

WARRANTIES & INDEMNITIES

Christos Chrissanthis

Conditions - Warranties - Indemnities

Conditions – repudiation (avoidance) of contract

Warranties – undertakings dependent on fault

Indemnities – promises to reimburse a loss caused by a certain fact, independent of fault

Representations – if not true the contract can be repudiated

Representations of fact – true and accurate

Representations of opinion – made in good faith

In what terms are Indemnities better than Warranties

1. No fault required
2. No causation required. Remoteness & foreseeability are irrelevant.
3. No mitigation. An indemnity claim is a claim for a debt, not a claim for breach of contract. No obligation to mitigate the loss.

MISREPRESENTATION OF FACT

- False statement
- Knowingly or recklessly or carelessly
- As to a material issue
- Inducement; the false statement must have induced the counterparty to enter the transaction

Under Greek law the remedy is avoidance of the contract ab initio (*ex tunc*); however, avoiding the contract may not be a realistic remedy in such transactions

LIST OF WARRANTIES

1. Corporate Status of Seller/Buyer. Corporate Authorizations. No bankruptcy.
2. Legal status of share titles.
3. Legal status of target company. Memorandum of Association. Share capital, etc. No outstanding dividends.
4. Corporate books & records. Minutes of BoD Meetings. Minutes of Shareholders Meetings.
5. Financial records & accounts. Financial balances.
6. Insurances.
7. Compliance with law. Operating licenses and permits.

8. Litigation & Investigations.
9. Insolvency.
10. Transactions in arm's length.
11. Environmental compliance.
12. Data protection.
13. Employees. Health & safety
14. Assets. Property titles and charges over assets.
15. Intellectual property.
16. Software systems.
17. Contract of the company.
18. Pension schemes.
19. Disclosure & Data Room documents.

FINANCIALS

- a. Records & Accounts.
- b. Provisions in the accounts
- c. Events since the accounts' date; material adverse change
- d. Working capital
- e. Debts and Bad Debts
- f. No guarantees in favor of third parties
- g. All transactions are reflected in the accounts

INDEMNITIES

1. Tax
2. Social security
3. Outstanding bank cheques
4. Outstanding debts to employees
5. Awards arising from pending litigation
6. Other major risks identified during the due diligence process

Damages for breach of warranty

Multiplier

The purchase price is usually determined on the basis of a multiplier, i.e., net assets X 5, or EBITDA X 5, or earnings X 5.

Do we take into account the multiplier in determining the volume of damages?

YES, if there is a contractual clause to this effect.