

PROSPECTUS LIABILITY

MANAGING THE RISK OF STRATEGIC TRANSACTIONS AND INITIAL PUBLIC OFFERINGS

VALUE CREATION

Over the past years the global market has experienced a substantial increase in strategic transactions such as mergers, acquisitions, divestments, and initial public offerings. For the companies in question, such transactions lead to a change in risk exposure for stakeholders such as directors and officers.

A global leader in risk and insurance management, Marsh designs and delivers solutions to make our clients more successful. Our experts can help you before, during, and after the issuing of prospectus documents accompanying the transaction or IPO, in order to support the successful implementation of your strategy.

What is a Prospectus?

A prospectus is a legal document that institutions and businesses use to describe the securities they are offering to participants and buyers.

A prospectus commonly provides investors with material information about stock, bonds, mutual funds and other investments, such as a description of the company's business, financial statements, biographies of officers and directors, detailed information about their compensation, any litigation that is taking place, a list of material properties and any other material information.

PROSPECTUS-SPECIFIC RISK ISSUES

If forecasts fail or the expected benefits of the investments facilitated by the offering fall short, investors are likely to sue the issuer and any signatory (or participant under some legislations) of the prospectus based on information provided within the document.

Claims can be made for several reasons such as :

- Inadequate or inaccurate disclosure of information
- Mis-statements
- Failure to abide by securities rules
- Inaccurate financial or operational forecasts
- Improper accounting practices
- Lack of information such as risk factors

PROTECTING YOUR STRATEGIC TRANSACTIONS

POTENTIAL RISK EXPOSURES CONNECTED TO A STRATEGIC TRANSACTION OR IPO

<p>Regulatory Risks</p> <ul style="list-style-type: none"> • Stock exchange requirements when preparing the transaction • Enhanced corporate governance responsibility • Increased regulatory scrutiny • New regulation in relation to the publication of financials • Post-transaction insider trading 	<p>Shareholder-related risks</p> <ul style="list-style-type: none"> • Alleged errors, omissions, mis-statements in the listing offer document • Increase in number of shareholders • Change in geographical location of shareholders • Share price • Poor earnings
<p>Counterparty Risks</p> <ul style="list-style-type: none"> • Potential indemnities to underwriters in the event of being sued as a result of the mis-statements 	<p>Employee Risks</p> <ul style="list-style-type: none"> • Pension plan changes: changes to pension plans following a transaction (merger, acquisition, divestment, IPO) may cause employees to sue the company's pension scheme.

POTENTIAL RISK EXPOSURES AND RECOMMENDATIONS ACCORDING TO TRANSACTION TYPE

Transaction Type	Impact on Directors and Officers Liability	Possible amendments to existing D&O Policy	Specific insurance solutions
Acquisition and / or creation of a new entity	<ul style="list-style-type: none"> • Liability related to the decision to proceed to the transaction. • Liability arising out of the past of a newly acquired company. 	Automatic cover of the new entity, as from the effective date of acquisition / creation, should the entity meet automatic criteria.	<ul style="list-style-type: none"> • Transaction Liability policy • Retroactive cover by a stand-alone policy or by negotiation in the existing D&O policy. • Transactional risk solutions
Sale or merger of the policy holder	<ul style="list-style-type: none"> • Liability related to the decision to proceed to the transaction. • Liability arising out of the transaction process (such as omissions or inadequate communication). 	The existing D&O policy remains in force ONLY for acts committed before the effective date of the transaction.	<ul style="list-style-type: none"> • Issuance of a 'Run-Off' policy to cover acts committed prior to the transaction. • Issuance of a new D&O policy for the newly-created organization.

A 100% Customized and Flexible Risk Transfer Program (Case Study)

One of our major clients in the Power & Energy sector informed us of their intention of acquiring a competing company, and requested our advice to adequately protect the Directors and Officers involved in this transaction. Marsh's input was a core element in finalizing the decision, and proceeding to the transaction.

Closing the deal

The Marsh Belgium FINPRO team proposed several options, based on the information available at this early stage. The creativity displayed in our options proved that a tailor-made insurance solution could be issued when needed. The result: the necessary level of comfort to finalize the decision, and proceed with the transaction.

