M&A Insurance in Brazil: Strategic Risk Allocation and Deal Efficiency

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Representation and warranty (R&W) insurance is gaining traction in Brazil as a practical tool for managing risk and smoothing negotiations in mergers and acquisitions.

Originally developed in U.S. and European markets, this type of coverage protects buyers against losses stemming from breaches of representations made by the seller in the share purchase agreement or similar instrument. It helps shield the buyer from undisclosed liabilities while giving the seller greater certainty around receiving the deal proceeds.

For buyers, R&W insurance offers an additional layer of protection, either replacing or complementing the traditional indemnification mechanisms typically negotiated in M&A transactions.

R&W insurance is especially valuable in deals involving multiple sellers. By shifting the indemnification obligation to one party – the insurer – it eliminates the need to pursue claims against each seller individually. This simplifies dispute resolution and makes it easier to recover losses.

It also helps reduce the risk of litigation or non-payment. In transactions where sellers have limited financial resources, even a valid indemnification claim may go unpaid. R&W insurance ensures the buyer receives compensation as agreed. It's also useful when the seller stays on as an executive after closing: a post-deal indemnification claim could strain the parties' relationship and disrupt management of the business.

In cross-border deals, enforcing seller warranties can be complicated by jurisdictional issues and difficulty in obtaining access to the seller's assets. With R&W insurance, the buyer avoids having to litigate abroad: any losses are assessed and paid by a local insurer.

From the seller's perspective, R&W insurance offers immediate advantages. By reducing or eliminating the need for escrows and contractual holdbacks, it allows sellers to access deal proceeds right away. The insurer also waives its right of recourse against the seller if the policy is triggered, meaning the risk is truly transferred. This creates the possibility of a clean exit, freeing the seller from future liabilities. That's especially appealing to investment funds, such as private equity funds, which prioritize efficient capital distribution to investors after a divestment.

R&W insurance also adds value in competitive sale processes. It gives sellers greater confidence in the offers they receive and reduces the impact of potential contingencies on pricing. That, in turn, improves comparability between bids and helps level the playing field among prospective buyers.

R&W insurance still faces obstacles to wide acceptance in the Brazilian market. While policies can be issued abroad and costs have come down, local familiarity with the product remains limited, and domestic offerings are still relatively scarce. Another point that often requires clarification is the scope of coverage: R&W insurance does not cover known or materialized liabilities. For those, other forms of protection must be used.

Even so, the market is showing signs of maturity. R&W insurance reflects a shift in how deal risk is allocated, and its adoption is likely to grow as market participants become more familiar with its benefits. Knowing how and when to use this tool is increasingly important for structuring M&A transactions that are efficient, secure, and aligned with the parties’ goals.

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