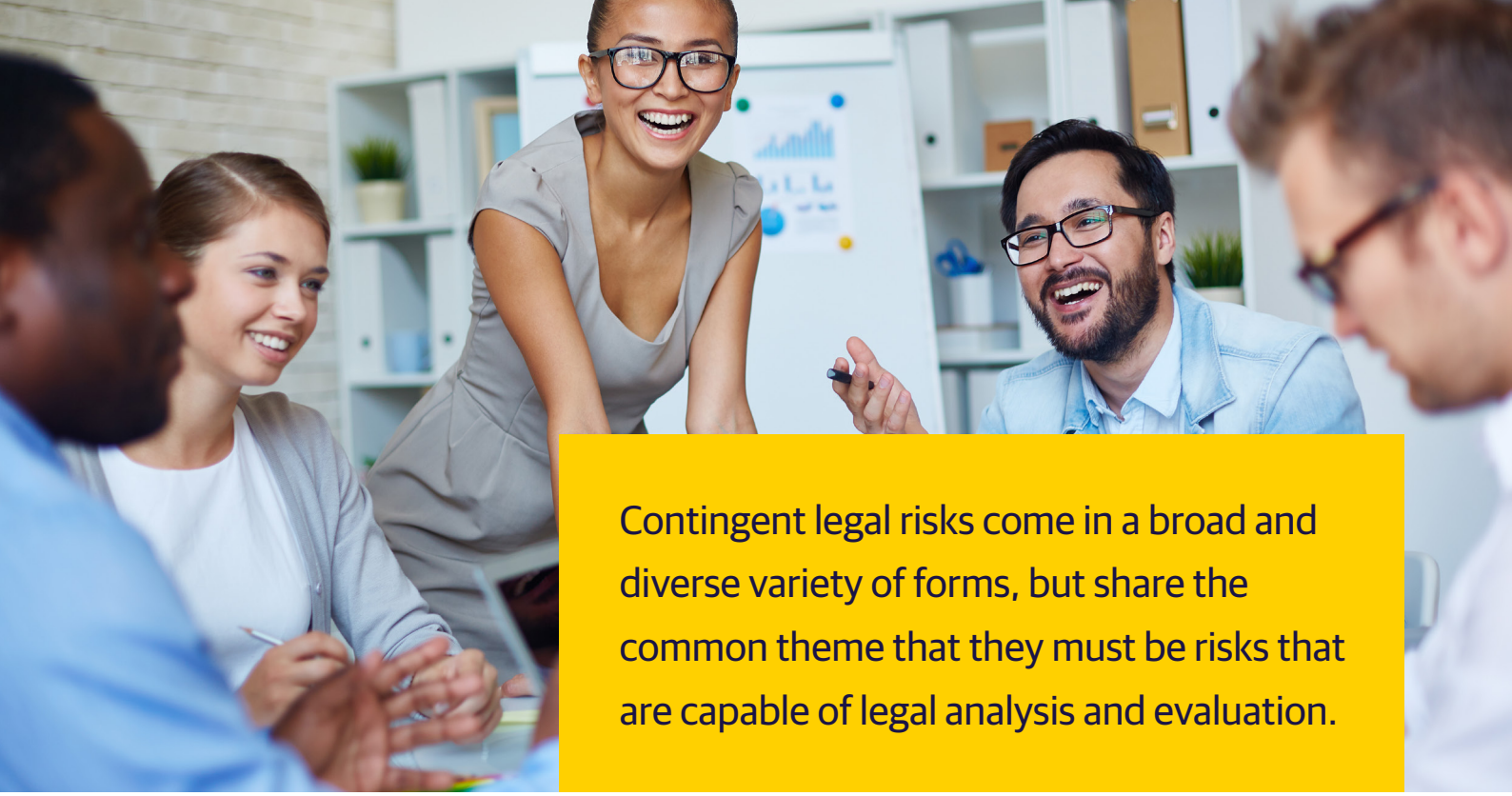
Contingent Legal Risk Insurance

Coverage tailored to identified risks,
keeping projects and transactions on track

Liberty
Global Transaction
Solutions™



Contingent legal risks come in a broad and diverse variety of forms, but share the common theme that they must be risks that are capable of legal analysis and evaluation.

CLRI policies are often used to transfer risk that would otherwise block a transaction.

