



中国并购保证保险

Warranty and Indemnity Insurance in China



兼并与收购

美亚保险专业的并购保险团队可以为您量身定制一款并购保证保险 (英文简写“W&I”), 以承保因卖方违反在业务出售过程中作出的陈述与保证而承担的责任或因而导致的损失。有了并购保证保险, 卖方可以避免出售收入被冻结在第三方托管账户里; 对于买方, 即使卖家不能支付违约赔偿金, 也可在交易完成后的一定期限内仍确保卖方的保证不会是一纸空文。

Mergers and Acquisitions

Warranty & Indemnity (“W&I”) Insurance is a tailored insurance product from AIG’s Mergers & Acquisitions Insurance team to cover breaches in representations and warranties given in the sale of a business. Sellers can cover themselves to prevent sale proceeds being tied up in escrow accounts. Buyers can ensure the warranties have real value even if the seller is unable to pay a warranty claim which arises some time in the future.

战略优势

并购保证保险可以使**买方**获得以下优势:

- 就违约赔偿的金额和赔付的确定性而言获得补充保障
- 延长保障期限, 使得买方能有更充分的时间发现并申报被收购企业可能存在的问题
- 在激烈的竞购过程中, 因有保险提供补充保障, 可使得买方对卖方的追索要求相对减少, 从而使其竞价脱颖而出
- 维护与卖方的关系—特别是交易完成之后, 卖方可能会变成买方的关键雇员或商业合作伙伴

并购保证保险可以使**卖方**获得以下优势:

- 降低将来由于索赔而需承担或有责任的风险, 使得卖方能从所出售的企业净身而退
- 立即可将所有或大部分出售的所得分配给投资人, 或用以偿还现有的债务, 无需设立任何第三方托管账户
- 可在出售问题资产或严重亏损的业务时帮助到卖方
- 消除交易过程中的各项障碍, 促成交易, 甚至可能提高出售价格

Strategic Benefits:

W&I Insurance enables **BUYERS** to :

- Supplement protection for breaches of warranties both in terms of value and certainty of payment
- Extend the duration of warranties, affording buyers additional time to detect and report problems that may exist with the acquired business
- Distinguish a bid in a competitive auction by negotiating more limited recourse from the sellers by supplementing the contractual recourse with insurance
- Protect relationships with sellers who may become the buyers’ key employees or commercial business partners after the transaction

W&I Insurance enables **SELLERS** to :

- Reduce the risk of contingent liabilities arising from future claims, allowing sellers to exit a business cleanly
- Distribute all or most of the sale proceeds to investors or use proceeds to pay down existing debt: there is no need for an escrow account
- Help sellers of distressed assets and/or sales in a turnaround situation
- Expedite a sale and potentially increase the purchase price by eliminating obstacles to closing



承保范围

W&I (无论是承保卖方的“并购保证责任保险”还是承保买方的“并购保证补偿保险”)均可赔付交易方因卖方违反并购协议 (SPA) 中所述的保证或税金承诺而遭受的损失。

针对卖方的保单可以承保卖方由于非故意的错误陈述导致的赔偿责任; 而针对买方的保单则可以承保买方因卖方的错误陈述(无论卖方是否故意为之)可能遭受的损失。买方可依据保险合同直接向保险公司提出索赔, 而无须向卖方追偿。

保险条款

我们将尽可能宽泛承保并购协议中的陈述保证。正因如此, 买方按照并购协议可对卖方提出索赔的事项, 将与并购保证保险合同的承保范围不会有太大的出入。

■ 保险期间

保险的有效期一般从签订协定起开始, 直到并购协定中保证补偿条款有效期届满时为止。买方的“并购保证补偿保险”保险期间可视并购协议规定的期限, 而根据买方的需求延长, 一般最长为7年。

■ 免赔额

保险公司和被保险人可协商确定“免赔额”(即不予承保的须由被保险人自行承担的损失部分)。“免赔额”一般为交易价值的1%。但是, 根据个案情况, 或为了降低保险费, 可以适当调高此比例。

■ 责任免除

虽然承保范围可根据每一并购交易中各种具体保证内容而量身定制, 但是某些事项是属于所有保险合同均除外不保的。这包括披露函或尽职调查报告中所列明的事项、养老金资金不足等; 在承保卖方的保单中, 还包括卖方的欺诈行为。

■ 责任限额

最高限额5000万美元(保险期间累计)。

■ 保险费

通常是责任限额的1.5% (百分之一.五) 到3.5% (百分之三.五)。

■ 目标客户

参与跨境并购的买方或卖方。

Cover

The policy, whether seller-side or buyer-side, will indemnify the insured for loss resulting from a breach of warranty or tax deed/covenant in a Sale and Purchase Agreement (SPA).