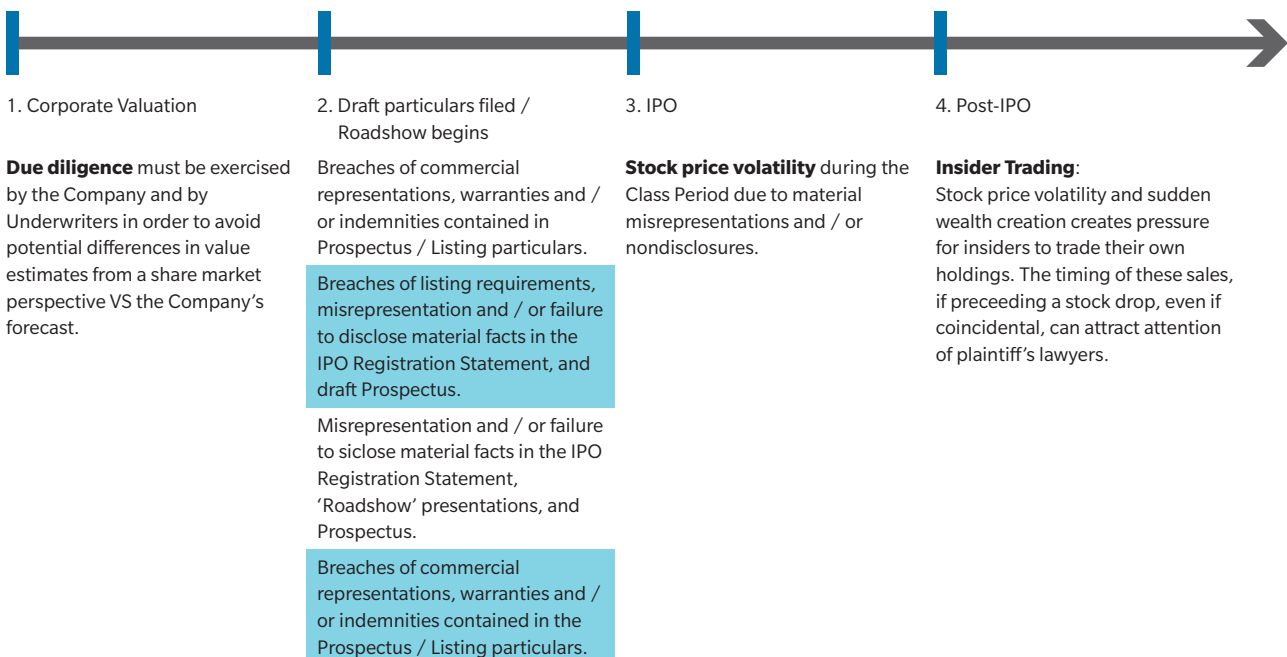
Tailoring the optimal solution

Having signed an NDA, the Marsh team was given access to additional documentation regarding the transaction. Our experts provided an in-depth analysis, along with a series of recommendations regarding the proposed Prospectus Liability coverage. The policy, designed to complement the D&O in place, and to provide protection during the initial stages of the deal, was issued within the following weeks,

Flexible solutions, matching your business strategy

A year later, our Client decided to augment their ownership in the acquired company. In order to ensure the adequate protection, Marsh advised our Client to re-negotiate the Prospectus Liability policy, and extend the duration of the coverage. This was achieved within record time, to our client's satisfaction.

GUARANTEEING A SUCCESSFUL IPO



A Traditional IPO- related Prospectus Liability Solution (Case Study 1)

Our Client is a start-up in the green energy business for whom we place and administer several lines of coverage, with the exception of Directors and Officers liability. Marsh was informed of our Client's decision to become publicly listed. The Marsh Belgium FINPRO team presented our methodology to the client, along with a preliminary study of potential liabilities ensuing from their decision to launch an IPO.

In-depth Analysis

Having been appointed as their risk advisor for IPO-related issues, the Marsh FINPRO advisors proceeded to analyzing the specifics of the Prospectus, as well as those of the planned IPO.

Clear Recommendations

Our analysis resulted in clear recommendations regarding optimal coverage, allowing us to organize a market consultation in order to obtain the best available pricing for our Client.

Market Leverage

The added value provided by our account team, along with our market leverage, made it possible to issue, within weeks, a tailor-made Prospectus Liability policy, protecting our Client's Initial Public Offering.

POSSIBLE INSURANCE SOLUTIONS

Extending the Directors and Officers liability policy

Depending on the size and the type of operation, it might be possible to extend the coverage to include the liability linked to the prospectus and the other requirements of a specific offering.

Whilst the Directors and Officers Liability Policy can be endorsed to cover many elements of the prospectus upon negotiation, cover can potentially be changed at each renewal, and this eliminates certainty in terms of coverage and cost.

Specific stand-alone "prospectus liability policy"

This stand alone policy is a multi-year "transaction specific" policy. It is tailored to cover the risks of a specific transaction and provides a separate limit to respond to claims arising from the prospectus. After the premium has been paid, it can not be revoked or cancelled by the insurer, and therefore is non-renegotiable whatever may happen.

The exposures for Directors, Officers and employees as well as the Company can be extremely large. Therefore a stand-alone policy is advisable to isolate these exposures and avoid impacting the insured's existing Directors and Officers policy. The companies will also purchase this cover to protect the proceeds of the offering.

The policy can be written and afterwards extended to any kind of offering of securities such as Primary or Secondary Offerings, Debt Offerings, and Private Placements. Furthermore it can also be extended to include cover for additional third parties assisting the Company in the offerings process, if specifically required.

CONTACT

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The Marsh FINPRO practice is a global team of over 1.100 colleagues, dedicated to financial and professional liability insurance coverages. Our staff includes specialists who can provide services around the exposures our clients face, such as corporate governance, cyber risk liability, professional liability, crime, and other areas of concern for our clients. Globally we place USD 12 billion of insurance premiums into the market, enabling us to innovate, negotiate, and resolve claims with superior outcomes for clients. FINPRO successfully manages the D&O and other management liability insurance lines for 63% of the Fortune 100.

In Belgium, our FINPRO practice counts 8 dedicated professionals, who place an excess of 50M EUR in premiums on the local market (2012 figures). Our Brussels office is recognized as a Center of Excellence for Financial & Professional lines.