Contingent legal risks may, and often do, arise in the context of an M&A transaction but they may also be stand-alone risks with no connection to a deal. When used on a deal, Contingent Legal Risk Insurance (CLRI) may be used in conjunction with R&W/W&I (Representations and Warranties/Warranty and Indemnity) policies and is often used to cover a known risk that is excluded from cover under the R&W/W&I policy, and which may otherwise block a deal if neither the buyer nor the seller is willing to bear that risk. The fundamental distinction between CLRI policies and R&W/W&I policies is that, like Tax Liability Insurance policies, CLRI policies cover known legal risks whereas R&W/W&I policies are designed to cover unknown risks.

How CLRI can help

CLRI is designed to respond to our clients' requirements to de-risk one-off identified issues (by transferring them to an insurer) and can be used in a wide range of circumstances. Most commonly, CLRI policies are used to transfer legal risks that might otherwise prevent or adversely affect a range of transactions, including M&A deals, or which might result in one party bearing a greater exposure to that risk than they are commercially comfortable with.

Each CLRI policy is unique and tailored to the specific facts of the risk to be insured. The Liberty GTS CLRI underwriting team will focus on the facts, the legal analysis, and the commercial context that shape and inform the risk in question, in order to provide bespoke policy coverage that meets our clients' requirements.

For example

CLRI policies can be structured to contain a loss payee clause for the benefit of the lenders to the insured, which is helpful when the loss to be covered is the repayment of bank debt taken out by the insured that would be triggered by the occurrence of the insured trigger event.

Which types of legal issues can be covered?

Contingent legal risks are typically low probability but high severity. Policies can be structured to cover: loss incurred as a result of the crystallization of a legal, judicial, administrative, regulatory, or legislative risk; an unexpected interpretation of a contractual provision; or the risk of a judgment or an arbitral award in favor of the insured being overturned on appeal.

Examples of the types of risks that may be covered by CLRI policies include:

- The risk of a regulatory body determining that a business has been operating without the necessary permits or licenses or that it has been operating in breach of their terms
- The risk of a court judgment or an arbitral award in favor of the insured being overturned on appeal or its quantum being reduced below a certain threshold
- The risk of an adverse interpretation of a law or regulation, which could impact a business' contractual entitlement to payment
- Legacy deal liabilities that could prevent the liquidation of a private equity fund
- Contingent liabilities to creditors that might make a security trustee unwilling to distribute insolvency proceeds
- The risk of a court or arbitral tribunal making a higher-than-anticipated damages award in favor of a claimant, against the insured
- The risk and uncertainty flowing from counterparties' differing interpretations of contract terms

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Contingent legal risks tend to be low probability but high severity.

What can make a contingent legal risk insurable?

A legal opinion from a reputable law firm with expertise in the subject matter of the risk in question which:

1. Sets out the factual background
2. Analyzes the applicable law and/or regulation
3. Details the loss that may be suffered should the risk crystallize
4. Reaches a clear and quantified conclusion as to the likelihood of the risk crystallizing

A risk is also much more likely to be suitable for a CLRI policy if the insured can demonstrate a clear commercial rationale for seeking to insure the risk (such as unlocking an impasse in deal negotiations).

See CLRI in action

Case study 1

Reclassification risk in the renewables sector

CLRI coverage unlocks negotiations by removing potential risk that two solar plants could be reclassified as one.

An investor in the renewable energy sector in Southern Europe was in the process of an M&A transaction to acquire two solar plants which had been classified as separate plants for the purpose of the regional regulatory law. This impacted the level of income they could be expected to generate.

The investor's due diligence identified the risk that the solar plants could be reclassified as a single plant by the competent regulatory body because, while separate installations, they were in close proximity to each other.

Such a reclassification would have resulted in a potential liability to repay the historic Specific Regulated Remuneration (SRR) and/or the refusal of future SRR payments.

There were good technical and legal grounds to support the position that the solar plants should not be classified as a group of facilities as defined by the regional regulatory law. Nonetheless, the potential severity of the risk in terms of quantum created an intolerable level of uncertainty for the investor, which was therefore considering abandoning the project.

The investor took out a CLRI policy to cover the loss that it could have suffered in the event of a reclassification of the two solar plants. This took the risk off the table and enabled the parties to unlock the negotiations and proceed with the signing of the transaction within the timeline initially agreed.

