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Five Focus Areas for Buyers When Purchasing Assets from Bankruptcy

The global pandemic has wreaked havoc on businesses from a wide variety of industries (e.g., life sciences, industrial products, consumer products, services.) Although adversely impacting many companies, it also presents an opportunity for interested buyers to purchase assets from bankrupt companies through the Section 363 sale process under the U.S. bankruptcy code.

However, these transactions also come with many risks and time constraints. Buyers should evaluate these key considerations that are often common issues with asset purchases from bankruptcy sales. Unless proactively addressed, these issues could reduce deal synergies and/or decrease the value of the business being acquired.

Shortened sign-to-close window

The timeline between declaring bankruptcy, selling assets and liquidating the company in most instances is very short. This, in turn, creates a shortened integration planning or transitionary period to stand up and operate the business, which results in an extremely short timeframe to do the following:

a. Determine TSA support needs and post-close support

b. Review and novate contracts (vendor and customer)

c. Establish legal entities to receive assets and identify the critical path to Day 1

Unidentified Reverse Transition Services Agreement (RTSA)

Liquidating companies/sellers commonly require a buyer to provide access to conveying employees and/or systems to wind down operations. These unplanned RTSAs can add potential execution risks for the buyer due to:

a. Capacity issues in providing these services for an extended period

b. Potential employee turnover of RTSA resources

c. Challenges with conveying system management

Manage data migration risk by leveraging a Clean Room for analysis

A Clean Room can be leveraged for bankruptcy sales involving sensitive and confidential data, including the following:

a. PHI or similar confidential stakeholder data

b. Customer and vendor pricing for synergy evaluation

c. Avoiding regulatory breaches by revealing any competitive information to the other party with data migration activities

Build Day 1 workarounds to integrate “as-is” asset purchases

The conditions of these assets are sold “as-is” e.g., expired system licenses, operating permits, SOPs, etc.. The Buyer needs to plan on how they will integrate these assets

into their own platform or stand-up independently in a timely manner with updated permits and licenses. This is achieved by:

a. Understanding & designing the operating model by function

b. Creating detailed end-to-end business processes and system flows

c. Mapping out Day 1 workarounds for key processes of order-to-cash ,procure-to-pay, forecast-to-Fulfill, Record-to-Report, Hire to Retire etc.

Prioritize stakeholder communications and change management

Buyers tend to focus heavily on transaction value during distressed asset purchases. Communications to key stakeholders (e.g., employees, vendors, customers, regulatory bodies) tend to be de-prioritized. This could lead to:

a. Loss of institutional knowledge and a poor employee onboarding experience

b. Possible disruption in vendor supplies and cancellation of customer orders

c. Potential regulatory body fines or inspections

FTI CAN HELP

FTI Consulting provides holistic restructuring, transaction advisory and business transformation services as an integrated suite of services offered to acquirers who are considering purchasing assets through a 363 sale or asset sales from companies undergoing the Chapter 11 bankruptcy process.

Our experts can advise clients without any audit restrictions and can also serve g in interim management roles, including CEO, CFO, etc.

FTI Consulting has deep experience with buyers and sellers of distressed asset sales. We will partner with you to mitigate risks that are unique to distressed transaction scenarios to ensure that the assets being acquired or sold are absorbed or setup seamlessly with your organization and continue to provide value.

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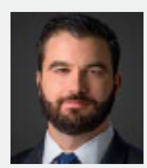

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