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INTRODUCTION

Every acquirer expects someone to stand behind the warranties. In some deals, no one can. Warranty and indemnity (“W&I”) insurance is widely used in M&A transactions, but a traditional policy still assumes a seller willing to give warranties. Where the seller gives warranties but will not stand behind the full loss, the insurer steps in. But what if there is no identifiable seller, or the seller cannot give warranties at all? Synthetic W&I answers that question. The warranties are written into the policy and negotiated between the buyer and the insurer; the seller gives few or none.

Synthetic W&I takes two principal forms. Full synthetic cover places the entire suite of warranties in the policy, and the SPA contains none. Partial synthetic cover supplements the warranties the seller does give with additional policy warranties negotiated by the buyer, ranging from limited to very extensive. In more developed W&I markets, synthetic cover has been used in: (i) insolvency sales, where a liquidator sells the asset; (ii) auctions, where offering limited or no seller warranties gives a bidder an edge; (iii) take-private transactions, where public shareholders lack day-to-day knowledge of the business and will not give business warranties; and (iv) sales by minority shareholders or financial investors, where management or the company is not involved in the transaction. India is different. The product is untested and insurer appetite is unproven. Terms available elsewhere may not be available here, and each placement must be assessed on its own facts.

Evaluating the Value of Synthetic W&I policies

Buyer Lens

For a buyer, synthetic W&I cover has most value where the alternative is a deal with no warranty or loss protection – particularly in distressed sales, take-privates and minority sales, where the only other options may be a lower price or no deal. In a competitive auction, a bidder that relies on synthetic W&I, and so asks the seller for no business warranties or disclosure letter, gains an advantage over bidders seeking a seller indemnity or traditional W&I cover.

The trade-off is that the warranty package is likely to be narrower than a negotiated SPA package, and the buyer faces added negotiation of policy wording and a more

burdensome underwriting process.

Seller Lens

From the seller's perspective, synthetic W&I can be an effective route to a "clean exit". There is: (i) no warranty package to negotiate and provide; (ii) no disclosure letter to prepare; and, in principle, (iii) little or no residual liability. This can be attractive for funds approaching the end of their life, insolvency practitioners and minority investors who have neither the appetite nor the knowledge to give or stand behind operational warranties.

Depending on the nature of coverage, a synthetic W&I policy may leave some residual seller exposure, even if only as to the accuracy of the information the seller supplies. Insurers will ordinarily retain subrogation rights against the seller where the loss arises from the seller's fraud. A seller that has given no warranties may nonetheless be exposed for fraud and for the accuracy of information it supplies. The nature of the deal and the scope of coverage will determine the circumstances in which residual exposure remains.

The Practicalities of Synthetic W&I policies

Role of the seller and target management

The buyer must choose between a warranty package tailored to the transaction and the insurer's standard wording. A tailored package is built during diligence and typically yields wider protection. Standard terms at the quotation stage fix coverage sooner but may leave transaction-specific risks uncovered. In either case, the warranties form part of the policy and are agreed with the insurer, not negotiated with the seller.¹ The target and its management remain indispensable. Where the seller gives no warranties, target management ordinarily leads the disclosure process. Management must populate a comprehensive data room, support the buyer's diligence and be able to show that disclosure is complete. The insurer may insist on diligence calls with key operational personnel and the seller, to test the reliability of the information given to the buyer and to understand management's and the seller's view of the risks in the business. That access also lets the insurer close gaps in the warranted scope, resolve queries from the diligence materials and verify that disclosure is complete and accurate.

Limits on the warranties available

Synthetic cover is not equally available for every type of warranty. Insurers are typically unwilling to insure broad compliance assurances, ordinary-course statements or management accounts, or propositions that turn on another party's behaviour or involve opinion or subjective judgment. Assessing these matters may require information only the seller holds, which makes synthetic cover harder to obtain.²

Disclosure Regime

The policy's disclosure provisions must work without a seller disclosure letter or a separate disclosure exercise. General disclosures are usually recorded in a policy

¹ HWF Partners, "Synthetics", (accessed 16 October 2026)

² Lockton, "Synthetic W&I Insurance Brochure", (accessed 16 October 2026)

schedule and may draw on corporate searches, public registers and the accounts.³

For transaction-specific matters, the buyer generally relies on the data room and the responses to diligence questions. An insurer may also ask for a disclosure schedule. The buyer can prepare it, but preparation by the seller and management is preferable.⁴

In practice, the seller and target management contribute principally through responses to questions, and the breadth and quality of the diligence remain central to the cover obtained.

Loss under the synthetic W&I policy

A conventional W&I policy takes its definition of loss from the SPA. The buyer has a claim against the seller for breach of warranty, and the insurer pays what the buyer could have recovered under that claim. A synthetic policy has nothing to borrow from. The insured event is simply that a warranty written into the policy proves untrue, so the policy itself must state what the insurer will pay.

Knowledge

Synthetic policies usually carry no knowledge qualifiers in the warranties, because the seller gives few or no warranties. Where a knowledge qualifier is used, the policy should specify whose knowledge counts (for example, named individuals in management or sellers) and apply an actual-knowledge standard. As with W&I policies generally, insurers will also exclude matters known to the buyer's deal team before inception.

Costs and Timing

The premium on a synthetic W&I insurance coverage is likely to be higher than for traditional W&I, with higher underwriting fees and, in some cases, higher retentions or de minimis thresholds.

A synthetic policy generally takes longer to place than a traditional one, because insurers require more extensive diligence and rely more heavily on detailed Q&A.

Indian Market

Although synthetic W&I insurance remains relatively uncommon in India, several of the circumstances that have driven its adoption in other markets are already present. In the absence of such a product, investors are often left to rely on valuation adjustments and prolonged diligence and decision-making processes to address the risks of acquiring assets where seller warranties are unavailable. This can lengthen timelines and, at times, cause transactions to fail.

Synthetic W&I works best when the warranties target the buyer's key risks, the diligence is robust enough for the insurer to rely on, and the policy deals clearly with loss, knowledge and disclosure. It will not replace a negotiated warranty package. Its value lies in deals where that package was never on offer.

Wider acceptance in India will turn on one thing: whether insurers are willing to underwrite this risk. Several questions remain open. Where can these policies be placed? How

³ Lockton, "Synthetic W&I Insurance Brochure", (accessed 16 October 2026)

⁴ HWF Partners, "Synthetics"; White & Case LLP, "Synthetic W&I insurance: Broadening warranty protection in M&A", (accessed 16 October 2026)

will loss be measured in India? Will insurers underwrite a risk where the seller has little or no skin in the game and the information may be uneven? For buyers, the question is whether the premium is justified, particularly where protection may be narrow.

A sensible starting point for India is partial synthetic cover for bespoke warranties tested through robust due diligence. That lets insurers build comfort with the product while buyers get targeted protection against identified risks. Adoption is likely to come deal by deal rather than through a market-wide shift, with early policies setting the terms offered later. The question for India is not whether synthetic W&I is needed, but who will write the first policy.

This publication is for educational and informational purposes only and is not intended and should not be construed as legal advice. We have focused here on themes we see most frequently in our work with PE investors, corporates and leading W&I markets. The risk allocation on any particular transaction will, however, turn on its facts, sector and diligence record.

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1002–2026