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Deploying an interim manager for distressed M&As

Distressed M&As require an experience-based, good process structuring, secrecy and speed. An interim manager can be of great value in supporting the insolvency administrator.

Given that the market for company successions and company disposals (M&As) shrank massively during the past two years, it has not been easy to sell companies even under normal circumstances. The sale of a true crisis firm or an insolvent firm is generally even more difficult. Nonetheless, with good preparation distressed M&As may be sold successfully in a short period of time. In contrast to the normal M&A business, the focus here is on process structuring and speed. Secrecy must be guaranteed in every M&A process, but this aspect acquires a special weight in distressed M&As. If done systematically, speedily and with circumspection, investors can be found even for insolvent firms. An interim manager can play a key part in this.

Stocktaking

Before the M&A process starts, the assets must be safeguarded and the insolvency administrator must analyse whether the firm in question or its assets may be sold in a short period of time. If this question is answered in the affirmative, the continuance of the firm must first be ensured and thus everything must be done to prevent a breakup of the company. The value of the firm must be maintained and "the bride must be adorned" in order to achieve the best possible price and to maximise the bankruptcy quota. Successful company disposals in this segment differ from flops in that what is to be sold is initially decided systematically. Is it really the existing company? Or are only the assets to be sold as

part of a so-called asset deal? Furthermore, it must be verified whether all assets will be transferred of whether a part or an independent division of the business will be left and will perhaps be offered for sale to other investors. Another aspect during these initial days is to achieve the highest possible legal security about whether the assets to be sold are subject to third-party rights that could completely overthrow a transaction. Lacking research can bitterly hurt later.

Although at the beginning of the process the potential investor may still be unknown, a concrete entity must be put together and finally presented. For the part to be sold this implies creating a business fiction (there is no legal form of business organization) and to present realistic sales and profit plans that determine, from the liquidity side, the needed working capital for the planned commercial transactions in order to stand up to the later due diligence of potential investors. To do this, one needs good knowledge of the market in which the company is active and well-based know-how of its products. Work is facilitated if the consultancy has a research team and if the consultants working on site can have access to the managers of the firm. Here an interim manager may serve as a valuable pace setter. His empathy can restore the necessary calm, as the staff remaining during the insolvency procedure usually feels insecure regarding the company and their own future.

The info memorandum

The info memorandum is developed on the basis of the above mentioned aspects, but it is very important not to divulge any market-relevant details with which "pseudo-interested parties" could later gain access and knowledge about relevant orders. Even more important for distressed M&A deals than for "normal" M&A trans-actions are the principles of secrecy and speed. These two are the indispensable prerequisites for success. Frequently the truly interesting assets in distressed M&As consist in the existing customer base, the internal firm know-how as well as the orders. Once these are lost to competitors, no interesting core remains for a sale. In the present crisis situation plants may be found anywhere. But these no longer constitute any interesting sales objects.

Looking for investors

As in cases of normal M&As, initially a long list of potential investors is assembled, if possible in cooperation with the research department and the industry experts. Included are strategic investors who are interested in the core business, as well as financial investors. Recently heard reports that financial investors have dropped out as buyers of distressed M&As in the current situation do not correspond to reality. During the past six months our consultancy has successfully conducted several cases in which the main investor belonged to the financial sector. Strategic investors are very important and must initially be assessed internally: Can they maintain the company to be sold (a very important side condition also for the insolvency administrator)? Do they want and can they work with the existing product range or do they only want to get rid of an unloved competitor by purchase and close-down and thereby accelerate a market shake-out by paying a purchase price?

In an individual case one must decide whether potential investors are initially only to be informed with a teaser or with a detailed memorandum, perhaps already supplemented by a business plan. At this stage the aim is to arouse interest without already violating the secrecy of essential information. If not only a teaser but an info memorandum is given to the interested parties, it should also contain an explanation of the insolvency. Considering the strengths and potentials, this will yield the arguments for the purchase of the insolvent business.

"Secrecy and speed" contradict initially a broad approach of potential buyers and the promotional arousal of demands for the purchase of assets. Like for a normal M&A, a long list of potential investors is put together first. This long list is then to be discussed with the insolvency administrator and, as the case may be, the management. The latter option may not be meaningful, as the management can, out of fear of losing their own jobs, knowingly spread wrong information. Potential investors ought to be approached speedily. As a disposal is frequently only possible internationally, at least an English version if not even a French version of the info memorandum must be produced. Then telephone calls must follow, often a thankless task. The contact person must be approached with persistence, but a special commitment is necessary.

Investors who showed some interest must first sign a non-disclosure agreement before additional materials are made available. These contain more detailed information on the business in question and its assets. Care must be taken, however, not to divulge any information on the order situation.

Visits of the interested buyers to the firm

This topic is of special importance as the selling process takes place under considerable time pressure. Several interested parties will want to take a look at the business and its assets. It is recommended to filter and analyse the "visitor tourism", as not every potential investor is seriously interested. Frequently it is information that is to be gathered. That is why we recommend asking every potential investor to present his planned strategy for the business and – ideally – already submit a so-called "non-binding offer". Only then is to be decided which candidate is to be considered more closely. In the best case, three to five truly interested and interesting investors will remain on the short list.

