

Mergers And Acquisitions Outline Law School

Mergers and Acquisitions Outline

• Types of Transactions

◦ Merger

- Requires:
 - Approval of Board of both entities
 - Approval of Shareholders of both entities (DE is majority, MO is ⅔)
- File Articles of Merger with each applicable state
- Two companies become one. Results:
 - Usually, one is merged out of existence. In a consolidation, both are gone, and a new corporation is created.
 - All assets become the property of the surviving entity (by operation of state law)
 - All liabilities become the obligations of the surviving entity (by operation of state law)
 - Shareholders of target get consideration (no consideration in merger of equals)
 - The merger of two companies of about the same size to form a single company
- Types of Mergers:
 - Forward (Direct) Merger
 - Acquiror takes target, both now under acquiror's entity
 - **A merger in which the target company merges with and into the buyer, the buyer assumes all of the target company's assets, rights, and liabilities, and the target company ceases to exist as a separate entity.**
 - Reverse Merger
 - Acquirer merges into target; resulting entity is the target
 - Rare. Private companies want to become public is the best example.
 - A reverse merger occurs when a smaller, private company acquires a larger, publicly listed company.
 - Forward Triangular Merger
 - Parent is acquiring. Parent creates a new corporation, new corp buys target. Parent funds the merger sub to pay the target.
 - Result: Parent owns merger
 - Keeps liabilities separate.
 - Disadvantage:
 - Anti-assignment clauses may kick in
 - Change of control
 - **when a company acquires a target company through a subsidiary, or shell company.**
 - Reverse Triangular Merger
 - Parent owns merger sub. Merger sub pays target to become it. Parent owns the target.
 - Advantages:
 - Keeps branding, name recognition
 - Contracts are in the name of the target, don't have to deal with anti-assignment clauses
 - Most common
 - **occurs when an acquiring company forms a subsidiary in order to purchase a target company, which then absorbs the subsidiary to create a new company.**
 - Short Form Mergers
 - Parent company holding 90% or greater of ownership over sub can force a merger **WITHOUT** a shareholder vote from sub. (Mo. Stat. 351.447)
 - Also called freeze-out or squeeze-out
 - Still have appraisal rights.

Mergers and acquisitions outline law school provides a comprehensive framework for understanding the complex legal processes involved in the consolidation of companies. The study of mergers and acquisitions (M&A) is an essential aspect of corporate law education, equipping future lawyers with the necessary tools to navigate this dynamic field. This article aims to dissect the various components of M&A law, highlighting key topics that law students should focus on while developing their outlines.

Understanding Mergers and Acquisitions

Mergers and acquisitions represent two fundamental strategies used by companies to achieve growth, enter new markets, or attain competitive advantages. While both terms are often used interchangeably, they

refer to distinct processes:

Mergers

- A merger occurs when two companies combine to form a single entity. This can happen through:
- Statutory mergers, where one company acquires the assets and liabilities of another.
- Consolidations, in which both companies cease to exist and form a new corporation.

Acquisitions

- An acquisition refers to one company purchasing another company's assets or shares. Key types of acquisitions include:
- Stock acquisitions, where the acquiring company buys the target company's shares.
- Asset acquisitions, where specific assets of the target company are purchased.

Legal Framework of Mergers and Acquisitions

The legal landscape surrounding M&A is complex and multifaceted, incorporating various laws and regulations at both federal and state levels. Law students should focus on the following areas:

1. Securities Law

Mergers and acquisitions often involve the buying and selling of securities. Key regulations include:

- The Securities Act of 1933, which governs the offer and sale of securities.
- The Securities Exchange Act of 1934, which regulates trading practices and disclosure requirements.

Understanding these laws is crucial for navigating the legalities of public company transactions.

2. Antitrust Law

Antitrust laws aim to prevent anti-competitive practices and promote fair competition. The main statutes include:

- The Sherman Act

- The Clayton Act
- The Federal Trade Commission Act

Law students should familiarize themselves with how these laws apply to M&A transactions, including the review process by the Federal Trade Commission (FTC) and the Department of Justice (DOJ).

3. Corporate Law

Corporate law governs the formation, operation, and dissolution of corporations. Key considerations include:

- The fiduciary duties of directors and officers during M&A transactions.
- The rights of shareholders, including appraisal rights and voting rights.

Understanding corporate governance principles is essential for evaluating the legality and fairness of M&A deals.

