



Bankruptcy-driven sales find more international buyers

Foreign companies are increasingly the winning bidders in the acquisition of businesses sold under the U.S. Bankruptcy Code (Section 363 sale). Earlier this year Lincoln International LLC advised on two such Section 363 sales of U.S.-based companies to acquirers in India and Korea.


The recent increase of international acquirers buying U.S. businesses in bankruptcy has been fueled by powerful, long-term globalization trends coupled with a significantly weakening U.S. dollar and reduced competition from private equity acquirers who rely on debt financing. International buyers are also taking advantage of acquiring attractively valued U.S. business assets in bankruptcy.

Section 363 sales are typically more complex and proceed rapidly according to a court-mandated auction schedule. In years past foreign buyers have not responded promptly enough to the requirements for acquiring assets out of bankruptcy in the United States. Today, they are operating at a heightened level of sophistication and are using U.S.-based financial advisors, legal counsel and due diligence consultants. Though seemingly a small nuance, this use of U.S.-based professionals is critical to navigating complex bankruptcy court intricacies and ensuring a rapid close with minimal hurdles.

The benefits afforded by a bankruptcy process are also attractive to foreign acquirers. For example, Section 363 sales “cleanse” troubled assets, enabling an international buyer to purchase assets free and clear of liens and claims and reject certain assets, liabilities and contracts. In addition, an aggressive foreign buyer can position itself as the “stalking horse bidder,” enabling it to dictate key transaction terms and receive court-approved protections, including a break-up fee and expense reimbursement. Such benefits position the foreign acquirer to gain greater comfort around perceived risks, especially if the buyer is unfamiliar with the U.S. market and local principles and standards. In addition, financial protections neutralize costs which may make foreign buyer participation otherwise prohibitive.

As foreign acquirers continue to establish and bolster operations in the United States through acquisitions, bankruptcy-driven sale processes—with distressed sale prices, buyer protections and certainty to close—provide an increasingly



attractive avenue for growth that is poised to accelerate in the future. 

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