



Warranty & Indemnity (W&I) Key Facts

The complexity of risks inherent in a corporate level transaction, such as a merger or acquisition, can be such that they threaten the deal itself. **Warranty & Indemnity Insurance (W&I)** offers a convenient risk transfer solution to the parties involved so that they are free to proceed with the deal. However, purchasing W&I may not only be beneficial as a matter of practicality but also as a strategic tool used to effectively enhance the seller's sale offer (seller-side policy) or the favourability of the buyer's-bid (buyer-side policy).

HCC Global offers both buyer-side and seller-side W&I policies customised to match your deal requirements.

Who is insured?

Seller-side:

The party/ies giving the warranties contained in the SPA*/contractual document relating to the transaction. This is normally the seller(s) but may include other guarantors or warrantors.

Buyer-side:

The party/ies to whom the warranties contained in the SPA*/contractual document relating to the transaction are being given. This will always be the buyer(s) who has a direct financial (insurable) interest in the transaction.

What is insured?

Seller-side:

A financial loss arising out of a breach of those warranties, therefore covering the seller's liability to indemnify the buyer.

Buyer-side:

A financial loss arising out of a breach of those warranties, therefore covering the direct loss suffered by the buyer. Defence costs are also covered should a third party bring a resulting claim against the buyer.

Trigger:

Claims made (for the first time) during the policy period.

Policy Form:

Each policy is customised to follow and match the warranties and indemnities in the SPA/contractual document closely, in order for there to be little or no difference between what could be claimed against the seller and what the seller (or the buyer as the case may be) can claim on the W&I policy.

Policy Period:

Typically 3 – 7 years. The policy term will generally run from signing of the deal for the full survival periods of the warranties and indemnities in the SPA, including the tax warranties. The period for a buyer-side policy can extend the limitations prescribed in the SPA to meet the buyer's needs.

Retention:

The policy "retention" or excess, (the uninsured amount of the loss to be borne by the insured), will be agreed between the insurer and insured. This may reflect thresholds in the SPA, but the structure of the policy retention can also be adapted in a variety of ways to meet the deal requirements.

Exclusions:

- Fraud or fraudulent misrepresentation of the insured (*seller-side*)
- Disclosed facts / circumstances (unless specifically covered as an indemnity)
- Warranties marked as excluded or partially covered in the policy cover
- Inadequacy of pension funding

A Smart Approach to TRI



- ▶ We have a **specialised TRI team** with senior support, broad skill base and expertise in relevant tax, legal, broker, claims and underwriting issues
- ▶ Our service promises **speed and flexibility** of response
- ▶ We involve our **in-house claims department** in policy wordings and product development to be able to offer you the most appropriate coverage
- ▶ We have the **international profile** of the wider HCC Global team at our disposition; key to swift underwriting and claims handling wherever your jurisdiction. This means we count on:
 - ▶ Multilingual skills
 - ▶ Local policy wordings (adapted to local language and law)
 - ▶ Local legal knowledge
- ▶ We offer **customised policies** and can make manuscript amendments on a deal by deal basis to ensure policy coverage meets the deal requirements
- ▶ We offer a financial **capacity** of up to €15 million / US \$15 million or £10 million per TRI policy
- ▶ We offer **financial strength**: We form part of the **HCC Group** rated AA by Standard & Poor's and FitchRatings, A+ by A.M. Best Company

About Us

HCC Global Financial Products (HCC Global) is a tied insurance agency operating from regional centres in Europe and the USA. We are a wholly owned subsidiary of **HCC Insurance Holdings, Inc.**, one of the world's largest and most established specialty insurance groups (HCC Insurance Holdings, Inc. is rated **AA** by Standard & Poor's and Fitch Ratings, **A+** by A.M. Best Company).

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Tax Indemnity Insurance (Tax) Key Facts

Any uncertainties regarding tax issues surrounding a transaction, investment or other activity can hinder and potentially break a deal. **Tax Indemnity Insurance (Tax)** effectively covers the liabilities incurred should tax authorities in the future challenge the legal conclusions supporting the tax treatment of a specific matter. Therefore, resulting contingent tax exposure can be reduced or eliminated totally by transferring the risk to the insurer.

HCC Global offers customised Tax policies as part of the TRI range of products.

Who is insured?	Either the target company subject to the potential tax liability, the buyer, or sometimes the seller where an indemnity has been given.
What is insured?	The actual tax liability determined by the relevant tax authority arising from a specified set of circumstances; Interest payments, fines and/or penalties; plus costs and expenses incurred in defending the claim.
Trigger:	Claims made (for the first time) during the policy period.
Policy Form:	The policy will be tailored in each case to cover the specific tax exposure identified during the diligence process.
Policy Period:	Typically 3 – 7 years. The policy term will generally be aligned with the applicable limitation period.
Retention:	The policy “retention” or excess, (the uninsured amount of the loss to be borne by the insured), will be agreed between the insurer and insured. Most tax policies will apply the excess to the cover for defence costs only, with any final determination of tax due being covered in full (subject to the policy limit).
Exclusions:	Cover is tailor-made for each situation, and so will vary from policy to policy but will generally exclude losses resulting from inaccurate facts or omission of material information given by the insured; criminal or fraudulent acts or intentional violations of law; and changes in legislation after the inception date of the policy.

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Contingent Risk Transfer Insurance Key Facts

During a corporate transaction, such as a merger or acquisition, there may be other potential and known risks, unrelated to resulting tax ramifications or the Sales and Purchase Agreement (SPA) itself, that either party may consider a hindrance to achieving completion. As a further deal facilitator **Contingent Risk Transfer Insurance** provides a risk solution that bridges the gap between the parties' positions so that the deal can be concluded successfully.

HCC Global offers customised Contingent Risk policies as part of the TRI range of products.

Who is insured?

The target company subject to the contingent liability, the buyer, or sometimes the seller where an indemnity has been given.

What is insured?

Actual loss arising from a specified set of circumstances identified in the course of a corporate transaction as giving rise to a potential liability; related costs and expenses too.

Trigger:

Claims made (for the first time) during the policy period.

Policy Form:

A contingent risk transfer policy is typically underwritten to cover a single specific known risk, but may also contemplate awaiting litigation or an anticipated claim. As such, the insured can opt to include defence costs in the limit of liability or simply coverage for the amount of any award of damages.

Policy Period:

Typically 3 – 7 years. The policy term will usually run from the transaction closing date or other specified date until settlement or final adjudication of the dispute being covered.

Retention:

The policy "retention" or excess, (the uninsured amount of the loss to be borne by the insured), will be agreed between the insurer and insured.

Exclusions:

Cover is tailor-made for each situation, and so will vary from policy to policy but will generally exclude losses resulting from inaccurate facts or omission of material information given by the insured; criminal or fraudulent acts or intentional violations of law; and changes in legislation after the inception date of the policy.

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