

THE PATH TO PUBLIC:

AN ESSENTIAL GUIDE TO PROSPECTUS LIABILITY INSURANCE



Honan.

After a subdued start to Initial Public Offerings (IPOs) in the first half of 2023, the listing of the chip designer, Arm, which raised \$7.6 billion could signal the reopening of the "IPO window" more broadly.

Balancing the risks and rewards of **taking your company public.**

As the market gains momentum, entities must consider the role of protective instruments to limit the impact of prospective claims, litigations, or fiscal implications associated with the IPO process.

Taking a company public in Australia is both an exhilarating and complex task and there is an intricate web of financial and legal liabilities surrounding the process. There are insurance solutions designed to help companies navigate this journey, including Prospectus Liability Insurance, commonly paired with Directors and Officers Insurance (D&O)

Solutions
to support
your public
listing:



Prospectus Liability Insurance

Addresses risks directly associated with the prospectus. For a claim to fall under this category, it must stem directly from a discrepancy or from unintentional misinformation within the prospectus itself.



Directors and Officers Liability

A holistic policy to protect directors and managers from liabilities arising from alleged mismanagement such as legal claims, regulatory fines, and shareholder disputes over misleading data.

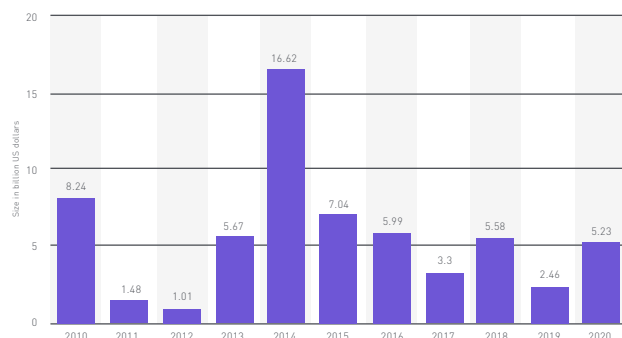
What is happening in the IPO market?

A reopening of the "IPO window"?

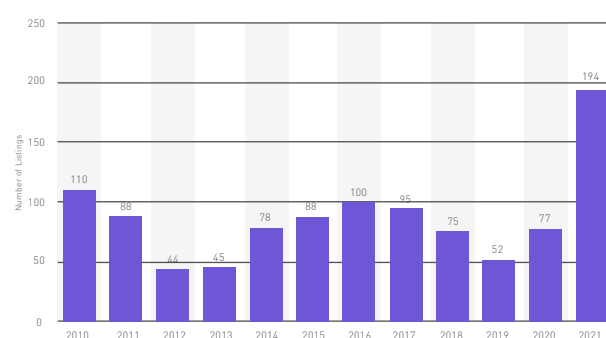
In 2023, the Australian Securities Exchange (ASX) landscape can best be described as a dichotomy of resilience and uncertainty. A glance at the first half of the year reveals a rather subdued activity for Initial Public Offerings, with a mere 14 new listings—a stark contrast to the 59 from the same period in the preceding year. This path suggested that 2023 might mirror the slow progress we saw in the mid-2000s.

In the second half of 2023, there has been a palpable change in the atmosphere. A significant catalyst for this renewed optimism was the momentous listing of the chip designer, Arm, on the Nasdaq. Its robust 25% surge on its inaugural day, raising an impressive \$7.6 billion, was not a success story in isolation—it has broader implications for the global IPO ecosystem, as highlighted in Graph 1 below.

Value of initial public offering (IPO) proceeds on the Australian Securities Exchange (ASX) from 2010 to 2020 (in billion U.S. dollars)



Number of initial public offerings (IPOs) on the Australian Securities Exchange (ASX) from 2010 to 2020



(# IPOs): 87 IPOs in 2022, and 30 for 2023.

Why is this revival significant?

