

## Writing a global pandemic playbook – a three part series

Distressed M&A: Opportunities for strategic buyers and optimizing opportunities for sellers

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## Sellers

- may need to generate liquidity by selling underperforming assets to shore up core assets
- may have pressure to sell entire business due to cash burn rate
- motivation may impact price, process and structure of sale



## Buyers

- after a decade of a Seller-friendly M&A market, power balance likely to shift to Buyers
- opportunistic motivations: cash rich buyers may invest at lower multiples/valuations
- defensive motivations: Control over supply chain that is in jeopardy

# Accelerated time frame

## Process of transactions



- Need for appropriate advisors and management of target entity
- Limited time to conduct robust diligence process
- Competition-auction dynamics can help drive timing of a sale process
- Regulatory considerations take on heightened significance
  - Competition matters
  - Regulatory approvals
  - New COVID-19 regulations
- Sellers' directors' fiduciary duties and considering interests of creditors



# Accelerated time frame

## Structure of transaction

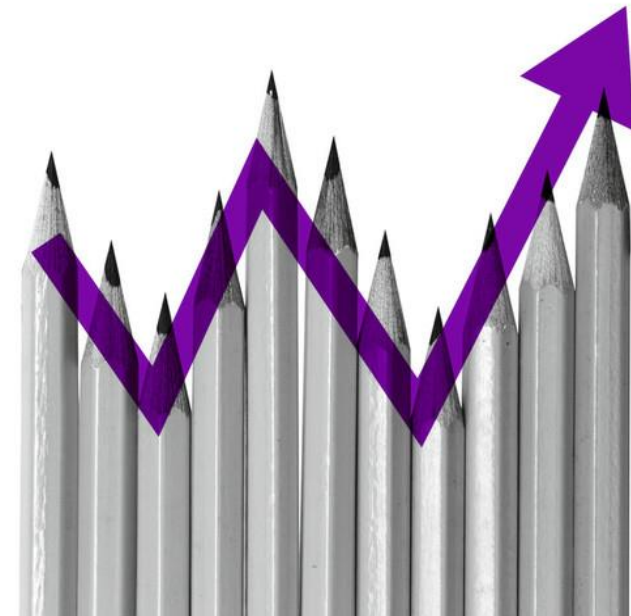


- Asset sales more common
- Limited warranties given by the Seller focused on key material problem areas
- Increase in requests for indemnities
- Increased risk around contract breaches/ability to assign contracts
- Increased risk around title to assets (fraudulent transfer/preferences)

# Certainty of closing/market closing conditions



- Deferred consideration/earn-outs
- Use of closing conditions
  - MAC in the context of a distressed business (effect of COVID-19 on MAC outs)
  - Lower tolerance for due diligence or financing outs
  - New/more specific closing conditions tied to financial performance/customers/vendors
- Bridge loans/credit support
- Increased need to keep lenders informed





- Availability of Indemnification (in court v out of court)
- Risk of clawbacks/preferences/fraudulent transfers
- New regulations
  - Treatment of NOLs
  - Treatment of PPP loans after a sale
- Role of R&W and special contingency insurance
- Impact of COVID-19 on insurers' risk profile
- Warranty protection and valuations



**Questions?**





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