A seller-side policy covers the seller for its own innocent misrepresentations; a buyer-side policy covers the buyer against the seller's misrepresentations (innocent or otherwise). The buyer claims directly against the insurance policy and does not have to seek recourse against the seller.

Policy Form

The policy will be tailored in each case to offer broad coverage that matches the representations and warranties in the SPA as closely as possible. Consequently there will be little difference between what could be claimed against the seller pursuant to the SPA and what the seller (or the buyer as the case may be) can claim against the W&I policy.

■ Policy Period

The policy term will generally run from signing of the deal for the full survival periods of the warranties and indemnities in the SPA. For a buyer-side policy can extend the limitations prescribed in the SPA to meet the buyer's needs, subject to a maximum of 7 years.

■ Retention

The insurer and insured will agree on the “retention” or excess, which is the uninsured amount of the loss to be borne by the insured. This is generally set at 1% of the value of the transaction, but may be higher depending on the deal or to reduce premium costs.

■ Exclusions

Although cover is tailored in each case to match the warranties specific to the transaction, some issues will be excluded on all policies. These will include matters set out in the disclosure letter or due diligence, pension under-funding and, on a seller-side policy, fraud by the seller.

■ Limit

Up to \$50m.

■ Premium

Typically 1.5% to 3.5% of the cover purchased.

■ Target Customers

Buyers or sellers involved in cross-border transaction.

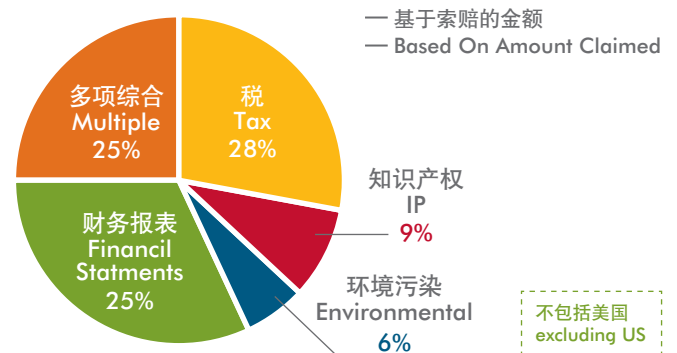
\$ 50 million

可提供的最高责任限额
Maximum Limit of Liability

责任限额的
1.5~3.5 %

保险费 Premium

AIG过去并购保证保险理赔分项统计图 AIG Historical Claims Statistic



本地的服务及经验 Local Presence and Experience



AIG在全球多数国家拥有专业的当地核保和理赔团队，包括中国大陆、香港、澳大利亚和伦敦。这种网路覆盖使得AIG能够快速、有效地承保业务，消除了投保过程中因地域不同可能导致的风险。

AIG has a dedicated local underwriting and claims teams across the globe, including in China, Hong Kong, Australia and London. This makes AIG uniquely based to underwrite transactions quickly and efficiently and removes logistical risks in placing the insurance.

案例研究

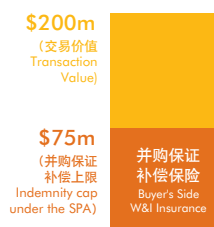
香港

外国机构和个人投资方将其遍布亚太地区的通讯网路出售给了一家海外私募基金。这项交易适用香港法律，企业交易价值约为2亿美元。公司所有权变更后，一些个人股东将继续担任管理层和员工，买方希望避免直接向这些个人提出索赔，以免破坏与他们的关系。因此，被保险人购买了一份责任限额为7500万美元的买方并购保证补偿保险。在这个案例中，AIG提供了责任限额总计4000万美元的基层和首层超额保障。

Hong Kong

Foreign institutional and individual sellers had sold their communications network across the Asia Pacific region to an off-shore private equity fund. The transaction was subject to Hong Kong law and the enterprise deal value was approximately USD200 million. As some of the individual shareholders were remaining as management and staff following the change of ownership, the buyer did not want to have to claim directly against those individuals and risk losing their goodwill. Accordingly, the insured procured a buyer-side W&I insurance program of USD75 million, of which AIG provided the primary and first excess layers with a total limit of liability of USD40 million.

