemnifies the insured for financial loss for a breach of warranty or the tax indemnity in an M&A transaction.
- Covers loss or liability arising from unknown or undisclosed matters only.
- Can be purchased by either a buyer or a seller.



### Tax Insurance

- Transfers a known or uncertain tax liability from the insured's balance sheet to an insurer.
- The insurer will indemnify the insured for financial loss arising from a challenge from a tax authority.
- Available both pre or post M&A transaction (or on a standalone basis).



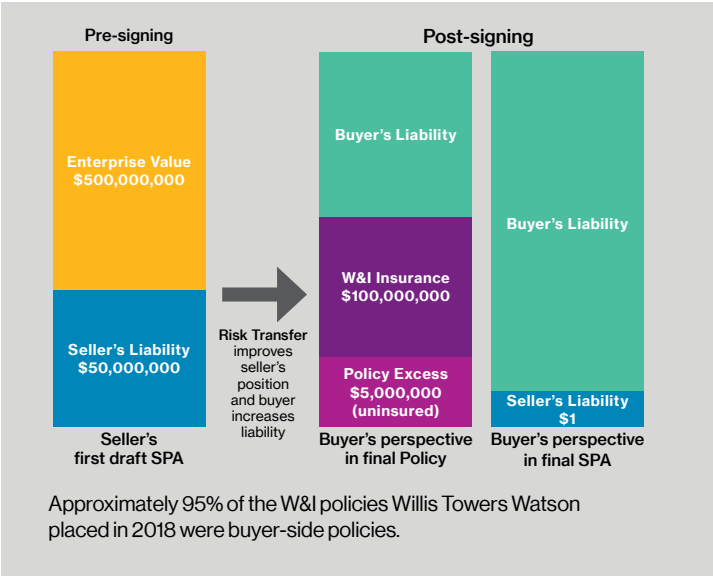
### Contingent Risk Insurance

- Covers identified or known contingent risks which are typically the subject of a specific indemnity in an M&A transaction.
- May also be provided for identified “one-off” issues which are not necessarily related to an acquisition or a disposal.
- Used to facilitate a future deal, transfer risk or mitigate a contingent balance sheet exposure.

## W&I - key features

### Buyer-side

- Covers the buyer against the seller's misrepresentations (both innocent and fraudulent).
- Two key advantages over a seller-side policy:
  - The insured can claim directly against the insurer (i.e. without having to pursue recourse against the seller or warrantor(s)); and
  - Provides indemnification in respect of the seller's fraud.

