

Will COVID-19 impact your deal?

Answers to your top questions about our underwriting process

With the escalation of COVID-19, private equity funds and strategic clients are rightly considering their approach to M&A. Without a doubt, the impact of COVID-19 will be a significant factor impacting a buyer's investment thesis right now.

While these are uncertain times, our approach to underwriting representations and warranties (R&W) policies remains largely the same. To help answer some of your questions about how we are addressing COVID-19 when underwriting R&W policies, we have pulled together a few key pointers:

- **Valuation and viability:** Clients should assess their valuation models to account for likely economic volatility in light of COVID-19 and should understand the ability of the acquired business to meet its payment obligations in light of reduced cash flow or loss of customers.
- **Material contracts and supply chain:** Are there sufficient 'act of god,' 'force majeure' or 'contract frustration' protections in place to permit material contracts to be put on hold if need be? Clients should also consider whether there is any risk of customers being lost or supply chains being interrupted.
- **MAE clauses:** Material Adverse Event (MAE) clauses should be appropriately drafted to provide termination rights should COVID-19 adversely impact the deal between signing and closing.
- **Insurance:** Clients should carefully review all insurance arrangements (especially business interruption insurance) to determine whether there is any coverage for liabilities resulting from pandemics.
- **Employees:** Clients should be actively working with the management of the company to be acquired to understand what measures are being taken to assist COVID-19 affected employees. Companies should also simulate different COVID-19 scenarios (ie. prolonged working from home or majority workforce being sick off work for over two weeks) and ascertain what contingencies would be made under such scenarios.

A note on representations and warranties:

- Specific representations on COVID-19 will likely be excluded from coverage under the R&W policy.
- We will carefully review the warranties and representations to assess whether there is any exposure to potential COVID-19 related liabilities and may amend coverage under the R&W policy as a result.

If you have any other questions about CFC's M&A insurance products, or how they respond in light of COVID-19, please get in touch at transactionalliability@cfcunderwriting.com.