Buyer's Side Policy (HK)



允许买方能直接向保险公司寻求赔偿，避免影响与合作伙伴的关系
Allow the Buyer to seek indemnity directly from the insurer rather than the seller

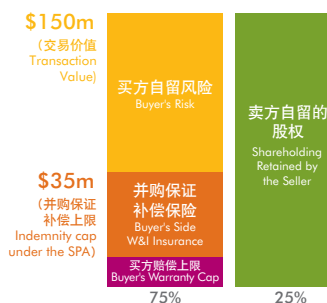
中国

数家欧洲的机构投资者和中国的个人股东计划出售其在中国一家技术公司的股权，出售价格大约1.5亿美元。承保此交易的不寻常之处就是，中国个人投资者保留了其约25%的股份，但仍要求保险合同能对其提供保障，以应对买方就其出售的那部分股权可能向其提出的索赔。买方购买了一份责任限额为3500万美元的并购保证补偿保险，使其获得了比其他竞购人更加有利的竞争优势，即其能提供具有吸引力的购买价格，且只需要卖方提供较低的担保。保险合同为超过卖方担保的损失提供保障保险。因此，一旦出现违反保证条款的情况，买方可获得充分的第三方担保，卖方同时也大幅降低了自身因提供保证而承担高额赔偿的风险。

People's Republic of China (PRC)

European institutional investors and individual PRC-based shareholders were selling their equity interest in a PRC technology company, for which the consideration was approximately USD150 million. An unusual aspect of the cover was that of the individual PRC investor was retaining approximately 25% of his shareholding, but still required cover under the policy for his potential exposure to claims by the buyer in respect of that part of the equity interest he was selling. The buyer took out a buyer-side insurance policy with a limit of liability of USD35 million that provided it with a competitive advantage against the other bidders by offering an attractive purchase price but only requiring a low warranty cap from the seller. The policy provided the institution with cover above the seller's cap. This had the advantage of giving it sufficient recourse for breach of warranty and the seller greatly reduced exposure in relation to the warranties.

Buyer's Side Policy (PRC)



因要求的补偿上限较低，买方能让其竞价更有优势
Allow the Buyer an advantageous bidding position in a tender

新加坡

一家欧洲的公司准备将其位于新加坡的一家制造公司的全部已发行股本出售给一家亚洲的投资公司，交易价格约1亿美元。这家被出售的公司在中国、新加坡、马来西亚和印尼都有子公司和运营机构。位于欧洲的母公司投保了一份责任限额为2500万美元的并购保证责任保险，一旦其违反一般保证、环保保证和税务保证条款，即可通过该保险获得补偿。这份保险的特别之处在于可提供某些特定的赔偿，包括清算被出售的公司的子公司所可能引起的税务责任，以及欧洲的母公司未向相关的政府机构进行必要的备案而引起的责任。

Singapore

A European parent was selling 100% of the issued share capital of a Singaporean manufacturing company to an Asian investor, for which the consideration was approximately USD100 million. The target entity had subsidiaries and operations in each of the PRC, Singapore, Malaysia and Indonesia. The parent company took out a seller-side W&I policy with a limit of liability of USD25 million that provided cover for breaches of general, environmental and tax warranties. A unique aspect of the cover was that the policy also provided cover for certain, specific indemnities, including potential tax liabilities arising out of the liquidation of dormant subsidiary companies of the target or a failure on the part of the seller to have made the necessary filings with the relevant government authorities.

