

Corporate Restructuring 104: Buying and Selling Assets in Bankruptcy

A primer for investors seeking to attain knowledge regarding the process for buying and selling assets of companies undergoing Bankruptcy.

Content Overview

The purpose of this content is to provide participants with a fundamental overview of the process of selling assets in bankruptcy under both §363 and Chapter 11 Plan sales. Bankruptcy assets sales have grown increasingly common since the Global Financial Crisis in 2008. §363 sales provide an expedited process, particularly for 1st lien Secured Creditors, to protect against diminishing value as well as an opportunity to realize proceeds in a time and cost-efficient manner. Moreover, §363 allows secured creditors to credit bid their claim and set a floor value in an auction, particularly as a stalking horse bidder. This webinar will cover the mechanics of selling assets under both a Chapter 11 plan and under §363, including §363 bid procedures and the role of the stalking horse bidder, due diligence and auction process in §363 sales as well as a final order approving a §363 sale.

Prerequisites

Participants should have a basic understanding of finance, accounting, financial statement analysis, as well as familiarity with the bankruptcy process in general.

Registration

Course date is TBD and last approximately 90 minutes. A Zoom Link will be provided upon payment. Cost is [] per person with a 20% discount for groups of 5 or more.

Agenda

Selling Assets Outside of Bankruptcy

- Fraudulent Transfer Risks
- Fiduciary Duty issues
- Successor Liability
- Anti-Assignment Provisions
- Adverse Tax Consequences

Chapter 11 Plan Sales

- §1123(a)(5)
 - Allows for sale or merger as means of effectuating a Plan of Reorganization
- Still must meet Ch 11 plan approval threshold requirements
- Auction can still be held in plan context
- Preserves tax assets and exempt from stamp/transfer taxes §1146(c)
- Successor liability still applies
 - Ability to provide releases for board members and third parties

§363 Asset Sales

- Ability to sell assets free and clear of all liens and encumbrances
- Credit Bidding for secured creditors
- Accelerated timing vs Ch 11 Plan Sale
- Avoid successor liability

§363 Sale Process

- Establishing Initial Bid Procedures
- Stalking Horse Bid Terms and Protections
- Stalking Horse APA
- Auction
- Court Approval and Closing of Asset Sale
- Final Sale Order

Other Bankruptcy Asset Sale Considerations

- Treatment of Environmental Liabilities in Bankruptcy
- Tax issues
 - CODI
 - NOL Preservation
 - Impact of Ownership Changes IRC 382(l)(5) 382(l)(6)

Target Audience

This intensive workshop will benefit any professional who seek to gain insight into distressed M&A (363 sales and Ch 11 Plan Sales):

- Working in the financial services industry (restructuring advisory, investment banking, consulting, research, asset management, private equity, brokerage, sales & trading, insurance, etc.)
- Working in the corporate or strategic development group or finance department of a corporation
- High yield investors
- Asset managers
- Private equity investors
- Financial advisors
- Operational consultants
- Business development managers

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