

Marsh FINPRO's Turnaround and Restructuring Practice



Market turmoil and macroeconomic pressures present unique challenges that contribute to distress for some companies. These businesses often report actual or potential loss of revenue and face increased financial hardship. Some may even be pushed into bankruptcy or restructuring.

These organizations can expect many questions and challenges, including how to manage their insurance programs. Securing robust coverage that meets the unique needs of a business undergoing bankruptcy or restructuring — at competitive pricing and with appropriate limits and terms and conditions — may be difficult without the help of experienced advisors.

Specialists from Marsh's dedicated Turnaround and Restructuring Practice, part of our Financial and Professional Liability (FINPRO) Practice, can help you throughout the bankruptcy or restructuring process, serving as your trusted advisor every step of the way. Our team includes senior brokers with an average of 20 plus years of knowledge and experience placing directors and officers (D&O) liability insurance for companies going through bankruptcy and restructuring.

Having helped hundreds of distressed companies, our specialists can effectively guide you through this difficult process, anticipating critical questions and delivering proven solutions to help you protect your corporate and personal assets and achieve peace of mind. Our professional team has experience with all manner of bankruptcy and restructuring transactions, including pre-packaged or pre-negotiated filings, distressed asset sales, and liquidations.

Diagnosing your insurance needs

We help distressed companies in a number of ways, starting with a bankruptcy diagnostic that can be completed as soon as your company exhibits signs of distress. Using the diagnostic, we can review key metrics that can affect how insurers underwrite and price your coverage, including your financial statements, future earnings, cash flow, debt, lender financial covenants, and ability to make future debt/interest payments. We can then advise you on how to secure robust coverage that specifically addresses your restructuring or bankruptcy risks.

Protecting your personal assets through D&O insurance

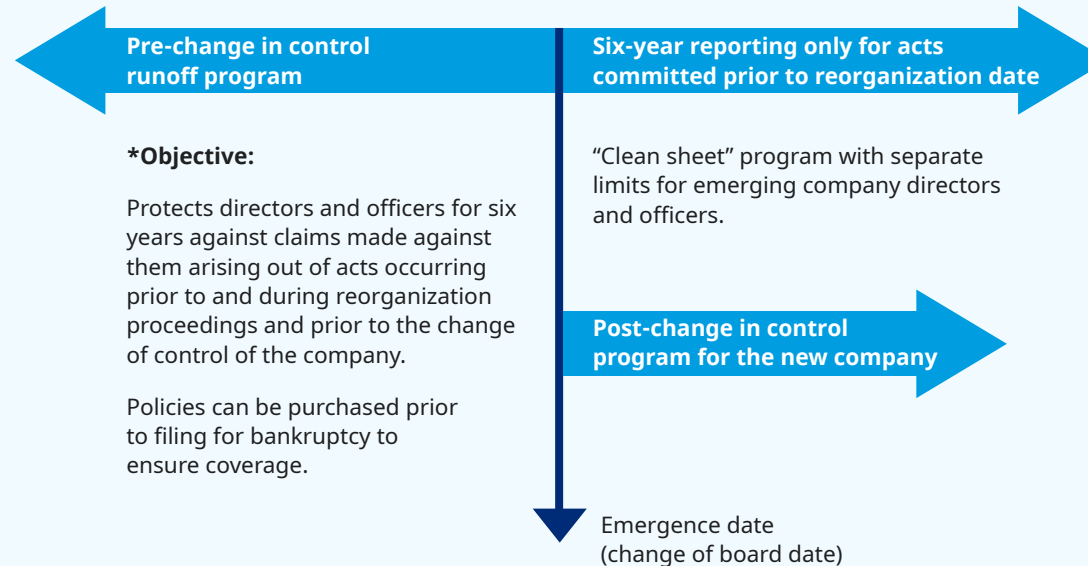
As the bankruptcy and restructuring process continues, we will review your D&O program. A D&O policy becomes especially meaningful during insolvency, when a company may be unable to indemnify its senior leaders. However, this is also a time of increased risk for D&O insurers, and companies will need to make sure they are presenting their risk effectively.

