WARRANTY & RELATED SPECIALTY INSURANCE REPORT

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GLOBAL INSURANCE LAW CONNECT

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INTRODUCTION

Welcome to Global Insurance Law Connect's first warranty and related specialty insurance report.

The global market for warranty and related specialty insurance has reached an inflection point. It is no longer accurate to view these products as niche specialist tools used only in the most sophisticated transactions. As these products are increasingly used around the world, Global Insurance Law Connect recently asked our members in 25 jurisdictions to provide an analysis of warranty and indemnity (W&I) insurance, tax and contingent insurance, trade credit insurance, and insurance for fines and penalties in their local markets.

The results of the survey highlight how these products are moving closer to the mainstream of dealmaking, credit protection and risk allocation. But the findings also show that growth is uneven, often highly dependent on local legal infrastructure, market familiarity and the ability of insurers, brokers and advisers to explain where these products add value.

The strongest theme to emerge is that demand is being driven by pressure in the underlying market, rather than by insurance innovation alone. Where dealmaking is more competitive, parties are looking for ways to bridge gaps between buyer protection and seller finality. Where businesses face insolvency, payment delay or geopolitical disruption, they are looking for greater certainty around counterparty risk. Where tax, regulatory, environmental or litigation risks are becoming harder to price, there is growing interest in cover that can isolate and manage specific exposures. The report therefore points to a market that is becoming more pragmatic and closely tied to commercial decision-making.

The survey also showed that international capacity is accelerating adoption, but it is not enough on its own. London and other specialist hubs remain central to underwriting appetite and product development, particularly in markets where local capacity is limited. Yet the success of these products still depends on local law, local deal practice, local tax and regulatory systems, and the quality of disclosure and due diligence. In that sense, the market is globalising, but trust is still built locally. For more detailed and region-specific insights, we encourage you to contact your local firm.

We hope this report provides a useful perspective on how the warranty and related specialty insurance market is evolving, and we look forward to continuing the conversation as the market develops in the future.

Best wishes,

Gillian Davidson
Global Insurance Law Connect – Chair

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R&W INSURANCE: A MARKET UNDER PRESSURE TO GET THE BALANCE RIGHT

GARETH REES, GLOBAL LINES LEADER, LIBERTY GTS

After a period of intense competition, abundant capacity and low pricing, insurers are asking a more fundamental question: how can we restore the balance to the R&W market (also known as the W&I market)?

As the M&A market begins to move again, interest rates have decreased, private equity firms have significant capital to invest, and many funds are reaching the point in their investment cycle where they need to sell portfolio companies and return money to investors. Deal activity is starting to pick up, particularly in the US, with renewed momentum in EMEA and APAC too.

For the R&W market, this is encouraging news. But more deals do not necessarily mean an easier market for insurers. Rates have risen across many regions, especially in the US, but price is only one part of the picture. Policies are often broader than they were several years ago, with fewer exclusions and lower retentions. Insurers may be charging more while still taking on a greater share of the potential loss.

Retentions illustrate the point. Buyers are retaining less risk than they once did, leaving insurers responsible for more when a claim is made. That is particularly important in R&W insurance because claims can take years to emerge and develop. A policy that looks profitable at inception may look very different by the time its claims position is fully understood.

Another change that deserves attention is the growing use of nil seller recourse structures. These arrangements can give sellers the clean exit they want and help buyers get deals completed. But they can also change the dynamic of the transaction. If sellers have little or no financial exposure for a warranty breach, they may have less reason to challenge warranty wording or spend as much time on disclosure.

That is not an argument against nil seller recourse – it is a reminder that R&W insurance is not a replacement for good deal discipline. Insurers will not cover every loss, and buyers may ultimately be left with the cost of an issue that could have been identified through more thorough diligence or disclosure. As these structures become more common, everyone involved needs to be clear about who is carrying which risks.

For insurers, the answer is not simply to raise rates or write more business. Each transaction needs to be assessed on its own facts, with pricing, coverage and retentions supported by claims experience and sound underwriting judgement. Buyers and brokers should also consider the financial strength of the insurer providing the cover, as well as its ability to pay claims in the long term.

The outlook for the R&W market is positive, but the next phase will test whether that growth can be sustainable. Adequate pricing, sensible retentions and a properly run transaction process all matter. If the market can get those fundamentals right, R&W insurance will continue to support M&A without losing sight of the risks it is designed to cover.

WARRANTY AND INDEMNITY INSURANCE

W&I AS A MAINSTREAM M&A TOOL

W&I is now embedded in the deal toolkit across a number of developed insurance markets. In Australia, it is described as *"a common risk management tool in M&A transactions"*, supported by Lloyd's syndicates, global insurers, specialist underwriters and MGAs. In the UK, W&I and related specialty insurance products are *"widely available and well established"*, with buyer-side cover helping sellers achieve a cleaner exit while preserving recourse for buyers. The London Market remains a major centre for transactional risk underwriting, including broader transaction liability cover for risks such as title and environmental liabilities.

