

## Warranty and Indemnity Insurance Policy - Prospectus

In the last few years, India had witnessed a substantial slowdown in the mergers and acquisitions (“M&A”) activity. The election of the Modi led government has brought back tremendous faith in investor community. Overall mergers and acquisitions (M&A) in India, which hit a record high in the first half of 2018, more than halved to \$41.6 billion in the first half of 2019 as both domestic and cross border deals declined, according to Refinitiv, a financial market data provider owned by Blackstone and Thomson Reuters. Cross-border M&A deals witnessed a steep fall with a slowdown in inbound M&A transactions, which recorded a 64.5% fall to \$14.3 billion in the first six months of the calendar year, compared to the corresponding period last year. While the M&A space showed a slowdown, primary bond offerings from Indian issuers hit a record high at \$45.4 billion in the first half of 2019, making it the strongest semi-annual period on record. The increase in bond offerings was largely dominated by the financial sector, which held 66% of the market share amounting to \$30 billion, from \$17.8 billion during the same period last year. The coming year is expected to be a booming year in terms of M&A activity as the investor community has seen certainty in Modi led government’s reform agenda and the policies have been largely formulated to encourage foreign investments. It is strongly believed that year 2019 will see a surge in M&A activity due to the new bankruptcy law, the faster pace of approvals initiated by the government as part of its ease of doing business in India campaign and the relaxation in Foreign Direct Investment norms. Sectors such as IT-ITes, healthcare, energy, pharma, e-commerce and banking and financial services were the key sectors in 2015. In 2015, inbound deals dominated the Indian M&A landscape with interest coming from US, German and Canadian bidders. One can expect the increase in the M&A deals and activities in the upcoming time as both local and international investors and business houses are eyeing India with a hope of tremendous growth.

### PRODUCT OFFERING

**Warranty and Indemnity Insurance Policy also known as Merger and Acquisitions Insurance Policy** is designed to cover unknown warranty and indemnity risks in private company sale and purchase agreements. Known risks can also be covered but are subject to extensive underwriting and are much less common. These covers are contract-based covers as each insurance contract is unique as it will sit back to back with the Sale Purchase Agreement. The warranties and the indemnities in a SPA transfer liability between the buyer and the seller and are the result of extensive negotiation. The liability will be between these parties and the insurer and is the underlying risk that the underwriters will be evaluating.

The policy is designed to served long term in nature i.e. it will be valid upto 8 years from the date of Inception

The policy also provides coverages (based on client requirement) such as :

#### Tax Opinion Insurance:

Covers identified tax risk that have been subject to extensive and thorough review by external advisors and tax specialists and may be challenged by a relevant tax authority.

#### Contingent Liability Insurance

Designed to help overcome a contentious matter between the Buyer and Seller due to a known issue within the target company. Risks can vary from pending litigation, employment, pension obligations, intellectual property, run-off exposures or title of shares.

### EXCLUSIONS

This policy will not pay for any loss or defence cost arising out of, or in any way connected with

- any Insured Warranty marked as “Exclude” in the Warranty Spreadsheet or any Insured Warranty marked as “Partial Cover” or “Covered As Amended”, in each case, in the Warranty Spreadsheet to the extent that such Loss arises out of or relates to that part of the Insured Warranty for which cover is not provided as described in the Warranty Spreadsheet;
- any Breach or Loss of which any Buyer Team Member had Actual Knowledge as of the Effective Date or any material inaccuracy or omission from in any No Claims Declaration;
- any specific indemnities or adjustment provisions set forth in [sections] [clauses] [schedules] [ ] of the Purchase Agreement

(including any post-Closing purchase price adjustments, “locked box” and/or leakage provisions);