Arm's success is emblematic of the potential reawakening of the "IPO window"—a period characterised by a market conducive for companies to initiate public listings. The ripple effect of Arm's accomplishments on the Nasdaq has reverberated through venture capital corridors, prompting them to revisit shelved plans for portfolio company listings. Preliminary dialogues with market advisors and participants echo this sentiment, envisaging a more vibrant tech IPO avenue.

Key developments in the **insurance market**

The Prospectus Liability Insurance market has been waiting with bated breath for a resurgence in the IPO market. With the Directors and Officers insurance landscape experiencing clear and consistent signs of softening, underwriters are scrambling to recoup lost premium. The scene is being set for the perfect Prospectus Liability Insurance market with increased offshore supply also dampening pricing pressure and enhancing competitive tension, as well as the general broadening of appetite by most insurers.

Competitive market conditions bode well for the IPO sector



Despite the forces at play, the Prospectus Liability Insurance market is primed for competition as financial market valuations start to return to “fundamental analysis” and deviate from the aggressive P/E multiples of previous years. This atmosphere of caution in the investor community at large will provide insurers a greater deal of comfort in writing risk. This is mainly because capital providers will be more focused on stringent value investing criteria as opposed to more growth-oriented outlooks. The increased prevalence of Private Equity and Venture Capital firms focusing on more concrete and dependable metrics such as positive operating cash flow, strong liquidity, and low debt serviceability will be nothing but a boon for underwriters who have always been more cautious and preferred greater certainty.

Prospectus Liability Insurance emerges not just as an operational requirement but a strategic imperative. It empowers companies, and their leadership teams, with the confidence to move forward, shielded from potential setbacks.

The roadmap to an IPO:

The path to public is complex, can take time and requires a number of considerations to be made, including the associated risks involved, building the right team and having the right partners to support you on this journey.

Preparing to become a public company:

Preparation is the secret to success. The better prepared your company is, the more efficient and less costly the process can be. We recommend that an orderly plan be executed over a one to two-year period.

Assembling a robust IPO team:

Secure a team of seasoned advisors who bring firsthand experience. This team, ranging from specialists to core staff, will be instrumental in drafting the registration statement and other crucial documentation. A team will typically include lawyers, accountants, investment bankers, insurance advisors, and specialist consultants.

Seamlessly transitioning to a public entity:

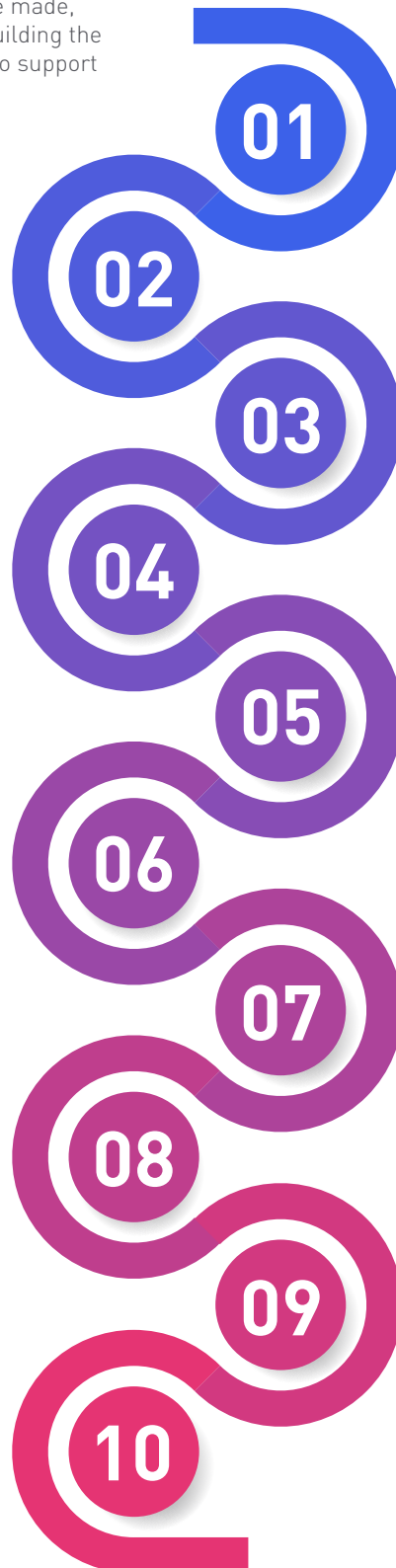
The cornerstone of a smooth IPO process is preparation. We advise a structured preparation plan, ideally spanning one to two years, ensuring efficiency and cost-effectiveness.

