

Insurance Solutions In A Distressed Market

In the current economic environment, many companies are under tremendous financial stress and face difficult decisions regarding their businesses, including restructuring, divesting assets or seeking protection under the bankruptcy laws.

Buyers and sellers of distressed assets and/or troubled companies face unique risks. Such transactions can be challenged and even unwound after they close. Unknown claims can succeed to the buyer or attach to the purchased assets. Procedural defects in the sale process can expose both parties to liability and expense.

Whether it is the personal liability of the trustee of a liquidating trust, a board of directors, a restructuring officer/turnaround team, or the buyer or seller of distressed assets, Marsh has developed insurance solutions that can mitigate these risks.

Solutions for Distressed Mergers and Acquisitions

Solution	Covered Risk
Successor Liability Insurance	Designed to insure buyers against unintended succession to liabilities of selling entity. Covers claims based on common law and fraudulent transfer theories.
Representations and Warranties	Designed to protect seller or purchaser against actual or alleged breaches of representations made in the sale agreement. Particularly relevant if recourse against a seller is uncertain or not viable due to bankruptcy or insolvency.
Tax Insurance	Designed to insure against the financial loss incurred if contingent tax liabilities (including interest and penalties) are assessed by taxing authorities. Insurable issues include, but are not limited to, executive compensation, net operating loss restrictions, tax-free spin offs or reorganizations and cancellation of indebtedness.
Fraudulent Transfer	Designed to protect buyers or sellers of distressed assets against creditor/trustee claims of fraudulent transfer.
Protection for Sales under Article 9	Designed to provide buyers or sellers of distressed assets against claims of procedural infirmity, successor liability and fraudulent transfer. Intended to provide similar title and other protections to buyer as those received in sales conducted under the United States Bankruptcy Code.
Protection for Litigation and Known Contingencies	Designed to insure pending or threatened litigation or other contingent liabilities that hinder a sale or capital infusion.

Insurance Solutions In A Distressed Market *(continued)*

Solutions for Boards of Directors, Bankruptcy Trustees and Restructuring Officers

Solution	Covered Risk
Bankruptcy Trust/Trustee Liability Insurance	Designed to protect bankruptcy trustees in the event a claim is brought against the trust and/or the individual trustees.
Restructuring Officer Insurance	Designed to protect restructuring officers/firms against claims by creditors and shareholders.
Investment Bank Advisory Indemnity Insurance	Designed to protect Investment Banks against claims brought by third parties in connection with its M&A/Restructuring advisory services provided to financially distressed clients.
Errors and Omissions and Directors and Officers Insurance	Designed to protect directors and officers from claims brought by creditors, shareholders or clients, either for mismanagement (D&O) or professional malfeasance (E&O).
Run-off Insurance for Companies filing under Chapter 7	Designed to protect directors and officers (or their equivalents) for six-year period for claims brought by creditors, shareholders and employees (for Employment Practices matters).

For more information, please contact:

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