Transactional Risk

Welcome to DUAL Transactional Risk - insurance for Representations and Warranties, Tax, Liability and Contingent Liability

What is Representations and Warranties Insurance?

Representations and warranties insurance ("RWI") provides coverage for financial loss sustained by an insured (either a buyer or seller) in connection with a M&A transaction by protecting the insured from unknown breaches of the representations and warranties made by the seller in a transaction agreement.

Why should you purchase RWI Insurance?

Quite simply, RWI helps the parties close the deal by:

- Reducing risk to the seller – The seller transfers liability for unknown or unanticipated breaches of its representations and warranties to the insurer, thereby reducing or eliminating the need to set aside an escrow or post a reserve or collateral for potential breaches of the representations and warranties.
- Reducing the buyer's counterparty's credit risk – RWI allows the buyer to reduce its counterparty credit risk on the seller by transferring the risk to the insurer, providing indemnity for the seller's unanticipated breaches.
- Producing competitive bids – The insurance allows a buyer's bid to be more competitive (particularly in an auction) by alleviating the need for the seller to post a substantial escrow for up to 18 months after the transaction closes.
- Speeding up closing time – RWI allows the parties to more efficiently allocate transaction-related risk, increasing the deal value for the seller and incentivizing the seller to negotiate and to close the sale more quickly.
- Safeguarding business relationships – Where the sellers will continue to be involved with the business following the sale, the insurance protects these vital business relationships and allows the parties to focus on successfully operating the business.
- Promoting clean exits – With seller receiving the proceeds from the transaction with a reduction or complete elimination of any escrow, a seller can readily distribute the sale proceeds from the transaction to its investors upon closing.

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- Eliminating the threat of seller bankruptcy – In eliminating this threat, the insurance is ideal for distress M&A transactions.
- Closing the gap on deals at impasse
- Bringing financial security for cross-border dea

What is Tax Liability Insurance?

Tax liability insurance is a highly tailored insurance product covering unanticipated occurrence of tax loss stemming from a taxing authority's legal challenge to the insured's tax position or treatment, or certain change to tax credits by providing financial protection to an insured in the event that the tax position, treatment or credit is successfully challenged by the IRS or another specified taxing authority.

Why should you purchase Tax Liability Insurance?

- Proven protection – tax liability insurance protects insureds by either reducing or eliminating the monetary consequences relating to the outcome of one or more tax issues by safeguarding an insured from financial loss incurred as a result of a successful challenge by the relevant taxing authority.
- Breadth of coverage – a tax liability policy can cover a number of common tax exposures facing a company or its business, including:

  - Tax-free reorganizations, mergers and spin-offs
  - 338(h)(10) elections/S Corporation issues
  - REIT Qualifications
  - Partnership issues
  - Historic tax credits
  - Net operating losses
  - Energy Tax Credits
  - FIRPTA
  - Subject matter of a tax opinion or tax indemnity
  - Specific tax matters that do not qualify for coverage under a representations and warranties policy, and remain a cause for concern by the buyer
  - Tax insurance can also cover the risk of financial loss from additional tax and the interest and penalties imposed on such additional tax, contest costs and gross-up costs (the amount by which the insured's taxes are increased as a result of the payment of proceeds under a tax insurance policy)

- Eases the closing of M&A transactions – by eliminating the parties need to negotiate allocation of known pre-closing tax liabilities and expediting the due diligence process
- Defines the extent of financial exposure from certain tax risks in relation to the transaction or the taxpayer's business
- Simplifies the seller's withdrawal from a business, as the insurance eliminates the need for indemnities or escrows for known tax exposures or uncertain tax positions
- Provides certainty of risk allocation to the parties to a transaction when the relevant taxing authorities do not provide timely rulings on specified tax matters

- Facilitates financing or investment decision making
- Eliminates need for clear guidance from the applicable tax authority or tax law precedent is unavailable

What is Contingent Liability Insurance?
Contingent liability insurance is bespoke insurance coverage designed to mitigate or eliminate exposures related to contingent risks to ensure a M&A deal can close quicker or a protracted exposure can be brought to meaningful and efficient resolution.

Why should you purchase Contingent Liability Insurance?
The coverage can be drafted to cover specific risks within a M&A Transaction where buyer and seller reach an impasse in closing the deal because of concerns with a contingent liability by having the risk posed by the contingent liability removed from the deal and separately insured.

The coverage allows an insured to transfer known litigation risks and can act as a stop-loss for current or pending litigation or as a hedge against a reversal of a judgment on appeal.

Breadth of coverage – contingent liability insurance can be drafted to cover:
- Litigation
- Environmental matters
- Intellectual property infringement
- Employment matters
- Securities and other class actions
- Antitrust exposures
- Products liability
- Fraudulent conveyance
- Foreign risks

Why should you choose DUAL Transactional Risk when purchasing your Transactional Liability Insurance Coverages?

DUAL Transactional Risk is centered around Underwriting Excellence

We bring a veteran underwriting team, with depth of experience in underwriting RWI, tax liability and contingent liability risks as well having served as legal counsel in underwriting, coverage, claims handling and policy drafting capacities, to its RWI underwriting.

Transactional liability insurance is a highly complex and bespoke line of insurance coverage, with terms, conditions and limitations offered or removed based on underwriting. Such a line of insurance requires a high degree of technical underwriting acumen, making it a natural fit for our experienced team.

Market leading policy forms drafted with clear and concise terms and conditions that are readily tailored in real time by our veteran underwriting team with its extensive policy drafting experience.

Significant Financial Backing and Claims Experience

Dual Transactional Risk has partnered with a S&P A+ rated U.S. commercial property and casualty insurer with more than a century of experience.

Claims are handled in-house with our insurer partner by a seasoned group of attorneys and claims professionals. This streamlined approach allows for timely response by a partner that has the both the expertise and the financial strength, giving our customers complete confidence throughout and beyond the transaction.

We will meet the needs of our Customers

Capacity to write deals for up to $30 million in limits either as a lead or participant in larger programs

Appetite across an expanse of industry sectors, including, energy, manufacturing, industrial, consumer products, financials services, media, telecommunications, technology, mining and utilities.

Appetite for underwriting deals in all enterprise value ranges from small to mega market sizes.