



REPRESENTATIONS & WARRANTIES INSURANCE

Buyer-side

SUMMARY

Buyer-side Representations & Warranties (R&W) Insurance protects a buyer against unforeseen loss arising post-closing. The product allows a seller to reduce or eliminate its indemnity cap for a post-closing breach, providing a clean break.

Historically favored by private equity sellers, R&W Insurance has become a firm feature of the deal landscape – increasingly recognized by corporates and sponsors as a way to successfully execute deals.

In recent years, our team has supported buyouts with an aggregate value of **\$100bn+**, across a wide range of industry sectors.

This document provides a high level reference guide to using R&W Insurance on your deal.

SCOPE

R&W Insurance protects a buyer against unknown loss arising from a breach of warranty or claim under a tax indemnity.

The policy doesn't cover known risks and it is important to understand the implication of diligence findings on cover.

We undertake a detailed analysis of the financial, legal and tax diligence reports – flagging identified risks which may be excluded from the policy to deal teams. This allows these risks to be factored into the underlying deal negotiation.

Covered

- ✓ Seller/Company's Representations & Warranties
- ✓ Pre-Closing Tax Indemnity

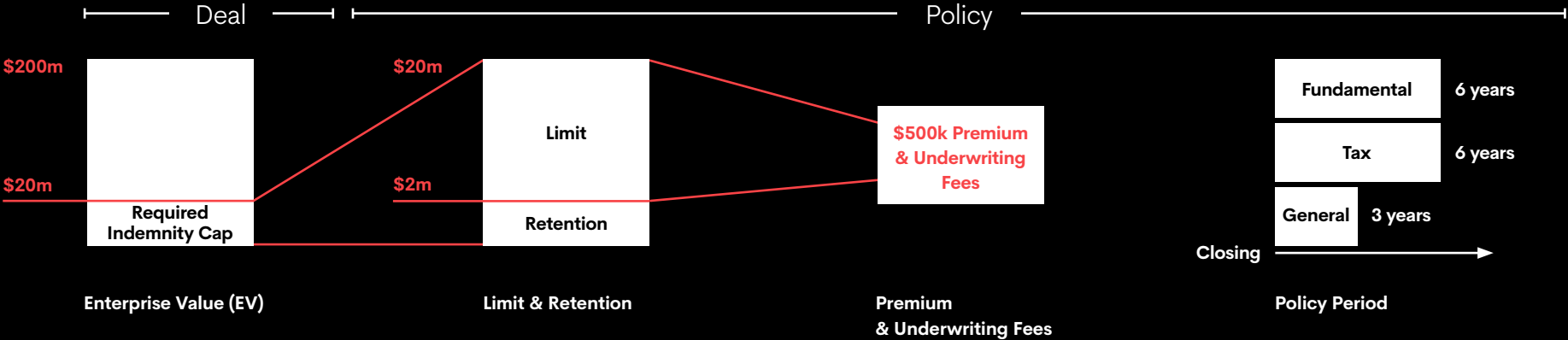
Excluded

- ✗ Purchase Price Adjustments
(Net working capital adjustment)
- ✗ Known Risks
- ✗ Market & Deal Specific Exclusions

PARAMETERS

The policy limit, retention, premium and underwriting fees are deal specific – typical parameters alongside an illustrative example are set out below.

The premium is influenced by a number of factors, including nature and location of the target company, identity of the buyer/seller and their respective bargaining positions. Our team is able to provide indicative parameters (alongside key risks) if provided with the above details (on a no-names basis).



Typical Parameters

R&W Insurance is used on a wide range of deal values – the Atlantic team placed policies on deals with values from \$10m to \$18bn+

Policy Limit: replaces or enhances seller indemnification cap – typically 10-30% of EV

Retention: single aggregate retention that often matches seller indemnification – typically 0.5-1.5% of EV

Premium: one-off premium for entire policy period (6 years) – rates are typically 2-3.5% of policy limit

Underwriting Fees: covers insurer's external counsel's fees and charged in addition to the Premium – typically \$15-50k

Policy Period: claims made policy that can extend underlying survival periods – typically 6 years fundamental, 6 years tax, 3 years general

Example \$200m EV

Policy Limit: \$20m (10% of EV)
Retention: \$2m (1% of EV)

Premium: \$500k (2.5% of policy limit)
Underwriting Fees: \$20k
Total Cost: \$520k

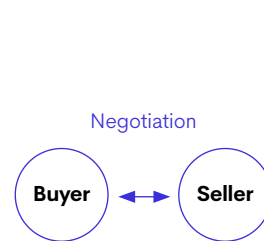
Tax & Fundamental: 6 years from closing
General: 3 years from closing



PRINCIPLES

R&W Insurance requires the buyer and seller to undergo an arm's length negotiation. From uploading the relevant documents to the data room at the outset of the process, to disclosing against a last minute representation inserted by the buyer, insurers take comfort from a robust process.