Beyond the most established markets, the consistent theme is not simply greater M&A activity, but the type of deal environment in which W&I solves a practical problem. Competitive auctions, private equity exits, cross-border buyers and sellers seeking clean exits all create pressure to bridge the gap between seller finality and buyer protection. Ireland's move from niche to mainstream use, Italy's rise of W&I above the small-cap segment and France's increasing use of buyer-side policies all point in that direction. Germany also reflects this momentum, with Dr Carolin Schilling-Schulz, Partner at Arnecke Sibeth Dabelstein in Germany, describing these products as *"highly specialised products"* that are *"becoming more and more popular"*.

In Luxembourg, W&I insurance is increasingly used, mainly on larger private-equity and cross-border M&A transactions. This reflects Luxembourg's role as a transaction-structuring hub. Policies are often placed with international insurers authorised or passported into Luxembourg. Ariane Wourwoukas, Counsel at Molitor Legal in Luxembourg, comments: "*Fund and private equity activity is the primary driver in Luxembourg. It is often used as the jurisdiction of the holding vehicle even where the underlying assets or target are located abroad. This situation multiplies entry points for warranty and indemnity (W&I) insurance. This trend is further supported by signs of renewed M&A activity involving Luxembourg-based businesses and investment structures since 2025."*

Austria and Greece illustrate how this dynamic is playing out in larger and more international transactions in their markets. Dr Clemens Völkl, Partner at Völkl Rechtsanwälte in Austria, comments: *"W&I insurance has become a standard feature in many mid-cap and large-cap transactions, with private equity buyers at the forefront of this development."* He also highlighted the Schur Flexibles transaction, which resulted in a W&I payout of approximately EUR 120 million. Similarly, Zaphirenia Theodoraki, Counsel at KG Law Firm in Greece, comments: *"W&I insurance is available in Greece and is increasingly used in M&A transactions, particularly in larger, cross-border and private equity transactions, reflecting the growth and internationalisation of the Greek M&A market."* Poland adds a Central European perspective, with W&I *"available and increasingly standard in large M&A and real estate transactions"*, although placements are commonly supported by international insurers, MGAs or the London Market.

OPPORTUNITY CONSTRAINED BY AWARENESS AND CAPACITY

In markets where W&I is still scaling, the opportunity is often clear but the conditions for broader adoption are still developing. Awareness, local underwriting capacity, transaction size and regulatory clarity matter as much as demand. India is one example of a market where W&I has gained traction alongside an increasingly complex M&A environment. Shivangi Sharma Talwar, Partner at JSA Advocates and Solicitors in India, comments: *"W&I insurance is an established transactional-risk product in India and has gained significant traction alongside the growth and increasing complexity of M&A."* Policy terms are also evolving, with insurers increasingly willing to consider bespoke cover for identified tax, regulatory or contractual exposures where due diligence supports it.

China shows how quickly transactional insurance can expand when M&A policy support, private equity exits and cross-border activity combine. Yvette Jiang, Advisor at BUREN in China, comments: *"W&I has become standard in cross-border M&A involving Chinese parties, although complex risks are still often placed through London, Hong Kong and Singapore, using onshore fronting backed by international reinsurance where required."*

In other markets, adoption remains more constrained. João Marcelo dos Santos, Partner at Santos Bevilaqua Advogados in Brazil, comments: *"The Brazilian market remains small in terms of premium volume but has recently experienced growth"*; İlke Akçay Bozburun, Partner at PIA Legal in Türkiye, comments: *"W&I is still developing and remains relatively limited compared to more mature markets such as the UK and the US";* and Malta does not have a well-established domestic W&I insurance market, with placements typically made through London or other international hubs. New Zealand's market is active but shaped by scale, with *"transactions large enough to warrant this form of insurance"* remaining limited.

The economics of W&I are also changing. Historically, the product was primarily used in larger transactions because of premium levels, underwriting fees and adviser costs. Those costs can still be disproportionate on smaller deals, particularly where a financially strong seller or guarantor can stand behind the warranties. But falling premiums, lower retentions, automated underwriting, synthetic warranties and broader insurer appetite are making the product more accessible. Marijke Lohman, Partner at WIJ advocaten B.V. in The Netherlands, comments: *"Where W&I Insurance was once limited to large-cap transactions, it is now used in all types of corporate transactions, as minimum deal volume and premiums have dropped and insurers' appetite has expanded."* The broader conclusion is that W&I adoption grows fastest where it solves a tangible deal problem and where local advisers, brokers, insurers and regulators can turn that demand into repeatable market practice.

TAX LIABILITY AND CONTINGENT RISK INSURANCE

COMPLEXITY IS CREATING DEMAND FOR BESPOKE COVER

Tax liability insurance and contingent risk insurance are developing in response to increasingly complex tax regimes, more active tax authorities, regulatory enforcement, litigation risk, environmental liabilities, data governance and the need to isolate identified risks that might otherwise prevent a transaction from proceeding or require escrows, indemnities, price reductions or security arrangements.

