

Representations and Warranties Insurance

Inaccuracies in representations and warranties 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) from AIG's Mergers & Acquisitions Insurance Group protects buyers or sellers from financial losses resulting from inaccuracies in the representations and warranties (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 inaccuracies in the R&Ws made by the seller or 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.

Coverage Highlights

- ▲ Coverage is optimally suited to transactions involving companies valued between \$25 million to \$1 billion.
- ▲ Up to \$50 million in coverage is available for any single transaction; larger programs can be structured on a case-by-case basis.
- ▲ Coverage is highly customized to individual transactions.
- ▲ Policy periods generally align with the survival period of the R&Ws set forth in the acquisition agreement.
 - Buyer-side cover can extend beyond the survival period of the R&Ws that the buyer is receiving from the seller in the acquisition agreement.
- ▲ Typical premium is 2% to 5% of the amount of insurance purchased.
- ▲ Deductibles are typically 1% to 3% of the transaction value (based on variables such as the type of business being acquired, the nature and scope of R&Ws being insured, the due diligence, etc.).

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 not controlled or been actively involved in the management of the target business from unintentional non-disclosure or breaches of R&Ws.
- Expedite a sale and potentially increase the purchase price by eliminating obstacles to closing, such as indemnity negotiations.

**ADDITIONAL
COVERAGE FEATURES**



Representations & Warranties Insurance at Work

The following are typical scenarios in which RWI can be deployed.

Distinguishing an Auction

An investment bank conducted an auction bid of an IT staffing company owned by a financial sponsor and company management. Expecting all bids to be substantially similar, a private equity firm bidder contacted its insurance broker seeking a way to distinguish its bid.

AIG provided a quote for a buyer-side R&W policy with a \$10 million limit of liability above the sellers' minimal indemnity (which served as the deductible). Confident it would have this coverage in place if it won the auction, the private equity firm submitted its bid with a lower than customary indemnification request. It won the bid. Following an underwriting review, the RWI policy was bound at closing, enabling the buyer to win the auction without sacrificing its protection for breaches of R&Ws.

Reducing Seller's Indemnity Obligations

A private equity firm was selling a portfolio company to a strategic buyer for approximately \$130 million. Initial drafts of the acquisition agreement contemplated that 10% of the purchase price would be placed in escrow for breaches of R&Ws. The seller contacted its insurance broker to explore the use of an RWI policy to reduce the escrow amount.

After negotiations with the seller and its advisors, AIG provided the buyer with a pre-negotiated buyer-side RWI policy with an \$11 million limit of liability above a \$2 million deductible (to be borne by the seller in the form of a reduced escrow). By purchasing the RWI for the benefit of the buyer, the seller was able to dispose of its portfolio company with a significantly reduced escrow obligation and the buyer was able to obtain its desired level of protection.

Expert Claim and Litigation Management

In the event of a claim, the AIG companies® have a claims team dedicated to transactional insurance, including Representations & Warranties Insurance. These seasoned professionals specialize in disputes surrounding complex transactions and in processing customer claims in a professional and expedient manner.

For more information, contact your broker or local AIG Executive Liability® office. You can also e-mail MAInsurance@aig.com or visit www.aig.com/aigexecutiveliability.

Representations & Warranties Insurance is part of a suite of insurance products AIG's Mergers & Acquisitions Insurance Group offers for the spectrum of exposures inherent in mergers, acquisitions, divestitures and other transactions. Other products in the suite include Tax Liability Insurance, Contingent Liability Insurance, Litigation Buyout Insurance and Investment Banking Engagement Insurance.

Insurance is underwritten by subsidiaries of American International Group, Inc., and is subject to underwriting review and approval. Some coverages may be underwritten by a surplus lines insurer. Risks placed with a surplus lines insurer must be placed in accordance with surplus lines laws and other applicable laws. Surplus lines insurers do not generally participate in state guaranty funds and insureds are not protected by such funds. The information contained herein is for general information only and does not constitute an offer to sell or a solicitation. The description herein is a summary only. It does not include all terms, conditions and exclusions of the policies described. Please refer to the actual policies for complete details of coverage and exclusions. Coverage may not be available in all jurisdictions.



EXECUTIVE OFFICES
70 Pine Street
New York, NY 10270
212.770.7000
www.aig.com