

Representations and Warranties Insurance

Inaccuracies in representation and warranties (R&Ws) made by the seller or the target company in connection with a merger or acquisition can result in costly liabilities. Buyers can be left without the ability to recover losses arising from these inaccuracies from the seller. Sellers can be forced to hand back a portion of the purchase price.

Representations and Warranties Insurance (RWI) protects buyers or sellers from the financial losses resulting from inaccuracies in the R&Ws made by the seller or target company in connection with a merger, acquisition, divestiture or other business transaction, enabling them to protect against these scenarios.

Policies can be crafted to address both buyer- and seller-specific concerns. A buyer-side policy reimburses the buyer for losses resulting from the inaccuracies in the R&Ws made by the seller of the target company in the acquisition agreement, allowing the buyer to recover its losses directly from the insurer without first having to pursue recovery from the seller. A seller-side policy reimburses the seller for losses resulting from claims by the buyer arising from inaccuracies in the R&Ws made by the seller in the acquisition agreement, protecting the seller from having to return a portion of the purchase price.

Key Advantages

RWI delivers distinct benefits for buyers and sellers. RWI enables buyers to:

- Enhance protection for breaches of R&Ws, supplementing the indemnification provided by the sellers
- Extend the duration of R&Ws, affording buyers additional time to detect and report problems that may exist with the acquired business
- Distinguish a bid in a competitive auction by accepting a lower than customary indemnification from the sellers and supplementing this indemnification with RWI
- Ease concerns about the ability to collect on the sellers' indemnification due to the sellers' poor financial condition or other practical considerations (e.g., sellers may be numerous, geographically dispersed or difficult to locate)
- Protect relationships with the sellers who may become the buyers' key employees or commercial business partners after the closing

RWI enables sellers to:

- Reduce the risk of contingent liabilities arising from future R&W claims, allowing sellers to lock in their return on investment and cleanly exit a business or industry
- Distribute all or most of the sale proceeds to investors or use proceeds to pay down existing debt
- Protect passive sellers who have no controlled or been actively involved in the management of the target business from unintentional non-disclosure breaches of R&Ws
- Expedite a sale and potentially increase the purchase price by eliminating obstacles to closing, such as indemnity negotiations