Registration statement:

Management, having an in-depth understanding of the business, should lead the drafting phase. Delegating significant drafting could result in a document that does not reflect the management's perspective.

Post-IPO and navigating public perceptions:

Once publicly listed, a company steps into a spotlight of increased scrutiny and continuous obligations. The perception of the public can influence stock value substantially. It's crucial to recognise and manage this newfound influence effectively.



Evaluating the decision to go public:

While seeking additional funds can be a driving factor, it's essential to evaluate if going public aligns with your specific objectives. One must take into account the broader implications and strategic goals during this pivotal transition.

Tackling accounting and financial reporting challenges:

Address intricate accounting aspects, financial statements, taxation, and compensations ahead of time. This proactive approach limits hurdles during the registration phase, streamlining the transition to a public entity.

Crafting your IPO structure:

The right IPO structure can significantly enhance value and efficiency. Regardless of the method selected, establishing a well-aligned corporate framework is paramount.

Amplifying your IPO's worth:

A compelling equity narrative is at the heart of every successful IPO. This narrative, which offers a vision for your enterprise, becomes the beacon for potential investors. Investment banking experts leverage this story to gauge your company's market fit and valuation.

Mastering the IPO journey:

Enterprises that embrace the characteristics of public companies well ahead of their IPO tend to succeed more. With a knowledgeable project management team by your side, you're poised for success.

Navigating Risks Associated with Public Listings

The intricate dance of taking a company public is filled with promise, but is also laden with risk, excitement, and its fair share of pitfalls. Amidst the flurry of preparations for IPOs and Reverse Takeovers (RTOs), the spotlight often lands on the realm of insurance, and in particular, Prospectus Liability Insurance. This insurance, colloquially known as IPO Insurance, is more than just a safety net. It is a safeguard against potential claims, lawsuits, or other financial implications that could arise during or after the IPO process.

How It Works: **Prospectus Liability Insurance**



Prospectus Liability Insurance is specifically designed to protect companies, their board of directors, and key officers from financial and legal repercussions stemming from the IPO process. But why is such protection crucial? Well, in the IPO journey, from the meticulous development of the prospectus to the roadshows promoting it, there's ample room for unintentional errors, oversight, or unforeseen challenges. Given that a company's prospectus is a foundational document, pivotal for investors' decisions, any inaccuracies can lead to legal disputes. These could come from various stakeholders, including industry regulators like the Australian Prudential Regulation Authority (APRA) or the Australian Securities and Investments Commission (ASIC), shareholders, and even creditors.

It is against this backdrop that Prospectus Liability Insurance becomes indispensable. With it, companies can confidently navigate the public listing process, knowing they have a robust layer of protection against potential claims.



Choosing the Right Path: **Stand-alone vs. Combined Coverage**

The uptick in IPOs and RTOs on the ASX has led to a surge in inquiries about D&O insurance. Companies often express interest in integrating Prospectus Liability coverage with standard D&O insurance. Incorporating Prospectus Liability into a D&O Insurance policy requires the company and insurer to work together to ensure both parties understand the complexities and the potential implications of integrating coverage.



