

## Need for Transaction/M&A Insurance

Every transaction whether stake sale or merger and acquisition carries risks and liabilities whether known or unknown. The representation, warranties and indemnification provisions provide security for the buyers. The indemnities provided in the Sale and Purchase Agreements (SPA) can be short term or long term depending on the negotiation between the buyer and the seller. Distribution of these risks and liabilities is always a contentious issue. The structuring of representations, warranties and associated indemnities can often threaten an otherwise mutually beneficial deal. Representation and warranties insurance can provide a viable solution to both the parties in reaching an amicable agreement and thereby consummate the deal.



## What does the insurance cover?

The insurance provides cover for breach of express warranties and representation made in the SPA. The insurer steps into the shoes of the seller and indemnifies the buyer. The policy can be taken both by the buyer or the seller.

## Buyer Side Policies

Provides compensation to the buyer in case of any loss arising out any breach arising out of representation and warranties given by the seller thereby freeing the buyer from pursuing the seller and his assets.

## Seller Side Policies

Reimburses the seller for any losses that may accrue to the buyer on account of any inaccuracies in the representation and warranties made by seller.

## Benefits for Sellers

- Clean cut from the transaction without any long tail liabilities
- Funds are available for immediate use and may not be parked in escrow accounts

- PE/VC funds may want to redistribute the funds to their investors

### **Benefits for Buyers**

- May not get the desired level of protection/indemnities from the seller
- May find it difficult to pursue the seller and recover losses on a future date
- Enhanced protection in cases where the sale is a distress sale
- May not want to pursue indemnities against principal employees who may continue to work with the buyer post acquisition.

### **Main Insurance Products**

**W&I insurance** is designed to cover breach of representations and warranties and losses arising as a consequence.

**Tax opinion insurance** is designed to cover tax treatment of a particular transaction which the tax authorities may challenge at a later date.

### **Main Exclusions**

- Actual knowledge of a breach or fact which may lead to a breach
- Frauds of the insured
- Matters already disclosed

**For more information on this policy, contact us on [info@optima.co.in](mailto:info@optima.co.in)**

Optima Insurance Brokers Pvt. Ltd. is a leading insurance broking company based in Delhi and has a pan -India presence through 7 offices.

Optima manages insurance for more than 500 well-known companies including GE, Honeywell, Nat Geo, E&Y, India Bulls, Birla Soft etc. With a team of more than 150 accomplished professionals we are geared to handle the most complex insurance needs of our clients. For more information on this policy, contact us on [info@optima.co.in](mailto:info@optima.co.in)