Seller's Side Policy (SG)



完全替代卖方于并购协议中提供的补偿
Replacing the indemnity provision for the Seller

理赔案例

买方保单

一家欧洲的上市公司从一家私募股权投资公司收购了一家公司，包括其管理团队。买方声称卖方违反了提供给买方有关资讯的保证条款，包括IFRS的合规保证以及遵守银行贷款协议中约定的保证条款。
索赔金额总计2500-3000万欧元。

卖方保单

一家欧洲买方购买了一家私募股权投资公司出售的企业，随后提出了一项违反保证条款的索赔，声称在交易完成前，卖方未向其充分披露企业的业务状况。
总索赔金额为5000-6000万欧元。

买方保单

一家私募股权投资公司收购了一家制造公司，交易完成后声称卖方（和现在的少数股东）违反了数项保证条款。这些违反事项包括：主要机器的制造能力、篡改发票和费用，使用的核心软件未经适当授权许可。此外，买方还声称，卖方在交易之时所提供的合同价值也有不实之处，因此，违反了一项有关合同价值的保证条款。
这项索赔是依据买方保单而提出的，买方索赔金额总计1350万美元。

卖方保单

一家美国的买方购买了一家位于拉丁美洲的电信公司，随后对于一家美国私募基金的卖方提出了一项违反保证条款的索赔，声称在交易完成前违反了外汇管制的相关法律。
总索赔金额为500万美元。

买方保单

税务机关向被收购公司提出补缴增值税税款的要求，指称被收购公司之前在其重要业务重组时，未足额缴纳增值税。
总索赔金额达300万英镑。

Claims Sample

Buyer Policy

A listed European company acquired a company from a private equity fund and management team. The buyer alleged breaches of the warranties given in relation to information provided to the buyer, IFRS compliance and certain warranties relating to alleged breach of banking covenants.
Total damages claimed-EUR 25-30 million.

Seller Policy

A European buyer of a private-equity owned business has brought a claim for breach of warranty, alleging that the sellers failed to disclose relevant information relating to the state of the business prior to closing.
Total damages claimed-EUR 50-60 million.

Buyer Policy

A private equity fund that backed a management buyout of a manufacturing company is alleging several breaches of shareholder). The alleged breaches relate to the manufacturing capabilities of a key piece of machinery, doctored invoices and expense, and operating key software without the appropriate licenses. The buyer is also alleging that the seller has breached a warranty in relation to the value of contracts that were in existence at the time of the transaction.
The claim is being brought on a buyer-side policy and the damages claimed by the buyer total USD13.5 million.

Seller Policy

An American buyer of a Latin American telecommunications business has brought a claim against a US based private equity seller in relation to a historical third party claim alleging infringement of foreign exchange regulations.
Total damages claimed-USD 5 million.

Buyer Policy

A demand has been made against the target company by a taxation authority in relation to a VAT liability that is alleged to have arisen out of an historic business restructuring.
Total damages claimed-GBP 3 million.



核保所需材料

交易过程详细和交易时间安排、任何信息备忘录、相关的尽职调查报告、最新草拟的并购协议和披露函、本保险公司可与客户签订保密协议保守其商业秘密。

办理并购保证保险核保及报价的4个简单步骤:

- 收集核保所需文件并初步确认有关问题
- 非约束性报价
- 保险公司尽职调查和外部法律审核
- 保险方案安排和执行

Documents Required for Underwriting

Details of the transaction process and timing, any information memorandum, relevant due diligence reports and the latest available drafts of the acquisition agreement and disclosure letter. We execute a confidentiality agreement with client.

4 Simple Steps in Underwriting & Quotation Process.

- Submission of underwriting documents and initial issues discovery
- Non Binding Indication
- Insurer Due Diligence and external legal review
- Execution

核保考量

保险合同项下的责任限额将由保险人和被保险人基于交易价值共同协商决定。在确定保险费时，将考虑以下因素：

- 交易的复杂性
- 行业领域及业务的地域范围
- 交易过程管控以及所涉顾问

获得并购保证保险的时间取决于交易所处的阶段，但是一般在首次咨询后的两个星期内即可完成审核报价。

Underwriting Considerations

The limit of liability under the policy will be agreed by the insurer and insured and will be driven by the transaction value. The premium will take into account such factors as:

- the complexity of the transaction;
- the industry sector and geographical spread of the business;
- the quality of the transaction process and advisers involved.

