Finlex

Public Offering of Securities Insurance (POSI)

What is insured

Examination of liability issues, defence against unjustified claims and settlement of justified claims

Insurance cover is provided for claims for damages against insured companies and/or insured persons due to incorrect or incomplete information in the securities prospectus (insurer). The task of the POSI insurer is to examine the question of liability, defend against unjustified claims against the insured and pay compensation in the event of justified claims.

Co-insurance of preparatory acts possible

Insurance cover is provided as standard for incorrect or incomplete information in the prospectus. If required, preparatory activities and investor approaches in roadshows (including pilot fishing, etc.) can also be insured.

Who is insured

The group of insured persons is determined on an individual basis

The main parties involved in a capital market issue are:

- Issuing companies
- Management of the issuer
- Syndicate banks
- Auditors
- In the case of IPOs and SPOs: the selling and controlling owners

What else should you know

POSI is a project policy

- The premium is payable as a one-off premium for the entire term
- The term should be aligned with the limitation period (usually 12 years)
- The sum insured is available only once for the entire term and thus for all claims

D&O insurance: observe notification obligations and don‘t forget to adjust

Capital market activities also significantly change D&O risk. It is essential to observe disclosure obligations and adjust the current D&O insurance, especially when securities are placed for the first time. A company‘s capital market follow-up obligations can usually be covered by the issuer‘s current D&O insurance.

Placing the risk

Initial meeting & exploratory phase

First, an exploratory meeting takes place to learn more about the transaction and to clarify liability and transfer options. Before any confidential information is exchanged, an NDA (non-disclosure agreement) is signed, which the insurers will also sign at a later stage.

Tender and negotiation phase

Once initial information (draft prospectus, annual reports, issue amount, planned date of initial listing, etc.) has been provided, the tendering phase begins. The market is surveyed extensively, while the scope of insurance is defined in parallel with the issuer, the accompanying law firms and other parties involved. The terms and conditions are actively negotiated.

Roadshow phase

At this point, the structure of the insurance programme should be finalised as far as possible so that, when the roadshow begins, provisional cover can be placed for all parties involved.

Ideally, only one reservation should remain at this point: the execution of the issue itself!