

A perspective view of a data center aisle. The server racks on both sides are illuminated with bright blue light. Overlaid on the scene are several white-outlined rectangular frames of varying sizes, some containing faint digital patterns or circuitry. The floor is dark and reflective, mirroring the lights from the racks. The overall atmosphere is high-tech and digital.

REassurance.
Insurance made simple

Transactional Risk Insurance in Data Centre Development:
A Strategic Guide for Data Centre Developers, Investors and Legal Advisors

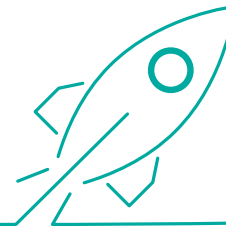
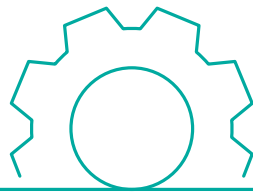
Introduction:

A New Edge in Data Centre Land Acquisition

Data centre development is accelerating, but the complexity of acquiring and preparing land remains a persistent barrier. Title issues, planning delays, unknown legal liabilities, and transaction slowdowns can derail strategic site selection and delay time-to-market.

Transactional Risk Insurance products such as **Title Insurance**, **Warranties & Indemnities (W&I) Insurance**, and **Legal Indemnity Insurance** or **Latent Defects Insurance** offer a flexible, strategic solution. These insurances are well-established in M&A and real estate markets but underutilized in digital infrastructure.

This guide outlines how transactional risk insurances can help data centre developers, investors, and their legal teams secure sites faster, with greater certainty and fewer roadblocks.



What is Transactional Risk Insurance?

Title Insurance

Protects the buyer or lender from loss due to unknown defects in the property title (e.g., unregistered rights, encroachments, or fraud).

W&I Insurance (Warranty & Indemnity)

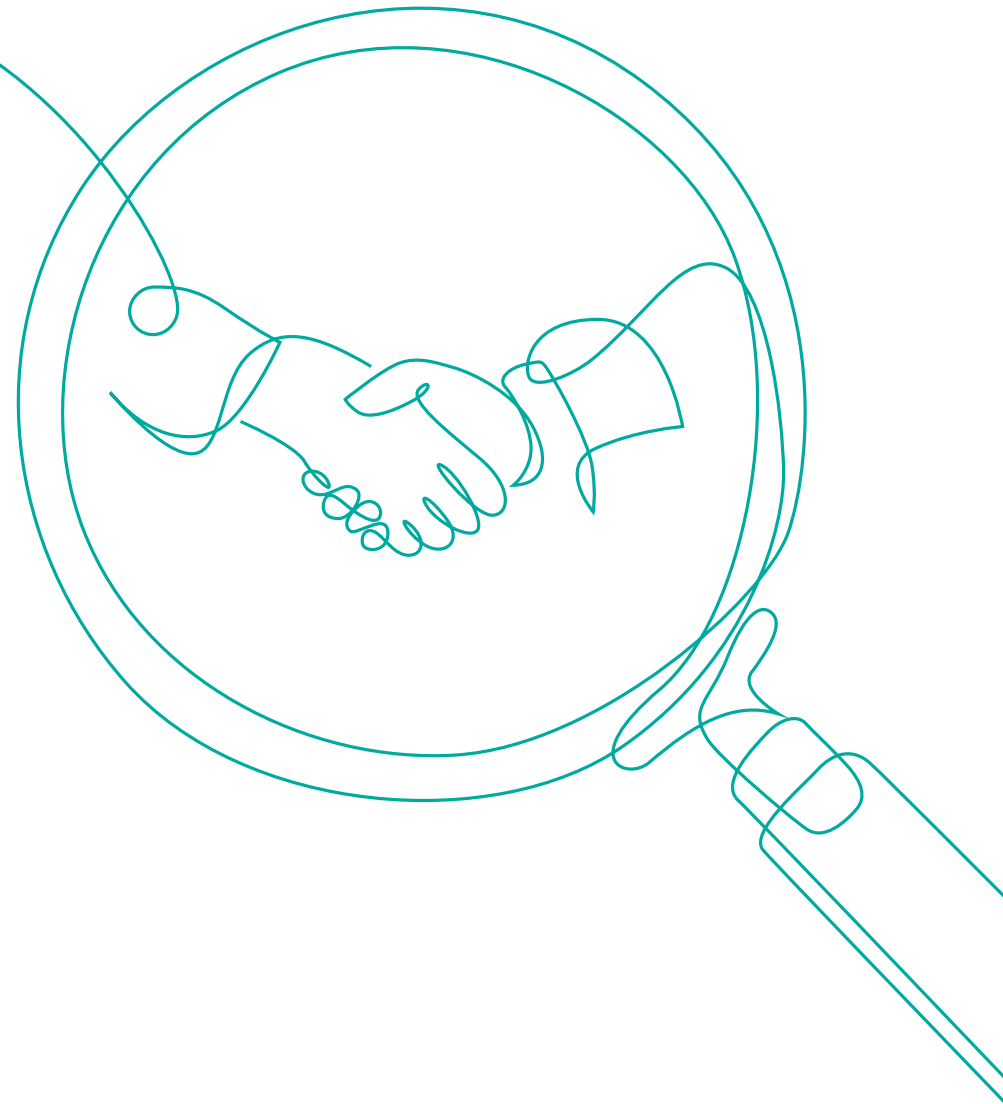
Covers financial loss from breaches of representations and warranties made in a Sale and Purchase Agreement (SPA). Removes the need for sellers to provide long-term indemnities or escrow.

