

Prospectus Liability/Public Offering of Securities Insurance (POSI)

Public Offering of Securities Insurance (POSI) or Initial Public Offering (IPO) Insurance protects directors, officers and selling/controlling shareholders against claims arising out of the public offering of shares or securities.

Directors and officers are often most at risk when the company undertakes a public offering of securities and issues a listing prospectus. The prospectus invites investors to purchase shares or other securities based on financial information and undertakings. In this event directors and officers (and other parties) can be personally liable for the contents of the prospectus and the accuracy of the information therein.

The majority of Directors & Officers Liability policies do not cover prospectus liability except by endorsement and this will generally attract additional premiums.

Potential areas for claims include the failure to disclose information, either in the prospectus or in any representations prior to the issuing of the prospectus as well as allegations of misstatements or misleading statements.

A standalone POSI/IPO 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 subsequent offerings.



- Covers the failure to disclose information, either in the prospectus or in any representations prior to the issuing of the prospectus (including investor presentations and road shows).
- Single premium for a multi-year policy which provides cover for up to six years to coincide with the usual statutory limitation period for bringing claims.
- Covers the costs and expenses of being required to attend an investigation, enquiry, administrative or regulatory proceedings.
- Coverage can be extended to include underwriters and advisors to the transaction.
- The insurance premium can potentially be included in the total transaction cost of the listing (rather than a business cost).

POSI or IPO Insurance covers directors and officers, controlling shareholders, selling shareholders and, in respect of securities claims, the entity.

Key policy benefits

- A POSI/IPO policy is a transaction specific policy covering liabilities relating to the listing. The limit of liability is entirely separate to any existing Directors & Officers Liability coverage.
- Covers directors and officers, controlling shareholders, selling shareholders and, in respect of securities claims, the entity.

Customised
advice & service



Prospectus Liability/Public Offering of Securities Insurance (POSI)

Costs and liability limits

POSI/IPO policies are bespoke programmes, the cost of which, very much reflect the individual risk dynamics involved in the transaction and the liability limit purchased. The premium is additionally influenced by industry sector, the track record of the business, choice of exchange (main board or junior market), jurisdiction and amount of 144a exposure.

The process of determining the appropriate limit for POSI/IPO insurance has always been difficult. There is no methodology that eliminates the uncertainty associated with this process. Historically however, our clients have adopted four main decision criteria:

- A nominal amount of cover to demonstrate a small degree of comfort for the directors and officers for defence costs cover
- A peer group analysis of similar companies, although in reality, clients will often strike a balance between cost and limit
- A limit that covers x% of market capitalisation
- To purchase as much limit as available in the market so that directors and officers are protected to the fullest extent possible

Procedures for obtaining POSI/IPO premium indications

In order to obtain firm terms for POSI insurance, we would ideally require the following information:

- A completed POSI proposal form submitted with:
 - All offer or listing documents, including any amendments thereto
 - A copy of the final particulars in connection with the public offering of securities
 - A copy of the underwriting agreement, which sets forth the indemnification of the proposer in connection with the public offering of securities
 - Latest reports and accounts
 - Confirmation of the amount of 144a exposure
 - Confirmation (or estimate) of the amount to be raised

However, for pricing estimates JLT would be able to commence work with higher level information. Generally it is also prudent to engage with insurers as early as practicable in the IPO timetable.



Coverage can be extended to include underwriters and advisors to the transaction.

For further information please contact:

Ali Chaudhry
Tel: +(852) 2864 5500
Email: Ali_Chaudhry@jltasia.com

William Seccombe
Tel: +(65) 6411 9371
Email: William_Seccombe@jltasia.com

JLT Risk Solutions Asia Pte Ltd
1 Raffles Quay #27-01
One Raffles Quay - North Tower
Singapore 048583
Tel: (+65) 6333 6006
Fax: (+65) 6333 8180

www.jltasia.com

© 2010 Jardine Lloyd Thompson Asia. All rights reserved.