Warranty and Indemnity insurance in M&A transactions

Osborne Clarke

The Warranty and Indemnity ("W&I") insurance covers seller's liability in the event of a breach of its warranties given in the share purchase agreement ("SPA").

In venture capital ("VC") transactions, W&I insurance helps align investor and founder interests by shifting warranty risk to an insurer, preserving growth capital in funding rounds and enabling cleaner, lower-liability exits.



Pros

Clean exits
W&I insurance reduces residual warranty exposure, enabling VC funds and founders to exit with fewer contingent liabilities and distribute proceeds more quickly.

Alternative to escrows
It replaces or materially reduces the need for escrows and holdbacks, making more capital immediately available to the business.

Protection for founders and management
Shifts a substantial part of the warranty risk to the insurer.

Deal speed
With core risk transferred to the insurer, parties can more easily agree warranty scope, caps and security, which can streamline negotiations and support faster execution.

Enhanced buyer and investor confidence
Cover sitting with a rated insurer increases confidence in enforceability of warranty claims, including in cross-border or higher-risk VC growth deals.

Cons

Cost vs. deal size
Premiums, underwriting fees and additional advisory costs can be disproportionate for early-stage VC transactions, reducing overall returns.

Timing and process friction
Insurer underwriting and extra due diligence requirements may slow down fast-paced VC deal timetables and add procedural complexity.

Coverage limitations
Known issues, fraud and certain tax or technology matters are often excluded.

Retentions and policy caps
Deductibles and policy limits mean not all potential warranty liability is transferred to the insurer.

Target gives warranties
If the investor brings a claim under the warranties, the target pays the damages and, in effect, the very same growth capital into which the investor has just invested is eroded.

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