

Transactional Liability Predictions 2026

The international spread of warranty and indemnity policies will mean increasing tension between market practice and local law

Warranty and indemnity insurance (W&I) is an increasingly mature product in several markets, where wordings have evolved and precedent exists to guide interpretation. However, the assumptions that apply to a W&I claim under English law may not apply equally to policies and share purchase agreements (SPAs) governed by the law of another jurisdiction. Such issues could occur at every level, from the SPA (matters of contractual interpretation and implied terms) to the policy (specific issues of local insurance law) and indeed to how disputes are resolved (for instance, as to disclosure in circumstances where insurers will often have much less visibility over the documents than parties to the underlying transaction). It will often make sense to seek local legal advice in conjunction with English law, and not just in response to a claim but at the underwriting and pricing stage.

Expect tax claims to top the notification charts

There has been a strong uptick in tax risk coverage recently and we expect tax to be the most frequently notified claim type in the year ahead. Coverage for tax risks has expanded under warranty and indemnity (W&I) policies, and there is now a well-established market for standalone specific tax risk policies. These policies not only cover known tax risks excluded from W&I insurance (e.g. due to disclosure or high quantum) but are increasingly used to cover business restructuring risks, real estate transaction taxes, financing transactions and international tax matters. The higher volume of notifications will not necessarily translate into higher claim payments, as many tax claims are notified protectively at the time the tax authority opens an enquiry or audit, and there is often a long lead time before an insurable liability crystallises. Demand for tax cover is expected to continue to rise as the market increasingly views it as a routine tool for managing complex and high quantum tax risks.

AI-powered solutions are accelerating the M&A process

Although M&A activity has slowed in recent years, the deals going through demand increasingly complex due diligence. Buyers must assess a wide range of factors including the target's exposure to economic and geopolitical volatility, regulatory compliance, tax, environmental, social and governance performance, and litigation risk. AI technologies are now playing a pivotal role in streamlining this process. Advanced AI tools enable enhanced due diligence by rapidly reviewing vast datasets, identifying financial crime and anti-money laundering compliance issues, and flagging inconsistencies or potential risks for further investigation by the buyer and its legal team. This not only improves accuracy and efficiency but also frees up valuable human resources, allowing deal makers to focus on strategic elements such as negotiation and stakeholder engagement. With appropriate oversight, the integration of AI into the M&A lifecycle offers transformative potential, reshaping how transactions are assessed, executed and managed.

ESG is a crucial component of M&A due diligence

Corporations recognise that tackling environmental, social and governance (ESG) issues can give them a competitive edge and unlock opportunities for growth. With greater scrutiny of ESG targets by consumers, employees, investors and regulators, ESG considerations have become a vital and integral focus in M&A deals. Buyers are critically assessing sellers' commitments to environmental liabilities, governance issues and social responsibility as part of the acquisition process, to ensure ESG statements are credible and corporate cultures will align post-merger. Misalignment in ESG values or performance metrics may pose significant integration challenges and may lead to claims and reputational damage if not properly managed. The rise of ESG scoring - which applies quantitative methodologies to independently assess ESG factors - reflects a growing demand for transparency and accountability. This approach is rapidly gaining traction and is expected to become a standard feature of the M&A due diligence process.

Transactional risk insurers must adapt to stay ahead in a competitive market

Challenging market conditions have led to a slowdown in M&A activity, but high-value premiums remain within reach for insurers as buyers seek greater certainty in the volatile deal making landscape. To maintain a competitive edge, transactional risk insurers are evolving their product offerings. The market is responding to growth sectors - notably technology, renewable energy, and life sciences - where emerging risks tied to intellectual property (IP) and AI are central to the target's value and asset base. In these sectors, insurers are developing innovative solutions to address complex exposures, including bespoke coverage for IP infringement and AI-related risks. Buyers are increasingly demanding tailored representations and warranties that explicitly cover these areas, seeking robust protection and risk mitigation as part of the transaction structure. As a result, transactional risk insurance is becoming more sophisticated, with a sharper focus on the unique attributes of cutting-edge technologies.

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