China is one of the clearest examples of significant tax liability insurance growth. Standalone tax cover has seen rapid expansion, with claim notifications in 2025–2026 reaching their highest level since 2017, and claim values doubling. This is linked directly to heightened tax scrutiny over cross-border restructurings, offshore indirect transfers, the rollout of the Golden Tax Phase IV digital system and the new PRC Value-Added Tax Law. In China, growth over the next three to five years is expected to concentrate in standalone tax liability insurance, driven by Golden Tax Phase IV and increased regional tax audits, with demand expanding from M&A into offshore trust restructurings, supply-chain profit models and net operating loss utilisation.

India also shows strong potential for tax insurance. Tax exposure is a significant driver of transactional-risk cover, with tax-related issues accounting for 50% of W&I claim notifications among Marsh clients in India in 2025. In India, tax insurance is expanding beyond traditional coverage to include bespoke solutions such as specific indemnity cover and cover for past dispositions. Wider use of W&I in domestic and cross-border M&A is expected to support further growth in both W&I and standalone tax insurance, especially for identified or uncertain tax exposures.

Luxembourg points to the implementation of Pillar Two and the continuing evolution of EU anti-avoidance, transfer-pricing and reporting rules is expected to create demand for cover relating to clearly identified tax positions.

Contingent risk insurance is developing around identified legal, regulatory, environmental and litigation exposures. Australia expects growth in contingent risk cover for environmental liabilities, tax positions, renewable energy, battery storage, critical minerals, approvals and land access. Sarah Conroy, Partner at Beale & Co LLP in Ireland, comments: *"In Ireland, there are opportunities linked to event cancellation, M&A, legal and judicial contingency, renewable energy, infrastructure, real estate, planning and environmental risks."*

Italy points to litigation and arbitration, sanctions and export-control exposure, environmental liabilities and emissions-trading exposures. Diego Lacayo, Partner at LAC Legal in Panama, comments: *"Tax enforcement, economic substance, beneficial ownership, transfer pricing, permanent establishment, climate and permitting issues, title disputes, concessions and regulatory approvals are areas where tailored tax or contingent-risk solutions may develop where risks are sufficiently defined and capable of underwriting."*

Taken together, the responses suggest that tax liability and contingent risk insurance are moving from the margins of transactional cover into a more strategic role. Their value is greatest where a known risk can be analysed, priced and ring-fenced so that a deal or investment can proceed without over-reliance on indemnities, retentions or price adjustments. France's focus on the Research Tax Credit, Italy's transfer pricing and tax credit concerns, Spain's use of tax insurance beyond M&A, Switzerland's thinner but specialist contingent-risk capacity and India's expansion into bespoke tax solutions all point in the same direction: the next stage of growth is likely to be issue-specific rather than product-led.





EMERGING RISKS WIDEN THE OPPORTUNITY

Emerging risks are broadening the opportunity for warranty and related specialty insurance. Across a number of jurisdictions, members point to AI, cyber, data protection, ESG, climate, operational resilience and supply-chain risk as areas that are increasingly relevant in due diligence and may create opportunities for specific risk-transfer solutions. Malta highlights iGaming, fintech, EU AI regulation, Mediterranean climate risks and regulatory scrutiny of financial services. Petra Attard, Senior Associate at Mamo TCV Advocates in Malta, comments: *"Malta's exposure to Mediterranean climate risks, including water scarcity and coastal erosion, and to EU environmental regulation, may create opportunities for contingent environmental liability insurance."*

New Zealand points to privacy, data, environmental and distressed M&A risks. Poland identifies ESG compliance, greenwashing, supply-chain disruption, sanctions, geopolitical risk and energy-price volatility as areas that may create demand for tailored cover.

> "LARGE-SCALE INFRASTRUCTURE, ENERGY TRANSITION AND GIGA-PROJECT DEVELOPMENTS ARE CREATING INCREASINGLY COMPLEX CONTRACTUAL, REGULATORY AND CONSTRUCTION-RELATED RISK PROFILES INVOLVING MULTIPLE STAKEHOLDERS, INTERNATIONAL FINANCING ARRANGEMENTS AND SIGNIFICANT CONTINGENT LIABILITIES."
>
> LYNDON RICHARDS, PARTNER AT BEALE & CO LLP IN THE GCC

Nathan Penny-Larter, Partner at Beale & Co LLP in the UK, comments: *"Cyber security, data protection and intellectual property ownership are becoming particularly important in technology transactions, while ESG-related issues, employment practices, environmental matters and regulatory or policy changes affecting energy and infrastructure projects are also creating demand for more tailored solutions."* Mexico also highlights litigation, globalisation, climate change and AI, noting that *"Market globalisation might give rise to new areas within insurance and reinsurance"* and that, *"with the rise of AI", corporate private information is increasingly vulnerable.*

Lyndon Richards, Partner at Beale & Co LLP in the GCC, comments: *"Large-scale infrastructure, energy transition and giga-project developments are creating increasingly complex contractual, regulatory and construction-related risk profiles involving multiple stakeholders, international financing arrangements and significant contingent liabilities."* The common thread is that emerging risks are not creating demand for generic cover, but for targeted solutions that can translate complex, fast-moving exposures into risks that can be assessed, priced and managed with confidence.

