



## Warranty & Indemnity Insurance in M&A Transactions Overview - GREECE

**Warranty and Indemnity Insurance** (“**W&I Insurance**” or “**R&W Insurance**”), although not a popular element in M&A transactions in Greece, is getting increasing attention lately, especially in high value transactions from the buyer side and in particular where the buyer is a foreign financial institution, venture capital or investment fund.

W&I Insurance would mainly be sought from authorized foreign insurance companies as Greek insurance carriers in general do not have this product available currently in their portfolio for the Greek market for a number of reasons; among them, the low demand from local clients, the market’s transactional immaturity for such policies, the comparatively high costs and premium involved and complexities that may arise in pursuing claims under such policies are mentioned by insurance

market factors and prospective insureds. On the other hand insurance companies sometimes were also reluctant to offer this type of coverage from the outburst of the financial crisis in Greece, especially where tax and compliance risks were involved, which are amongst the main areas of risk in M&A transactions in Greece.

However, both insurance companies as well as international and local insurance brokers are increasingly active with this type of insurance as the country risks are gradually reduced.

Under Greek law and insurance practice, there are no restrictions in acquiring a W&I Insurance policy, as long as the insurance company offering the policy is legally authorized to do so.

W&I Insurance facilitates the successful completion of high value transactions by effectively removing from the negotiating table the contentious issue of allocation of risk for post-completion warranty and indemnity claims.

The seller in a shares sale and purchase contract (“SPA”) may have to face liability from the particular warranties provided in the SPA or indemnity clauses included in it or indemnity agreements related with a transaction. The Transactional Risk Insurance (or Warranties & Indemnities Insurance), reflecting the relevant insurance practice in Anglo-Saxon countries as well as in other jurisdictions, can be used to provide cover against the financial losses from breach of the warranties and indemnities in the SPAs. The cover is used as a method to bridge the gap between the needs of the sellers and buyers in particular M&A transactions. Such gap is inherent in many cases since the buyer of the shares of the company – target tends to secure the widest possible set of warranties on the part of the seller, in order to increase seller’s level of protection, whereas at the same time the buyer prefers to limit the extent of such warranties, in order to reduce the risk of claims being raised after completion of the transaction.

As in the prevailing international practice, the W&I cover is provided either to the seller or the buyer:

The W&I sell-side insurance policy covers the seller for losses seller may suffer from valid claims of the buyer due to breach of the seller’s warranties as well as for any obligation of indemnification, which may derive from the SPA. The seller in such instances keeps the legal responsibility of indemnifying the buyer, as such (responsibility) is agreed in the SPA executed between them for the case that the latter brings a claim for restitution of damages sustained due to breach of warranties up to the limit of liability agreed in the SPA agreement. In the event of a valid claim, the seller will be compensated from the insurance company for any amount exceeding the deductible (the amount, which will be covered by the insured) including all defense costs.

The cover offered in W&I buy-side insurance policies is similar. In the event that the buyer suffers any damages from breach of the warranties of the seller, he is entitled to raise a claim against him and the insurance company for the amount of losses he has sustained, not only up to any limit eventually agreed in the SPA, but also for any amount exceeding it. Claiming against the insurance company does not presuppose bringing a claim against the seller previously.

For both above types of insurance policies (seller-side or buyer-side), the insurance cover is bespoke and may be formed and adapted on the particular needs of each transaction in accordance with the

warranties provided as well as the allocation of risks between the seller and buyer in the SPA, for limits based on the designated limit of liability of the seller in relation to the value of the transaction. Typical exclusions in the insurance cover are the statements in the SPA (disclosures), any findings of reviews performed (and contained in the due diligence report), forward looking warranties, under-funding of private pension benefit plans, willful misconduct and fraud, deliberate non-disclosure and misrepresentations (only in the case of the seller-side insurance).

## CONTACT

For any further comment or query, do not hesitate to contact us:



**Claire Pavlou**  
**Partner**  
**M&A/Corporate**

[c.pavlou@kglawfirm.gr](mailto:c.pavlou@kglawfirm.gr)



**Konstantinos Issaias**  
**Partner**  
**Insurance**

[k.issaias@kglawfirm.gr](mailto:k.issaias@kglawfirm.gr)

### ***Main (Athens) Offices***

28, Dimitriou Soutsou str., 115 21, Athens, Greece, Tel: +30 210 8171500, Fax: +30 210 68 56 657/8

### ***Thessaloniki Branch***

17, Ethnikis Antistaseos str., 551 34, Thessaloniki, Greece, Tel: +302 2310 441552

[www.kglawfirm.gr](http://www.kglawfirm.gr)



Follow Us

---

**Disclaimer:** This newsletter contains general information only and is not intended to provide specific legal, or other professional advice or services, nor is it suitable for such professional advice, and should not be used as a basis for any decision or action that may affect you or your business. Before making any decision or taking any action that may affect you or your business, you should consult a qualified professional advisor. We remain at your disposal should you require any further information or clarification in this regard.

©Kyriakides Georgopoulos, 2019