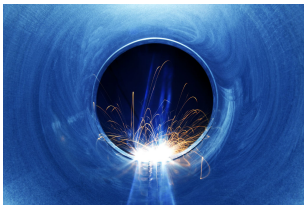

Guide to Distressed Acquisitions in U.S. Manufacturing

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Despite some bright spots, the landscape for U.S. manufacturing remains challenging. While supply chains have largely stabilized post-pandemic, the manufacturing sector is grappling with compressed margins, high borrowing costs, and volatile energy prices. These pressures have led to a noticeable uptick in distressed assets and corporate restructurings, particularly among middle-market and family-owned manufacturers that may lack the financial flexibility to withstand prolonged downturns.

For domestic manufacturers with healthy financials, private equity groups, or well-capitalized investors, these conditions present an opportunity to acquire valuable assets, product lines, or competitors at a discount. While this does present an opportunity, distressed acquisitions are legally and operationally complex and differ from acquiring assets from a company that has a strong balance sheet. Buyers must balance the speed required to close quickly with the diligence necessary to avoid acquiring hidden liabilities or inheriting regulatory exposure.

Risk Mitigation

One of the most effective tools in this space is a well-drafted asset purchase agreement. In distressed manufacturing deals, buyers greatly prefer to pursue asset deals rather than stock or equity purchases to cherry-pick specific assets such as machinery, equipment, inventory, and trade secrets, all while excluding obligations like unpaid vendor and supplier claims, environmental liabilities, or underfunded pension plans. Even in asset deals, buyers can face exposure for successor liability, particularly if the transaction is deemed to be a de facto merger or if the business continues in substantially the same form. To protect against these risks, counsel can draft contractual exclusions clearly and consider indemnity holdbacks or risk premiums where exposure is uncertain.

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For more deeply distressed targets, including those in Chapter 11 bankruptcy, buyers may seek to acquire assets via a Section 363 sale. These sales offer the benefit of court supervised approval and the ability to obtain assets free and clear of liens and other encumbrances. However, timing is crucial, as bankruptcy sales often move quickly, and courts may favor higher bids or bidders with stronger operational continuity plans. Domestic manufacturers looking to expand through this route should prepare well in advance by engaging with debtors, secured lenders, and bankruptcy counsel early on.

Due Diligence

Due diligence in distressed M&A transactions should also be tailored to closely review manufacturing-specific risks, including the following:

- **Environmental compliance:** Distressed manufacturing assets can come with additional remediation and compliance costs due to environmental regulations, especially for operations involving hazardous materials, legacy waste, or older facilities.
- **Labor and employment:** Union contracts and legacy workforce obligations (including WARN Act compliance) can survive a transaction or complicate post-closing integration.
- **Contracts:** Customer and supplier contracts may have change of control or anti-assignment clauses that can delay or derail a deal.
- **Real estate:** Leases may have embedded liens or cure costs, or there may be other liens, mortgages, or encumbrances on real property that need to be addressed prior to closing.

Finally, buyers should consider how recent U.S. legislation, policy shifts, and industrial incentives might affect post-acquisition value. For example, companies acquiring distressed targets in sectors tied to semiconductors, clean energy, or critical infrastructure may be eligible for tax credits or grants under the Inflation Reduction Act or CHIPS Act, provided the deal is structured to maintain domestic operations and jobs.

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Key Takeaways

While the acquisition of distressed assets presents real opportunity for U.S. manufacturing companies to grow strategically, it also requires careful legal navigation. Success depends on swift but thorough diligence, deal structuring that isolates risk, and a clear view of post-closing integration challenges. With the right legal and financial strategy, distressed deals can serve as a powerful lever for long-term competitiveness in a still-fragmented industrial landscape.

For assistance evaluating a potential target or structuring your next distressed asset acquisition to limit successor liability, please contact the authors or any attorney with Frost Brown Todd's Manufacturing Industry Team.

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