> "MALTA'S EXPOSURE TO MEDITERRANEAN CLIMATE RISKS, INCLUDING WATER SCARCITY AND COASTAL EROSION, AND TO EU ENVIRONMENTAL REGULATION, MAY CREATE OPPORTUNITIES FOR CONTINGENT ENVIRONMENTAL LIABILITY INSURANCE."
>
> PETRA ATTARD, SENIOR ASSOCIATE AT MAMO TCV ADVOCATES IN MALTA

TRADE CREDIT INSURANCE

A MATURE PRODUCT SHAPED BY TRADE EXPOSURE

Trade credit insurance is closely tied to the practical realities of doing business, protecting cashflow, supporting financing and managing exposure to customers who may become insolvent, pay late or default altogether. It is widely used by exporters, wholesalers, manufacturers, financial institutions and businesses with significant trade receivables, particularly where companies are exposed to overseas buyers, volatile trading conditions or concentrated debtor risk. Poland illustrates how trade credit can become embedded in domestic credit and export-trade activity. Anna Urbańczyk, Managing Associate at WKB Lawyers in Poland, comments: *"The local trade credit market includes offerings from the state-owned export credit agency KUKE and remains closely connected to domestic credit and export-trade needs."*

A recurring theme is the role of public or quasi-public export credit support where private capacity is limited or where political, economic or war-related risks make cover more difficult to place. Germany's use of *"Hermes cover"* is one example of this model, safeguarding exports to countries with heightened political or economic risks where private credit insurers may no longer offer cover. Ukraine shows the same principle in a more acute form. Olga Vorozhbyt, Partner at Sayenko Kharenko in Ukraine, comments: *"Trade credit insurance is the clearest growth area in the Ukrainian market today, but domestic capacity remains thin and heavily state-supported through the Export Credit Agency."* The ECA's expanded mandate, special status as an NBU-supervised insurer and ability to distribute through insurers and intermediaries are expected to widen the product's reach.

Market structure and regulatory conditions also shape how trade credit develops. Patricio Prieto Larrain at Prieto in Chile comments: *"In Chile, trade credit insurance is more frequently used than W&I, but capacity is limited and regulatory requirements have restricted participation by some regional reinsurers."* In Malta, demand is linked to the jurisdiction's position as a Mediterranean trade hub and its exposure to instability in North Africa and the Middle East. In New Zealand, demand is shaped by debtor concentration, insolvency and export risk. These examples point to the same underlying theme: trade credit demand grows where businesses need continuity and confidence in the face of payment, counterparty and cross-border risk.

"THE LOCAL TRADE CREDIT MARKET INCLUDES OFFERINGS FROM THE STATE-OWNED EXPORT CREDIT AGENCY KUKE AND REMAINS CLOSELY CONNECTED TO DOMESTIC CREDIT AND EXPORT-TRADE NEEDS."

ANNA URBAŃCZYK, MANAGING ASSOCIATE AT WKB LAWYERS IN POLAND

This helps explain why trade credit is likely to remain resilient even where broader transactional insurance volumes fluctuate. Economic uncertainty, supply-chain disruption, geopolitical instability and insolvency risk all reinforce its relevance. Spain describes trade credit as *"firmly established"* and *"widely used in both domestic transactions and international trade"*; Ireland highlights its role in protecting businesses *"against customer insolvency and payment default";* and Joachim M. Skjelsbæk, Partner at RIISA in Norway, comments: *"Demand is linked to an export-oriented economy where cover helps manage counterparty default risk and support financing arrangements."* Across these markets, the product's value lies in giving businesses greater confidence to trade, extend credit and manage working-capital risk through uncertain conditions.



INSURANCE FOR FINES AND PENALTIES

Cover for fines and penalties remains one of the most legally constrained areas of the market. Across many jurisdictions, GILC members emphasise that criminal, punitive or administrative sanctions are generally not insurable where insurance would undermine the personal, punitive or deterrent function of the penalty. This is not merely a matter of market appetite; in many jurisdictions it reflects public policy, statutory principles or regulatory expectations.

France provides one of the clearest examples. In France, insuring criminal or administrative fines, such as CNIL/GDPR sanctions or competition authority fines, is contrary to *ordre public*. The principle reflects the personal nature of penalties, which must be executed by the offender. Tiphaine Bouvard, Partner at Byrd & Associates in France, comments: "*Although it is noted that the position remains debated because no provision of the French Insurance Code formally states the uninsurability of such sanctions, most French insurers refuse coverage. In heavily regulated sectors such as technology, healthcare and finance, this creates practical consequences, where a target's principal exposure is a potentially large administrative fine, parties may need to reintroduce specific indemnities or price reductions rather than rely on insurance.*"

