

Distressed M & A and Restructuring: Getting Your Company Out of Trouble

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Fundamentals for Success

According to TMA, the fundamentals for achieving a successful distressed sale transaction include five key elements:

- Understanding the company's situation
- Setting expectations and communicating with all constituents
- Running the right sale process
- Finding the right buyer
- Solving obstacles to get to closing

According to KPMG, distressed businesses often exhibit one or more of the following characteristics:

- Over-leveraged balance sheet
- Covenant and/or payment defaults
- Lack of internal controls
- Loss of a major customer, supplier, or key employee
- Management seeking bridge financing for “quick fixes”
- Discovery of fraud
- Product failure
- Obsolete business model
- Cyclical downturn
- Volatility in raw material and energy costs
- External shock to economy

Bankruptcy Auctions

2008: 292 Auctions, \$5.8B*

2007: 116 Auctions, \$7.4B

2006: 44 Auctions, \$538M

*through 11/8/08

Source: www.bankruptcyinsider.com

Using Bankruptcy to Sell the Business

Some Advantages:

- Unload debt and bad contracts
- Avoid “fraudulent conveyance” issues
- Clean title to assets
- Court approval avoids later legal challenges to sale

Using Bankruptcy to Sell the Business

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Some Concerns:

- Slower process
- Loss of control
- Loss of confidentiality
- Unhappy management
- What effect on price?
- Transaction costs