



W&I insurance, also known as M&A insurance or representations and warranty insurance (R&W), can be purchased by a buyer or a seller in an M&A transaction to protect against financial loss arising from an unknown or undisclosed matter that is covered by the warranties or tax covenant agreed between the parties.

## Why choose Brockwell?

We are experts in M&A insurance. Our team has more than 50 years of combined experience with transactional insurance products as underwriters, insurance brokers, and advisers. This market-leading expertise means that your M&A transaction is in safe hands with Brockwell.

All service providers involved in an M&A transaction need to facilitate the process and our experienced M&A professionals can fit seamlessly into a transaction to help get the deal done. Unlike other W&I insurers, we have in-house tax and accounting expertise with excellent M&A/W&I experience which allows us to provide a more agile service without reliance on external advisers.

Our team will proactively look for opportunities to assist clients with risk management. For example, we may be able to offer cover on a standalone basis with a tax or contingent policy for a 'high quantum : low likelihood' risk that is identified and therefore excluded from the W&I policy.

We are also able to offer a range of buy-side enhancements:

- new breach – cover for warranty breaches in the signing/closing gap
- knowledge/materiality scrape removal of warranty qualifiers
- synthetic tax covenant - a tax covenant under the policy
- affirmative cover - removal of disclosure under the policy in relation to certain identified risks
- synthetic non-disclosure of the data room

And we are here to support both during and after your transaction. Our clients can be confident that behind their policy is robust risk capital and award-winning claims expertise.

## Cover for Identified Risks

Where a matter is noted in due diligence, but is theoretical in that it does not relate to a substantive identified risk and is classified as a low, very low or remote risk, then notwithstanding the reference in the due diligence (for an additional premium) we may be able to undertake further underwriting and offer cover for such identified matter. This is known as 'affirmative cover'.

We are only able to offer affirmative cover where the risk noted in the due diligence is straightforward and there is sufficient due diligence (or further information available) to allow us to understand the risk.

As an alternative we may be able to offer cover in a standalone Tax or Contingent policy. Broadly, these policies offer an indemnity for financial losses triggered by an 'event' provided

## Headline Coverage Details

**Limit of Liability:** anything up to £45m (or equivalent)

**Minimum Premium:** typically £70,000 (or equivalent) excluding applicable taxes

**Jurisdictions:** no restrictions except pure USA risk

**Policyholder:** cover available to both buyers and sellers (n.b. unlike some insurers we can insure individuals)

**Seller Cap:** cover available where the seller's financial exposure is nil or £1

**Policy Period:** up to a maximum of 7 years

**Policy Excess:** nil excess as standard for real estate/renewables transactions

Contact us for details at:  
[submissions@brockwellcapital.com](mailto:submissions@brockwellcapital.com).



## Synthetic W&I insurance

We understand that there isn't a one-size-fits-all approach to M&A transactions and our team have developed a W&I product to cater to the specific demands of buyers who are acquiring a target where the seller or management team is unable to give warranties. This is particularly relevant for a distressed transaction.

Previously a buyer might have had to take on the risk of unidentified historic liabilities and this was factored into the price or cost of debt finance. However, we can offer 'synthetic W&I insurance' whereby Brockwell offers a set of warranties and in conjunction with the buyer's advisers undertakes a Q&A and targeted due diligence process so that appropriately due diligenced synthetic warranties can be provided in the insurance policy.



### How can synthetic W&I insurance help with distressed M&A?

Acquiring a distressed business does not always allow the time for buyers to get as much comfort as desired. Our distressed W&I insurance helps buyers mitigate unknown risks and so facilitates the acquisition process. For example, a W&I policy can help in a distressed scenario by:

- providing a buyer with financial recourse for key warranties
- facilitating a sale of assets by lenders after enforcement of security
- assisting with getting a buyer's leveraged finance provider comfortable
- protecting a buyer's financial model against unforeseen liabilities

Identified risks can cause a transaction to stall. It may be possible for us to complete a separate underwriting work stream and get comfortable, in which case we will be able to use our in-house expertise to offer separate protection under a standalone Tax or Contingent policy.

### What are the key scenarios for distressed W&I?

#### *Institutional Exit*

An institutional sponsor and management team may be looking to exit, but their equity is under water and so there is no financial incentive for the sellers to give contractual protection. A W&I policy can be used to give a buyer financial cover.

#### *Insolvency Practitioner*

An IP has been appointed and will not provide any contractual protections other than in respect of the validity of their appointment. Using W&I will provide alternative protection.

#### *Finance Parties*

A finance party has enforced security and wishes to dispose of the asset, but is unwilling to offer any contractual protections. The finance provider can propose a W&I policy to any buyers seeking contractual protections to facilitate the disposal.

### How does it work?

The process is designed to accommodate targeted due diligence and limited seller involvement, whilst providing a buyer (and acquisition finance parties) with additional comfort that would not otherwise be available.

Given the potential limitation to the due diligence available, in order to get comfortable Brockwell may request certain documents and information for review. This is more akin to sell-side W&I, except that we may need to make specific document requests where there is no (or a limited) data room. This process would be in addition to the work undertaken by the buyer's advisers, but we will be clear at the outset as to how we envisage the process working.

Whilst our key focus is on distressed scenarios, we would (for example) also contemplate offering the same cover for a public-to-private transaction or where there is a strong commercial rationale for no warranties being given by the seller(s).

## Key contact

**Andrew Graham, Managing Director, +44 (0)7786 134 275,  
[andrew.graham@brockwellcapital.com](mailto:andrew.graham@brockwellcapital.com)**

Andy is a co-founder of Brockwell. He is one of the most experienced M&A risk underwriters in the world and took a leading role in the establishment and development of transactional risk insurance when he joined AIG in 2006.