GCF Periodic Review:
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In this edition of the review David Craze, Technical Director of SLR Consulting, a multi-disciplinary consultancy, provides an update of the impact that environmental due diligence procedures are having on transaction processes and how best to incorporate and manage them within a disposal timetable.

Does environmental due diligence matter at the moment?

YES IT DOES! It is probably correct to say that environmental issues are rarely deal breakers but without thorough due diligence and planning, actual or potential environmental liabilities can be a significant source of contention in the latter stages of a transaction, raising value and contractual exposure issues.

From the perspective of preparing a business for sale, a well conducted Phase 1 report disclosing the relevant environmental factors associated with a site remains the best way to render intrusive Phase 2 reports either unnecessary or limited in scope. Phase 2 reports, particularly on older industrial sites, present risks to the transaction's timetable and pricing, but also can present risks to the site itself if not carefully designed and monitored by the vendor's environmental consultant.

The scope of Phase 1 reports has recently broadened, beyond the basic reporting on condition of property, in two areas:

- Firstly, new regulation is being introduced in 2009 in the form of the Environmental Liability Directive (ELD) which will have significant impact for site 'operators'. One key component of the ELD is to place a new legal obligation on the owner/operator of a business to inform regulators should environmental damage occur and to take all practical steps to rectify/remediate the problem. Environmental damage is briefly defined as i) significant adverse effects on natural habitats, ii) significant adverse effects to controlled waters, iii) significant risk to human health. This also covers the threat of adverse effects.
- Secondly, specific to certain industries and suppliers, greening of the supply chain is increasingly a requirement of key clients such as major retailers. In such instances, compliance with customer requirements for carbon footprint, ethical standards and sustainability are becoming new diligence requirements to be included in a comprehensive Phase 1 report.

A key area of SLR's consultancy advice relating to business sales remains the best way to deal with issues revealed by Phase 1 reporting. First and foremost is the consideration as to whether potential liabilities will actually crystallise into real liabilities in the life time of investment or ownership if there is no intention to close or redevelop that site. SLR can advise on the best methods and measures for dealing with the issue and/or investigation of insurance based solutions to mitigate any exposure which will otherwise have to be dealt with in the sale and purchase agreement.

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Comment:

Exiting stressed non-core businesses in the current climate

It has become increasingly important to review the exit of stressed non-core units either as a source of cash to repay debt, to fund core business areas or alternatively to stem existing or potential losses.

The principal options comprise sale as a going concern, closure or restructuring. The sale option, where feasible, should deliver the optimal value outcome through avoidance of redundancy and closure costs, as well as the severe haircuts attendant on selling stock, plant & machinery, and commercial property in the current economic gloom. Restructuring is generally costly and not without risks.

Gazelle's experience of these types of situations has enabled the development of relationships with a broad range of specialist investors who are willing to take on challenged businesses. We are seeing consistent appetite, particularly for smaller businesses, from entrepreneurs and ex-managers seeking ownership opportunities who are prepared to take on poorly performing businesses. Although the consideration realised may in part often be deferred or contingent, the ability to exit a non-performing business cleanly and swiftly, stemming operating losses, avoiding restructuring costs and freeing up management time and capital, can often be compelling.

Gazelle's non-core disposal advisory service

Gazelle was set up over 10 years ago to offer corporate clients access to independent and senior level investment banking advice for deals in the lower mid-market, typically ranging from £5-100 million. Such transactions can be time and judgement intensive, raising a number of complex issues on which clients require expert and experienced advice.

We specialise in business and asset disposals, offering bespoke advice on the structuring, planning and implementation of processes. Our approach always begins with an honest assessment of the likely range of outcomes – our fees are linked in a large part to the successful completion of such transactions.

We can assume responsibility for co-ordinating all aspects of a transaction from initial preparation and marketing through to negotiation and execution. The successful sale of non-core businesses in the current climate requires a focused, experienced and dedicated resource to expedite a transaction and deliver optimal terms.

Gazelle has a strong track record of delivering results, sometimes in challenging circumstances where the business is impaired or loss-making. Over the years, we have developed a strong network of contacts and can frequently identify the less obvious interested party, whether based in the UK or internationally.

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