Distribution Product Guide: Contingent Liability

→ Distributor Product Guide
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This guide is for intermediary reference only:

It does not contain the full terms and conditions of the contract of insurance. Full terms and conditions are within the policy documents; you can request to have a copy of these.

Background

Markel International is a leading provider of Contingent Liability insurance both as a capacity provider to coverholders.

Markel has been insuring TL risks for over 5 years.

By taking the time to understand the activities of our insureds and to subsequently identify the specific exposures faced, we are at the forefront of insuring a variety of diverse risks, many of which are complex.

Product design

Markel products go through a Product Design and Approval process to ensure products are able to meet the needs and objectives of the target market. This product has undergone testing, including industry benchmarking as part of this approval process.

Contingent Liability insurance covers specific known non-tax (often legal) risks likely identified in the Buyer's due diligence (DD) or disclosed by the Seller in a merger and acquisition (M&A) transaction. The Buyer is typically the insured. The risk would be excluded under the Warranty & Indemnity (W&I) policy because it's known (with W&I covering unknown risks after DD and disclosure). However, if the risk is low probability (making it insurable) but high severity (the motivation for the purchase), a separate policy just for that risk may be purchased. Contingent Liability policies may also arise outside of M&A transactions if the insured is interested in removing the potential non-tax liability from its balance sheet often as part of restructurings, fund wind-downs, liquidations or payments to shareholders.

Cover is provided on a "claims made" basis, where the policy is designed to respond to claims that are made during the period of insurance.

Limits and retentions are in the aggregate for the period of insurance.

We confirm that the product is free from any innate conflict of interest that would compromise you from putting customers interests first.

Target market

The Target Market for Contingent Liability are commercial customers:

- Have more than 50 employees; and / or
- GBP 10m turnover

The insured under a Contingent Liability policy is often a special purpose vehicle set up by the Buyer for that transaction. As a result, the insured may be a shell company without employees or turnover at the time of purchase. The ultimate owner of the insured though is either a private equity fund or a parent company. In all cases, the insured is advised by a suite of specialists including legal advisors in respect of the specific non-tax risk being insured. We work with sophisticated buyers with sophisticated advisers engaging in corporate M&A for Target Companies valued in the range of $1 million to over $1 billion, which may give rise to the need for Contingent Liability policies. The Buyer's lawyers typically negotiate the Contingent Liability policies as well. There are edge cases where the insured may be an individual because the Buyer does not want to use W&I and instead keeps the Seller directly liable, in which case the Seller may take out a policy and the Seller may be an individual or group of individuals. The Seller / insured will still be heavily advised.

This Policy is not suitable for:

- Individuals purchasing for non-commercial reasons
- Firms with less than GBP 1m revenue

In respect of Contingent Liability policies in M&A transactions, we are able to insure a broad range of Target Companies (both in terms of geography and sector), the subject of the underlying specific non-tax risk, and also a broad range of insureds as described above. Contingent Liability policies are discretionary purchases. In their absence, the liability is allocated between the Buyer and Seller in a transaction. Perhaps, the Buyer negotiates a price chip, secures an indemnity (promise to pay) in the purchase contract from the Seller for that particular risk or it just wears the risk itself. Buyers have increasingly used Contingent Liability policies in M&A because they have a single, financially strong counterparty who is incentived to pay claims. Sellers like requiring Contingent Liability policies because they do not have to hold a portion of the proceeds of their sale back in escrow for that particular risk and can move on to their next venture without the residual liability.

Scope of cover

Markel International's Contingent Liability policies can be arranged with a number of different extensions to allow other types of business protection to be arranged under the same policy.

We tailor all aspects of each policy specifically to the individual risk, ensuring that you have the right cover for your client's exact needs.

We can offer cover for:

- A range of specific non-tax (often legal) risks in jurisdictions typically matching the governing law of the transaction to the policy
- Types of contingent liability risks insured include litigation buyout, competition law or regulatory
- Loss typically includes potential legal liability, costs of defending claims and gross-up subject to the limit
- Policy periods are typically 7 years to align with relevant statute of limitations
- Bespoke policy language tailored to the risk

Should a client be in a position to make a claim, we have dedicated claims handlers on hand specifically for this product, possessing the expertise to process the claim and advise the customer to limit loss from the outset.

Product value assessment

We have taken into account the cost to Markel to provide the product, the chosen distribution channel and, the key features and benefits, alongside anticipated product performance and customer services to undertake a Fair Value Assessment. This includes where an add-on product (including premium finance) not manufactured by us is sold alongside, or forms a package with the distribution of our products. As part of this assessment we have collaborated with our chosen distribution partners to gather and assess fees and charges associated with the Product at point of interaction.

Following our assessment of Contingent Liability, the product as presented provides Fair Value to the intended Target Market, which has been assessed through the Management Information available to us on the products performance, evidencing the value to Policyholders overall. We have determined that the features, benefits and distribution strategy remain consistent with the needs of the Target Market, and provide suitable coverage. The defined distribution strategy is appropriate for this product, and provides the value intended through the policy lifecycle.

We do however expect any distributor of this product to consider any additional fees or charges they may charge policyholders and its effect on the end value. This includes the addition of ancillary products provided alongside a Markel product which may erode the intended value.

Distribution strategy

Our Contingent Liability insurance product has been designed for distribution by insurance intermediaries that hold commercial agreements with us. Each distribution partner is assessed by the Underwriting team to have the appropriate level of understanding about the risks and exposures faced by their customers in the operation of their business. Where necessary, we shall work with intermediaries to provide training and communications as appropriate.

The distribution strategy is considered appropriate for the target market with customers having the option to purchase these products through a distributor of their choice based upon their expertise in the field. These products are considered suitable for advised and non-advised sales by suitably skilled persons.

Distributor / partner remuneration and costs

We expect the following to be agreed, prior to any placements being made:

- Commission levels
- Fee for Service arrangements, should they be entered into between both parties

Distributors / partners responsibilities

You are reminded to assess fair value to your customers where you charge additional fees, charges or where commission rebating takes place. Distributors / partners should consider whether their customers who are purchasing a Markel International product are being charged any additional fees that are not funded by the premium paid.

If a distributor / partner identifies that a product is not providing fair value and this has been caused by the distributor's / partner's distribution arrangements, including its remuneration arrangements, the distributor / partner must immediately inform Markel International for appropriate action to be determined.

Providing feedback

We welcome any feedback from our distributors / partners on the performance of our products. All feedback will be considered in our next product review. We shall host regular touchpoints with you to discuss the product offering and any support required.