Legal Indemnity Insurance

Addresses specific, known legal risks such as missing easements, restrictive covenants, planning irregularities, and rights of light.

Environmental Liability Insurance

Covers unknown pollution or environmental breaches, including contaminated land, failed EIAs, or legacy waste issues.



Strategic Advantages for Data Centre Developers

1. Speed to Market

- Insurance can be placed quickly, allowing deals to close despite unresolved issues.
- Avoids waiting for title corrections, planning appeals, or deed amendments.

2. Deal Certainty & Risk Transfer

- Reduces the need for prolonged negotiation over liabilities.
- Provides clean exits for sellers and better protection for buyers.
- Makes deals more attractive to equity and debt providers.

3. Improved Site Optionality

- TRI unlocks sites previously considered too risky.
- Developers can confidently pursue urban edge or brownfield locations with legal complications.

4. Planning Risk Mitigation

- Legal indemnity insurance can cover risks like unlawful planning permissions or judicial review challenges.
- Useful where developers are inheriting uncertain planning history.

5. Better Financing Terms

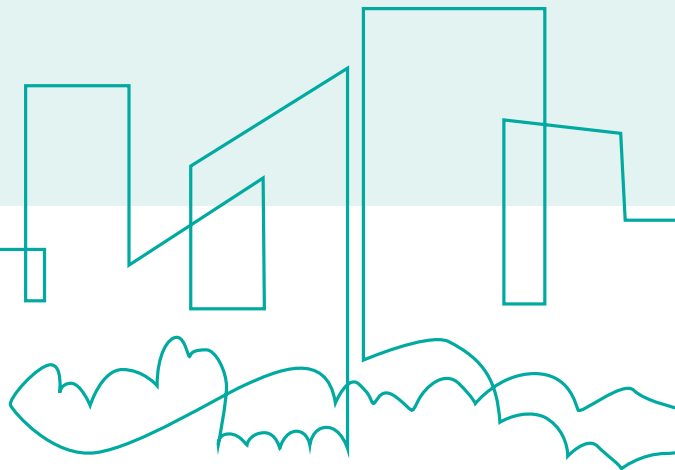
- Lenders and investors view insured risks more favourably.
- Insurance cover is often a precondition for development finance.

6. Environmental Risk Management

- Environmental insurance can transfer liability for historic contamination or compliance gaps.
- Mitigates ESG-related due diligence concerns.

7. Reduces Capital at Risk

- Avoids need for holding large cash reserves or escrows to manage future liabilities.
- Makes capital deployment more efficient.



Common Use Cases in Data Centre Development

- Restrictive Covenants: Insurance can allow development despite outdated land-use restrictions.
- Access Issues: Title insurance can protect against defective or unregistered rights of way.
- Utility Rights: Missing or non-documented utility easements.
- Unknown Ownership Claims: Protection against third-party claims to title.
- Contaminated Land / Environmental Warranties: W&I insurance can be used where sellers won't give environmental protections.
- Historic Planning Breaches: Where enforcement risk is low but not removed.
- Planning Appeals in Poland: Cover for zoning or permit disputes that could delay builds.
- Legacy Industrial Pollution (CEE): Environmental liability cover for brownfield sites.



