Distressed Transactions

Securing investments and enhancing value to improve outcomes for distressed mergers and acquisitions and financings

Empower Results®

Challenging times can present opportunities for those professionals looking in the right places with appropriate valuation and risk controls in place.

After many years of growth, the economic shocks of 2020 are bringing a renewed focus on mergers and acquisitions (M&A) and transactions surrounding distressed businesses. These important considerations include financings to create enhanced liquidity, reorganizations to focus on core businesses and improve balance sheets and execution of asset sales on acceptable terms. Transaction Liability insurance solutions, such as representations and warranties insurance, tax insurance and litigation risk insurance, have become a standard component in today's M&A market, as well as a means through which companies can add certainty to contingent risk outcomes. As we move into an environment where distressed deals, including both non-bankruptcy and court-approved transactions, become more prevalent, insurance solutions regularly used for M&A, financings and non-transactional situations provide a compelling value proposition to increase asset values and streamline matters for the benefit of all parties involved, including buyers, sellers and creditors.

Newer solutions that address risks and optimize intellectual property have opened opportunities for intangible-asset-rich businesses to navigate the distressed environment with cost-effective solutions that help secure liquidity, manage risk, and improve transaction execution.

Representations & Warranties Insurance

The use of representations & warranties insurance in distressed M&A can facilitate the transfer of risk and post-closing liabilities by helping protect buyers from losses resulting from a breach of sellers' representations and warranties and eliminating the need for a related indemnity or escrow holdback by seller. This approach allows buyers and sellers to negotiate a traditional purchase agreement with typical representations and warranties, providing buyers with the peace of mind that the value of the deal will not be eroded after the close, while still permitting sellers and creditors to exit with the sale proceeds at closing.

Enhance Protection

Provide buyer with a creditworthy counterparty where seller indemnification is impractical or impossible.

Increase Cash at Closing

No requirement for a seller indemnity or representations & warranties survival, resulting in greater liquidity by allowing seller to distribute 100% of proceeds.

Increase Pool of Bidders

Encouraging the use of representations & warranties insurance in an auction process may generate interest from acquirers who would not typically be comfortable buying distressed assets.

Mitigate Risk

Many risks are not extinguished by a "free and clear" order under the bankruptcy process, such as first-party issues like financial statements and sufficiency of assets breaches and certain third-party claims relating to product liability, intellectual property and labor matters. representations & warranties insurance can help address these concerns for buyers.

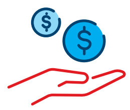
Tax Insurance

Tax insurance, which is often referred to as the insurance version of a private letter ruling, is a trusted instrument to help achieve certainty with respect to a contingent tax liability. Simply put, if the intended tax treatment is successfully challenged by the Internal Revenue Service or a foreign, state or local tax authority, the insurers will, subject to the terms of insurance policy, pay the covered tax, interest and penalties, and certain contest costs on an after-tax basis. Tax insurance can help facilitate a wide range of transactions surrounding distressed businesses, such as financings to create enhanced liquidity, reorganizations to focus on core businesses and shore up balance sheets and asset sales out of bankruptcy. The treatment of tax issues, tax reserves, and tax assets, and obtaining certainty surrounding the outcome, can have a central role in the strategy to maximize asset values. Tax insurance is a vehicle to help obtain that certainty for the benefit of lenders, creditors, investors and owners.

Some examples of relevant tax risks in a distressed scenario include:

- Interest deductions
- NOL carryforwards
- Tax refunds
- Cancellation of debt and debt restructuring
- Worthless stock deductions
- Reorganizations and recapitalizations
- Intercompany transactions
- Employee benefits issues
- Credit enhance tax indemnities
- Neutralize Fin 48 reserves

Tax insurance can help facilitate a wide range of transactions surrounding distressed businesses.



Financings to Create Enhanced Liquidity

Reorganizations to Focus on Core Businesses

Shore up Balance Sheets and Asset Sales out of Bankruptcy

Litigation Risk and Judgment Preservation Insurance

The risk of significant or catastrophic loss from pending litigation can pose a challenge to many distressed situations, eroding shareholder value, forcing reserve requirements that can negatively impact cash flow, or preventing a merger or acquisition from closing.

On the plaintiff side, even after succeeding in winning a significant judgment in court or arbitration, businesses must protect against the risk that the judgment will be partially or completely reversed on appeal, or that the awarded damages will be reduced.

Litigation risk insurance is a critical tool to help protect businesses from the risks of catastrophic judgments and preserve the benefits of favorable judgments.

Aon's Litigation Risk Insurance Solutions include:

- **Defense-side catastrophic judgment insurance**, which helps businesses ring-fence litigation-related risks, enabling them to move forward with M&A deals, financings, or other transactions, and permitting them to otherwise operate unimpeded by the specter of a potential future catastrophic judgment
- **Plaintiff-side judgment preservation insurance**, which allows businesses that win significant judgments at trial, on summary judgment, or in arbitration to "lock in" some or all of a damage award pending appeal, thereby reaping immediate benefits from judgments that otherwise might take years to become final, and that may ultimately be overturned.

Intellectual Property Solutions

Intellectual property can be a critical source of value and liquidity for companies that invest in innovation. At the same time, intellectual property can be a meaningful source of risk, particularly in a recessionary period when patent litigation tends to rise. Aon delivers a suite of intellectual property solutions focused on helping companies seize opportunities to access liquidity in the capital market, optimize transaction execution in the M&A market, and manage intellectual property litigation risk – all heightened priorities in a distressed market environment.

Aon's Intellectual Property Solutions include:

Collateral Protection Insurance

Enables an intellectual-property-rich company to secure non-dilutive debt financing backed by its intellectual property. For the lender, the collateral protection insurance policy protects the value of the borrower's covered intellectual property assets, enabling the portfolio to serve as loan collateral. For the borrower, collateral protection insurance unlocks the value of a company's intellectual property assets as a source of low-cost capital.

Quality of IP (QoIP)

A report that delivers intelligence around a company's intellectual property assets in support of a strategic transaction or portfolio review. QoIP catalogs the subject's intellectual property assets, analyzes the coverage, opportunities and risks associated with the portfolio, and generates insights intended to help clients articulate and realize the value of their intellectual property.

Intellectual Property Liability Insurance

Offers protection against certain costs of inbound intellectual property litigation. Companies can use intellectual property insurance to help augment risk management practices in periods of heightened litigation risk, which include recessionary periods and transaction scenarios where a change of ownership may attract the attention of potential plaintiffs.

Contact Information

If you are interested in obtaining coverage, contact your Aon broker.

For additional information about the solutions described:

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Intellectual Property Solutions

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About Aon

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