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Article

If IPO’s rebound in 2024, how can Private Equity firms make sure they have all the risks covered?

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Since early 2022, the global Initial Public Offering (IPO) market has fallen out of favour as poor investor sentiment has led to an exceptionally quiet market. Against the backdrop of high inflation, escalated geopolitical tensions, and high interest rates, many companies decided to postpone their listing plans and wait for a more suitable environment.

It is easy to see why. In 2021, over 2,000 IPOs took place globally in an all-time record high. [1] Fast forward to 2023, listing volumes had dropped to 1,298 in a mere 24 months. For those that were brave enough to list on global financial markets, many saw underwhelming post-IPO performance as valuations were not always accepted by investors and listing proceeds disappointed.

For now, we remain in wait and see mode to find out who moves out of the IPO waiting room and list on equity markets this year. Those private companies that do make the leap this year and list on financial markets need to be aware of the Directors & Officers (D&O) risks they face. Failure to do so could lead to investors recouping losses if a float underperforms and advisers potentially being sued if they advise badly or communicate incorrectly.

Information errors

Leading an IPO is a significant milestone for a company, but private firms and private equity funds face numerous risks as they navigate a process laden with complexities and potential pitfalls.

The IPO roadshow – a series of meetings held by private companies with potential investors, analysts and other stakeholders ahead of a listing – is particularly fraught with risks. During the roadshow, firms present large amounts of information to potential investors whether that be outlining the company's strategy, competitive advantages, or financial projections, and all within a short timeframe.

By sharing this information, it opens directors to significant risk. Regulation of how information and what information is shared ahead of a float is extremely strict as it can affect the final listing price. Mistakes in this part of the process are dangerous and leave companies and advisers exposed to costly legal action.

Furthermore, as more jurisdictions try to attract firms to list and improve transparency for investors, we are seeing new regulation emerge which companies and officers need to be aware of when listing.

Recently, the EU has made it easier for disgruntled investors to go on the attack through the courts. The Union has developed a series of strict regulations, such as the Representative Actions Directive, which makes it simpler for unhappy investors to take collective action and seek redress if an IPO fails or doesn't live up to expectations.[2]

The rise of ESG reporting requirements for firms has further created new risks for businesses planning to float on global stock exchanges. New proposed climate change reporting legislation in Australia is extremely broad and is set to apply to both public and large private companies. The US is also seeing increasing activity in this space.

The EU's Corporate Sustainability Reporting Directive (CSRD) protects against greenwashing, forcing firms to substantiate any green claims made. Mistakes or non-disclosures around a business' green proposals could hit a firm's reputation and lead to an expensive legal case or challenge from regulators or investors.

Navigating IPO risks in a volatile world

IPOs are not easy. The sheer range of stakeholders involved in the process heightens the risk of these complex public offerings. Ultimately, if post-IPO the financial performance of the listing is not as predicted and a share price drops, investors could seek to recoup losses if they feel there was mismanagement in the process.

In an increasingly litigious world, Directors & Officers need to be prepared for this and ensure they have the right risk mitigation tools in place. Failure to protect against these eventualities could be a major headache for private firms as claims can be significant in both money and a tarnished reputation. Any claim arising from an IPO that has soured could be crippling if a company is not protected by robust insurance cover.

The transition from a private company to a public company via IPO requires a huge step up in reporting requirements and governance. Bridging the gap requires careful preparation and expertise.

Specialist D&O can help mitigate IPO risk

We have created a bespoke D&O product for Private Equity firms to protect their portfolio companies and mitigate IPO risk, which includes IPO roadshow cover. Please get in touch with our team at the earliest possible moment to ensure your liability receives the highest level of protection.

Our bold, holistic solution covers all aspects of the private equity and IPO lifecycle, from purchase to exit and everything in between, enabling ambitious plans to move forward with confidence. Find out more here **Private Equity Portfolio Liability | beazley**

1- IPO Trends | Ernst & Young

2- Representative Actions Directive | European Commission

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