The timescale for obtaining W&I insurance will depend on the stage reached in the transaction, but will usually be available within two weeks from first enquiry.





购买 W&I 的主要动力

常见情形

保证不充分

私募股权投资公司退出投资。卖方无法提供超出其能力和权利的保证，管理层自身也无法为收购方提供充分保证。例如：私募股权投资公司欲在并购完成后将出售并购目标所得立即分配给其投资人或进行再投资，因此不愿意承担保证条款下的任何或有责任。

出售新收购公司的卖方。卖方出售的公司可能是最近12个月内才收购的公司，所以不愿意为其收购之前的业务提供任何保证。

执行困难

卖方财务状况不佳或有不良交易历史记录。即便卖方愿意承担并购协议项下众多的保证责任，买方仍然可能担心卖方在整个保证期内的偿付能力，尤其是在没有备选解决方案（如第三方托管账户）的情况下更是如此。

买卖双方地处不同司法管辖区域。如果并购交易双方处于不同的司法管辖区域，即使获得了有利的法院判决，但是申请强制执行境外的交易方，不仅要耗费大量金钱，而且操作流程也相当繁琐。

竞买战略

对卖方而言，制定周详的计划并投保并购保证保险，再加上恰当的尽职调查和信息披露，既可以降低承担的风险，又使出售方案更具有吸引力。

作为竞买方策略，购买并购保证保险可以降低其对卖方保证的需求，从而获得一定的商业优势，从众多的竞买者中脱颖而出。

W&I Insurance Driver

SCENARIO

Lack of Warranties

PRIVATE EQUITY FIRM EXITING INVESTMENT. Seller unable to give warranties beyond capacity and title. Management cannot by itself provide sufficient warranty cover to acquirer. E.g. private equity firm wants to distribute sale proceeds to its investors or reinvest proceeds immediately on completion, and may therefore be unwilling to accept any contingent liability under the warranties.

CORPORATE SELLERS WITH SHORT OWNERSHIP HISTORY. Seller may be “selling on” a company which it acquired perhaps as recently as 12 months ago and is unwilling to give any warranties for periods prior to its ownership.

Enforcement Difficulties

SELLER IN FINANCIAL DIFFICULTY OR WITH A POOR TRADING HISTORY. Although the seller may be prepared to stand behind substantial warranties, buyers may be concerned over the seller’s ability to meet claims throughout the warranty period, particularly if alternative solutions (such as an escrow) are not available.

SELLER AND BUYER IN DIFFERENT JURISDICTIONS. The resources required to obtain a judgement and then enforce it against parties in overseas jurisdictions may be economically and operationally onerous.

Strategic Positioning in an Auction Process

FOR THE SELLER CAREFUL PLANNING AND THE INTEGRATION OF W&I INSURANCE INTO THE AUCTION PROCESS can result in less liability and better consideration for the seller, when backed up by appropriate due diligence and disclosure.

COMMERCIAL ADVANTAGE for buyers who can also strategically deploy W&I insurance to differentiate themselves from other bidders by requiring lower levels of warranty cover from the seller.

为何选择美亚保险？

美国国际集团(AIG)是一家国际领先的保险机构,为130多个国家和地区的客户提供服务。AIG旗下公司通过全球最广泛的财产责任保险业务网络服务各类商业、机构及个人客户。AIG旗下公司在美国亦是领先的寿险及退休金服务提供者。AIG的普通股在纽约证券交易所及东京证券交易所上市。

美亚财产保险有限公司(简称“美亚保险”)是AIG旗下在中国经营财产责任保险的独资子公司,目前在北京市、上海市、广东省、深圳市、浙江省和江苏省设有分支机构。

重要提示

1. 本文引述的任何理赔案例,只供说明之用,不应被理解为确认任何真实个案的承保范围,也不应以这些案例为依据预测真实索赔个案的结果。实际理赔应根据具体事实处理,并受相关的保险合同的约束。
2. 本文不构成保险合同的一部分,承保范围和责任免除等详细内容,请参阅保险合同,并以其规定为准。

您可以从美亚保险以下各分支机构获得财产保险服务:

总部 美亚财产保险有限公司

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