

# Representations & Warranties Insurance

CHUBB®



Available to either buyers or sellers in a transaction, Chubb's Representations and Warranties Insurance provides protection against financial losses\*, including costs associated with defending claims, for certain unintentional and unknown breaches of the seller's representations and warranties made in the acquisition or merger agreement.

Chubb's Representations and Warranties coverage backstops a seller's indemnity obligations to the buyer, or provides additional protection to buyers beyond the seller's obligation in the transaction. This facilitates smoother deal negotiations relating to the allocation of exposures and risks among the buyer and seller, including escrow amounts, indemnification caps and survival periods of representations and warranties.

Policy periods are set to match, or sometimes extend, the indemnification survival periods in the transaction documents. Typical policy periods are up to three years for general representations and warranties and up to six years for fundamental representations and

warranties such as tax, ownership/title and intellectual property.

Policies are customizable and negotiated on a deal-specific basis. Standard exclusions typically include criminal fines or penalties, post-closing purchase price adjustments, actual knowledge of breaches or fraud by the insured's deal team, covenants and underfunded pension liabilities.

## **Buyer-Side Policy**

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Under a buyer-side Representations and Warranties policy, Chubb pays buyers directly for losses arising out of a post-closing discovery of seller's breach of a representation or warranty in the transaction agreement. Buyers may use Chubb's Representations and Warranties policy as the sole recourse in the event of a breach, or to supplement the seller's indemnification obligation by providing additional coverage beyond the cap and/or survival period contained in the agreement.

\* In excess of retention

### **Benefits of a Buyer-Side Policy**

- Offers additional protection to the buyer beyond the negotiated indemnity cap and survival limitations in a purchase agreement.
- Provides the seller with a “clean exit” by reducing or eliminating the need to establish escrows or purchase price holdbacks, thereby enabling the seller to more quickly distribute greater portions of the purchase price to its investors in a private equity context or to retain proceeds in an owner/operator context.
- Enables the seller to reduce the amount of funds held back in escrow, enhancing the seller’s return on its capital in the current low interest rate environment.
- Protects buyers against the collectability or solvency risk of an unsecured indemnity provided by a seller (e.g., a financially distressed or non-U.S. seller or multiple sellers).
- Distinguishes a buyer’s bid in a competitive auction process by requiring a seller to provide short survival periods, modest liability caps and reduced escrow amounts for breaches of representations and warranties in a bidder’s draft purchase agreement.
- Preserves key relationships by mitigating the need for a buyer to pursue claims against management sellers now working for the buyer.
- Affords an alternative recourse to shareholders in public to private transactions.

### **Seller-Side Policy**

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Under a seller-side policy, Chubb indemnifies the seller for its indemnification obligations to the buyer for breaches of its representations and warranties in the transaction agreement. Chubb’s Representations and Warranties policy enables the seller to exit a transaction with confidence that it is not liable for contingent liabilities arising from an unanticipated breach of its representations and warranties. It also reduces or eliminates the need for seller accruals, reserves or collateral obligations for contingent liabilities.

### **Benefits of a Seller-Side Policy**

- Backstops negotiated indemnity obligations – a key benefit for private equity or venture capital funds at the end of their life cycle.
- Protects minority/passive sellers concerned with joint and several liability for indemnifying the buyer.
- Provides additional comfort for individual or family sellers.
- Furnishes a solution for situations where there is a lack of ownership history such as restructurings and “loan to own” situations.

### **Contact Us**

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For more information on Representations & Warranties insurance, visit [www.chubb.com](http://www.chubb.com) or email us at [transactionalrisk@chubb.com](mailto:transactionalrisk@chubb.com).

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