- civil or criminal fines or penalties (but only to the extent that such fines or penalties are uninsurable by law);
- non-compensatory damages (including punitive, aggravated, multiple or exemplary damages), consequential, special or indirect loss or damage [except if reasonably foreseeable];
- any estimate, projection, forecast or covenant or breach thereof;
- fraud, willful misconduct or fraudulent misrepresentation by the Insured or any Buyer Team Member;
- any funding deficit or other breach of the [Target][Target Group][Buyer Group]’s funding or other obligations under or in relation to any defined benefit scheme or plan, employee benefit scheme or plan, any other pension or superannuation scheme or plan, or any other arrangement for the purpose of providing benefits on retirement or death;
- the non-availability of any tax relief or losses, whether arising as a result of the failure to obtain any relief, the failure (or inability) of any company to surrender any relief or losses, or otherwise;
- any Secondary Tax Liability;
- the application of transfer pricing, thin capitalization or worldwide debt [cap] rules or legislation, or any other rules or legislation concerning the tax treatment of transactions other than at arm’s length, including any rules or legislation limiting the deductibility of interest payable under an intergroup agreement;
- any environmental liability, including (i) compliance with Environmental Law and environmental Permits (both as defined in the Purchase Agreement) and any applicable health and safety regulations and (ii) Pollutants or Pollution;
- damages calculated by reference to any pricing multiple on which the [Purchase Price] has been calculated;
- breach of bribery, anti-money laundering, competition, corruption, anti-trust or cartel laws applicable to the operations of the [Target] [Target Group][Buyer Group];
- [plus transaction specific exclusions from NBI and underwriting]
- The Insurer shall not be liable to make any payment for Loss based upon, arising out of, relating to or to the extent increased by any Breach if such Breach, or the subject matter thereof, arises directly from or consists of any fact, matter or circumstance that has been Fairly Disclosed in:
  - the Purchase Agreement;
  - the Disclosure Letter;
  - the contents of the Data Room;
  - any of the Due Diligence Materials; and
  - (v) [other reports and materials – public searches etc.].

### BENEFITS OF BEING INSURED UNDER THIS POLICY

#### From Buyers Side:

- Supplement their protection for breach of warranty both in terms of quantum and certainty of payment.
- Extend the duration of warranties, giving them additional time to detect and report warranty breaches.
- Distinguish their bid in a competitive auction by negotiating more limited recourse against the seller by supplementing the contractual recourse with W&I insurance.
- Protect their relationship with the sellers who may become their key employees or business partners upon completion of the transaction.

#### From sellers side:

- Reduce the risk of contingent liabilities arising from claims, allowing them to exit a business or investment cleanly.
- Distribute all or most of the proceeds of sale to their investors or service their existing indebtedness as there is a reduced need for an escrow account.

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- Protect themselves where they have not been actively involved in the management of the target business from unintentional non-disclosure or other breaches of the terms of the SPA.
- Expedite a sale and potentially increase the purchase price by eliminating obstacles to closing, such as protracted indemnity negotiations.

### RENEWAL

The policy is Non-Renewal.

### CANCELLATION

#### For Retail Customers:

The Insured can cancel the policy at any time during the policy term, by informing the Company. The Company can cancel the policy only on the grounds of established fraud, by giving minimum notice of 7 days to the Insured. The Company shall refund proportion premium for unexpired policy period subject to no claim(s) made during the policy period.

#### For Commercial Customers:

Subject to Policy Clauses, this policy is Non Cancellable

### CLAIMS PROCEDURE

#### In the event of loss of an insured event the company must be informed immediately

Our contact details are as follows:

1. Relationship officer / channel partner
2. Branch Office
3. Call Centre - 022-6234 6234
4. E-mail at [care@hdfcergo.com](mailto:care@hdfcergo.com)

Our contact details are as follows:

**HDFC ERGO General Insurance Co. Ltd.**  
**Corporate Claims Department**  
**6th Floor, Leela Business Park,**  
**Andheri Kurla Road, Andheri (E), Mumbai – 400059**  
**Call Centre - 022-6234 6234**

During Intimation of claim, Insured has to provide relevant information which includes Policy details, policy period and Loss details (viz. Loss Location, Contact Details, Details of Loss, Details of claimants, Rough estimates of Loss along with copy of Project carried for which the policy is obtained).

In general, primarily, the following basic documentations are required for taking the claim forward:

- Detailed description of the incident in chronological order and the manner by which insured first became aware of the circumstance/ claim right from the date of discovery until the current status
- Details of quantum of loss with supporting documents
- Actions taken by the insured post discovery of incident
- Copies of all relevant correspondence, pleadings (or any other document relevant to any proceedings, proposed settlement, mediation or arbitration) and other documents or information received or issued by the insured in respect of such breach or third party demand.
- Internal Investigation report, if any
- Any other documents which could be construed as material information to the case.

### CLAIMS PROCESS (AS PER POLICY DOCUMENT)

All terminology in Bold have specific definitions under the policy and the reader is required to refer the policy document for the said definitions

- 6.1 The Named Insured shall deliver a Claim Notice to the Insurer as soon as reasonably practicable after any Specified Person acquires Actual Knowledge of:
  - 6.1.1 Any Breach, Third Party Demand or Loss; or
  - 6.1.2 Any fact, matter, circumstance or event which may reasonably expected to give rise to a Breach, Third Party Demand or Loss.

Provided that a delay in delivering notice to the Insurer as soon as reasonably practicable after a Specified Person becomes aware of the relevant matter will not affect the Insurer's obligations hereunder unless and to the extent of the monetary equivalent by which such delay actually prejudices the Insurer's interests under this Policy (subject to the Insurer providing evidence of such prejudice to the Named Insured if requested and subject to the Insurance Contracts Act).

