

Mergers & Acquisitions

In the context of a business disposal, a top priority for the vendor is a clean exit free of concern about warranty claims. Broadly, that can be achieved by any one of 3 avenues including, limitations on warranty claims, vendor due diligence and vendor warranty insurance.

Limitations on warranty claims are common. They are often referred to as caps and collars. A cap is a maximum claim amount above which a purchaser may not claim against the vendor. Often this level is a percentage of the purchase price. Where a cap is agreed the vendor has certainty that the sale proceeds above this level are secure.

A collar is a minimum claim amount below which a purchaser is prevented from bringing a claim. It protects a vendor from inconvenience on account of immaterial amounts.

Usually monetary threshold limitations are accompanied by time limitations. Two years is a common limitation for non tax matters; 5 years is usual for tax.

Vendor due diligence is an obvious tool to maximise price in much the same way as a vendor of a house often aims to maximise the price by doing up the kitchen and bathrooms pre-sale. In a business context it means carrying out a pre-sale review of the business to identify and correct any weakness.

From a protection stand point a vendor due diligence allows the vendor to disclose any risks and thereby gain protection against possible warranty claims.

Warranty insurance is gaining more and more attraction in sales transactions. Indeed in many cases a purchaser will now require it in order to shield itself from the risk of uncovering an empty shell if and when it seeks to enforce a claim against a vendor. Ordinarily warranty insurance will provide complete relief for the vendor so that a purchaser is limited to bringing a claim against the insurer.