Italy adopts a similar but nuanced approach. Sanctions of a criminal or punitive-administrative nature, including antitrust and data protection fines or pecuniary sanctions imposed on entities under Legislative Decree No. 231/2001, are generally regarded as uninsurable on public-policy grounds. The Italian market therefore operates around the edges of that principle: defence costs, civil and compensatory consequences of the underlying breach and, in tax liability policies, interest and certain tax penalties may be addressed, while direct transfer of punitive sanctions is not. Alberto Batini, Partner at BTG Legal in Italy, comments: *"Any element touching fines and penalties should be structured conservatively with cover confined to defence costs, compensatory consequences and sanctions whose insurability can be defended under Italian public policy."*

> **"ALTHOUGH IT IS NOTED THAT THE POSITION REMAINS DEBATED BECAUSE NO PROVISION OF THE FRENCH INSURANCE CODE FORMALLY STATES THE UNINSURABILITY OF SUCH SANCTIONS, MOST FRENCH INSURERS REFUSE COVERAGE. IN HEAVILY REGULATED SECTORS SUCH AS TECHNOLOGY, HEALTHCARE AND FINANCE, THIS CREATES PRACTICAL CONSEQUENCES, WHERE A TARGET'S PRINCIPAL EXPOSURE IS A POTENTIALLY LARGE ADMINISTRATIVE FINE, PARTIES MAY NEED TO REINTRODUCE SPECIFIC INDEMNITIES OR PRICE REDUCTIONS RATHER THAN RELY ON INSURANCE."**
>
> TIPHAINE BOUVARD, PARTNER AT BYRD & ASSOCIATES IN FRANCE

In Luxembourg, the law prohibits insurance of fines and penal settlements, subject to the exception for amounts borne by a person who is civilly liable. The insurability of administrative fines remains unresolved and their coverage presents a high risk of non-insurability.

Similar themes arise across Austria, Switzerland, Ukraine, Türkiye, China and the GCC. Austria generally treats insurance for administrative or penal fines as void where contrary to public policy. In Switzerland, punitive financial sanctions are generally treated as non-compensatory and uninsurable, and any wording such as *"to the extent insurable by law"* should be treated as a savings mechanism rather than an assurance that punitive sanctions will be paid. In China, liability insurers are prohibited from covering criminal fines and administrative penalties, making such cover regulatorily impermissible and standardly excluded. And in Ukraine, tax and administrative liability insurance is unavailable as a matter of legal principle because such liability is intended to deter future violations.

Germany reflects the same public-policy tension. Dr Carolin Schilling-Schulz, Partner at Arnecke Sibeth Dabelstein in Germany, comments: *"Due to a constant stream of new regulations, including EU regulations, both companies and individuals may face substantial fines"*, but the prevailing German view is that insuring against fines would be contrary to public policy and therefore impermissible. She also notes an increasingly contested position, with *"critical voices raised against this"*, particularly where insurers promise cover for fines in areas such as cyber or D&O policies subject to there being no statutory prohibition, and then refuse cover by relying on that proviso.

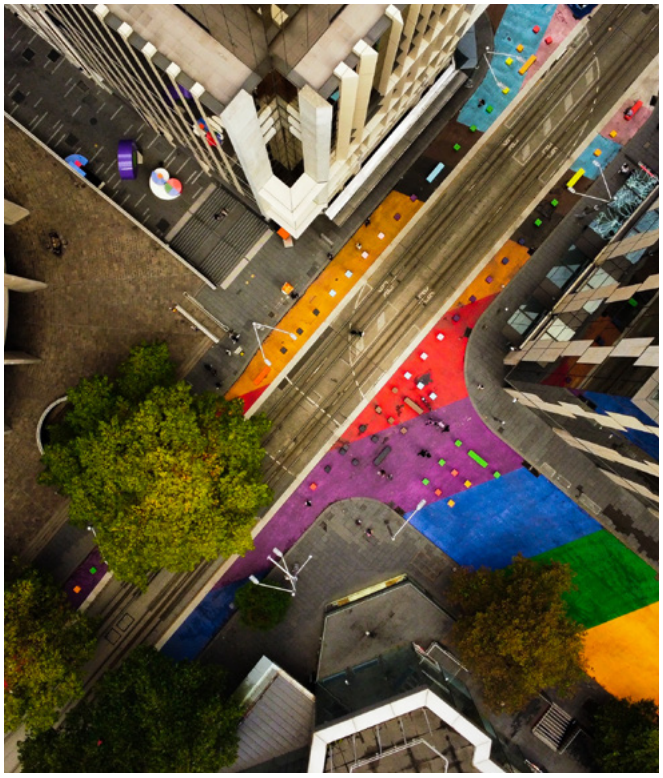
The overall picture is therefore cautious. While demand for protection against regulatory exposure is increasing, most markets distinguish sharply between insurable defence or compensatory costs and the direct transfer of punitive sanctions, which remains heavily constrained by law and public policy.