Due diligence

The serious candidates must receive a corresponding data set for their due diligence. In practice, these materials have some blocked out passages, aggregations and summaries in order to prevent data theft at this stage. Due diligence differs from that in a normal M&A process, in that in an asset purchase, as a rule, no liabilities are assumed. It has been our experience that this issue is difficult to explain to foreign investors in particular. Here the buyer must be told sensitively but consistently that, in contrast to the normal case, no longer period of time is available for due diligence, but that the procedure must be executed in one to two days at most. Especially with American or Asian investors this requires several, partly very strenuous telephone conversations at rather strange times of day in Germany. The due diligence process itself must be closely attended to. The investors' understandable wishes to speak with management alone should not be met for tactical reasons, but there should always be a socially skilled member of the M&A team present at the meetings.

Here, too, the principles of secrecy and speed should be observed against the background of the usually high time pressure. The insolvent company will naturally have only limited liquid means at its disposal. At best, with the start of the true insolvency process the purchase contract for the assets will be signed. If the process takes longer, the current costs of the operative business and the expenses related to the sale of the assets must be earned by the continued firm or the insolvency administrator must himself assume the risk. The total process must be accompanied by a constant and strict control of the liquidity development. In order to speed up the process, a firm submission date for the offers should be agreed. Many investors want to clear up this or that detail and thereby extend the process consciously or unconsciously. Here the skill of the M&A team is necessary to counteract effectively such delaying efforts.

Once the offers are received, they must be analysed together with the insolvency administrator according to a carefully assembled catalogue of criteria. Despite precise specifications of what the offer should look like, foreign investors frequently fail to submit their offer in the required or demanded form. Individual parameters must now be determined and analysed in a neutral way in order to be able to recommend a final investor to the insolvency administrator.

The responsibilities of the interim manager

The interim manager in small and medium-size firms cannot do without a qualified team of experts. The demands of individual clients are too different; the legal and taxation issues are too complex. Reliability and the experienced action in the exceptional case of insolvency require the interim manager and the insolvency administrator to work hand in hand. Besides routine tasks during this phase of the process, the people concerned must "adorn the bride", as it is called in the industry. In such a difficult situation, the interim manager must be able to conduct the operative business with the help of the specific knowledge of the staff. He must take the holistic view, must look outside the box. In such a difficult situation the interim manager must be able to use his social skills to align the internal and external contacts with their divergent interests in such a way that the process can yield results in favour of the business and in the best case

also in favour of retaining the employees' jobs. All of this must accord with the directives of the insolvency administrator and the creditors.

A big advantage of deploying an interim manager in small and medium-size firms is that, after having done his work, he will gradually withdraw from the company without a golden handshake that would otherwise be given. Although the interim manager will bill a daily fee of € 1,200, the firm is not liable for social insurance contributions, pension and vacation claims.

The interim manager as trouble shooter

The work of the interim manager is already defined by his assignment to make himself superfluous. But interim managers are frequently trouble shooters.

What is the most important aspect of the interim manager's work? Figuratively he should be present and at the same time invisible. Stakeholders should not find out about changes in the firm. On the one hand he must influence the management and the employees in a conciliatory way in order to calm them down in the existing crisis situation and to motivate them toward the goal. On the other hand he must also be a two-fisted negotiator with banks and suppliers or credit sales insurers. A kind of trouble shooter. One who can control the ship in rough seas. Many an entrepreneur is alarmed when the banks install an interim manager on his side. He thinks that he will lose control. But what authority does an interim manager have? From businessman to moderator and mediator with the banks, to filling a personnel vacancy, the interim manager may be given most diverse powers of attorney. Frequently he is given general power of attorney. Less frequently he assumes direct management functions and is entered in the commercial register.

A case study: Sphairon Access Systems GmbH

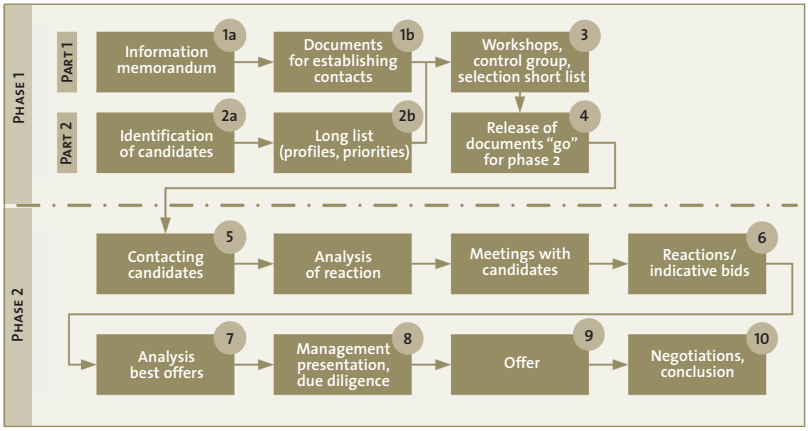
Safeguarding the existing customer relations was of prime importance for the insolvency administrator, as the firm's order book, but also the related medium to

long-term customer relations represented the essential value of the assets. In addition, there were partly well advanced development projects for new products that were close to market introduction. To safeguard the value of these assets customers had to be prevented from cancelling orders or to turn entirely to another supplier.