Case study 2

Transferring the risk of catastrophic loss scenarios

Amidst drawn-out litigation, CLRI coverage allows a company to secure critical financing.

A European company was involved in a long-running dispute. The first instance judgment, which was favorable to the company, was reversed on appeal. The company received permission to appeal to the final appellate court, but it was possible that the conclusion of the litigation could still take several years.

The company was in the process of a public market equity fundraising to secure investment to finance the ongoing development of its business. While its balance sheet was strong enough to meet the anticipated damages award in the event of an adverse court decision, there was still a remote but not implausible risk that the amount of damages awarded could be materially higher than that anticipated worst-case scenario. The company had a robust legal opinion that supported its analysis.

The company took out a CLRI policy to cover the loss that it could have suffered in the event of a genuinely catastrophic outcome. Not only did this ring-fence the liability to a manageable amount from the company's perspective, but it allowed the company to demonstrate to its potential investors that the liability had been capped, and the catastrophic down-side litigation risk removed, which assisted the company in concluding a successful fundraising.

See CLRI in action

Case study 3

Court preservation of an arbitration award

CLRI coverage frees up funds for a company, despite ongoing arbitration.

A company was awarded significant damages at arbitration following a dispute with its counterparty to a long-term commercial contract, which was found by the arbitral panel to have been wrongfully terminated by the counterparty. The counterparty lodged an appeal in the local court of first instance (an appeal to a further arbitral panel was not possible).

Pursuant to a written decision, that court confirmed the arbitration award. The counterparty then filed a further notice of appeal with the competent appellate court. The company, having received the damages from the original arbitral award, wished to find a means to allow it to deploy those funds for business purposes elsewhere in its group as the ultimate decision of the appellate court was likely to take years.

Its solution to this problem was to purchase a CLRI policy which covered it against the risk of being required to repay the arbitral award by an adverse appellate court judgment. The policy gave it the necessary protection to free up those funds for use in its business.

Case study 4

Building permit challenged

CLRI policy bridges a financing impasse, allowing a development project to continue despite a court challenge.

A building permit had been awarded to a renewable energy group authorizing the construction of a wind farm in France. During the construction phase, the building permit was challenged in the French administrative court by a group of local citizens opposed to the development seeking an order for the building works to be terminated and the demolition of the completed turbines.

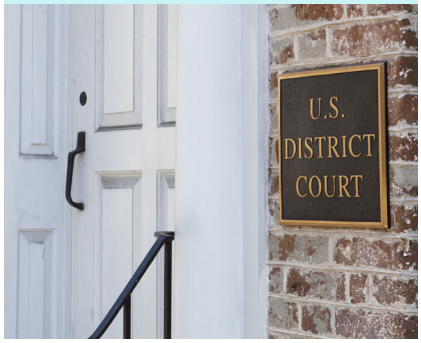
As a result, the banks financing the project were unwilling to release the funds required to complete the construction works until the administrative court had issued a binding decision which, given the protracted court timetable, would result in significant delay to the completion of the project from the operator's perspective.

The developer took out a CLRI policy which resolved this impasse and gave the financing banks sufficient comfort to release further funds to enable construction to recommence. The policy covered the developer for the loss that it would have suffered had the administrative court issued a binding decision revoking the building permit. This would have triggered repayment of the bank financing at a time when the developer would not have been generating any revenue to enable it to fund this debt. While taken out by the developer, the policy was structured to contain a loss payee clause for the benefit of the lenders.

See CLRI in action

Case study 5

Judgment preservation insurance (JPI): how to monetize a judgment award



A U.S. claimant company obtained a significant damages award in a judgment given by a U.S. district court in a patent dispute. After a bench trial of several weeks, the court in its in-depth opinion, determined that the defendant had wilfully infringed multiple valid patents. In addition to awarding enhanced past damages, the court ordered significant ongoing royalties for the future use of those patents. The defendant then lodged an appeal with the competent U.S. appellate court.

The claimant was confident that it would ultimately succeed in the appeal process and sought a solution that would enable it to monetize the award now rather than wait for a final determination in court, which could take several years.