> **"DUE TO A CONSTANT STREAM OF NEW REGULATIONS, INCLUDING EU REGULATIONS, BOTH COMPANIES AND INDIVIDUALS MAY FACE SUBSTANTIAL FINES."**
>
> DR CAROLIN SCHILLING-SCHULZ, PARTNER AT ARNECKE SIBETH DABELSTEIN IN GERMANY

BARRIERS TO WIDER UPTAKE

INTERNATIONAL CAPACITY REMAINS ESSENTIAL OUTSIDE MATURE MARKETS

Capacity is one of the clearest dividing lines for warranty and related specialty insurance between mature and developing markets, but the pattern is more nuanced than a simple domestic-versus-international split. The UK, Australia, the Netherlands and Spain show the benefits of established underwriting, broking and legal ecosystems. Elsewhere, international capacity is often the condition that allows the market to function at all. Austria relies on London and DACH-region specialists; the Greek market remains largely reliant on international insurers and reinsurers for W&I and other specialised transactional insurance products; Malta is heavily reliant on international insurers and reinsurers, principally in the London market; Poland relies on international insurers, MGAs and reinsurers for W&I, tax and contingent risk products; and New Zealand frequently draws on Australian/Pacific transactional risk teams and international insurers, MGAs, Lloyd's syndicates and reinsurers. China, India and Brazil frequently use local placement or fronting structures supported by international reinsurance, while the GCC continues to look to London and other established centres despite growing capability in the DIFC and ADGM. Luxembourg is an EU insurance hub rather than a domestic risk market therefore W&I, tax and contingent-risk underwriting remains largely reliant on international markets. The conclusion is that global capacity is not replacing local markets – it is giving them a bridge to scale, provided local law, licensing and claims handling are properly understood.



COST, AWARENESS AND UNDERWRITING DISCIPLINE

The most common barriers to wider uptake of W&I insurance are cost, awareness, underwriting complexity, limited local capacity and regulatory uncertainty. For smaller transactions, the fixed costs of underwriting, premiums, broker fees and adviser input can be difficult to justify. Matt Ellis, Partner at Sparke Helmore in Australia, comments: *"For larger deals and private equity-led transactions, costs may be a small proportion of deal value, but in smaller transactions traditional W&I can be hard to justify where a financially strong seller or guarantor can stand behind the warranties."*

Malta points to limited deal flow, smaller transaction values, lack of awareness and reliance on personal relationships, earn-outs and escrow arrangements. Rob Coltman, Partner at Duncan Cotterill in New Zealand, comments: *"In New Zealand, the principal barriers are cost, transaction size, awareness and the underwriting requirements associated with specialist products. Smaller transactions may not justify W&I premiums and underwriting costs, while inadequate due diligence can result in exclusions or restricted coverage."* Poland also highlights cost, thin local capacity, limited awareness outside internationally standardised transactions and uncertainty around foreign-law policies and forum selection.

Germany shows how process concerns can also affect uptake. While there is local capacity and underwriting expertise for W&I, some products remain less well known and a perceived underwriting delay can still deter parties from using cover. However, the German response notes that where the process is well prepared, the delay is minimal, and customers increasingly recognise the advantages, helping W&I become more widely accepted.

For tax liability and contingent risk insurance, the barrier is often less about whether demand exists and more about whether the risk can be defined with enough precision to be underwritten. Several jurisdictions emphasise that these products depend heavily on

> "IN NEW ZEALAND, THE PRINCIPAL BARRIERS ARE COST, TRANSACTION SIZE, AWARENESS AND THE UNDERWRITING REQUIREMENTS ASSOCIATED WITH SPECIALIST PRODUCTS. SMALLER TRANSACTIONS MAY NOT JUSTIFY W&I PREMIUMS AND UNDERWRITING COSTS, WHILE INADEQUATE DUE DILIGENCE CAN RESULT IN EXCLUSIONS OR RESTRICTED COVERAGE."
>
> ROB COLTMAN, PARTNER AT DUNCAN COTTERILL IN NEW ZEALAND

robust legal, tax and factual analysis. Spain notes that insufficient due diligence or difficulties in properly identifying and defining a risk may limit cover, particularly for tax and contingent risk insurance. Panama similarly highlights the need for risks to be sufficiently defined and capable of underwriting, while New Zealand stresses that insureds seeking tax or contingent risk cover should provide clear adviser analysis and quantify the potential exposure. The underwriting discipline required for these products is therefore high: where the risk is too uncertain, too poorly evidenced or too dependent on unresolved legal interpretation, cover is likely to be narrowed, excluded or unavailable.

Regulation is another recurring constraint. In Türkiye, the absence of an explicit regulatory framework specifically addressing W&I insurance limits local underwriting capacity and makes the product less accessible for purely domestic transactions. In Chile, restrictions on foreign insurers offering insurance locally make it difficult to offer coverage more broadly, while the possibility of having to litigate abroad if cover is denied creates additional cost and uncertainty. Argentina's experience also shows how foreign exchange controls and payment-transfer restrictions can complicate cross-border risk transfer, particularly where premiums or claims payments are denominated in hard currency.

