

# REPRESENTATIONS AND WARRANTIES INSURANCE



Representations and Warranties (R&W) Insurance is constantly developing; new innovations are enabling transactions to close when certain issues previously would have derailed deals.

Our specialist transactional risks team can help companies strategically utilise R&W insurance as well as standalone tax and contingency policies to deliver a range of benefits\*.

## ADDING VALUE TO TRANSACTIONS

The principal function of R&W insurance is to provide financial protection for a buyer or a seller in the event of losses arising from a breach of representation (rep) or warranty in a US-style share purchase agreement (SPA). Coverage can be provided for fundamental, business and tax reps and warranties.

Policies are designed to sit 'back to back' with the reps and warranties and match the limitation period in the SPA.

## BUYER VS. SELLER POLICIES

- ✓ Buyer policies allow the buyer to be the named insured and permit the buyer to claim directly against the policy, usually regardless of any rights they have in the SPA to pursue the seller. This allows the seller to limit their liability to a nominal level (in some cases as low as nil) but gives comfort that the policy will effectively 'replace' the seller in the event of a breach of representation.
- ✓ Seller policies are used to sit behind the agreed seller liability 'cap' in the SPA. The selling warrantors are the named insured on the policy and if they are forced to pay a claim, can seek immediate recourse from the insurer. It allows the seller to ring-fence their financial exposure and access sale proceeds immediately.

## 2019 – 2020 ENHANCEMENTS:

- Nil seller recourse deals are accepted by insurers (subject to an excess being borne by the buyer)
- Average excess levels have dropped to 1% of EV (which can drop further to 0.5% after expiration of the general reps)
- Internal Financial and Tax DD can be accepted
- Consequential loss and multiplied exclusions removed
- Underwriting calls shorter and no written answers required
- No deemed disclosure of virtual data room or due diligence reports
- Tax underwriters now sitting within R&W teams to individually assess known tax risks
- Claims statistics available for each sector on request

## KEY FACTS:

<b>How much does it cost?</b>	Operating Business: 0.8% - 1.3% Regulated Industry: 1.1% - 1.6%
<b>What are minimum premiums?</b>	Minimum premiums are in the region of AUD90,000
<b>What limits are available?</b>	Up to AUD1bn capacity is available

## BENEFITS OF R&W INSURANCE

The need for the policy (in particular, a buyer policy) usually manifests following the seller materially restricting the buyer's recourse under the SPA, due to a requirement or desire to make a clean exit from the transaction. However, there are a number of other strategic benefits.

## USE AS A STRATEGIC TOOL

- ✓ **Competitive auction scenarios**  
The bidder can include a buyer policy with their bid, allowing the seller to limit liability.
- ✓ **Questions over seller covenant strength**  
The buyer may want to transfer the risk of paying a claim from the seller to a reputable insurance company, providing financial security.
- ✓ **Lender requirements**  
Certain banks only lend if a policy is in place.
- ✓ **Fund wind-up and private equity deals**  
No residual liability can remain, meaning a clean exit from the investment.
- ✓ **Liquidations**  
Assets are allocated between creditors and shareholders, so there can be no residual liability.

R&W Insurance does not replace the need for a thorough DD process and full disclosure is essential.

Standard exclusions include forward looking statements, certain fines and penalties, secondary tax liabilities and transfer pricing, pension underfunding, and completion purchase price adjustments.

## PROCESS

Any R&W policy will ideally incept at the same time that the deal signs and, if initiated in a timely manner, can be negotiated in a parallel work stream to the actual transaction.

Our team is determined to work at the speed of the deal, and not allow set transaction timelines to alter – we will work closely with the insured's legal team to enhance the policy and ensure the wording is the most competitive available in the market.

01	Initial Gallagher contact
02	Gallagher briefs insurers on a confidential basis (day 1)
03	Insurance market responds with initial indications. Gallagher/client analyse terms – interrogate market further and select carrier to finalise the insurance piece (day 2-3)
04	Insurer instructed
05	Insurer underwrites deal and conducts their own diligence, including an underwriting call (day 3-5)
06	Final policy issued and negotiated to counterparty satisfaction (day 5-7)
07	Deal executes/policy binds

## ABOUT ALESCO

Alesco is a fast-growing and dynamic insurance broker that specialises in energy, construction, property, liability, accident & health and contingency and related lines of business. Combining the strength and reach of a global brand, with the service levels and flexibility of a specialist independent broker, Alesco is committed to building confidence and creating certainty in your business.

Clients across the globe rely on Alesco to identify, manage and mitigate risk – and to broker some of the best policies with the world's leading insurers and reinsurers. Should clients require support in an individual specialism or the development of a single, comprehensive proposition across their portfolio, we have the proven skills and connections to serve all national and international interests.

## FOR MORE INFORMATION, PLEASE CONTACT:

### CHARLES RUSSELL

HEAD OF TRANSACTIONAL RISKS

Direct: +44 (0)20 7204 6237

Email: charles\_russell@alescorms.com

### RICHARD HORNBY

SOLICITOR, TRANSACTIONAL RISKS BROKER

Direct: +44 (0)20 7234 4083

Email: richard\_hornby@alescorms.com

## ALESCO

67 Lombard Street  
London  
EC3V 9LJ

Tel: +44 (0)20 7204 8999

[www.alescorms.com](http://www.alescorms.com)

[twitter.com/AlescoRMS](https://twitter.com/AlescoRMS)

[linkedin.com/company/alesco-risk-management-services](https://www.linkedin.com/company/alesco-risk-management-services)