The claimant took out a judgment preservation policy structured so that, in the event the defendant succeeded in reducing the damages award on appeal beneath an agreed floor value, the policy would reimburse the claimant for the difference between any such reduced award and that floor value.

From an insurer's perspective the risk was a strong candidate for a JPI policy as, with a detailed first instance opinion and full appellate briefing available for review, underwriters and their advisors had the benefit of high-quality materials to enable them to assess the merits of the case.

With the JPI policy in place, the claimant was able to monetize the award by obtaining debt financing on favorable terms, secured against the floor value provided by the JPI policy, and so achieved its commercial objectives of using the award to expand its core operations and pursue its growth strategies.

A JPI policy can be used in a wide variety of cases (including patent infringement, breach of contract, international arbitration, and business torts to name a few) and to preserve a wide range of damages awards (from $5 million to $1 billion).

See CLRI in action

Case study 6

Using insurance solutions to release trapped cash

CLRI coverage enables the secure release of trapped cash by transferring the risk of potential residual liability.

In a wide variety of different situations, significant amounts of cash can become trapped within a corporate structure, with the person controlling the release of the funds being reluctant to take the risk of making or approving a release to a party or parties petitioning them to do so. Very often this is because of a fear of exposing themselves to potential liability to third parties, typically with a competing claim to the funds in question.

Consider the following common scenarios which illustrate how CLRI policies may be used to break a deadlock to enable the release of trapped cash.

Scenario 1: An insolvent entity is controlled by insolvency practitioners (IPs). Having completed the collection of cash and/or assets, the IPs express reservations about proceeding with the distribution of proceeds to the secured creditors due to the risk of claims from unsecured creditors and/or undeclared creditors, which may have an interest in the estate. Placing a CLRI insurance policy in favor of the IPs and/or the secured creditors could help alleviate tensions between (i) the IPs who may be reluctant to disburse funds if they feel there are potential competing claims due to their statutory duties to all creditors; and (ii) the secured creditors who are legally entitled to receive their proceeds in priority and in a timely manner.

Scenario 2: A fund or a corporate group owns a solvent entity, which it intends to wind-up having extracted the cash and other assets held by it and transferred them to those persons entitled to receive them. The winding-up process entails a number of legal steps, which must be correctly performed before the liquidation can take place. There is a low risk that on or after completion of the winding-up process claims may arise in the medium to long term (depending on the applicable statute of limitations) which can lead to a reluctance to proceed with the winding-up. CLRI insurance can facilitate the winding-up of structures, which may have been dormant for years, by transferring the risk of potential claims from the stakeholders involved (e.g., the directors and/or shareholders of the entity in question, any IPs and any other recipient(s) of the extracted assets) to the insurer.

With many companies and corporate groups focused on maximizing the value of all assets on their balance sheets, using CLRI policies to facilitate the release of trapped cash can be a valuable tool in achieving this aim.

Capacity and claims handling

We are able to deploy limits of up to USD $165M on CLRI policies. As well as the advantage of being able to purchase a large limit from a single insurer, our clients benefit from our dedicated team of claims counsel who specialize in dealing with complex M&A claims, including those on CLRI policies.

This is part of our commitment to offering a first-class service across all aspects of our business. We recognize that offering an exemplary, in-house claims service adds value throughout the lifecycle of our relationships with our clients, from prior to inception of the policy, to the point of a claim and beyond.

A team with unmatched breadth and depth

Working with Liberty GTS, you have access to the expertise of one of the largest global teams of dedicated CLRI underwriters in the industry. Unlike teams that also work on R&W/W&I and tax risks, our CLRI underwriters focus exclusively on contingent legal risks, analyzing each risk with the focused attention it requires. Wherever your risk arises, we're uniquely structured to assess it, operating as a truly global team across multiple jurisdictions with the local legal knowledge and deal experience required to evaluate and underwrite your risk. Along with worldwide scope, our underwriters bring a full complement of skills and experience that includes both litigation and M&A expertise in both common law and civil law systems, enabling our team to deliver CLRI policies on a broad spectrum of contingent legal risks. We're ready to meet your needs now — and we're growing our team so that we can continue to provide this unique product to our expanding client base, while maintaining our high-caliber expertise and outstanding service.

