



# Public Offering of Securities Insurance / Charting your way through





# Charting a course to an IPO

“Going Public” can be an appealing strategy but we know, as a major insurer of Initial Public Offerings (IPO), that the journey can be filled with challenging twists and turns. This brochure looks at the depth and intensity of some of the risks facing companies and individuals involved in an IPO. It also highlights the protection that AIG can provide under its Public Offering of Securities Insurance policy (POSI) together with what our underwriters would consider when assessing your risk.

### The Destination

You decide an IPO is the best option for your company. We look at the capital increase or a selling shareholder and the use of proceeds (investment, refinancing etc).

### The Team

You select a team of professional advisors; lawyers, accountants, investment bankers, etc. We look at the underwriting agreement (hold harmless) and your advisors’ track record.

### The Exchange & jurisdiction

You choose the best market for you and your shareholders. We look at the jurisdiction and exchange and the levels of registration, exemption and disclosure.

### The Deal & Prospectus Structure

You prepare a prospectus with your team describing the risks and opportunities for your shareholders. We look at the price and size of the offering, the relevance of the risk factors, what guidance you provide, and the controls and experience of your board members and executive team.

### The Roadshow

You’re at the roadshow stage of your IPO so will be delivering your message to investors and analysts. We look at how your prospectus and your presentation are aligned, and the safe harbour preceding your forward looking statements.

Deep exposures



Who’s liable?



Rules and regulations



AIG Protection



Claims scenarios






## Deep Exposures

### **A new world of deep exposures**

By raising capital from the public, a company is creating new relationships, and opening up potential liabilities which are closely scrutinised by regulators.

Investors who base their investment decisions on a prospectus may claim the full value of their loss if the information in the prospectus is proved to be wrong.

A POSI policy has limits tailored to the specific transaction, rather than relying on a D&O policy.

### **The exposures can last a long time**

Actions against the people responsible for prospectuses can be brought years after the offering, up to the statute of limitations in the jurisdiction.

A POSI policy (unlike an annually renewable D&O policy) is set up to provide cover for the duration of the transaction's exposures in the relevant jurisdiction, for instance six years in the UK and three years in the US.







## Who can be liable?

### The people responsible

A prospectus must explicitly confirm that the people responsible for it have taken reasonable care to make sure the information is true.

Any of the following who have responsibility for the prospectus can be liable for its content:

- The company issuing the securities
- The company directors at the time the prospectus is published
- Any future directors named in the prospectus
- Anyone who is stated as accepting responsibility in the prospectus
- Anyone who authorised the contents of the prospectus.

### What can they be liable for?

People responsible for the prospectus may face civil and criminal liabilities if the prospectus is inaccurate, incomplete or misleading, particularly if they can't prove that proper care was taken preparing it.

People responsible for false representation in a prospectus may also be liable under the Fraud Act 2006, punishable by a fine or imprisonment of up to ten years.

## Rules and regulations

### Detailed rules have to be followed on prospectus content

Under the Financial Services and Markets Act companies that want to offer their securities to the public, or trade their securities on a regulated market like the stock exchange, have to issue a prospectus. There are detailed rules about what has to be in a prospectus in the Prospectus Regulations (which are supplements to an EU directive) and The Prospectus Rules from the FSA.

A prospectus must contain enough information for the public to assess the risks and benefits of investing in the securities – and specifically assess the company's:

- Financial position
- Historical results
- Future prospects
- The company's rights attaching to the securities being offered.

### Other important requirements on the information in the prospectus:

- It must relate to the particular nature of the company and its shares
- Information known by the directors that may impact the future performance of the company must be disclosed
- Information that could be obtained by making enquiries must be disclosed
- Omitting material facts can be as prejudicial as providing false or misleading statements
- There must be a summary in non-technical language of the key facts and risks
- If any material information changes between FSA approval and trading, the company must publish a supplementary prospectus
- Anyone responsible for the prospectus must notify the company and sponsor of any new factor or inaccuracy as soon as they become aware of it.





