

# CORPORATE DIVESTMENTS



When a company is selling all or part of its business, considering insurance matters and insurance based solutions that address specific transaction-related issues will help avoid the potential for purchase price disputes, as well as minimising the likelihood of issues arising after completion. Marsh can help you do this.

## SUCCESSFUL DISPOSALS NEED PLANNING

### VENDOR ASSISTANCE

Aims to identify key carve out and separation activity, including potential areas which may impact value, together with solutions to address them.

Vendor assistance can help to:

- Identify potential transaction issues and anticipate purchasers' areas of concern, for example what access will the disposed entity have to its former parent's insurance assets post-separation for assumed liabilities?
- Consider the best strategy in respect of outstanding and incurred but not reported losses.
- Decide what information you provide to potential purchasers and ensure it is consistent and robust.
- Counter purchase price disputes on insurance-related issues.

- Mitigate or remove issues which buyers could use to negotiate price reductions.
- Consider the use of insurance to solve any specific warranty, tax, litigation or environmental issues.
- Ensure the sale and purchase agreement is tightly drafted in respect of insurance matters.
- Identify any separation costs on your retained business.

Vendor assistance can be delivered in isolation or as a precursor to vendor due diligence.

### VENDOR DUE DILIGENCE

Marsh can provide an independent and objective due diligence report on the business to be disposed. This report is intended to be shared with bidders and can be relied upon by the successful purchaser. Whilst the scope of work is tailored for each transaction, it is important that all bidders are in possession of the information necessary for them to bid with confidence. The findings from the vendor assistance work can be included as required.

## ADVANTAGES

Spending time identifying potential issues in advance, and resolving them before the sale, can avoid a costly and distracting dispute both pre or post completion and will help:

- Validate perceived value drivers and likely negotiating issues up front.
- Maximise the value of bids and reduce the erosion of value after completion, for example due to unforeseen warranty claims or uninsured liabilities.
- Bidders get fast access to information, enabling you to receive more credible bids early on in the process.
- Increase the speed of a sale by avoiding multiple buyers asking the same questions.

## TRANSACTIONAL RISK INSURANCE

### THE BENEFITS OF WARRANTY AND INDEMNITY INSURANCE

Warranty and indemnity (W&I) insurance provides protection from a breach of the transactional warranties due to innocent misrepresentations or innocent non-disclosure. It can be structured on the sell-side or the buy-side of a transaction. Marsh can advise on and create innovative and entirely bespoke W&I cover for transactions. Good reasons for arranging this cover for disposals include:

- Protecting the warrantors and enabling a disposal with a seller-side policy:
  - Reducing the impact of contingent liabilities on future plans
  - Assisting board sign-off of the recourse package

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- Facilitating a clean exit with a buyer-side policy:
  - Significantly reducing the cap on liability the seller is required to provide to the buyer, often to around 1% of the transaction value, with the buyer insured in excess of this limited cap.

### RING-FENCING OTHER TRANSACTIONAL RISKS

Marsh can also advise and place covers for a range of other issues that can arise in the course of a deal, including:

- Tax liability insurance, which provides cover for contingent tax liabilities that present material risk and which could hinder the completion of a transaction if not managed carefully.
- Litigation buy-out insurance, which can provide cover for defence and settlement costs or the cost of any adverse ruling of a piece of litigation. This can offer certainty to the transaction and resolves an impasse in negotiations.
- Insurance in relation to other specific known matters such as environmental or contractual dispute indemnities.

## PRIVATE EQUITY AND M&A PRACTICE

The Private Equity and M&A Practice offers a highly experienced team to help clients involved in acquisitions, mergers, joint ventures and divestments. We work closely with your risk management team, providing risk and insurance advice to complement the traditional financial, legal and commercial due diligence provided by a deal advisory team.

**For further information please contact your local Private Equity and M&A Practice representative :**

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