



TRANSACTION LIABILITY

M&A INSURANCE PRODUCTS



WARRANTY & INDEMNITY (W&I) INSURANCE

W&I insurance acts to indemnify parties involved in a transaction against financial losses that could arise out of a breach of warranty or indemnity in the sale agreement. If the insured party suffers a loss due to a breach of a warranty or under the tax indemnity, it can claim against the policy up to the limited insured (typically a portion of the deal's enterprise value). W&I policies only cover unknown risks, so whilst the tax covenant will be covered under the W&I, specific indemnities given by the seller will not (although they could be covered under a contingent policy, as set out further below).



Benefits of W&I

A W&I policy brings advantages for both buyers and sellers and so has become a key feature in M&A transactions. Sellers use it to limit their ongoing liabilities and prevent sale proceeds being held up in escrows, allowing them to exit deals cleanly. Buyers use it to make their bids more attractive to sellers and to protect the value of their investment once deals are done. For private equity buyers, W&I also prevents future claims against portfolio management teams in the event of a warranty breach.

Timing & price

Ideally, the insurance broker should be instructed as early as possible in the transaction process. Insurers usually require about eight to 10 business days to produce and underwrite a W&I policy; in order to do so, they will require a copy of the sale agreement and the buyer's due diligence reports that cover, at a minimum, legal, financial, and tax. Pricing is expressed as a percentage of the sum insured under the policy. For operational businesses, premiums will reflect the complexity of the target business – for example, for a typical U.K.-based operational business, we would expect a premium of between 0.8% and 1.2%. Pricing for real estate transactions is lower, typically between 0.5% and 0.8%. Insurance premium tax may be payable in addition (dependent upon the jurisdiction of the insured entity), and insurers may also charge an underwriting fee to cover the costs that they incur in the underwriting process.

Buy-side vs. sell-side policies

The majority of W&I policies are structured as buy-side policies, as these give the seller the cleanest exit. They also allow the buyer to claim directly against the insurer in the event of a warranty breach. It is common for negotiations with insurers to begin from the sell-side before the policy is “flipped” to the buy-side. Sell-side policies are less common and typically more expensive than buy-side policies. Without access to DD reports, they can be cumbersome to structure and do not give a seller a “clean exit,” as they will still be contractually liable under the SPA for any breaches of warranty.



TAX LIABILITY INSURANCE & CONTINGENT LEGAL RISK INSURANCE

Tax liability and contingent legal risk insurance have developed as a response to demand for coverage for identified issues which are not within the scope of typical W&I cover. The risks are typically identified as part of the transaction diligence for an M&A transaction or from a restructuring or corporate reorganisation process. Tax liability and contingent legal risk insurance are also now used at other times in the business cycle where insureds identify risks and liabilities relating to insurable matters.

Although Tax liability and contingent legal risk policies cover different types of risks, namely tax matters for the former and generally legal and litigation matters for the latter, there are several key themes which run through each.

What is covered?

Theoretically, any risk where the insured can present a defensible position to insurers for why the risk will not crystallise should be capable of insurance.

For tax risks, insurers provide tailored solutions to cover specific and known tax issues which could crystallise into a tax liability following successful challenge from the authorities. These policies also cover losses arising from applicable interest, penalties, gross up, and costs for defending such a challenge. Typical risks we see being covered include issues arising with stamp duty, share schemes, employment-related securities, VAT, and transfer pricing. Another advantage of tax liability insurance is that Insurers will assist Insureds with the process of settling with the relevant tax authorities, which can act to lower the resource burden for insureds.

Contingent risk policies will protect an insured against a loss arising from risks identified that are outside of the scope of W&I and tax insurance. As a general rule, contingent risk policies will cover future legal or regulatory decisions (i.e. a court judgment or regulatory order) that would cause a loss to the Insured if the decision falls adverse to the insured's interest. Examples of risks covered include prospective or ongoing court or arbitral proceedings, contractual interpretation issues, complex ownership/title risks, and regulatory decisions or challenges.

Benefits of tax liability & contingent legal risk insurance

DEAL FACILITATION

Often, tax liability or contingent risk policies act as a deal facilitation tool. Policies provide comfort and certainty to buyers and help sellers protect themselves following an exit. Clients can accordingly manage their exposures to contingent tax or legal issues and reduce the time and cost of negotiating the issue between parties. This can be particularly helpful in competitive auction or bid processes or where an escrow arrangement or a price-chip is not be commercially viable.

UNLOCK VALUE & SIMPLIFY TRANSACTIONS

By transferring an identified risk to an insurer's balance sheet, Insureds can avoid potentially value limiting risk transfer mechanisms in transaction structures such as price-chips, escrows and indemnities, and release provisions that would otherwise have to be set aside. Insurance can similarly benefit insureds that no longer need to negotiate complex risk ringfencing in transaction documents.

Timing & price

The timing to procure and the price of tax and contingent legal risk insurance will vary depending on the complexity of the risk and probability of it occurring.

As there is so much diversity in what can be covered, it means that each policy is bespoke to the risk insured and that the insurers will engage in detailed underwriting to understand the nature of the risk, which extends the time frame as compared to W&I insurance. Although policies can be put in place in a matter of weeks, we would always advise clients that any policy will require at least a month to put in place. However, we can work with insurers to expedite the process if our client's transaction timeline requires faster action. As best practice, we always encourage our clients to approach us as early as possible in any transaction process to source insurance solutions for identified risks.

Pricing will be calculated as a percentage of the insurance coverage requested, known as the limit. Pricing for tax risks will normally be 1.5%-6% of the limit requested and, for contingent legal risks, between 2%-12% of the limit requested. In certain jurisdictions, insurance premium tax will also be payable. Insurers may also charge a nominal underwriting fee to cover their underwriting costs if they are engaged as preferred insurers for a risk.



At Lockton, our Transaction Liability Practice is the certain solution for transactional risk. We have advised on thousands of deals and are recognised as an industry leader in crafting and negotiating policies that cover unknown breaches of representations and warranties, as well as known tax, legal, and intangible asset risks. Our leadership team has been at the forefront of the transaction insurance industry for the past decade.

Collectively, we bring more than 50 years of experience as both corporate attorneys and transaction liability advisory insurance brokers, specialising in private equity and corporate acquisitions across all industry sectors. With our global footprint and deep cross-border expertise, we seamlessly support clients on international transactions, delivering consistent service and market insight wherever deals take place. When clients bring us into their transactions, they trust us to be true advisors — ones who will do everything in our power to streamline deals and provide thoughtful guidance without introducing execution risk.

Contact the Lockton team for more information today.



HARRY BLAKELOCK
Partner
Head of Transaction Liability U.K.
+44 7500 952671
harry.blakelock@lockton.com



DAVID ELPHINSTONE
Senior Vice President
Head of Private Equity
+44 7788 913774
david.elphinstone@lockton.com



Lockton Companies LLP. Authorised and regulated by the Financial Conduct Authority. A Lloyd's broker. Registered in England & Wales at The St Botolph Building, 138 Houndsditch, London, EC3A 7AG. Company No. OC353198.

© 2025 Lockton Companies. All rights reserved. C | 6295980 0925