Key Risks in Polish Data Centre Development

1. Title & Ownership Complexity

- Unclear boundaries or access rights
- Incomplete land registry (KW) data in rural or post-agricultural areas
- Historic restitution claims

2. Zoning & Planning Barriers

- Lack of or outdated MPZP (local zoning plans)
- Risky WZ (zoning decisions) that are challengeable in court
- Infrastructure upgrade conditions linked to permits

3. Environmental Risk Exposure

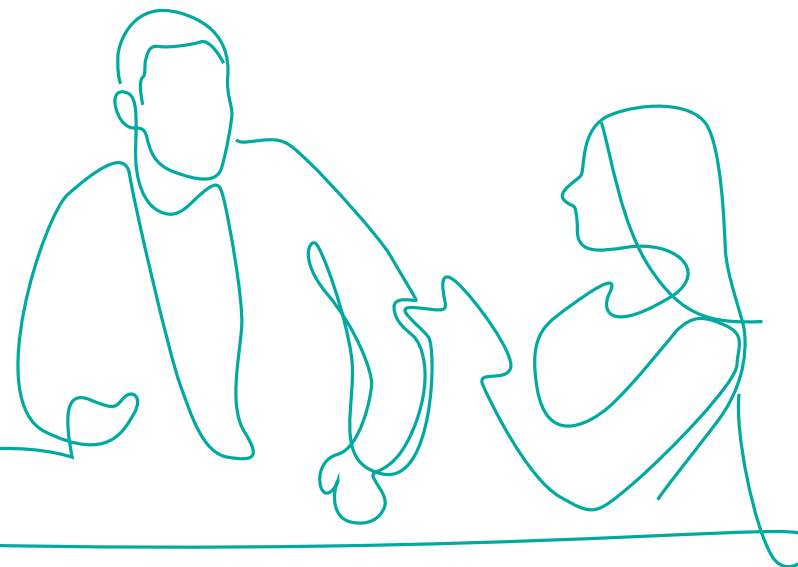
- Legacy industrial contamination (soil, groundwater)
- Incomplete or flawed EIAs (environmental impact assessments)
- Protected species/forest restrictions
- Waste and asbestos liabilities

4. Infrastructure Uncertainty

- No formal legal access to roads/utilities
- Delays in securing energy grid connections (especially for high load users)

5. Local & Political Risk

- Municipal resistance to development
- Third-party planning appeals
- Political shifts affecting land classification



Benefits Summary: Why Commercial Clients Should Care

Benefit	Commercial Impact
Faster deal execution	Reduces hold costs, speeds delivery
Unlocks more site options	Increases geographic and strategic flexibility
Greater deal certainty	Supports internal approvals and investor confidence
Cleaner seller exits	Facilitates smoother transactions
Enhanced lender comfort	Improves access to debt finance
Reduced legal negotiation	Shortens due diligence time
Capital efficiency	Less reliance on escrows/retentions
ESG Risk Mitigation	Addresses investor concerns over legacy land use

Case Study Snapshots

1

Planning Irregularity in Poland

A developer acquired land based on a zoning decision (WZ) later challenged by neighbours. Insurance provided legal cover against permit invalidation, allowing construction to continue.

2

Defective Access Rights in Warsaw Suburb

A project was delayed by lack of formal road access. Title insurance allowed the buyer to proceed while negotiations with neighbours continued.

3

Environmental Contamination in Post-Industrial Łódź

Insurance was used to cover historic soil contamination at a former textile site, allowing for secure redevelopment without delay.

4

W&I Policy in Polish SPV Sale

A hyperscaler bought a Polish SPV owning land but the seller refused to provide robust reps and warranties. W&I insurance enabled the buyer to proceed with confidence.

Closing Thoughts

Transactional risk insurance is more than a backstop — it's a strategic tool for unlocking complex, high-value data centre projects. Whether navigating tight timelines, imperfect sites, or difficult negotiations, TRI can provide the certainty needed to move forward with confidence.

Legal teams and commercial leaders alike should explore how insurance solutions can improve their deal structures, reduce friction, and accelerate delivery in a highly competitive market.

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