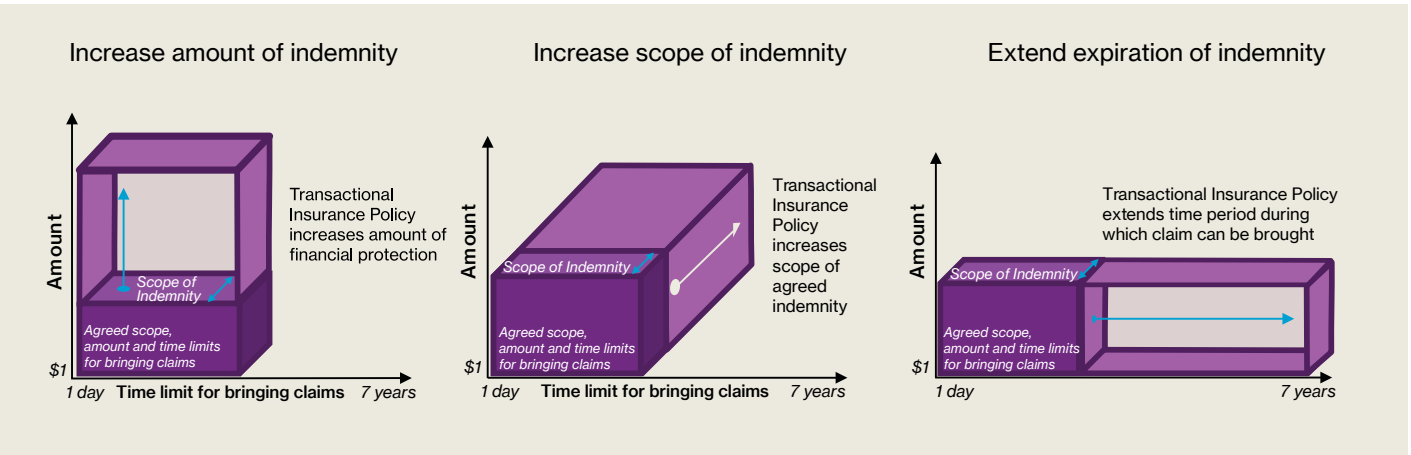


### Seller-side

- Offers liability protection to the seller for innocent misrepresentations in M&A transaction documents.
- Designed to respond in the event that the buyer brings a claim for a breach of warranty or a claim under the tax indemnity against the seller.
- Enables a seller to ring-fence the risks associated with the disposal.
- Used as an “End of Fund Life” solution to package contingent liability for historic disposals.

## M&A transaction tool that adds value

W&I insurance supplements and extends protection for breaches of warranties (duration, scope, quantum)



Buyer's reasons	Seller's reasons
<ul style="list-style-type: none"><li>▪ Enhance or distinguish an auction bid;</li><li>▪ Protect relationships with sellers or warrantors;</li><li>▪ Alleviate concerns where uncertainty of recourse;</li><li>▪ Provide protection for proceeds of sale;</li><li>▪ A risk management tool where investing in unfamiliar industries or territories;</li><li>▪ Give extra comfort for lenders (including the ability to assign policy proceeds);</li><li>▪ Reassure shareholders and other investors;</li><li>▪ Mitigate enforcement difficulties where the seller and buyer are in different jurisdictions;</li><li>▪ Bridge the warranty gap;</li><li>▪ Enhance the warranty package on offer from a distressed seller / administrator; and</li><li>▪ Remove an intractable issue from a negotiation.</li></ul>	<ul style="list-style-type: none"><li>▪ Achieve limited or “nil” seller recourse;</li><li>▪ Enhance the value of exits;</li><li>▪ Achieve a “clean exit” and fast distribution of sale;</li><li>▪ Use as part of an intra-group or pre-IPO reorganisation;</li><li>▪ Mitigate or ring-fence either general or specific post completion liabilities/exposures;</li><li>▪ Protect passive sellers;</li><li>▪ Peace of mind for individual (or family) sellers;</li><li>▪ Risk management tool where a seller is exiting a non-core business division; and</li><li>▪ Remove an intractable issue from a negotiation.</li></ul>

## Seller-side to buyer-side “flip”

It is common that competitive auction processes will require that sole recourse for claims in respect of a breach of warranty or under the tax indemnity will be to a Buyer's W&I policy (except in the case of fraud).

The Willis Towers Watson team in Australia and New Zealand pioneered the use and structuring of W&I insurance in these competitive auction processes and can work with the seller and its deal team to structure a tailored W&I insurance solution for the seller which will typically involve:

- Approaching the W&I Insurance market to secure the most competitive pricing and terms - this is done on behalf of the seller with a view to ultimately placing a Buyer's W&I policy;
- Appoint a preferred W&I insurer, having regard to WTW's extensive experience in the market;
- Producing W&I process notes and papers to be shared with bidders to ensure an efficient and controlled W&I insurance process;
- Working with multiple bidders to minimise back end execution risk; and
- Placing the W&I policy on the buyer-side with the preferred bidder.



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## Why Willis Towers Watson?

The Transactional Risks team at Willis Towers Watson is a market-leading, global and experienced team of M&A professionals with significant corporate, legal, tax, underwriting and broking insurance backgrounds that advises its clients, and their advisers, on entering into bespoke transactional insurance products. To provide our clients with the most flexible and competitive insurance solutions, we are able to access all major insurance markets worldwide for every transaction. We advise on the process, market trends and facilitate/negotiate the optimum insurance solution for the insured. On every deal, we utilise our strategic relationships with the insurers or underwriters enabling us to deliver the best achievable results in a timely manner.

## About Willis Towers Watson

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