

# HCC Global launch new M&A Transaction Risk Insurance Team



**Lorena Segovia**  
Transaction Risk Insurance Manager – International



**Thomas M. Mannsdorfer**  
Transaction Risk Insurance Underwriter

The numerous risks involved in corporate level transactions such as mergers & acquisitions (M&A) may threaten the successful completion of a deal. Therefore a convenient risk transfer solution is of paramount importance.

HCC Global Financial Products (HCC Global) has created a new underwriting department for M&A transaction risk insurance (TRI) in order to provide both the buyer and vendor with an adequate security strategy. HCC Global is a wholly owned subsidiary of HCC Insurance Holdings, Inc. (NYSE:HCC), one of the world's largest and most established speciality insurance groups.

Corporate INTL spoke to Lorena Segovia and Thomas Mannsdorfer to find out more about the insurance products on offer and to discuss the team's performance in the TRI market so far.

## TRI

Warranty & indemnity insurance (W&I), one of the insurance products in the TRI range, provides protection against losses arising from a breach of warranties and indemnities given in a Sale and Purchase Agreement (SPA). It facilitates the deal process for the parties involved and may further enhance a vendor's sale offer or the appeal of a buyer's bid. HCC Global also provides other bespoke products which fall under the TRI umbrella including: tax indemnity insurance and contingent risk transfer insurance.

The recent increase in M&A activity in 2010 has precipitated a greater need for these risk solution products. Lorena Segovia, international transaction risk manager and Thomas Mannsdorfer, transaction risk insurance underwriter, explained why market trends indicated that it was the right time to launch this new line of business:

"Despite a global economic downturn and the consequent slowing of M&A activity, we believed it was the right time to enter the TRI market. We foresaw that companies in certain industries would need to acquire as a part of their defence strategy, triggering M&A transactions. We expected these transactions to be subject to very detailed due diligence procedures in order to attract financing.

"We also understood that transaction parties had become more risk averse and would seek additional security in relation to risk issues exposed by the deal process. As a consequence, these companies would

therefore consider TRI products as a viable solution. Moreover, M&A players would be more sensitive than ever to the insurer's financial strength and stability when buying these insurance products."

Indeed the team's prediction of market trends is now backed by concrete figures. Global M&A activity is up 21% through the first nine months of 2010. More specifically the European markets have experienced a general upward trend with a 49% rise year on year.

"There is a growing need among deal parties to minimise surrounding costs relating to corporate transactions and to rapidly free capital for other projects or financial investments, once undertaken. This is capital that would otherwise be tied-up for several years (for example, in a generally low interest bearing escrow account). A well-tailored W&I insurance programme can satisfy those requirements."

The HCC Group's AA rating by Standard & Poor's and A+ by A.M. Best, HCC Global's in-house experience and expertise, and receptive market conditions, means that the firm is perfectly positioned to offer TRI products.

## HCC Global: TRI Team

The TRI team consists of committed underwriting, claims and legal professionals. Their extensive knowledge and experience of worldwide transaction risk related issues ensures that clients receive a fast and efficient service.

"The client benefits not only from the TRI team's experience and in-depth knowledge of worldwide transaction risk related issues, but also from our unique "under-one-roof" strategy; whereby our multinational financial lines underwriting team provides global insurance solutions from our office locations in Barcelona, London and Miami. The TRI team can count on this wider support structure for local knowledge, language skills or jurisdictional advice if needed," commented Ms Segovia and Mr Mannsdorfer.

"In short, we stand out from our peers for our flexibility, responsiveness, country specific expertise and for our eagerness to provide outstanding, customer-focused service within the frame of an AA-rated Insurance Group."

One of the team's particularly useful capabilities is to customise TRI policies to match a buyer or vendor's deal requirements. Ms Segovia and Mr Mannsdorfer explained this further. They said that the underwriting process that the team applies is the key factor. HCC Global seeks to understand its clients' businesses and the underlying risk associated with transactions. Every deal is analysed and assessed relating to the insurance sought;

"Firstly the SPA, any ancillary agreements and the vendors' or buyers' due diligence reports are analysed. If analysis is carried out early enough in the transaction process, some of our comments may be beneficial for further contractual negotiations between the deal parties and can even be reflected in the final SPA version.

"After this first assessment, conducted in-house, a Non-Binding Indication (NBI) is submitted to the client (prospective insured). If the client decides to pursue the purchasing process, an additional and more detailed risk analysis is conducted, involving, if required, external legal, tax and/or accounting partners in the different jurisdictions to which we cater.

