Representations and Warranties Liability Insurance

Prospectus

Introduction

Typically in business agreements there are statements by which the seller gives certain assurances to the buyer, and the buyer relies on these statements to take decisions about the agreement. These representations and warranties may relate to financial statements, accounts receivable, taxes, employee benefits, intellectual property etc. The seller makes these representations and warranties in good faith and the buyer relies upon these statements to close the transaction.

Representations and Warranties Insurance helps protect buyers and sellers from financial losses resulting from inadvertent inaccuracies in representations and warranties made in connection with mergers, acquisitions, divestitures and other business transactions.

Coverage

Each policy is tailored for a specific business transaction and the insured representation and warranties will vary depending on the nature of the transaction.

The policy can be offered to cover two types of transactions – exposure emanating from entering into purchase agreement – exposure emanating from entering into sale agreement The policy reimburses the defence costs and damages if any arising from alleged misrepresentation or breach of warranty.

Seller side policies

A seller side policy covers the selling company and any designated owners, shareholders, directors, officers, and employees. The policy is triggered when a lawsuit or written demand is made by a buyer against a seller for a breach of a covered representation or warranty. Seller-side policies respond to losses resulting from claims made by the buyer for an inaccuracy in representations and warranties made by the seller about the acquired company or business.

Buyer side policies

Buyer side policies reimburse Buyers for losses resulting from inaccuracies in representations and warranties made by the seller, enabling buyers to recover losses directly from the insurer without having to locate and pursue the seller and its assets.

Important Definitions

Affiliate means any person or entity that directly or indirectly controls, is controlled by or is under common control with, the Policyholder
Breach means the breach of or an alleged inaccuracy in any of the representations or warranties contained in the representation and warranties clause in the SPA.
Claim means

(a) any demand or legal action made or brought by the Buyers against the Policyholder pursuant to the terms of the SPA alleging a Breach that could reasonably be expected to result in Loss; or

(b) any notice of a Third Party Demand that could reasonably be expected to give rise to a demand or legal action as mentioned in (a) above.

Deal Team Members means the individuals named the Policy who supervised, reviewed or conducted any due diligence, analysis, negotiation or evaluation in connection with the SPA or its related documentation

Loss means

(c) The amount to which the Policyholder is contractually obliged to pay in respect of a Breach pursuant to the terms of the SPA.
(d) Any related Defence Costs incurred by the Policyholder.

Loss shall be reduced by any offsetting recoveries (including recoveries from any other insurance policies or indemnities) or tax benefits due to any Policyholders or Affiliates.

Loss does not include any:

1) Consequential loss; or
2) Punitive or exemplary damages; or
3) Injunctive or equitable relief; or
4) Fines or penalties
5) Matters uninsurable under law.

Third Party Demand means any demand made or legal action brought against the Buyer by any person or entity other than

(a) an Affiliate;
(b) the Policyholder;
(c) the Insurer,

where the resulting damage would constitute a Loss.

Other Important Terms and Conditions

Claim Series
All Claims/or circumstance or series of Claims/or circumstances based upon, arising out of, or in any manner involving the same Breach whether or not committed by the Policyholder/Deal Team Member, shall be deemed to be one Claim for the purposes of this Policy, and such Claim shall be deemed to be first made on the date the earliest of such Claims/circumstance is first made against the Policyholder. It is agreed and understood that notwithstanding the provisions of this clause, each such Claim/circumstance shall be notified to the Insurer in accordance with the Policy terms and shall specify in writing the reasons for which the Claims/circumstances arise from the same Breach.

Maintenance of Due Diligence Records

Until the later of 90 days after (i) the expiration of the Policy Period or (ii) the final resolution of all Claims or disputes relating to this Policy, the Policyholder should, and to the extent possible, cause Affiliates to maintain all the materials relating to the due diligence and consummation of transaction documentation under the SPA and other related documents.

Claim Conditions

The Insured shall give written notice to the Insurer of any circumstances that may reasonably be expected to give rise to a Claim or any Claim made against the Insured, as soon as practicable and in any case during the Policy Period.

Such notice shall include (but is not limited to):

(i) the reasons for anticipating a Claim (or circumstances);
(ii) the Insurer's Claim form duly completed;
(iii) All other information or documentation relevant to the Claim/circumstance.
(iv) the nature and circumstances of the facts relating to an alleged, supposed or potential breach;
(v) date, time and place of the alleged, supposed or potential breach;
(vi) the identity of the potential claimants and all other potentially involved persons and/or entities;
(vii) estimate of possible loss;
(viii) the potential media or regulatory consequences.

Insured's duties in case of a Claim

Inform the Insurer as soon as practicable and in any case during the policy period

No admission or settlement should be made or offer of settlement extended or consent to any judgment without prior written consent of the Insurer.

Policyholder should do nothing to prejudice the Insurer's rights of recovery, by way of subrogation or otherwise.

If there is any other insurance which does or may provide an indemnity then the Insurer must be informed of the same without delay.

The Insured must take the insurers prior consent, before appointment of any external expert or legal counsel

The Insured shall do everything necessary for the purpose of enforcing any rights, remedies, obtaining relief or indemnity from other parties to which the Insurer is become entitled upon the Insurer paying for any Loss under this Policy, whether before or after indemnification.

As a condition precedent to liability under the Policy, the Insured at its own costs hall provide the Insurer with all documents, information, assistance and cooperation that the

Insurer may request and require towards investigation, defence, settlement or appeal of a Claim or circumstance. Each Insured shall also take reasonable steps to mitigate the Loss.

Insurer's Rights in case of a Claim

The Insurer is entitled to all information, assistance and cooperation which the Insurer requests and for this to be provided to it in a timely manner.

The Insurer will not be responsible for any defence costs unless their express prior consent has been obtained.

The Insurer shall be entitled to fully participate in the defence and at the negotiation stage of any settlement that is reasonably likely to involve or appears to involve the Insurer.

Premium

The premium shall depend on various factors such as the business activities of the seller, strength of financials of the seller, transaction size, transaction type, details of professional team etc

Note: The above is a summary of some of the important terms, conditions and exclusions.
For complete details on coverage, terms, conditions and exclusions, please contact the Insurer's office and refer to the Policy document carefully and understand the same before concluding the sale.

Grievance Redressal:

For resolution of any query or grievance, Insured may contact the respective branch office of the Company or may call toll free no.1800-2666 or may approach us at the sub section "Grievance Redressal" on our website www.icicilombard.com (Customer Support section). However, if the resolution provided by us is not satisfactory you may approach Insurance Regulatory and Development Authority of India (IRDAI) through the Bima Bharosa Portal - https://bimabharosa.irdai.gov.in/ or IRDAI Grievance Call Centre (IGCC) at their toll free no. 1800 4254 732 / 155255.
You may also approach Insurance Ombudsman, subject to vested jurisdiction, for the redressal of grievance. Details of Insurance Ombudsman offices are available at IRDAI website: www.irdai.gov.in, or on the Company's website at www.icicilombard.com.

STATUTORY WARNING

PROHIBITION OF REBATES

(Under Section 41 of Insurance Act 1938)

(1)No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to [take out or renew or continue] an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing [or continuing] a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer:

[Provided that acceptance by an insurance agent of commission in connection with a policy of any class of insurance business taken out by himself in relation to risks associated with his own life, health or property shall not be deemed to be acceptance of a rebate of premium within the meaning of this sub-section if at the time of such acceptance the insurance agent satisfies the prescribed conditions establishing that he is a bona fide insurance agent employed by the insurer.]

(2) Any person making default in complying with the provisions of this section shall be liable for a penalty which may extend to ten lakh rupees.