

## COVID-19 Coronavirus Business Impact Broadcast Series

# Has the Rep and Warranty Insurance Market Remained Healthy During the Pandemic?

APRIL 17, 2020

On April 15, 2020, Dechert's Private Equity group presented "Has the Rep and Warranty Insurance Market Remained Healthy During the Pandemic?" an episode of the firm's COVID-19 Coronavirus Business Impact Broadcast Series. The episode was hosted by Emily Standen (moderator), an M&A associate in the firm's New York office; Craig Schioppo, Managing Director and the Transactional Risk Practice Leader at Marsh JLT Specialty; and Markus Bolsinger, a partner in the firm's New York office and co-head of the firm's private equity practice.

This broadcast summarized the availability of representations and warranty insurance during the COVID-19 pandemic and initial trends in coverage, premiums and exclusions. It also touched on the carriers' approaches to due diligence and attorneys' modifications to the representations and warranties in purchase agreements.

COVID-19 Coronavirus Business Impact

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### HIGHLIGHTS FROM THE EPISODE

#### Availability, Premiums and Exclusions

While the flow of submissions has slowed, the rep and warranty insurance market remains open for business. Brokers and carriers are up and running and continue to bind policies. Premiums are pricing the same as they were pre COVID-19 or potentially even lower given the falloff in deal volume and significant carrier competition for the smaller number of deals. Nearly all carriers are responding to the COVID 19 pandemic with increased attention to areas of heightened risk in due diligence and/or a requirement for some form of COVID-19-related exclusion from coverage.

#### Carriers' Approach to Due Diligence

The scope of diligence required by carriers to underwrite a policy is evolving in the COVID-19 era. However, even with respect to the heightened risk areas of focus in due diligence, a combination of robust diligence and absence of red flags or bad history in the area of focus tends to get carriers comfortable.

#### Modifications to Representations and Warranties in Purchase Agreements

Parties are reacting to the epidemic by modifying existing, commonly used reps and crafting new ones. Among the commonly used reps being modified are: (i) absence of changes (frequently partnered with similar modifications to the interim operating covenant); (ii) compliance with laws; (iii) labor and employee matters; (iv) financial statements, inventory and accounts receivable; and (v) customer and suppliers. In addition, lawyers have come up with novel COVID-19 directed reps, though carriers often stipulate that these reps will not be considered part of the purchase agreement for their purposes, meaning that any breaches and related losses under such representations are not covered by rep and warranty insurance policies.

#### Forward-Looking Role of Rep and Warranty Insurance

Both Dechert and Marsh anticipate that once we move out of the COVID-19 crisis, rep and warranty insurance will continue to be a significant part of the M&A landscape. Rep and warranty insurance has changed how sellers and buyers transact with each other. Even if there were to be a shift in leverage between them – with sellers becoming more desperate while US\$1.7 billion of dry powder in private equity firms' coffers still sits on the sidelines – the widespread acceptance of rep and warranty insurance as a tool for allocating risk will not disappear.

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