Finally, each policy wording is tailor-made to follow the SPA to the greatest extent possible. Individual policy drafting includes our ability to provide in-house

language abilities and local jurisdictional knowledge."

There has been much client interest since the TRI product line's launch in February 2010, submissions coming primarily from insurance brokers with a high level of expertise in the field. Several TRI policies have been sold in the London market as well as in other jurisdictions across Europe and in Australia. Clients include; large funds, private equity firms as well as individuals and family holdings. Warranties and indemnities are insured in share as well as, asset deals.

## TRI product benefits

W&I policies provide a suitable risk transfer solution to those involved in a deal, valid for varying durations after the transaction date, allowing them to proceed without concern for any unforeseen circumstances surrounding the transaction. Furthermore, purchasing W&I is not only useful as a matter of practicality but can also be used as a strategic tool to effectively enhance the seller's sale offer of the favourability of the buyer's bid.

TRI solutions are often of interest to both the buyer and vendor, reiterated Ms Segovia and Mr Mannsdorfer. They explained that whilst in the past this insurance concept fell under other liability insurance offerings, and mainly focused on the vendor's needs; nowadays, roughly 60% of accounts are buyer-side policies.

"There are specific advantages for a buyer. For example, a loss arising due to breach of warranty can put the buyer in a vulnerable position. Direct pursuit of the vendor can be inconvenient, time consuming, costly and sometimes damaging to business relationships. Indemnification for loss cannot always be secured, even where a contractual obligation to pay exists.

Having purchased TRI the buyer may now recur directly to the insurance company who, depending on the policy wording, may or may not have the right of recourse against the seller. In an auction process, the buyer may also specifically want to use W&I Insurance to enhance the bid offer, making it more appealing and increasing the chances of a successful bid."

Ms Segovia and Mr Mannsdorfer also described the problems concerning the seller-side of a deal. They said that the smooth negotiation of a deal can be threatened by future uncertainties regarding the vendor's contractual obligations, by potential liabilities stemming from inaccuracies in warranties and/or by potential claims under the tax covenant.

"In addition, buyers are likely to seek some form of security for future claims. This would normally tie-up sale proceeds, hindering a quick and clean exit for the vendor. As it is normally in the vendor's interest to free capital quickly from the transaction (for other investments or, as in the case of selling family businesses, to swiftly split it among the often broadly scattered family members) TRI seems the logical option."

Everything considered the main advantage for both parties is to have a prime insurance policy from a financially strong partner. "More and more, we find that TRI products are not only purchased as a means to facilitate the deal but also as a strategic tool in its negotiation.

As a deal facilitator this type of insurance can provide: a viable alternative

to lengthier forms of risk transfer; is an effective way of seeking indemnity in case of contractual breach; and can mitigate the vendor's risk for liabilities arising from innocent misrepresentations he/she has made or can afford coverage to the buyer for misrepresentations innocent or otherwise, made by the vendor.

As a strategic tool in securing the deal, buyer-side TRI gives the buyer a competitive edge against other bidders or seller-side can make the vendor's offer more appealing, as risk is transferred to a financially sound insurer."

Ultimately, peace of mind is an important factor for both deal parties, claimed Ms Segovia and Mr Mannsdorfer. "In many transactions the buyer and vendor hold a long-standing commercial relationship. Quite frequently the management of the target company is retained by the buyer and sometimes we find identical investors behind the seller and the buyer. Harsh settlement negotiations or even long-lasting litigation can sometimes be avoided by good professional claims handling."

Both concluded by stating that as M&A activity is gradually increasing, there is a greater awareness of risk and a willingness to seek alternative risk solutions including TRI.

"The number of submissions that we have received over this year certainly would indicate that more companies are considering TRI for their corporate transactions. Given that there is significant capacity in the market and the process to provide TRI has been simplified, this product looks to be on a growing and promising path."

## TRI Team

url: [www.hcc-global.com/tri.asp](http://www.hcc-global.com/tri.asp)  
e: [TRIteam@hcc-global.com](mailto:TRIteam@hcc-global.com)

Lorena Segovia  
Transaction Risk Insurance Manager – International

Thomas M. Mannsdorfer  
Transaction Risk Insurance Underwriter

Deborah McBrearty  
Transaction Risk Insurance Manager – UK



"The number of submissions that we have received over this year certainly would indicate that more companies are considering TRI for their corporate transactions. Given that there is significant capacity in the market and the process to provide TRI has been simplified, this product looks to be on a growing and promising path."