Transaction insurance products are designed to cover the various liabilities incurred in mergers or acquisitions. Warranty and indemnity insurance provides financial protection in the event of a breach of warranty or tax covenant claim under a sale agreement. This is a complex area, but Aon’s team of experts can help clients grow and divest with confidence.

Warranty and indemnity (W&I) insurance can be bought by the buyer or the seller. Sellers use the insurance as a strategic tool to protect their divestments and enhance their rate of return. Sellers are increasingly opting for W&I insurance to enable a clean exit from a position. Buyers use the insurance to increase financial protection, when recoverability from the seller is in doubt, or as a tactic to differentiate their bid in an auction process.

Timing and coverage
A W&I policy can be put in place at any point in the deal process (including after completion), but it is normally placed at the signing of the transaction. If required, the buyer can extend the period of insurance beyond the time limitations in the sale agreement, but it is most common to match the sale agreement liability periods.

Aon always seeks to negotiate cover which matches the warranty liability in the sale agreement as closely as possible. If a particular warranty is excluded from cover, it is always highlighted at an early stage to allow for further negotiation around that warranty. W&I typically excludes “known matters”, such as those detailed in the disclosure letter and any due diligence reports. Costs incurred in the defence of a warranty claim are also covered.

Key information
The premium can vary, but it is typically 1% to 2% of the policy limit. Factors such as the attachment point of the policy, the jurisdiction and the breadth of the warranties in question will affect the final premium amount. The premium is a one-off payment made for the whole period of the insurance policy.

As a guideline, insurers typically anticipate no less than 10% of the total deal size to be insured. The policy excess (also referred to as the retention) is usually set at around 1%+ of the deal size, and a policy de minimis (or small claims bar) would typically apply to 0.1% of the deal value.

Next steps
All transactions are different and transaction insurance is always tailored to suit the individual circumstances involved. To discuss how insurance could be used on a specific deal, or for more information, please get in touch with a member of the Aon transactional liability team.