

During the course of intricate M&A discussions, negotiating parties need an experienced insurance team that can offer innovative solutions to help move the dialogue forward. Allied World's Mergers & Acquisitions team has highly experienced professionals who are knowledgeable on both the financial and legal aspects of transactions. As specialists in the mergers and acquisitions insurance field, we work with clients to recommend risk mitigation solutions, before disagreements impair or derail the process.

### REPRESENTATIONS AND WARRANTIES (R&W) INSURANCE

Representations and Warranties (R&W) insurance provides coverage for losses arising from breach of representations and warranties within the context of an M&A transaction. Often, during M&A negotiations, a gap exists between the level of indemnification that will be offered by a seller and the level of indemnification that a buyer will accept. This can often lead to a deadlock between the parties and their advisors. An R&W insurance policy can bridge that gap by transferring certain risks to a third party.

#### Key Features

R&W insurance can be purchased by a buyer or a seller to protect against the loss or liability arising from an unknown or undisclosed matter. A seller side policy protects the seller for losses suffered in the event that a buyer brings a claim for breach of a representation or warranty. Defense costs incurred by the seller are also covered under the policy. A buyer side policy replaces the buyer's normal contractual recourse against a seller – protecting the buyer for losses arising from a seller breach of a representation or warranty.

Each policy is tailored to each unique transaction. Although we have 'template' policies available for review, we amend the policies specifically for each risk in order to give the best coverage available in today's market. We can offer the following policy enhancements depending on the transaction dynamics:

- The policy period usually matches the time period in the transaction documents and, on a buyer side policy, can be extended beyond this time period
- Retention may be eroded by all contractual claims
- Mirroring the exact disclosure standard set out in the transaction documents to eliminate coverage gaps
- "No claims" declaration focused only on actual knowledge of breach
- No general environmental exclusion

**Capacity:** Up to \$50M available

### TAX OPINION / LIABILITY

Tax Opinion / Liability insurance is a valuable tool for managing significant tax risks arising out of complex merger or acquisition transactions.

#### Key Features

Our M&A team possesses the expertise – both financial and legal – to develop comprehensive Tax Opinion / Liability insurance policies. Our focus is on tax issues arising within the context of a wider M&A transaction. We can look at contingent risks that already reside within the target company (e.g., a historic reorganization) and contingent risks that will arise at the time of the transaction itself (e.g., a particular sale structure).

**Capacity:** Up to \$50M available

### CONTINGENT RISK INSURANCE

Just as no two mergers or acquisitions are alike, we understand that insurance coverage for each special situation will vary. We provide tailor-made solutions and policies for a number of potential contingent liabilities that may arise in the context of an M&A transaction. By transferring an identified contingent risk to a customized insurance policy, the issue can be effectively mitigated during the negotiations – allowing both the seller and the buyer to focus on their broader commercial objectives.

Examples of special situation disclosed/contingent risks that we can insure include:

- Loss Mitigation / Litigation Buyout risks
- Tax Credit Recapture
- Loss portfolio transfer
- Contingent environmental risks
- Third party intellectual property infringement claims
- Employment disputes or employee legal issues
- Specific accounting treatment

**Capacity:** Up to \$50M available

### Loss Mitigation

Loss Mitigation insurance, also known as Litigation Buyout, is a specialized contingent risk insurance product which helps clients manage risks arising from pending or threatened litigation. We focus on disclosed contingent issues arising within the context of a wider M&A deal.

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# MERGERS & ACQUISITIONS INSURANCE

(continued)

## Loss Mitigation (continued)

While both parties agree there is a contingent liability, neither party may be willing to accept the risk allocation of such a liability. Our Loss Mitigation insurance can be used to resolve this deadlock and to allocate the risk away from the transaction parties.

## Key Features

Although we start with a 'template,' given the customized nature of Loss Mitigation insurance, each policy is specifically tailored to address the unique risks of the particular transaction. Our policy can be structured in many different ways. The key variables to consider are:

- **Attachment point** – what element of risk is to be retained by the insured? How will the risk be contractually allocated between the parties to the transaction?
- **Defense costs** – will the policy cover defense costs?
- **Scope of insured event** – precisely what events will trigger payment under the policy?

**Capacity:** Up to \$50M available

## TARGET MARKETS

Allied World's Mergers & Acquisitions team is able to address all U.S. and Canadian domiciled risks. We also have global M&A capabilities; please visit our website or contact our team for more information.



This information is provided as a general overview for agents and brokers. Coverage will be underwritten by an insurance subsidiary of Allied World Assurance Company Holdings, GmbH, a Fairfax company ("Allied World"). Such subsidiaries currently carry an A.M. Best rating of "A" (Excellent), a Moody's rating of "A3" (Good) and a Standard & Poor's rating of "A-" (Strong), as applicable. Coverage is offered only through licensed agents and brokers. Actual coverage may vary and is subject to policy language as issued. Coverage may not be available in all jurisdictions. Risk management services are provided or arranged through AWAC Services Company, a member company of Allied World. © 2018 Allied World Assurance Company Holdings, GmbH. All rights reserved.

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