For the last 15 years, Lloyd’s of London has been a market leader and innovator in the area of Mergers & Acquisitions (M&A) Insurance.

Lloyd’s has been trading since the 17th century and has an enviable reputation for underwriting expertise, innovation, claims handling and excellent financial ratings.

Ironshore acquired Pembroke to manage Syndicate 4000 at Lloyd’s. This complementary structure allows us to leverage the strength of Lloyd’s with our specialist underwriting expertise to maximize the benefits for our brokers and clients. Pembroke Syndicate’s M&A underwriting is managed by Rowan Bamford, who has 10+ years’ experience as a corporate lawyer and lead underwriter in M&A Insurance. Our team’s experience covers hundreds of M&A transactions in a variety of jurisdictions and industries. In fact, we have the largest global team in the industry with access to substantial capacity, which includes $150 million in coverage for any one risk.

Ironshore is rated A (Excellent) by A.M. Best. Our Pembroke Syndicate 4000 operates within Lloyd’s, where the market rating is A (Excellent) by A.M. Best, AA- (Very Strong) from Fitch and A+ (Strong) from Standard & Poor’s.
M&A Insurance is an increasingly valuable tool to facilitate M&A transactions. This specialist area of insurance includes products and solutions such as Representations & Warranties/Warranty & Indemnity Insurance (for buyers or sellers), Tax Liability Insurance and one-off policies created for individual contingent risks.

The most frequently used product is Representations & Warranties (R&W) Insurance utilized for private transactions. R&W Insurance policies are structured to address and mirror specific terms and conditions of sale and purchase agreements, including post-sale contingent liabilities, which often last for seven years. Policies are non-cancelable to ensure coverage remains in place for the duration of potential liabilities. Each policy is customized to reflect the commercial agreement made between parties and to insure and compensate the buyer or seller for loss incurred under the terms of the sale and purchase agreements.

The following types of coverage are the most common:

- Policies offering liability protection (defense costs and settlement) to sellers. We protect each innocent warrantor, even if other warrantors are found to be dishonest.

- Policies offering first-party protection to buyers for losses resulting from a breach of warranty (or call on an indemnity or covenant) given in the sale and purchase agreement and/or tax deed. Policies can sit on top of the warrantors’ cap (“top-up cover”), alongside the warrantors’ cap or straddle the cap. We protect the buyer, even if the seller has been fraudulent.

- Both buyer and seller policies can match the liability time limits in the transaction documents (e.g., up to seven years for tax liabilities).
The prevalence of private equity has helped fuel large numbers of acquisitions and disposals over recent years, and this activity appears set to grow as clients continue to acquire businesses in an uncertain global economic environment.

WOULD YOU AUTOMATICALLY SUGGEST REPRESENTATIONS & WARRANTIES INSURANCE TO YOUR CLIENTS BUYING OR SELLING A BUSINESS? PERHAPS YOU SHOULD....

During this tough economic climate and with international buyers looking to do business in less familiar jurisdictions, parties in transactions have become much more risk averse. Buyers often insist on greater liability caps and placement of consideration in escrow. Buyers are also more concerned about the financial covenants of certain sellers. Many sellers wish to utilize sale proceeds to repay loans or investors, but find it difficult when they have significant representations and warranties obligations.

Virtually all private sales of businesses require sellers to provide representations and warranties to purchasers. Often these representations and warranties create a seven-year obligation. But what if you wanted to spend or re-invest the proceeds of your sale, but risked a claim from the purchaser during the next seven years? What if you were to sell-up, retire and were later faced with litigation from an aggressive purchaser of your business?

Insurance can provide a comprehensive solution. For a one-off premium, clients can purchase Representations & Warranties Insurance policies with significant benefits, including a policy period of up to seven years, defense costs coverage and settlement protection. If clients are faced with a warranty claim, defense costs and settlement protection could be exactly what your clients need. R&W Insurance can remove a large amount of risk and uncertainty from a transaction.

On the buyer side of the transaction, there may be different concerns. What if the warrantors default on payments? Could the purchaser make a successful recovery? What if the warrantors will only accept a relatively low cap on their liability compared to the amount that the purchaser paid for the business? (This is common when a private equity investor is selling and refuses to give warranties.) Or what if the seller is undergoing financial restructuring?

M&A lawyers frequently recommend R&W Insurance to their clients. We have broad representations and warranties experience, having provided coverage to hundreds of clients over the years across a variety of business sectors.
TAX INSURANCE

Tax legislation complexities and tax issues can arise during due diligence in M&A transactions. It is often a contentious point as to whether the buyer or the seller should bear the potential tax liability. Our tax insurance product minimizes financial exposure to tax liabilities and related concerns, which helps reduce the friction and time required to complete transactions.

Our offering benefits each party’s vested interest. For a seller, tax liability insurance has the added advantage that no funds need be placed in an escrow account. For private equity sellers, once a tax liability is insured, it should not restrict their ability to distribute proceeds to investors. If there are multiple sellers, tax insurance should also help limit each of the sellers’ exposure to one another. For a buyer, obtaining insurance on a tax risk can provide greater comfort to its lenders or simply provide the buyer with peace of mind resulting from the superior covenant strength of Lloyd’s and Ironshore. Our policy also provides protection against the very real legacy risk associated with back taxes.

Ironshore’s team of dedicated tax underwriters and production specialists have more than 30 years’ experience advising on corporate tax transactions, making us the most experienced team in the tax liability insurance market. Our tax team has advised on the tax aspects of all types of corporate transactions, including M&A, reorganizations, returns of proceeds, real estate, corporate finance, cross-border structuring, private equity and venture capital. Our team brings this wealth of experience, together with a sharp commercial focus, to diligently assess and underwrite your tax liability as efficiently as possible.

DEDICATED CLAIMS TEAM

Ironshore has a dedicated M&A Claims team with private practice and Lloyd’s market experience who specialize in dealing with complex M&A claims. This team works closely from contract inception with our team of underwriters and production specialists, so they are well-versed on all the details of the agreement. In the event of a claim, our entire team works together to ensure a timely and considered response. While this paradigm seems obvious, it’s unique in our industry. It’s no wonder that 90% of our clients gave us a high rating for claims service this past year.
IRONSHORE PROVIDES COVERAGE FOR GLOBAL RISKS LOCATED THROUGHOUT THE WORLD, WITH A LOCAL PRESENCE OPERATING IN THE FOLLOWING CITIES:

NEW YORK  LONDON  FRANKFURT  DUBAI  HONG KONG  TOKYO  SINGAPORE  SYDNEY

CONTACT US
To learn more about Ironshore and our M&A solutions, please contact your broker or a member of our team:

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Ironshore, a Liberty Mutual Company, provides broker-sourced specialty property and casualty insurance coverages for varying risks located throughout the world. Select specialty coverages are underwritten at Lloyd’s through Ironshore’s Pembroke Syndicate 4000. The Ironshore group of companies is rated A (Excellent) by A.M. Best and A (Stable) by Standard & Poor’s. Pembroke Syndicate 4000 operates within Lloyd’s where the market rating is A (Excellent) by A.M. Best, AA- (Very Strong) by Fitch, and A+ (Strong) by Standard & Poor’s. For more information, please visit: www.ironshore.com.

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