When it comes to securing Prospectus Liability Insurance, **companies often find themselves at a crossroads**

Route one involves purchasing a stand-alone, bespoke Prospectus Liability Insurance policy. **Tailored to a company's unique needs, these policies can span from a single year to lifetime coverage, offering a comprehensive protective layer against a range of challenges tied to the IPO process.** Such policies are often extensive, covering inadvertent errors in the prospectus to unexpected regulatory investigations. However, given their comprehensive nature, stand-alone policies attract significant premiums, making them an unrealistic option for smaller or micro-cap companies.

Route two, which is more viable for smaller entities, involves merging Prospectus Liability coverage with their D&O Insurance. **This integrated approach offers a blend of protection against general directorial and officer liabilities and specific IPO-related risks.** While this might seem like the perfect solution, it's essential to remember that combining these coverages means sharing the policy limit across D&O liabilities and Prospectus Liability exposures. This shared limit could be a potential concern, especially if a significant claim arises.

Preparing for a Quote

Acquiring a quote for Prospectus Liability Insurance is a structured process. Insurers generally require a number of documents to gauge the potential risks and determine the premium. This usually includes the full prospectus, a detailed proposal form, and supplementary information delineating the transaction's specifics. Such additional details could encompass corporate presentations, underwriting agreements, and other associated documents.

There are several key factors insurers look upon favourably when underwriting Prospectus Liability Insurance. Some examples are:

- 01 Passionate founders who are looking to remain post-listing to drive and scale the business
- 02 Raised capital that will be used to fund growth initiatives and working capital and is not predominantly used to pay down debt or the shareholder sell down
- 03 Consistent earnings growth prior to listing with strong liquidity, minimal debt and a positive operating cash position
- 04 Proven business model independent of the “need” for capital or debt to continue as a going concern
- 05 Recurring subscription revenue stream
- 06 Long voluntary share lock-up periods for founders
- 07 Reliable and prudent prospectus forecasts
- 08 Conservative multiple valuation rates
- 09 An underwritten float and the reputation/track record of the investment bank backing the float
- 10 Positive track record of service providers such as corporate advisory, legal and accounting and a robust track record and history of the executive team with solid corporate governance experience on other listed boards

Assembling the Right Team:

The listing process is intricate and it requires a team of experts from various fields to collaborate effectively to ensure the successful transition of a company to public status.

The Corporate Adviser



The linchpin of the process, the corporate adviser offers:

- Guidance on financial aspects, including capital requirements and timing
- Recommendations on the float structure - whether to underwrite or employ a book build offer structure
- Selection of the best-fitting broker based on credentials, valuation, underwriting security, and investor base
- Advice on the appropriate valuation and listing price for the company
- Expertise in overseeing the float process from start to finish, including coordination with other stakeholders and regulatory bodies, and issue resolution

It is worth noting that some companies opt for the underwriter to assume the roles typically undertaken by the corporate adviser due to potential conflicts of interest.

The Underwriter



Essential in an IPO, an underwriter commits to purchasing any shares not acquired by the public, in exchange for disclosed fees. Key considerations include:

- Deciding on underwriting early in the listing process is crucial
- Underwriting facilitates fundraising success, provides an endorsement, and allows aggressive pricing
- The underwriting agreement will define the termination events and associated fees
- Fees usually range from 2.5% for medium to large IPOs and about 5% for smaller ones

Lawyers



A team of legal experts handles a range of responsibilities, including:

- Determining the best investment vehicle
- Conducting legal due diligence
- Drafting and reviewing the prospectus
- Negotiating with the underwriter
- Engaging with regulatory bodies
- Overseeing the IPO and ASX listing process
- Advising on operational issues and drafting other essential documents like escrow agreements and executive contracts

Investigating Accountant



Typically, the company's auditor fulfills this role, offering:

- Assistance in setting materiality thresholds
- Conducting accounting and tax due diligence
- Reviewing financial disclosures and advising on tax and accounting matters
- Evaluating forecasts presented in the disclosure document

Insurance Advisors



- Reviewing current policies and ensure ASX readiness
- Understanding the Management and Board's risk appetite during and after the IPO process
- Reviewing the prospectus for accuracy
- Arranging Prospectus Liability insurance

Share Registrar



This entity streamlines the post-fundraising period by:

- Handling applications and maintaining the company's share register
- Managing share allotments and transfers
- Dispatching investor communications, such as general meeting notices

Depending on the company, additional experts may be brought on board. Often, financial experts are engaged to offer opinions on the company's financial prospects or asset valuation.