Even where capacity is available, adoption can also be slowed by market behaviour and familiarity. In a number of markets, businesses still default to familiar contractual tools – indemnities, escrows, retentions, guarantees or seller liability caps – because they are better understood, easier to explain internally or perceived as cheaper. This is especially true in family-owned businesses, smaller domestic transactions and jurisdictions where the claims record for W&I or contingent risk insurance is still thin.

The lesson for insurers and brokers is that adoption will not be driven by capacity alone. It will require clearer education, simpler processes, better examples of claims performance and a stronger explanation of when insurance improves deal certainty rather than merely adding cost.

> **"KNOWN RISKS, FORWARD-LOOKING MATTERS, UNDERFUNDED PENSIONS, TRANSFER PRICING, CYBER INCIDENTS AND ENVIRONMENTAL ISSUES MAY BE EXCLUDED OR REQUIRE SEPARATE COVER."**
>
> DOMINIK SKROBALA, PARTNER AT GBF ATTORNEYS-AT-LAW IN SWITZERLAND



DUE DILIGENCE DEFINES THE SCOPE OF COVER

The quality and scope of due diligence can also determine whether meaningful coverage is available. In the UK, insurers generally expect the buyer to have investigated the business properly rather than relying on the policy as a substitute for diligence; gaps in due diligence may lead to exclusions or further underwriting requirements. China's advice is direct: insureds should not treat insurance as a fix for weak due diligence; unexamined risks will simply be excluded. In China, gaps such as incomplete labour compliance reviews or unverified financial models may lead to specific exclusions that narrow coverage. Fernando Blanco Gamella, Partner at Blanco y Asociados in Spain, comments: *"Insufficient due diligence or difficulties in properly identifying and defining a risk may limit cover, particularly for tax and contingent risk insurance."* Similarly, Dominik Skrobala, Partner at gbf Attorneys-at-law in Switzerland, comments: *"Known risks, forward-looking matters, underfunded pensions, transfer pricing, cyber incidents and environmental issues may be excluded or require separate cover."*



PRACTICAL ADVICE FOR INSURERS, BROKERS AND INSUREDS

The practical guidance from GILC members is that these products work best when considered early, structured carefully and supported by high-quality disclosure, due diligence and local legal analysis. For insureds, the key message is not to treat insurance as an afterthought. Austria, India, France, the UK and the GCC all recommend involving brokers, insurers and legal advisers early so underwriting can run alongside legal and financial due diligence. In France, it is noted that forward planning is essential.

For brokers, the most important role is often educational as much as transactional. Where brokers understand the product in depth, they are better able to explain its benefits clearly and educate clients on how the cover can support a transaction. That greater understanding benefits both insureds and insurers, as it helps parties see where the product can add value, build confidence in its use and ultimately support wider take-up. In jurisdictions where W&I and related products remain less familiar, GILC members emphasise the need to explain the mechanics of the cover, the underwriting timetable, the interaction with transaction documents and the difference between insured and uninsured risk. Matias Ponferrada, Partner at Abeledo Gottheil in Argentina, comments: *"Brokers should educate mid-market dealmakers proactively, because those able to explain the practical mechanics of the product are likely to capture demand that would otherwise default to traditional indemnities and escrows."* Chile makes a similar point in a market where adoption is more conservative, noting that patience is required because once a product is tried repeatedly and its benefits become known, market appetite can grow quickly. Lawyers remain central throughout the process as they advise on due diligence, disclosure, policy wording, exclusions, breach allegations and claims disputes. Aldo Ocampo at Ocampo 1890 in Mexico comments: *"Insurers should carry out a thorough adjustment process and maintain clear communication, because poor guidance or information-gathering can undermine the insurer's position in later disputes."*

LOCAL LAW CANNOT BE AN AFTERTHOUGHT

Finally, the advice for all market participants is to avoid assuming that international policy wording can simply be transplanted into each jurisdiction without adjustment. France emphasises the need for close alignment between the SPA and the policy. Italy warns that common-law-inspired policy wording must be coordinated with Italian-law transaction documents, including Civil Code limitation and disclosure rules. Switzerland advises that the SPA and policy should, where possible, be designed together, including warranties, disclosures, loss, knowledge, limitation periods, seller recourse, fraud and subrogation. Türkiye similarly recommends that insurers and brokers take *"a pragmatic and transaction-specific approach rather than relying solely on standard policy wordings"*. Malta and Poland reinforce the same theme: both stress early engagement with local counsel to bridge the gap between London-market or international policy terms and local legal concepts, governing law, forum, language and regulatory requirements. These products are most effective when international capacity is combined with local legal precision.

Germany's practical advice reinforces the same point. Policy terms governed by German law should not simply be translated but also checked by local counsel. This underlines the wider theme that local legal due diligence is essential where imported policy wording interacts with domestic law, market practice and public-policy constraints.

