

Warranty and Indemnity Claims – What’s the difference and why does it matter?



In tough economic times buyers of businesses are going to pay close attention to the assurances they are being given by the sellers. Those assurances are usually backed by detailed warranties and/or indemnities contained in the share purchase agreement. Buyers and sellers therefore need to understand the difference between warranties and indemnities. The table below summarises the key differences.

Warranty

What does this mean?

The warranties are a series of statements made by the seller about the business / its assets.

Indemnity

An indemnity is a promise by the seller to reimburse the buyer / target company for any loss suffered for certain specified events.

How can a claim arise?	The buyer will need to establish that the warranty was not true at the date it was made (typically the completion date).	The indemnity will set out the facts and matters covered. Typically these will be losses suffered by the target company / buyer after completion for certain agreed facts and matters.
What about disclosure?	The warranties will typically exclude any facts and matters the buyer is aware of prior to completion (e.g. as part of the due diligence exercise).	Typically the indemnities will not be limited by disclosures made by the seller.
How will damages be assessed?	The damages payable by the seller for breach of warranty will be assessed by reference to the difference between the value of the shares “as warranted” (i.e. on the basis that the warranties were true) and the value of the shares “as is” (i.e. given the actual state of affairs). Typically expert accountancy / valuation evidence will be needed to assess this.	The buyer / target will be entitled to claim any losses which arise out of the facts and matters covered by the indemnity.

Buyers will often want assurances to be given as indemnities with the benefit of a pound for pound recovery in the event of breach. Sellers will normally press for the assurances to be given as warranties so that what can be claimed is the real loss, that is to say the reduction in value of the shares (if any) as the result of the breach.

Which route is ultimately taken will have a very real impact on how a claim for breach must be approached, as well as the likely outcome.



How we can help?

If you may be involved in a dispute related to the above and would like advice, please contact the [commercial disputes](#) team.

Written by



[Tom Bourne](#)

Partner