



M&A Insurance Process On An Exit

THE PARAGON M&A TEAM HAVE TREMENDOUS DEPTH OF EXPERIENCE IN ARRANGING “STAPLE” INSURANCE WITHIN THE DEMANDING DEADLINES OF A SALES PROCESS, ENSURING MINIMAL DISRUPTION TO THE MULTIPLE TRANSACTION WORK-STREAMS AND THE EFFECTIVE IMPLEMENTATION OF A COST EFFECTIVE POLICY FOR THE EVENTUAL BUYER

The Paragon M&A team supports and advises sellers, buyers and M&A advisors, including:

- Private equity
- Real estate investors
- Corporates
- Infrastructure funds
- Law firms
- Corporate finance
- Accountants

Paragon have a strong reputation for providing comprehensive advice and delivering the following effective insurance products, including:

- Warranty & Indemnity
- Reqs & Warranties
- Tax
- Litigation Transfer
- Contingent Liability
- Title

We recognise that every transaction is unique and there will be distinct motivations driving each deal. This note is intended to act as a guide for M&A professionals on how Warranty & Indemnity (W&I) and other M&A insurances could be used within a competitive exit process.

BENEFITS

- Sellers limit their liability allowing early access to the full deal consideration.
- The need for escrow, bank guarantee and hold-back is minimised.
- The buyer has direct rights of recourse against their policy in the event of a claim.

Management

- “Ring fence” contingent exposure from breaches of warranties and indemnities.
- Enables a full suite of commercial business warranties to be provided.
- Re-investment into the target business is safeguarded.

Buyers

- Direct access to a M&A insurance policy with a limitation package tailored to the buyer’s requirements from an insurer with a strong security rating.
- In the event of a breach, there is no need to involve the seller / management in a claim.
- Management focus remains on driving the business forward without the “distraction” of potential claims that could erode the equity that they have worked hard to create.

Transaction timetable

Subject to the complexity of the transaction and the nature of the sales process, M&A insurance can meet all the necessary transaction milestones. When involved from an early stage in the sale process, the insurance timetable can be positively managed.

Contact Us

For more information on how M&A insurance solutions can facilitate transactions, please contact:

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QUESTIONS TO CONSIDER

- What **W&I structure** options are available and what will work best for the transaction?
- What **scope of cover** to offer i.e. policy limit, policy excess, policy period?
- How is the **cost of the insurance** to be allocated?
- When is the **right time** within the sales process to introduce M&A insurance to bidders and what information should be provided?
- Whether **bidders** should access the M&A insurance market directly?
- The impact that **split signing and closing** may have to the insurance terms?

UNDERWRITING FACTORS

Insurers need to have evidence of a **robust disclosure process**, that the buyer is completing **thorough due diligence** on all material aspects of the target and that the **warranties are well balanced** and negotiated in good faith by the sellers (regardless of the levels of liability that the sellers / management may retain).

PROCESS

The M&A insurance market sees thousands of transactions every year and insurers recognise the need to observe the utmost levels of confidentiality.

- Following the decision to sell the target, consider if an M&A insurance option is suitable and if so, the best approach for that particular sale process.
- Paragon provide a feasibility report outlining how the insurance process will fit within the wider sale, plus the likely scope, potential structures and costs of cover.
- Indicative terms obtained from the insurance market and report provided to the seller team.
- Insurance is aligned with the SPA to meet the seller's optimal exit position prior to it being released into the data room.
- Bidders given visibility of the insurance arrangements via a report, a term sheet, or a part negotiated policy.
- In the event exclusivity is given to preferred bidder / buyer, control of the insurance process passes to the bidder.
- Alternatively if there is a contract race, the seller controls how the insurance process fits into the transaction process and may require multiple insurer options.
- Insurer finalises their underwriting process.
- Policy wording negotiations completed to agree coverage.
- Policy commences at signing - if there is a period to closing, the necessary steps are undertaken at close and policy reaffirmed.



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