The major difference when using R&W Insurance is the seller's indemnification cap (and any associated escrow requirements) are set at a very low level, sometimes nil. In most other aspects, the deal process should be run in the usual manner.



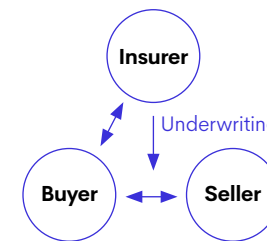
Arm's length negotiation between buyer and seller

Seller engages with target company's management and uploads relevant documents to the data room

Buyer undertakes customary diligence (legal, financial and tax)

Buyer and seller negotiate agreement, including representations and tax indemnity

Seller undertakes robust disclosure exercise

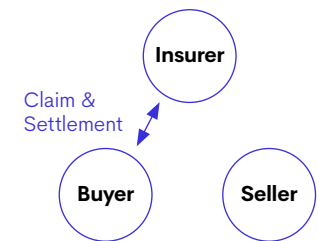


Insurer assesses the underlying M&A process

Non-invasive underwriting process which tracks the deal timetable

Atlantic co-ordinates the underwriting process – undertaking detailed analysis of the diligence and negotiating cover with the insurer

R&W Policy 'maps' representations negotiated between the parties



Buyer protected by R&W Policy

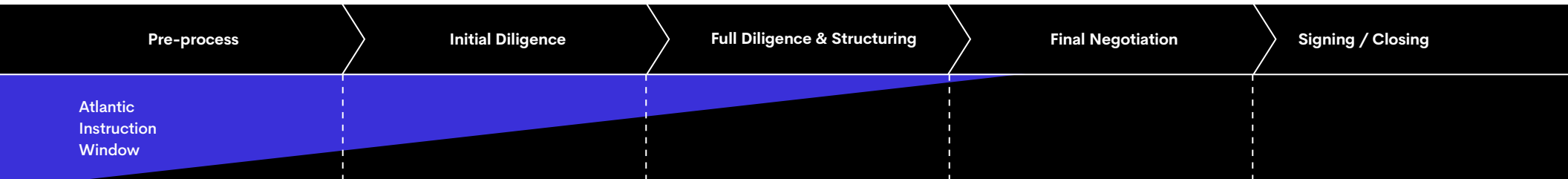
Buyer claims directly from insurer, no need to involve seller

Insurer waives subrogation against seller (save for fraud)

Buyer protected by policy, seller given 'clean' exit

PROCESS

Although Atlantic can be engaged at the last minute to bridge a deal impasse (our record is four days from a standing start), early instruction allows us to provide strategic guidance – this ensures the R&W policy is integrated smoothly into the deal process.



No costs incurred by client

Execution of NBI & start incurring underwriting costs

Initial Call →

Atlantic Review →

Non-binding Indications (NBIs) →

Atlantic NBI report →

Full Underwriting →

Policy Negotiation →

Policy Finalized

Introduce company and transaction

Preliminary Atlantic feedback on diligence scope, pricing, terms and key risks

Information memorandum
Financial statements
Diligence scope

Detailed analysis of the purchase agreement, focusing on the representations and warranties

Prepare submission, including cover for key risks

Target's existing insurance policies

Draft diligence reports (legal, financial, tax, environmental)

Draft purchase agreement

Marketing to potential insurers

Negotiation of pricing, cover and key risks

NBIs provided by insurers

Detailed report summarizing market response and recommendation

Atlantic discuss terms and recommendation with client – focus on execution and key risks

Engage insurer

Insurer engages external counsel and starts full underwriting

Atlantic undertakes detailed review of diligence reports – highlight positive findings and request advisors to undertake further analysis where necessary

Underwriting call

Data room access
Disclosure schedules
Updated diligence reports & purchase agreement

Updated diligence findings (following Atlantic's feedback) presented to satisfy insurer

Bespoke drafting negotiated by Atlantic – focus on key risks

Policy finalized ahead of signing/closing

- Atlantic
- Client
- Documents

Process

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