How can Honan help?

Our business is different in all the right ways.

We go beyond just insurance, advising leaders on strategies to mitigate current and evolving risks, limit exposures, and enhance employee safety and retention.

The team at Honan is younger and more diverse than the industry standard. Our advisors bring **expertise and fresh thinking** to deliver a high-quality, customer-led service that's more akin to leading consultancies than the traditional world of corporate insurance.



OUR FINANCIAL SERVICES BROKING OFFERING INCLUDES:

- Reviewing insurance liabilities
- Analysing the effectiveness of existing insurance solutions
- Assessing self-retention risk programs
- Identifying any uninsured risks that need to be insured
- Contractual indemnity reviews and advice
- Benchmarking existing insurance programs against best practice
- Providing recommendations for optimum risk transfer solutions, including estimated costs
- Structuring bespoke insurance solutions



OVERSIGHT AND COORDINATION

- With a dedicated client manager as your point of contact, we will advocate for your business at every step
- We'll manage key negotiations and marketing of your program to insurers prior to implementation, and at renewal time



EDUCATION AND INSIGHTS OFFERING

Provision of market-leading, relevant, and timely content about industry news, legal, compliance, and regulatory changes



OUR CLAIMS SERVICE:

- Legally qualified, highly experienced claims team with specialised cyber claims capabilities
- Dedicated claims manager for the lifecycle of a claim
- Analysis and policy response to provide a smooth claims experience

What sets us apart?

We are passionate about being a true partner, taking the lead as advisor and educator, and thinking creatively about solutions to optimise your business outcomes.



AUSTRALIAN-FOUNDED INDUSTRY LEADER

Established in 1964, and with over 450 staff, we're the largest independent broker in Australia.



CARRIER MARKET LEVERAGE

We place over \$500 million in insurance premium annually, and partner with over 103 insurance companies globally. Honan is the largest member of the Steadfast network, distributing \$9 billion of commercial premium in the insurance market.



DIVERSITY & INCLUSION

A key focus for Honan, both within our organisation and through supporting community organisations as captured in our Inclusion Charter.



GLOBAL REACH & INSIGHTS

We help clients navigate the challenges and opportunities of a global market, while providing market-leading local expertise.



ESTABLISHED NETWORKS

As the IPO Network's Insurance Placement and Risk Advisor, we are experienced in structuring the risk solutions and negotiating insurance coverage on your behalf for pre-IPO, to listing date and beyond.



SPECIALIST KNOWLEDGE

We have a proven ability to manage and place unique and complex risk profiles. We stay across the key emerging trends, proactively adjusting our insurance product offerings to align with these trends and the risks they pose.



CLAIMS SOLUTIONS

In-house claims specialists, led by industry and legal experts who know how policies and coverages will respond.



INNOVATION

Winner - 5-Star Insurance Innovator Award, Insurance Business Magazine (2021, 2022 & 2023).

Industry experience and expertise.

To find out how we can support your growth, please get in touch.

- ✉ info@honan.com.au
- ☎ +61 3 9947 4777
- 🌐 honan.com.au
- in Honan Insurance Group

Honan Insurance Group Pty Ltd ("Honan") ABN 67 005 372 396, AFSL 246749

Any advice in this brochure is general in nature and does not take into account the particular needs or circumstances of your business. Insurance cover is subject to policy terms, conditions, limits and exclusions.