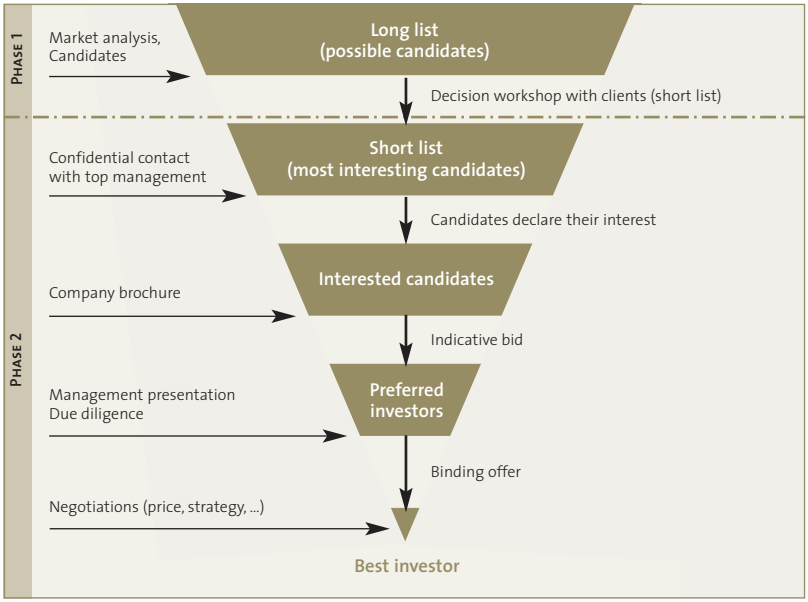
Time pressure was enormous. Was the insolvency administrator able to continue production at full cost in the opened proceeding after having availed herself of the insolvency payments? In addition, the administrator was daily presented with demands to permit the ordering of material from abroad necessary for the planning of production for the next months. At considerable risk, the administrator had to invest in the future out of insolvency in order to offer a potential buyer order and production guarantees and at the same time create the prerequisites for generating the highest possible purchase price. The voluminous questions to be answered in the shortest of times to safeguard the operative business and the value of the assets, led the insolvency administrator to ask for support by an interim manager as well as a suitable consultancy. The interim manager and the consultancy were to have long-standing reputations and experience in reorganization and restructuring as well as reported M&A competency. Bdp was given the mandate by the insolvency administrator of White & Case Insolvenz GbR.

In the company, bdp initially assumed the regular plausibility check of the liquidity planning by the still active management. In parallel, the immediate national and international search for potential buyers of the offered assets was started. An information memorandum was produced. Furthermore, bdp verified and checked the plausibility of the business planning in order to determine whether the administrator would be able, during the opened proceedings, to continue the business at full cost. It became obvious that a continuation of the business over weeks and months was not possible. Safeguarding the customer relations and a very speedy sale of the firm's assets would now have to be the focus of all efforts. In this the interim manager played a key role. As a neutral manager he established contact with customers and suppliers and generated confidence. In addition, he watched the liquidity control at the company. Together with the management extended simultaneous interviews were conducted in order to grant the interested buyer an opportunity to get to know the business as well as possible.

Organizational workflow Fig. 1



Process company purchase Fig. 2



After sending out the info memorandum, the parties were asked to state their intentions that were to give credibility to their interest in purchasing the assets. During this phase the interim manager already asked for purchase price ideas and proof of the potential investors' ability to pay. In the course of intensive talks and negotiations with potential buyers those parties emerged form a group of initially 20 interested parties for whom there was a rising probability of arriving at a short-term sales agreement.

Jointly with the insolvency administrator, the interim manager and bdp, four offers were addressed after careful selection. In order to be able to sign a legally binding purchase contract, the insolvency administrator had applied for a temporary creditor committee at the insolvency court concerned and had it instituted. At the end there was a clear vote, permitting the insolvency administrator to start purchase negotiations with the addressed interesting acquisition parties and to bring them to a successful end. By including the experienced bdp M&A team, the insolvency administrator was able to sign a purchase contract with an Indian investor and the former management of the firm only four weeks after the insolvency procedure had been started. While all jobs could be saved, the assets were transferred to the purchasers directly after signing the purchase contract. For the interim manager this concluded his project work in the firm.

Conclusion

An interim manager in a medium-sized company is the neutral expert for vacancies, for crises that neither the entrepreneur nor the management had expected. He is, at the same time, fireman, strategist, hope provider and diplomat. It is these very characteristics that are necessary in a distressed M&A process. Even though the daily fees demanded by an interim manager may initially appear high, especially when liquidity is low in an insolvency case, the expense quickly becomes qualified once the results and the operative and strategic effects in the future are considered. If new entrepreneurial prospects and secure jobs result from insolvency, his deployment has paid off.

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