Your team

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Gareth is the Chief Underwriting Officer (CUO) within Liberty GTS. As CUO, Gareth is responsible for promoting underwriting excellence within Liberty GTS by overseeing the technical and compliance side of the business. Gareth also leads our Contingent Legal Risk book. Prior to his promotion to CUO, Gareth was Head of the EMEA W&I insurance team for four years. Before joining Liberty, Gareth spent two years at another leading insurer, most recently leading its U.K.-based team of M&A underwriters. Prior to joining the W&I market, Gareth spent 10 years as a qualified lawyer in the corporate department of international law firm Pinsent Masons. Gareth advised across the full range of private M&A transactions, specializing in private equity buyouts and divestments and spent nine months seconded as a deal executive to an institutional investor.

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Aude is a Senior Underwriter in the Contingent Legal Risk team and launched the CLRI practice with Gareth Rees in January 2020. Aude was previously the W&I Southern Europe Manager at Liberty GTS and has extensive experience analyzing transactional risks in the context of M&A deals. Before joining Liberty in November 2015 (where she originally worked for Liberty's subsidiary Ironshore in London), Aude worked for AIG as a Senior Underwriter in Paris and W&I product leader for the France-Benelux zone. Prior to joining the W&I market, Aude spent 3 years as a French qualified lawyer in the M&A/Private Equity team of King and Wood Mallesons (previously SJ Berwin) where she focused on acquisitions and divestments of companies for French and foreign private equity funds and investors. Aude graduated from the University of La Sorbonne with a Master's degree in Business and Tax Law and was admitted to the Paris Bar in 2011.

Natasha Shoult

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Natasha is a senior underwriter in the Contingent Legal Risk team, based in our London office. Since joining the market in February 2021, Natasha has gained a broad spectrum of experience underwriting a variety of complex contingent risks across EMEA, including judgment preservation risks, adverse judgment risks and specific legal risks not in litigation, in diverse sectors and often in the context of M&A transactions.

Before joining Liberty GTS, Natasha was an Investment Manager at global legal finance firm, Augusta Ventures, specialising in High Court litigation in financial services and the energy & infrastructure sector. In that role she focused on the origination of investment opportunities, legal diligence, financial structuring and asset management. Prior to working in litigation finance, Natasha spent five years in the dispute resolution team at Watson Farley & Williams, where she acted for a wide range of clients, particularly in the energy, real estate and construction sectors, on claims which were typically high-value and multijurisdictional in nature. Whilst at WFW Natasha gained extensive experience of formal and informal dispute resolution, including adjudication and mediation, and in the protection of assets and enforcement in the English courts. Natasha graduated from Cambridge University (BA Hons) before completing her Diploma in Law and LPC at College of Law, London.

Your team

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Ankit is an Underwriter in the Contingent Legal Risk Team. Prior to the joining Liberty GTS in 2022, Ankit was Senior IP Underwriting Counsel at Ambridge Partners LLC focusing on reps & warranties, IP and contingency liability insurance. Prior to Ambridge Partners, Ankit was an associate in the intellectual property team at Gibbons PC, where he advised clients in patent litigation and prosecution matters. Ankit received his BSc from the University of Illinois at Urbana-Champaign and JD and MSc from Case Western Reserve University. Ankit is admitted to practice in Illinois, New Jersey, District Court of New Jersey and the Federal Circuit.

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Ed is an Underwriter in the Contingent Legal Risk Insurance team at Liberty GTS. He has wide disputes experience across a range of sectors and common law jurisdictions. Prior to joining Liberty GTS in January 2023, he was a Senior Associate in private practice. He practiced for 5 years in the Complex Commercial Litigation and Disputes team at K&L Gates LLP, in London, and over 2 years in the Restructuring and Insolvency team, in Sydney. Broadly, he provided strategic advice, and acted for, and against, corporates (including banks, and other lenders) and insolvency practitioners, including with respect to: M&A related disputes; contentious finance and insolvency scenarios (including distressed asset sales, securities enforcement and claims arising out of formal insolvency appointments); insurance claims; other boardroom disputes; and building and construction claims. Ed received a Bachelor of Arts and Sciences from the University of Melbourne, Bachelor of Laws from La Trobe University, Graduate Diploma of Legal Practice from College of Law (Victoria, Australia) and the ARITA Advanced Certification in Restructuring, Insolvency and Turnaround from the University of Technology Sydney.