RSG EUROPE TRANSACTIONAL RISKS

Contingent Risk

Contingent Risk insurance (CRI) is a transactional insurance product that can be used in M&A transactions. A CRI policy is a non-renewable, single premium product which insures against an identified but contingent liability. The premium is paid on commencement of the policy and the policy is structured as a single aggregate limit with no reinstatements.

A CRI policy is a claims–made policy, which means that coverage is triggered when a claim is made against the policy during the policy period (as opposed to when the act or omission that gave rise to the claim took place).

A CRI policy provides coverage for a specified contingent risk. It will only pay loss if the relevant loss trigger(s) expressly set out in the policy are satisfied. The scope and cover is specific, targeted and clearly identified. The policy period will typically match any open enquiry windows or statutory limitation provisions (subject to a maximum policy period of 7 years).

Each CRI policy is bespoke and is tailored to fit around the specific issue being insured. Due to the individual nature of the risk being insured, it is not possible to simply have a set of boilerplate terms and conditions; instead, RSG TRE has developed its proprietary base policy form which is amended and negotiated to fit the particular facts and circumstances of the specific risk being insured.

Types of Insurable Risks

RSG TRE focuses on identified contingent issues arising within the context of a wider M&A transaction. Much like Warranty and Indemnity (W&I) Insurance, the driver for the transaction parties seeking a CRI policy is one of risk allocation.

RSG TRE’s underwriting focus for CRI policies is on known contingent issues that can be clearly identified. This includes either contingent risks that already reside within the target group (e.g., conflicting interpretations of applicable law which, if enforced adversely, could impact on the target) or contingent risks that may arise at the time of the transaction itself (e.g., a particular sale structure or accounting issue within the sale structure).

The contingent exposure could arise in a multitude of different scenarios, which often stems from contingent liabilities in respect of litigation or contractual disputes which could involve the proposed insured or the target group that the insured is attempting to acquire (Proposed Insured). The contingent risk insurance market is fluid as final coverage positions will always be dependent on prevailing legal precedent and market practice.

Common examples of contingent risks that generally fit within the underwriting appetite of RSG TRE include:

- Contingent risks that may arise in the context of a corporate merger or corporate reorganisation:
- Risk of reclassification of the legal treatment of an asset sale:
- A challenge to a particular legal, regulatory or accounting scheme or position adopted by the Proposed Insured.

Process

Generally a CRI policy is purchased at the time that the underlying M&A transaction itself is signed. Typically, when CRI is being used to help facilitate the closing of a transaction, and this timing provides certainty to the parties that the CRI is available and in place. Standalone CRI policies can also be purchased that are not connected to an underlying M&A transaction.

Should you wish to reach the RSG TRE team, please email us at **info@rsgtre.com** or contact our office at the information found below:

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The underwriting team at RSG TRE is experienced at delivering a final CRI policy concurrently with the signing of the transaction. The underwriting team understands how transactions are structured and how best to navigate to a final coverage position within the confines of the transaction timetable.

The underwriting process at RSG TRE is a two stage process:

- Stage One: The first stage consists of an initial review of the available information and accompanying documents along with a discussion around the parameters of coverage required. This dialogue may include discussing different retention options, desired coverage and policy limit options. At the end of this stage, RSG TRE will produce a detailed set of terms outlining the different policy structures it can offer and setting out what further information and steps are required in order to complete the underwriting and issue a final policy.
- Stage Two: Following instruction, RSG TRE will prepare a bespoke CRI policy that will be negotiated with the Proposed Insured and its advisers. At the same time, RSG TRE will complete its underwriting of the risk. The underwriting process is non-intrusive and includes a detailed review of the underlying position along with reviewing all legal and technical advice available to the Proposed Insured in connection with the specific issue, an underwriting call with the Proposed Insured and its advisers to better understand the overall position, and dynamics and access to any data rooms that may be available in connection with the transaction.

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