- 6.2 Subject to this Clause 0, the Insurer shall not be liable for any Loss unless a Claim Notice in respect of that Loss (or the facts, matters, circumstances or events which give rise to that Loss) has been delivered to the Insurer:

- 6.2.1 On or before the applicable Expiration to which the Claim Notice relates; or

- 6.2.2 No later than 10 Business Days after the relevant Expiration to which the Claim Notice relates if the Named Insured first became aware of a Third Party Demand which is the subject of the matter set out in that Claim Notice during the 10 Business Day period prior to such relevant Expiration.

A deficiency (or alleged deficiency) in the content or delivery of a Claim Notice which is received on or before the period required under this Clause Error! Reference source not found. shall not preclude, reduce or otherwise relieve the liability of the Insurer for the relevant Loss to which the Claim Notice relates, except to the extent of the monetary equivalent that the Loss would have been avoided or mitigated by delivery of a Claim Notice absent such deficiency or alleged deficiency (subject to the Insurer providing reasonable evidence of such to the Named Insured and subject to the Insurance Contracts Act).

- 6.3 **CONTENTS OF CLAIM NOTICE:** The Claim Notice shall be in writing and shall to the extent possible and known to the Named Insured include a reasonable description of the facts relating to such matter, including a specific reference to the particular Insured Warranties and Indemnities in respect of which a Breach is alleged (if known), along with the insured's estimate of the amount of the Loss arising out of the alleged Breach (if known). A Claim Notice shall not be invalid by reason of failing to provide all necessary facts and circumstances and other details of the Breach or resulting or potential Loss in order to enable the Insurer to assess the Breach or Loss.

- 6.4 **LOSS SUBSEQUENT TO CLAIM NOTICE:** If a Claim Notice is delivered to the Insurer by the Named Insured

- 6.4.1 during the Policy Period; or

- 6.4.2 in accordance with Clause Error! Reference source not found. then any subsequent Loss arising out of the facts or circumstances identified in such Claim Notice shall be deemed reported at the time such Claim Notice was received by the Insurer.

- 6.5 **INSURER'S RESPONSE:** As soon as reasonably practicable after the Insurer receives a Claim Notice, but in any event no more than 25 Business Days after the Claim Notice is delivered to the Insurer by the Named Insured, the Insurer shall respond in writing by:

- 6.5.1 Acknowledging or denying cover for the Loss claimed or the claimed erosion of the Retention (and in the case where the Insurer has wholly or partially denied or declined the claimed Loss or the claimed erosion of the Retention, the Insurer shall specify the reasons for such denial or declination); and

- 6.5.2 In the case of a Claim Notice of any facts, matters, circumstances or events which could reasonably be expected to give rise to Loss, by acknowledging receipt of that Claim Notice and recording it as a notification of a circumstance which could reasonably be expected to give rise to a Policy Claim or to contribute to the erosion of the Retention.

If the Insurer is not in a position to reasonably determine whether (or the extent to which) the Loss is covered by this Policy or the Retention is eroded within the period specified in this Clause 6.5, the Insurer shall promptly request in writing such additional information, documents and other cooperation and assistance as it may reasonably require from the Insureds (such notice provided with reasonable detail), and following receipt of such information, the time limit in this Clause 6.5 shall apply from the beginning.

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The Insureds shall, to the extent reasonably practicable, to the extent within the Insureds' control and upon the Insurer's reasonable written request, provide the Insurer with copies of all relevant correspondence, pleadings (and other documents relevant to any proceedings, proposed settlement, mediation or arbitration) and other documents or information received or issued by the Insureds in respect of such Breach or Third Party Demand (at the Insurer's sole cost and expense) and to the extent possible afford the Insurer sufficient time in which to review and comment on such documentation prior to being issued by the Insureds – provided, without limitation of Clause 8.5, the Insurer shall cooperate in good faith with the Insureds to ensure and preserve the privilege or confidential status of any information shared in connection with this Policy.

- 6.7. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and signed by the party giving it. They shall be served either by hand, by post or by e-mail and shall be deemed served:
- 6.7.1 When delivered by hand (with written confirmation of receipt);
- 6.7.2 When received by the addressee if sent by a nationally recognised overnight courier (receipt requested);
- 6.7.3 When received by the addressee if sent by registered mail (return receipt requested, postage paid); or
- 6.7.4 On the date sent by email of a PDF document (with confirmation transmission), if sent during the normal business hours of the recipient, and on the next Business Day if sent after the normal business hours of the recipient, provided, however, that a hard copy shall also be given in accordance with Clauses 6.7.1, 6.7.2 or 6.7.3 above.