Marsh has pre-negotiated coverage tailored to bankruptcy risks with leading D&O insurers and a global presence so we can help you:

- **Review your policy forms for inadequate coverage**, with a special focus on restrictive endorsements. We can also help you pursue important protections and identify potentially problematic policy language.
- **Peer benchmark your limits** against our vast client database and place additional limits if necessary, including for Side A non-indemnifiable coverage.
- **Align foreign domiciled individuals' and subsidiaries' programs** with local bankruptcy and insurance indemnification laws by coordinating with our Multinational Practice colleagues who can help you remain compliant with applicable local insurance regulations.
- **Protect directors and officers** during the bankruptcy or restructuring process and after they leave the company through a multiyear runoff policy (generally covering six years).
- **Consider coverage for newly appointed restructuring officers**, which is often purchased during bankruptcy and restructuring proceedings.

Building an effective runoff insurance program

A D&O runoff policy covers directors and officers for any claims arising out of their acts occurring prior to the company's change in control. Runoff insurance for Chapter 7 filings is essentially the same, but normally has an added wind-down provision to cover activities by liquidators, including managing remaining operations and selling off company assets.



Engaging other valuable insurance solutions

Beyond D&O coverage, our team of specialists can help you manage a variety of other insurance products designed to address risks for restructuring companies. These include:

- Transactional risk insurance solutions to de-risk mergers and acquisitions (M&A) transactions if your company is selling assets.
- Policies to address third-party concerns around representations and warranties, litigation liabilities, tax issues, environmental issues, successor liability, or fraudulent conveyance risk.
- Coverage to backstop tax opinions or known loss scenarios.
- Employment practices liability insurance to protect your company from claims made by employees terminated as a result of your bankruptcy or restructuring.
- Fiduciary liability insurance to protect against risks arising out of underfunded pension plans.
- Insurance to quantify known exposures and eliminate the need for contingency trusts, which can help unlock excess cash collateral posted to insurers and provide immediate access to funds.

Meeting your post-restructuring insurance needs

As your company emerges post-bankruptcy, potentially with a new capital structure, our team can provide a comprehensive analysis of all of your insurance programs to help you determine appropriate coverage and limits.

Resolving complex claims along a continuum

D&O claims can be highly complex, and even more so if related to litigation filed as a result of a corporate bankruptcy. Plaintiffs typically include shareholders, creditors, lenders, bondholders, and employees. Our team of experienced claims advocates can help you avoid protracted disputes and assist you in driving positive claim results for the duration of your runoff policy.

Throughout the claims process, executives who may be preoccupied with bankruptcy proceedings can benefit from the knowledge and experience of our D&O claims advocates, who can maximize the personal protection afforded by their D&O insurance policies.

Delivering value to companies in distress

The road ahead for companies going through bankruptcy or restructuring can be difficult, which is why it's important to work with an advisor that knows the terrain. Marsh's team of FINPRO specialists has helped hundreds of companies navigate the process, and can help you manage critical risks, answer your key questions, and anticipate questions from underwriters. And with the backing of our 300+ FINPRO colleagues across the US — with deep knowledge of financial and professional policy forms, relationships with all leading insurers, and experience placing coverage for thousands of companies — we can help you build effective insurance programs at competitive pricing.

Circumstances giving rise to a claim	Reporting and initial advocacy	Coverage and negotiation advocacy	Resolution
If your insurer refuses to offer runoff coverage post-emergence, it may be necessary to file a "notice of circumstance," which can lock in coverage for circumstances you believe could give rise to a future claim.	<p>Our claims advocates can help you report a claim to your insurer and provide advice should your company face adversarial proceedings during bankruptcy. The claims process can become even more complex should allegations of fraudulent conveyance surface.</p> <p>We can also help you secure approval of defense attorneys and establish and maintain communication lines with insurers.</p>	<p>Executives facing personal D&O litigation will have added concerns surrounding expense approvals by bankruptcy courts. Our claims advocates can negotiate with insurers on your behalf to advocate for a D&O policy's advancement provisions when indemnification is unavailable. D&O litigation against a company can also be frozen or stayed, which may prevent it from advancing defense costs to individual defendants. Our claims advocates can review and determine the extent that Side A non-indemnifiable D&O coverage will step in to protect these individuals.</p> <p>We can also help you analyze reservation of rights letters and help prepare an effective response.</p>	We can deliver innovative solutions and approaches to help you resolve your claims and zealously advocate with insurers on your behalf.
We can provide ongoing analytical feedback and monitor significant developments concerning relevant coverage issues that can impact your company's exposures and programs.			

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