# Coverage Insights

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# Mergers & Acquisitions Insurance Considerations

In a situation where one company merges with another to become a single entity, or when one company is acquired by another, it is imperative that both parties review and update their insurance coverages to ensure all risks are accounted for. This article details the steps your company should take to prepare for a merger or acquisition and defines two types of insurance that may help your company close the deal with confidence.

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### Perform an Insurance Review

To make sure your company is not blindsided by surprise liabilities after a merger or acquisition transaction, perform the following review:

- Ensure all of the seller's existing policies have sufficient limits and adequate coverage for its main risks.
- Determine whether the seller has any potential liabilities that are not insured. To do this, review the seller's claims history and existing policies.
- Take note of the seller's existing contracts guaranteeing indemnification, or agreeing to additional insured status for suppliers, customers or corporate affiliates of the seller.
- Review existing contracts to look for any indemnities or insurance that may have been presented to the seller from other parties.
- Pinpoint new exposures that could pop up if operations are added or moved to locations unfamiliar to your company. New coverages may need to be purchased or old policies may need to be updated to make sure these operations are covered.
- Address any circumstances or conditions that could generate claims that would fall under the seller's coverage.
- Address any differences in the way the seller reported claims with the way the buyer reports claims.

Additional uncovered liabilities are often discovered in the due diligence process, and the purchase price can be adjusted accordingly or the buyer granted applicable indemnification.

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### Representations and Warranties Insurance

During a merger or acquisition, certain discrepancies may appear in the way each company has represented itself. These inaccuracies could cause significant liabilities after closing, and those liabilities may not be covered by general liability policies. If indemnification hasn't been promised, specialty insurance should be considered to cover these potential risks. Representations and warranties insurance protects buyers and sellers of a company against any inaccuracies made in representations and warranties. Some advantages of this type of coverage are that it does the following:

- Extends the time for representations and warranties, which gives buyers more room to spot any existing problems with the recently purchased business
- Removes the worry of not being able to collect on a seller's promised indemnification
- Speeds up a business sale by covering the liabilities of future representations and warranties claims
- During an auction, allows the buyer to place a distinguishing, lower, stand-out bid
- Allows a seller to fully and completely leave a business, if desired
- Allows the buyer to maintain a good relationship with the seller, who may become the buyer's employee or business partner after the transaction

## D&O Run-off Coverage

If you have a directors and officers (D&O) policy, you know that it protects you from the costs associated with any lawsuits, investigations or other claims brought against you. In a merger or acquisition scenario, the D&O coverage of both entities needs to be examined prior to the completion of the transaction to ensure gaps in coverage will not exist.

D&O policies are typically structured as "claims made," which means the insurance does not cover the company after the policy expires. This means that if a claim is filed against the seller after the seller's D&O policy expiration date, the seller will be responsible for paying any charges in full. Depending on the specific contract details, this could mean that the buyer is responsible for footing the bill.

Run-off insurance provides extended D&O coverage (for a selected time period) for any claims that arise after the seller's policy expires. It should be secured prior to the merger or acquisition transaction closing.

Another factor to examine in D&O insurance is the "change in control" clause. Many D&O policies include a "change in control" clause that modifies or voids the coverage if the company is merged into or acquired by another company.

Merger and acquisition deals can be complicated. Extensive research and preparation must be completed prior to the closing of the deal to ensure there are no gaps in insurance coverage. When preparing for a merger or acquisition, it is crucial to understand how the buyer's policy and the seller's policy will respond to a change in control and to secure run-off coverage for any claims made following policy expiration dates. In order to avoid saddling your combined company with uninsured liabilities, you must be knowledgeable about your insurance policies and how each might be modified in a merger and acquisition transaction. For more information about protecting your company or for further insight into your policy language, contact Bryson Financial today.