In each case, communications to the Insurer must be sent to the Insurer at the following addresses:

- 6.7.5 All Claim Notices and related correspondence shall be sent to:

**HDFC ERGO General Insurance Co. Ltd.**  
**Corporate Claims Department**  
**6th Floor, Leela Business Park,**  
**Andheri Kurla Road, Andheri (E), Mumbai – 400059**

Our contact details are as follows:

1. **Relationship officer / channel partner**
2. **Call Centre - 022-6234 6234**
3. **E-mail at [care@hdfcergo.com](mailto:care@hdfcergo.com)**

All other notices and correspondence required to be given to the Insurer under this Policy shall be sent to:

Mail:

**HDFC ERGO General Insurance Co. Ltd.**  
**Corporate Claims Department**  
**6th Floor, Leela Business Park,**  
**Andheri Kurla Road, Andheri (E), Mumbai – 400059**

Apart from above Standard documents some other documents may be called for based on the nature of claim.

1. Policy Copy and Proposal form
2. Detailed estimate of Loss
3. All documents and/or information relevant to the claim
4. Discharge voucher of the Insured accepting full and final settlement
5. KYC documents are compulsory

### GRIEVANCE REDRESSAL PROCEDURE

If you have a grievance that you wish us to redress, you may contact us with the details of your grievance through:

- **Call Centre - 120 6234 6234 / 022-6234 6234**
- **Emails – [grievance@hdfcergo.com](mailto:grievance@hdfcergo.com)**
- **Contact Details for Senior Citizens: 022 6242 6226**
- **Email ID: [seniorcitizen@hdfcergo.com](mailto:seniorcitizen@hdfcergo.com)**
- Designated Grievance Officer in each branch.
- **Company Website – [www.hdfcergo.com](http://www.hdfcergo.com)**
- **Courier - Any of our Branch office or corporate office**

You may also approach the Complaint & Grievance (C&G) Redressal Cell at any of our branches with the details of your grievance during our working hours from Monday to Friday.

If you are not satisfied with our redressal of your grievance through one of the above methods, you may contact our Head of Customer Service at

**The Complaint & Grievance Redressal Cell,**  
**HDFC ERGO General Insurance Company Limited**  
**D-301, 3rd Floor, Eastern Business District (Magnet Mall),**  
**LBS Marg, Bhandup (West) Mumbai-400078,**

In case you are not satisfied with the response / resolution given / offered by the C&G cell, then you can write to the Chief Grievance Officer of the company at the following address

**To the Chief Grievance Officer**  
**HDFC ERGO General Insurance Company Limited**  
**D-301, 3rd Floor, Eastern Business District (Magnet Mall),**  
**LBS Marg, Bhandup (West) Mumbai-400078,**  
**e-mail: [cgo@hdfcergo.com](mailto:cgo@hdfcergo.com)**

Grievance may also be lodged at IRDAI Integrated Grievance Management System- <https://bimabharosa.irdai.gov.in>

You may also approach the nearest Insurance Ombudsman for resolution, if - your grievance is not redressed by the Company. The contact details of Ombudsman offices are mentioned below if your grievance pertains to:

- Insurance claim that has been rejected or dispute of a claim on legal construction of the policy
- Delay in settlement of claim
- Dispute with regard to premium
- Non-receipt of your insurance document

You may also refer Our website [www.hdfcergo.com](http://www.hdfcergo.com) - <https://www.hdfcergo.com/customer-voice/grievances> for detailed grievance redressal procedure..

### ABOUT OUR COMPANY

**Name of the company –** HDFC ERGO General Insurance Company Limited (IRDAI Reg No 146)

**Registered & Corporate Office:** 1st Floor, HDFC House, 165-166 Backbay Reclamation, H. T. Parekh Marg, Churchgate, Mumbai – 400 020.

**Website – [www.hdfcergo.com](http://www.hdfcergo.com)**

**Contact number – 022 - 62346234**

**Email – [care@hdfcergo.com](mailto:care@hdfcergo.com)**

### INSURANCE ACT 1938 SECTION 41- PROHIBITION OF REBATES

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 a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectus or tables of the insurer.

**ANY PERSON MAKING DEFAULT IN COMPLYING WITH THE PROVISIONS OF THIS SECTION SHALL BE PUNISHABLE WITH FINE WHICH MAY EXTEND TO TEN LAKHS RUPEES.**

**Disclaimer: In the event of any question relating to interpretation of the insurance coverage, the policy document will prevail.**