M&A Insurance M & A

TYSERS
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M&A Insurance is fundamentally changing the nature of how transactions are being completed in the mergers & acquisitions world today.

With the increasing number of macro uncertainties in the deal-making environment and the amount of transactions failing to complete, the potential risk to transaction parties and their advisors of wasting time, effort and money is more prevalent than ever.

M&A Insurance can help prevent this by facilitating the closing of a deal through the transfer of certain financial exposures away from either the buyer or the seller to Insurers. These policies can be a capital efficient alternative to more traditional mechanisms, such as escrow or guarantees.

What is M&A Insurance?

M&A Insurance is a suite of tailored insurance policies, which are specifically designed to address identified or potential risks highlighted in the transaction negotiations between buyer and seller, covering the various liabilities these parties face.

These policies allow sellers to minimize their liabilities, whilst providing buyers with the financial protection they require to complete the acquisition.

M&A Insurance removes uncertainty from the deal process and can expedite negotiations by overcoming potential deal impasses, to ensure a transaction completes.

Although every policy is tailored to the transaction specifics, there are three main groups that M&A Insurance policies fall into; Warranty & Indemnity (W&I), also referred to as Reps & Warranties in N.America, Tax Liability and Contingent Liability.

By far the most popular M&A Insurance product is Warranty & Indemnity, which provides cover for a breach of the warranties made by the seller in a sale and purchase agreement, which are unknown to the buyer when the transaction completes.

Tax Liability covers specific tax exposures identified by advisers in the due diligence process, which could be challenged by a tax authority in the future. These can include residency concerns, taxes payable in their historical operation or whether capital gains is applicable relating to a transaction.

Contingent Liability can remove a wide variety of risks associated with either ongoing or potential legal, regulatory or other contingent issues.

Who can use it?

Policies are available for either the buyer or seller and can be used in a variety of transaction scenarios, including acquisitions, sales, restructuring, refinancing and investments.

M&A Insurance caters to all industry sectors and can assist in multiple jurisdictions, especially when a deal is cross-border and additional exposures may exist to a transaction party.

Tysers regularly works with all types of transaction advisers (legal, financial and tax) to help remove uncertainty from the process and ensure a deal completes.

When would you consider it?

These solutions can be introduced any stage of the transaction process; from the offer terms and drafting of the transaction document, to the closing down of an investment vehicle and returning the net proceeds back to investors.

Warranty & Indemnity is regularly used to "top-up" low seller liability limitations in the purchase agreement; both monetary (normally a percentage of the transaction value) and time period (two years for business warranties and seven years for tax warranties). This can help the buyer, by increasing the level of financial recourse available, or the seller, by reducing post-completion liabilities.

Tax Liability helps when parties cannot agree on the allocation of potential pre-closing liabilities or if there is no clear guidance from the relevant tax authority or legal precedent available. These policies are commonly used to substitute Indemnity provisions and expedite transaction negotiations.

Contingent Liability tackles potential "deal blockers", such as the financial exposure from threatened or existing litigation, a change in law or regulation post-completion, or liability concerns in a distressed entity transaction.

Why would you use it?

There are many reasons why M&A Insurance should be introduced in a transaction scenario, which are to the benefit of both transaction parties and their advisers.

For buyers, the policies can provide additional protection and risk management following the completion of a transaction. This can be in the form of enhanced financial security surrounding potential recourse concerns from the selling entity, which may be offshore or liquidating post-completion. Or, to protect the relationship with the new management, if a breach of warranty were to occur post-completion, with the buyer seeking recourse directly from an Insurer instead.

For sellers, insurance enables a clean exit, reducing post-completion liabilities and allowing them to access sale proceeds immediately. It removes the need for escrows and other similar mechanisms, which are not an efficient use of capital for either individuals or investment vehicles.

Advisers receive the benefit of having another "M&A tool" to use when structuring a deal; whether that be for strategic purposes in an auction process or to overcome negotiation impasses.

How is it arranged?

M&A Insurance policies are multiyear, in line with the exposures being addressed; typically 2-7 years in duration. The cover dovetails with the transaction documents and the policy can incept when the deal is signed. Insurance quotations can be obtained within 48 hours and policies put in place within 10 days. A one-off premium is payable after completion of the transaction and either the buyer or seller can pay for the policy, or it can be factored into the purchase price. The premium charged for a policy varies depending on the deal dynamics and particulars of the situation, such as industry sector, jurisdiction, etc.

M&A Insurance is helping transaction parties and their advisers address risk and provide financial certainty in a variety of deal scenarios. It provides a flexible, efficient and cost-effective option for dealmakers to facilitate transactions.

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