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M&A After the Crisis

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Murphy's law states that "Anything that can go wrong, will go wrong." This implies that if everything seems to be going well, you have obviously overlooked something. We hope that this rule does not apply to the current slow recovery from the crisis. We see that the market is reviving and that M&A activity is growing. At the same time, the post-crisis context has had an inevitable impact on transactions.

The recent trend in the M&A market is for making transactions between creditors and debtors rather than between peer business partners.

As a result of the crisis, creditors are facing massive defaults and realize that it is impossible to recover their money from debtors, so they are looking for alternative means of debt repayment, such as by acquiring the debtor's business.

Certain questions arise in this connection:

- how to acquire the debtor's business in the least costly way; and
- how to use the debtor's business most efficiently in the future.

The answers to these questions are interdependent and need to be found before any action is taken. For example, how the assets are acquired often depends on whether the business will be managed personally by the creditor or resold to another party.

When looking for ways to acquire the debtor's business, it is first of all necessary to obtain information about its business structure, business contacts and weaknesses. The debtor's business can be acquired not only through the traditional transaction mechanisms, but also

by involving court procedures. The latter may include court enforcement of secured assets, filing suits against the debtor and guarantors, and, where possible, against the debtor's shareholders (participants), or initiation of controlled bankruptcy procedures. Usually companies go to court only in the most extreme cases, supposing, reasonably, that court proceedings can be lengthy. However, combining the usual mechanisms for the acquisition of a debtor's business (contractual or corporate) with court procedures may be effective enough. Sometimes even the duration of court proceedings may be an advantage as they consume the debtor's resources and attention.

Any method to acquire the debtor's business should comply with the requirements of anti-monopoly laws (consent or notification of transactions with shares/assets) and corporate laws (mandatory offer, restrictions on shareholding, for example, prohibition of the 1-1-1 structure when a sole member of the company makes up another company consisting of one person).

After the business has been acquired, the creditor can integrate the business into its own business structure or resell it. The latter option calls for certain steps to make the business attractive for potential buyers. This may include creating an ownership structure understandable for investors, or debt restructuring. When making decisions, many factors have to be taken into consideration such as length of procedure, number and complexity of organizational arrangements, possibility of minimizing tax burden, and so on.

No ideal solution that could be applied universally exists for the acquisition and use of debtors' businesses. Solutions vary from case to case. However, for every problem there is almost always a solution. It is important to look at the problem from every angle and develop a strategy that would take into consideration all the factors, both financial and legal.

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