4. Contract Law

Contracts are the backbone of any M&A transaction. Law students should focus on:

- The structure of merger agreements and purchase agreements.
- Key clauses such as representations and warranties, covenants, and indemnification provisions.

A solid grasp of contract law is vital for drafting and negotiating M&A agreements.

The M&A Process

The M&A process can be divided into several critical phases, each with its own legal considerations:

1. Pre-Merger Planning

Before initiating a merger or acquisition, companies typically engage in strategic planning. Key activities include:

- Conducting market research to identify potential targets.
- Formulating an M&A strategy aligned with corporate goals.

- Assessing the financial health and value of potential targets through due diligence.

2. Due Diligence

Due diligence is a comprehensive review of the target company's business, financials, legal standing, and operational aspects. Law students should understand the importance of:

- Identifying legal risks and liabilities associated with the target.
- Reviewing contracts, financial statements, and compliance with regulations.

This phase is critical for ensuring that the acquiring company makes an informed decision.

3. Negotiation and Agreement

Once due diligence is complete, the parties enter the negotiation phase. Key elements include:

- Discussing deal structure, including whether to pursue a stock or asset acquisition.
- Negotiating terms of the purchase agreement, including price and payment structure.
- Drafting and finalizing the merger or acquisition agreement with legal counsel.

Understanding negotiation tactics and legal drafting is essential for law students specializing in M&A.

4. Regulatory Approval

Certain M&A transactions require approval from regulatory bodies. This phase involves:

- Submitting filings to the FTC or DOJ if the transaction meets specific thresholds.
- Addressing any antitrust concerns raised by regulators.

Law students should familiarize themselves with the regulatory approval process and the potential implications on deal timelines.

5. Closing the Deal

Once all conditions are met and approvals obtained, the transaction can close. Key considerations include:

- Finalizing the transfer of assets or shares.

- Complying with any closing conditions outlined in the agreement.
- Ensuring that necessary corporate actions are taken, such as board approvals and shareholder resolutions.

6. Post-Merger Integration

Post-merger integration is a critical phase that often determines the success of the merger or acquisition. Important considerations include:

- Aligning corporate cultures and operational structures.
- Retaining key employees and managing talent integration.
- Monitoring compliance with terms outlined in the merger agreement.

M&A Case Law and Precedents

Studying landmark M&A cases enhances understanding of legal principles and judicial interpretations. Notable cases include:

1. Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc. - Established the “Revlon duties” concerning the sale of a company.
2. Smith v. Van Gorkom - Addressed the duty of care in the context of board decisions during M&A transactions.
3. Kahn v. M&F Worldwide Corp. - Discussed the standards for evaluating the fairness of a merger transaction.

Analyzing these cases helps law students grasp the practical implications of M&A law and the evolving nature of corporate governance.

Conclusion

A well-structured **mergers and acquisitions outline law school** is crucial for students aspiring to excel in corporate law. By focusing on the legal framework, understanding the M&A process, and studying relevant case law, law students can build a solid foundation for their future careers. The field of mergers and acquisitions is ever-evolving, presenting exciting opportunities for legal professionals who are well-prepared to navigate its complexities.

Frequently Asked Questions

What are the key legal frameworks governing mergers and acquisitions in the United States?

The primary legal frameworks include the Sherman Act, the Clayton Act, the Hart-Scott-Rodino Antitrust Improvements Act, and state corporate laws.

What role does due diligence play in the mergers and acquisitions process?

Due diligence involves a thorough investigation of a target company's business, financials, legal obligations, and potential liabilities to inform the acquirer's decision-making.

How does antitrust law affect the approval of mergers and acquisitions?

Antitrust law is designed to prevent anti-competitive practices, and mergers that could significantly reduce competition may be challenged or blocked by regulatory authorities.

What are the common forms of payment used in mergers and acquisitions?

Common forms of payment include cash, stock swaps, or a combination of both, depending on the negotiation between the parties involved.

What is the significance of the 'breakup fee' in merger agreements?

A breakup fee is a financial penalty that the seller agrees to pay if it terminates the agreement to accept a superior offer, serving to deter competing bids and compensate the buyer for lost opportunities.

What ethical considerations should law students be aware of in mergers and acquisitions?

Law students should consider issues such as conflicts of interest, confidentiality, transparency in negotiations, and adherence to fiduciary duties when representing clients in M&A transactions.

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