## AIG protection



An AIG POSI policy offers protection against some of the risks of ‘going public’. Policy highlights can be found below, but for more detail, commentary and an online policy tour visit the POSI area of our website [www.aig.co.uk](http://www.aig.co.uk)

### Contract certainty

For maximum clarity and contract certainty, our POSI policy explicitly covers an offering’s potential liabilities including defence costs, damages, settlements, regulatory investigation costs, aggravated damages, interest on judgements and awards and multiplied portions of multiplied damages.

### Cover for everyone involved in the transaction

The wide range of interests involved in an offering can all be covered under our POSI policy including: current and prospective directors, shadow directors, non-executive directors, selling shareholders, the company, as well as offer underwriters to the extent that the company or directors have to indemnify them.

### Automatic cover for follow-on offerings

We provide automatic cover (full aggregated limit) for any follow-on offerings, including roadshows, within 12 months of the initial offering and up to 25% of the initial amount raised. This is a valuable facility for projects such as exploration initiatives that may require multiple offerings.

### Cover that lasts as long as the transaction

Our POSI policy is purchased and tailored specifically for the individual transaction. Limits, conditions and cover for additional insureds are all structured around the offering’s particular requirements and cover lasts as long as the exposure (the statute of limitations in the jurisdiction – up to six years in UK).

### “Ring-fenced” cover for non-executive directors

To make sure that non-executive directors have cover in place, even if the main policy limits are eroded by a large POSI claim, we give an additional “ring-fenced” limit of cover up to £1m for each non-executive director. This is applied automatically and there is no need to notify us if a new non-executive director is appointed to the board.

### Roadshows and negotiations

We make sure that any statements made directly in connection with the public offering during a roadshow are covered. Our POSI policy covers “any direct representations or presentations” before the actual closing of the application of purchase of the securities.

Did you know that the premium of the POSI may be deducted from the proceeds of the offering, thereby enabling companies to efficiently manage their insurance budgets?



#### **Crisis response**

We cover crisis management fees up to £100,000 to protect the offering against potential crises that could threaten it. These include regulatory “raids” (or a public announcement about one), the unexpected death of an executive, cyber attacks on the issuer’s computer systems and the issuer’s loss of a major customer or contract.

#### **Emergency pre-approved defence costs**

To make sure the policyholder’s defence isn’t undermined by any delay in contacting us about a potential claim, our policy provides “pre-approved” defence costs. Up to 10% of the overall policy limit can be incurred by the insured for professional advice and defence should they be unable to contact us.

#### **Data protection**

Recognising the increasing prevalence of data protection legislation, we cover the issuer and insured persons against any breaches of data protection and privacy laws around the world in connection with the issuance of the prospectus, up to a sub-limit of £50,000.

#### **Non-avoidance**

For additional reassurance our POSI policy is non-avoidable (following accidental non-disclosure of material facts for example). The only times when we might seek to avoid or rescind the policy are when there has been proven deliberate and fraudulent misrepresentation or non-disclosure by the insured.

#### **Portable cover**

The terms of a POSI policy are inalterable once the terms to cover the offering are in place, which means that even for claims arising years after the issuance of the prospectus, former directors will still be covered just as they would have been at the time of their employment.





## Claims scenarios

Some of the following claims scenarios involve investigation costs and potential criminal proceedings. Neither of these are unusual in circumstances where the financial amounts claimed can be very high. Investigation costs of individuals can easily reach seven figures, whilst criminal proceedings can, in a worst-case scenario, result in a loss of liberty for the defendants.

To illustrate some of the circumstances that could lead to a POSI claim, the scenarios chosen are loosely based on actual claims, although details have been changed to ensure confidentiality.

The scenarios show situations where our POSI policy could respond with cover for companies' and individuals' liabilities from prospectuses including; legal and defence costs, damages, settlements and awards.