CONCLUSION

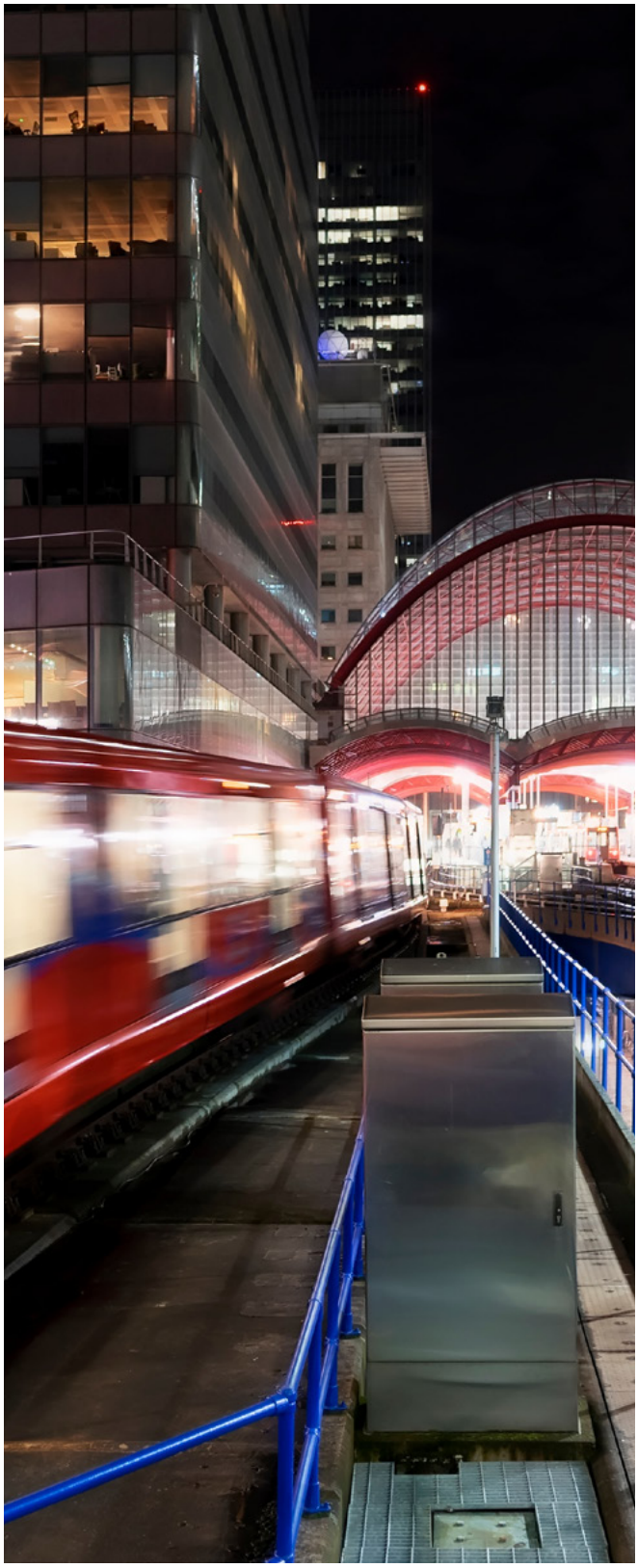
The clearest message from the GILC member responses is that the market has moved beyond early experimentation. Across the jurisdictions surveyed, warranty and related specialty insurance products are increasingly being used as practical tools to manage uncertainty, unlock transactions and support commercial confidence. The pace of adoption varies considerably, but the underlying direction is consistent: parties are turning to insurance where traditional contractual mechanisms alone do not provide sufficient certainty, flexibility or efficiency.

The findings also suggest that growth will be driven less by product labels and more by market conditions. Where transactions are more competitive, credit conditions more uncertain, regulatory scrutiny more demanding or risks more complex to allocate, these products are gaining relevance. Their value lies not in replacing existing deal protections or risk-management tools, but in adding another way to manage uncertainty where the risk can be properly understood, priced and documented.

However, the report also shows the limits of product innovation on its own. International underwriting capacity, particularly through London and other specialist hubs, can accelerate the growth of these products, but it cannot replace local legal infrastructure. The most successful markets will be those where international capacity is matched by credible local advice, robust due diligence, clear disclosure, careful policy drafting and an emerging claims track record. Where those foundations are weaker, uptake is likely to remain episodic: useful in high-value or cross-border transactions, but less embedded in everyday market practice.

The most important conclusion is that the next phase of growth will be less about selling generic cover and more about using insurance to solve defined commercial problems. That means identifying where risk sits, whether it can be assessed correctly, whether it is legally insurable, who is best placed to bear it, and how the policy interacts with the underlying contractual framework. For insurers and brokers, this calls for education, responsiveness and product flexibility. For insureds, it means engaging early and treating insurance as part of the transaction architecture, not a late-stage backstop. For lawyers, it reinforces their role as translators between global underwriting appetite and local legal reality.

In short, the market is globalising, but confidence is still built locally. The jurisdictions that are likely to see the strongest growth will not simply be those with the most capacity available, but those able to combine international capital, local legal certainty, disciplined underwriting and a track record of claims experience. That combination will determine whether warranty and related specialty insurance products remain primarily a feature of sophisticated transactions, or become a more standard part of how businesses manage transactional, trade, tax and regulatory risk.



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