Understanding W&I in a sale transaction

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*Warranties and indemnities (W&I) provide **protection** to parties involved by ensuring the accuracy of the information and offering compensation for losses resulting from **misrepresentations or undisclosed liabilities**.*

*W&I undergo **rigorous negotiation** and are essential for balancing risk allocation between buyers and sellers.*

The choice between warranties and indemnities depends on the specific circumstances of the transaction and the risk allocation preferences of the parties involved.

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Warranties

Warranties are statements made by the seller (or the buyer - also called buyer's warranties) to provide assurances regarding the accuracy, reliability and completeness of the information provided for the selling company.

Warranties cover aspects such as financial condition, legal compliance, contracts and intellectual property, with an aim to establish trust and reliance around the disclosed information.

PROS:

- They provide party protection by ensuring the accuracy of information.
- Enable the buyer to assess the target company's value and potential risks.
- Allow for potential claims and remedies if any warranty is breached.

CONS:

- Seller's potential liability for breaches of warranties, which may result in financial obligations.
- Warranties may not cover all potential risks or unknown issues.
- The buyer needs to conduct thorough due diligence to verify the accuracy of the warranties.

REMEDY FOR A BREACH:

In case of a breach of warranty, the buyer may have the right to seek remedies. Remedies can include functions such as damages, specific performance or indemnification for losses suffered.

Indemnities

Indemnities are contractual provisions that require one party (often the seller) to compensate the other (typically the buyer) for losses incurred due to specific events or circumstances. They aim to allocate risks and protect the buyer from potential liabilities.

PROS:

- Provide protection to the buyer against known risks, such as pending litigation or tax obligations.
- Allow the buyer to seek compensation for losses arising from identified liabilities.
- Offer a mechanism to address breaches of fundamental representations.

CONS:

- Seller's potential financial liability for indemnifying the buyer.
- Limited scope and negotiation required regarding the time limits, liability caps and thresholds for triggering indemnification.
- The buyer needs to carefully assess and identify potential risks to ensure adequate indemnification coverage.

REMEDY FOR A BREACH:

In case of a breach of an indemnity, the buyer may have the right to claim indemnification from the seller for the losses suffered as a result of the breach.

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