



Liberty GTS Contingent Legal Risk Insurance

Contingent legal risks are typically low probability but high severity risks.

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.

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 policies and are 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 Contingent Legal Risk Insurance can help

Contingent Legal Risk Insurance is designed to respond to our clients' requirements to re-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.

Each CLRI policy is unique and tailored to the specific facts related to the legal risk to be insured. The GTS CLRI underwriting team will focus on the facts and 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 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, legislative risk or an unexpected interpretation of a contractual provision or because a judgement or an arbitral award in favor of the insured has been overturned on appeal.

Examples of the types of risks that may be covered by CLRI policies are as follows:

- The risk of a regulatory body finding that a business has been operating without the necessary permits or licences or that it has been operating in breach of their terms;
- The risk of a Court judgement or an arbitral award being overturned on appeal;
- The risk of a Court or arbitral tribunal making a higher than anticipated damages award;
- Legacy deal liabilities that could prevent the liquidation of a private equity fund;
- Contingent liabilities that might make a security trustee unwilling to distribute insolvency proceeds;
- The risk of a change in law or regulation adversely affecting a business's future revenues; and
- The risk and uncertainty flowing from counterparties' differing interpretation of contract terms.



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: (i) sets out the factual background, (ii) analyses the applicable law and/or regulation, (iii) details the loss that may be suffered should the risk crystallize and (iv) 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).

Capacity & 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.

It is all 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.

Contacts



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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 the development of 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 UK 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 buy-outs and divestments and spent nine months seconded as a deal executive to an institutional investor.



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Aude graduated from the University of La Sorbonne with a Master Degree in Business and Tax Law and was admitted to the Paris Bar in 2011. Aude joined the Paris office of King and Wood Mallesons (SJ Berwin) in 2011 into the M&A/Private Equity team where she focused on acquisitions and divestments of companies for French and foreign private equity funds and investors.

In 2013, Aude joined AIG as a senior underwriter in Paris and product leader for the France-Benelux zone. She spent several months in London with the UK team underwriting warranty and indemnity insurance on European M&A transactions. Aude joined Liberty GTS (where she originally worked for Liberty's subsidiary Ironshore) in November 2015 and became the Continental Europe Manager focusing mostly on Southern Europe deals for the past four years. Aude is now Liberty GTS' first underwriter dedicated to the Contingent Legal Risk Insurance product.