The importance of insurance due diligence to corporate transactions

Understanding the insurance policies and protections a company has in place is fundamental to assessing risk and should always form part of any due diligence during mergers, acquisitions or investments. Insurance is an asset and if the insurance amounts, terms, quality or types of insurance are inadequate, its overall value is reduced.

Our established insurance and risk team provide comprehensive support and advice to companies across a range of industry sectors looking to make an acquisition or divestment, ensuring issues are promptly identified and resolved.

What are the benefits to you?

Our insurance due diligence process can help you:

- Decide whether to proceed with a transaction
- Assist with validating the purchase price of the company
- Enhance your insurance protection
- Reduce insurance-related risks.

Protecting directors and officers:

We advised directors in connection with the sale of their business on arrangements in respect of "run-off" insurance under Directors & Officers (D&O) insurance. This was to ensure that past and present insured directors and officers had the benefit of coverage for claims made over the following six years for alleged "wrongful acts" committed prior to transfer.

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Our insurance due diligence service includes:

Mergers and acquisitions

- Establishing key insurance actions – pre and post completion
- Identifying and reporting on seller's risk exposures
- Reporting on identity of policyholders/named insureds (possibly the seller's suppliers, customers, or past/present corporate affiliates) under each policy and their interests. These provisions may place the seller's insurance assets at risk
- Considering third party policies where the seller is a named insured. This is critical to ensuring that the post-transaction entity retains similar named insured status
- Analysing insurance covers and exclusions to ascertain if policies (e.g. liability, property, motor, D&O, errors and omissions, cyber etc) provide adequate cover against key risk exposures. It will also be important to consider historical policies where the business is one that could be subject to long tail liabilities, such as asbestos contamination
- Identifying gaps in cover
- Considering if any of the policies have a retroactive component, such as the application of a retroactive premium which the buyer might be responsible for paying post completion
- Considering whether change-in-control provisions will result in automatic termination of cover
- Assessing whether independent director liability cover is required
- Verifying adequacy of existing policy limits
- Reporting on self-insured retentions
- Stress testing the proposed insurance against risk profile
- Establishing cost of insurance programme in place
- Assessing/reporting on seller's claims experience
- Assessing pending claims (potential exposures/ valuations) and whether the relevant insurance will follow the liabilities
- Considering whether potential claims have been properly reported and are adequately covered
- Considering and reporting on risk mitigation strategies
- Ensuring that the benefits of insurance policies are properly transferred.

Sale

We prepare reports for the seller (pre-transaction) which provide information on:

- Insurance related risks
- Insurance covers in place
- Claims experience
- Pending claims, assessment of potential exposures and valuations.

We also:

- Review the wording of insurance provisions in the sale agreement
- Where applicable, review retained business insurance covers and limits to ensure that residual business risk is addressed
- Consider the requirements for run-off insurance
- Consider the requirement for cover against claims made by the buyer alleging misrepresentation or breach of warranty in the transaction agreement.

Pending claims on a target company:

We acted for a construction company in identifying, analysing and reporting on pending claims (coverage, assessment of potential exposure, valuation) of a target company, whether the claims had been properly reported, whether insurers had confirmed cover and the status of each claim.

Find out more:

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