### Poor quality assets

A manufacturing company initiates a public rights offer, but its prospectus fails to adequately report the poor quality of their assets. Shareholders who purchase rights on the basis of this information are disappointed when the share price falls following listing.

Shareholders take legal action against the company claiming that it failed to ensure that the prospectus information was not misleading and that it failed to ensure that the prospectus did not omit any information reasonably required for a shareholder to make an informed assessment of the company's financial position.

### Frozen proceeds

A services company is alleged to have materially overstated its financial position in the issue of its initial public offer prospectus. The regulator obtains an interim court order to freeze the funds raised in the offering. During this time the regulator conducts investigations and concludes that investors in the company should be compensated for the financial losses they sustained for purchasing shares on the basis of the misleading information. The settlement costs reach in excess of £100m.

### Redundancy programme

Shortly after its initial public offering of securities, a manufacturing company announces a major redundancy programme. The company's share price falls straight after the announcement, resulting in an immediate loss of value to many of the investors in the IPO. Investors sued the company alleging non-disclosure of this material information in the prospectus and after two years of civil litigation the manufacturer agrees a settlement figure in excess of £10m.

### Missed profit targets

A construction company issues a prospectus for an IPO which includes financial forecasts for the forthcoming year. Following the float the company falls well short of its forecasts, issuing several profit warnings and the share price falls dramatically. Investors who purchased shares on the basis of the prospectus pursue legal action to recover their losses, citing, amongst other things, the company and its directors' misleading and deceptive conduct.

### Regulators tipped off

A far eastern company withdraws its public rights offer shortly before it is due to close after regulators receive a complaint that the company had failed to disclose that it was in substantial legal disputes over terminated contracts. Its directors and other individuals involved in preparing the prospectus face investigation, legal action and possible civil and criminal liabilities for any false and misleading statements made in its prospectus.





Collective action legislation in relation to securities litigation is spreading in Europe , exposing companies to potentially large settlements and high legal costs. High profile cases by investors on the basis of misleading prospectuses, against Dutch and German companies in the oil and communications industries, are testament to this new environment.



## POSI at AIG

### Underwriting experience

Our UK underwriters have provided dedicated cover for over 200 IPOs in the last five years. As well as UK listings we have the expertise to provide cover for US IPOs for foreign issuers too.

AIG has worldwide capabilities and can underwrite from any country where we are licensed to operate (and we have the largest owned global network of any insurance company).

### Claims expertise

The POSI underwriting expertise is underpinned by the strength and depth of our financial lines claims team – consisting of 9 dedicated handlers based within the Financial Lines department in London, and with several decades of combined experience between them. The team have personally dealt with several high profile crisis exposures that have impacted the financial market of recent years.

Our strong internal UK network allows us to provide our brokers and clients with a dedicated and collaborative service.

More details can be found at: [www.aig.com](http://www.aig.com)

In the broker section of the website within the financial lines pages you can find more detailed information including policy details and product profiles.



## 1000 countries and jurisdictions



### Unmatched global presence

As a company AIG aims to deliver excellent service across a large global network. We currently serve clients in over 130 countries and jurisdictions.

### Our Values

We see ourselves as enterprising but measured, delivering insurance solutions that are effective as well as innovative, and listening carefully and working transparently with our business partners and clients. At the heart of everything we do is an unshakeable commitment to fairness and respect.

We meet client needs with confidence because we're driven by a long history of industry leadership and expertise.

For more information, including links to sample policy wordings, please visit our website [www.aig.co.uk](http://www.aig.co.uk) where you can find details of POSI and our other financial lines products.

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Additional information about AIG can be found at [www.aig.com](http://www.aig.com) and [www.aig.com/strategyupdate](http://www.aig.com/strategyupdate) | YouTube: [www.youtube.com/aig](http://www.youtube.com/aig) | Twitter: @AIGinsurance | LinkedIn: <http://www.linkedin.com/company/aig>.

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