Warranty & Indemnity Insurance

What is it and do you need it?

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When selling a business, buyers usually demand that you provide representations and warranties. These are legally binding assurances which provide the buyer with protections from any misrepresentation that can lead to a financial loss. If any of these assurances are incorrect and the buyer suffers a loss, they can make a claim for financial compensation against you.

Warranty and Indemnity insurance (also known as Mergers and Acquisition insurance) is there to protect you from the financial loss associated with claims while providing both parties with additional peace of mind.

What are warranties and indemnities?

A warranty is a written statement provided to the purchaser to back up claims you have made about the business during the sales process. Examples include:

- Accounting and other financial information
- Employees and pensions
- Intellectual property rights

Indemnities offer security for the buyer from known and specific circumstances. Examples include:

- Ongoing legal disputes
- Existing employee tribunals

What are the risks associated with warranties and indemnities?

When you provide the buyer with these warranties & indemnities, you are accepting responsibility for any financial loss that occurs due to misrepresentation. So, if the accounts are found to have been misrepresented, for example, you are liable for any loss sustained, even if such misrepresentation has been provided to you by others.

How long are you liable after selling your business?

Claims against you can be made up to six years post-sale.

How does a W&I policy provide protection?

If a warranty is proven to be inaccurate, even if by accident, as the seller you'll be responsible for reimbursing the buyer for the loss they have suffered as a result. A W&I policy will help protect your business sale proceeds and provide cover for defence costs arising from the claim of an inaccurate warranty.

What are the benefits of W&I insurance?

The obvious benefit is the removal of the financial risks associated with a claim against you. However, there are other, less obvious benefits.

- Maintaining W&I insurance may help you avoid the need for escrow, freeing up the sale proceeds.
- It provides peace of mind for the buyer, as they know valid claims will be paid. Making your business a more attractive proposition.

Can Warranty & Indemnity insurance be purchased by the buyer in an M&A deal?

Yes, the advantages are:

- Avoids risk of the buyer potentially having to bring a warranty claim against a seller who continues to be employed by the business after completion, therefore protecting the relationship with valuable staff as a claim is instead made under the policy.
- Removes the risk of a seller not having the funds to pay if a warranty claim arises
- Can improve the buyer's negotiating position as a seller may be willing to consider a lower offer if they know that the sale proceeds will be immediately available to them, rather than waiting for a warranty period to expire or having money held back in an escrow account

While every seller has the best intentions it is impossible to guarantee the integrity of your suppliers, investors, partners, and employees. Warranty & Indemnity insurance provides peace of mind, to both buyer and seller, that any misrepresentations are protected, reducing the financial implications of any claims, freeing up sales proceeds and, ultimately, making your business a more attractive proposition.

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