



TRANSACTIONAL LIABILITY PREDICTIONS 2025

CGC
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1. AI-powered solutions will speed up the M&A process

M&A activity has slowed in recent years and the deals which are going through require buyers to investigate a range of factors including the impact of recent economic challenges, regulatory compliance, tax, ESG and litigation risk. AI technologies are now widely used to speed up the due diligence process and decision making. AI solutions undertake enhanced due diligence and swift reviews of large data sets, check financial crime and AML compliance, and efficiently flag inconsistencies and potential risks for further investigation by the buyer and its legal team. The adoption of AI is also freeing up manpower, allowing deal makers to focus on other aspects like negotiations and communications. Providing sensible human oversight is applied, the opportunities for using AI in the M&A process are revolutionary.

2. ESG due diligence is increasingly important in M&A deals

Corporations recognise that tackling environmental, social and governance (ESG) issues can give them a competitive advantage and provide opportunities for growth. With greater scrutiny of ESG targets by consumers, employees, investors and regulators, ESG considerations are increasingly an important focus in M&A deals. Buyers are critically assessing sellers' commitments to sustainability and energy conservation, operational efficiencies and social responsibility as part of the acquisition process, to ensure ESG statements stack up and their merging corporate cultures will align. Significant differences in ESG ideology and performance criteria could be an obstacle to integration post-merger and may result in claims if mismanaged. ESG scoring – which uses quantitative measurements to independently verify ESG factors – is a growing market and it is expected to become more common place in the M&A due diligence process.

3. Transactional risk insurers will continue to evolve their products and claims response to steal a competitive edge

The difficult market conditions mean competition among insurers remains fierce. There are fewer deals but there are still high value premiums to be won as deal makers look for certainty in these uncertain times. We continue to see brokers and insureds press insurers to provide wider, US-style cover. Insurers will need to remain vigilant with their policy wordings to avoid giving more cover than intended. As a result of the broader cover offered, many insurers can expect to see an increase in the number of claims notified, although frequency may not be coupled with severity. On the claims side, insureds and brokers demand almost instant responses and insurers can differentiate themselves by retaining experienced and knowledgeable legal and expert advisers.

4. Expect greater focus on warranty and indemnity policy wording and ensuring consistency throughout a policy


Recent case law is likely to encourage more insurers to pay keen attention to policy wording, especially in relation to the scope of the insuring clause and the policy exclusions. Insurers will want to ensure that the policy is clear as to the scope of any exclusion and the proper interpretation to be given to any defined terms. For policies which include a schedule summarising the cover offered by the policy, we expect insurers, brokers and their insureds alike to keenly scrutinise the summary against the actual cover provided during the underwriting process to ensure there is consistency between the insuring clause and the intended scope of any policy exclusion. It is also good practice to consider W&I policies alongside the share purchase agreement to reduce the risk of disputes arising later. English courts are generally reluctant to find that policy wordings contain errors.





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