

Distinctive. Choice.



# Managing M&A / Private Equity Risks in Asia

Professional & Executive Risks

# Risk and Insurance Services

## Overview

**As the number of Mergers, Acquisitions, IPOs and debt transactions begins to grow across Asia following the global financial crisis, investors and lenders are approaching these opportunities with an increased scrutiny of risk. A result of this is not only an increased focus on insurance due diligence, but also the mitigation of potential risks within a transaction, through the employment of specific insurance products.**

## Advisory Services

Insurance due diligence is today recognised as an integral part of the investment/lending due diligence process.

As part of the insurance due diligence process, JLT provides specialist commentary on the following key areas:

- Analysis of the client's existing insurance programme, specifically its adequacy and capacity to respond to potential risks
- Detailed reviews and advice on any uninsured or inadequately insured risks that may have an impact on the target post-closing
- Investigation and pricing of a post closing programme that addresses the specific exposures of Newco
- Advice on local insurance regulations and compliance
- Advice on (re)insurer financial strength
- Reviews of significant outstanding claims as well as past losses, with a view to identifying trends
- An overall assessment of the risk management philosophy within the target company, specifically the approach to risk and risk mitigation

The ultimate goal of insurance due diligence is to confirm that there are no potential insurance and risk related issues that would preclude the acquisition of a target.

## Transactional Services

### Warranty Insurance

Warranty and Indemnity or Representations and Warranties Insurance can indemnify either the buyer or the seller in cases where there is a loss arising out of the breach of a warranty in the Sale & Purchase agreement.

A buyer side policy will cover the buyer company against misrepresentations by the seller company and a seller side policy will cover the seller company against its own (innocent) misrepresentations. In the event of a claim, the buyer will claim against the insurance policy rather than seek legal recourse against the seller.

### Tax Indemnity

M&A transactions often involve complex tax structures particularly where the transaction includes corporate restructuring. Tax Indemnity insurance allows either the buyer or the seller to purchase coverage that can either reduce or eliminate the loss following the successful challenge of a tax treatment by the authorities.

### Litigation Buyout

In cases where pending litigation may prevent a transaction from proceeding (or where it has a material effect on the pricing of the deal), it is possible to purchase insurance to effectively 'ring fence' the potential liability.

### Environmental Liability

Environmental or pollution liability provides coverage with respect to

claims against environmental warranties in Sale & Purchase agreements. Insurance cover is available for various environmental and pollution risks including site-specific preexisting conditions, operational pollution risks and to cap remedial cleanup work costs.

## M&A Risks and Remedies

Insurance due diligence is today recognised as an integral part of the investment/lending due diligence process.

In addition to Advisory and Transactional services, JLT offers the following specific risk services to address M&A-related risks:

### Business/Asset Protection

- Property Damage
- Business Interruption
- Third Party Liability

The usual level and quality of asset and liability protection, which are commonplace in the rest of the world, are often not present in Asia.

A better understanding of risk exposures and subsequent enhancement of policy coverage will ensure greater balance sheet protection.

### Capital Risks

- Government Interference/Political Violence
- Lender's Policy
- Contract Frustration

Political risk policies tailored to individual circumstances protect lenders against events preventing the scheduled payment of debt, investors against events that may prevent them from benefiting from their investments and contract parties against non-performance.

Insured risks can include expropriation, political violence, currency inconvertibility/non-transfer/non-payment and related exposures.

### Terrorism & Special Contingency Risks

- Property Damage
- Business Interruption
- Public Liability
- Key Person Insurance
- Kidnap & Ransom

Since 911, there has been an increased awareness of the risk of terrorism among businesses investors, lenders and insurers. Terrorism is no longer covered by property 'all risks' policies and must be sourced separately.

## Risk and Insurance Services

Key Person and Kidnap & Ransom protects against the loss of human capital. Their effect on the organisation should not be underestimated.

In addition to covering the fees and expenses of the response consultants, a K&R policy also provides important financial protection to ensure that the client does not suffer any detrimental financial impact.

### Management Liability

This includes:

- Directors & Officers Liability
- Professional Liability

Due to the wide range of activities that they undertake, Private Equity funds and Venture Capital firms face a unique combination of exposures. Management Liability covers for firms involved in M&A transactions needs to address these exposures and in many cases the structure of funds means it is difficult to separate D&O from Professional Liability exposures.

M&A-specific blended policies combining traditional D&O cover with the specific needs of purchasers including Professional Liability and Outside Directorship Liability, using policy language that addresses the unique M&A environment are available.

### Prospectus Liability Insurance

The majority of D&O policies do not cover Prospectus Liability except by endorsement. A standalone Prospectus Liability policy not only covers the company and its directors, officers and the selling and controlling shareholders, but can also be extended to include the issuing underwriter and the advisors to the transaction.

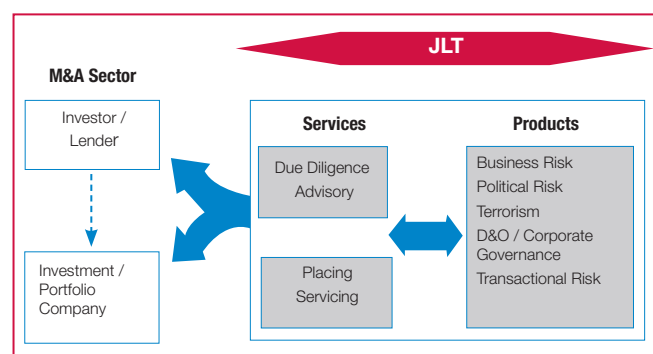
The policy covers the company against securities claims arising from the offering of its securities (equity or debt) through initial or secondary offerings.

A Prospectus Liability policy is a single premium multiyear policy of up to six years, often coinciding with statutory limitation periods.

### Portfolio Company Insurances

The objective of a successful portfolio company initiative is to maximise the leverage of the portfolio's insurance spend and at the same time deliver a programme that provides enhanced policy coverage.

Once engaged, JLT will ensure that all issues that were flagged during the due diligence process are addressed. In addition, we will focus on both income generation and cost savings, wherever these are feasible. One way that this can be achieved is through the introduction of JLT's Affinity experts, who will work with clients to deliver revenue enhancing products.



### About JLT Asia

Jardine Lloyd Thompson (JLT) Asia is a market leader in insurance and reinsurance broking, risk management consultancy and employee benefits services.

Our operations in Asia date back to 1836. Today, JLT Asia is one of the most experienced brokers in Asia, with over 700 staff in 12 locations - China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Macau, Philippines, Singapore, Taiwan, Thailand and Vietnam.

JLT Asia's technical abilities and expertise span a wide range of specialist areas:

- Affinity
- Aviation
- Captives
- Capital Risks
- Construction
- Employee Benefits
- Energy
- Interactive Technology Solutions
- Major Corporate Risks
- Marine (Cargo and Hull P&I)
- Professional & Executive Risks (ProEx)
- Property
- Reinsurance (Treaty and Facultative)
- Risk Management
- Small & Medium Enterprises (SME)
- Wealth Management

Our specialists are renowned for their innovative approach to developing integrated insurance, reinsurance and alternative risk transfer solutions.

Integrity is a hallmark of the JLT organisation. Our quality and compliance regimes are among the most thorough in the industry.

You can obtain more information about JLT Asia at: [www.jltasia.com](http://www.jltasia.com)

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