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Legal Considerations of Mergers and Acquisitions: Exploring the Dynamics

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ABSTRACT

Mergers and acquisitions (M&A) is a complex process that involves combining companies through various legal, financial and strategic processes. This article provides a comprehensive overview of the legal aspects involved in M&A transactions. Explores key legal considerations, regulatory frameworks and contractual arrangements involved in M&A transactions. It also analyzes the role of legal counsel, due diligence procedures and post-merger integration challenges. Through a detailed study of current examples and trends, this paper provides valuable insight into the legal landscape of M&A transactions.

I. INTRODUCTION

Mergers and acquisitions (M&A) are a cornerstone of corporate strategy that facilitates strategic growth, consolidation, and restructuring in the industry. This complex process involves the incorporation of companies through legal, financial and strategic methods that lead to the transfer of ownership, assets and liabilities from one entity to another. Therefore, understanding the legal status of M&A transactions is paramount, given the complex framework of laws, regulations, and contractual agreements that govern these transactions.

This paper aims to provide a comprehensive overview of the legal parties involved in M&A transactions, exploring key legal considerations, regulatory frameworks and contractual arrangements. It also delves into the role of legal advice, due diligence procedures and post-merger integration challenges, and uncovers the challenges of entering the legal landscape of M&A transactions.

Moreover, M&A transactions are not limited to legal considerations; including strategic decisions and financial results. Research on mergers and acquisitions is advancing rapidly, but remains divided in different perspectives and research variables. Researchers may contribute to silo research in M&A research and overlook relevant research from related fields, which creates the problem of fragmentation.

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II. MERGERS AND ITS TYPES

A merger is an agreement that combines two existing companies into one new company. Mergers are usually done to expand a company's reach, expand into new segments, or gain market share. All this is done to increase shareholder value. In a merger, there is often no store to prevent the company from being acquired or merged by a complementary company.

Merger is the voluntary merger of two companies into a new legal entity under the same terms. The companies that agreed to merge were roughly similar in size, customers, and scope of operations. This is why the term "united of equals" is sometimes used.

1. Horizontal Merger

Horizontal merger occurs when a company joins or acquires another company that offers the same or similar product lines and services to end customers, in the same industry and at the same production stage. Companies are usually direct competitors in this case.

For example, if a company that manufactures mobile phones merges with another company in the mobile phone industry, it is called a horizontal merger. The benefit of this merger is the elimination of competition, which helps the company increase market share, revenue, and profits. It also offers economies of scale due to increased volume due to lower average costs due to higher production. This type of merger also encourages cost efficiency, as redundant and wasteful activities are eliminated from operations, such as several administrative departments or divisions, such as advertising, purchasing, and marketing.

2. Vertical Merger

A vertical merger is done to bring together two companies in the same value chain to produce the same goods or services, but the only difference is the stage of production in which they operate. For example, if a clothing store takes over a textile factory, this will be called a vertical merger, because the industry is the same, namely clothing, but the production stage is different: one company operates in the regional sector and the other in the regional sector. secondary sector. This type of merger is usually done to ensure the supply of the required goods and to avoid supply disruptions, as in our example, a clothing store believes that clothes will be supplied by a textile factory. It is also done to limit the supply of competitors, resulting in greater market share, revenue and profits. Vertical integration offers cost savings and higher profits because there are no manufacturer parts.

3. Concentric Merger

A concentric merger, also known as a related diversification merger, occurs when two

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companies operating in the same industry but with different products or services merge. The purpose of a concentric merger is to achieve economies of scale, expand market share, and differentiate product offerings within the same industry.

An example of a concentric merger is the 2005 merger between Procter & Gamble (P&G) and Gillette. P&G, a consumer goods company known for home and personal care products, has teamed up with Gillette, a maker of beard products and personal care products. . While both companies were in the consumer goods industry, their product lines were complementary rather than directly competitive.

This is usually done for the convenience of customers, as it will be easy to sell these products together. In addition, it will help the company to diversify, thus making it more profitable. Selling one of the products will also drive the sales of the other, so if it can increase the sales of one of the products, it will generate more profit for the company. This type of merger reduces the risk for businesses to enter other areas of the industry and provides access to otherwise unavailable resources and markets.

4. Conglomerate Merger.

When two companies operate in different industries regardless of the level of production, the merger between the two companies is called a conglomerate merger. Unlike other types of mergers, merging companies involve companies with different business interests that do not share the same product, service, or market. The main reason for conglomerate mergers is to diversify the business portfolio, reduce risk and take advantage of new growth opportunities.

In 2015, General Electric (GE), a multinational company with interests in industries as diverse as aviation, healthcare, and renewable energy, announced the acquisition of Alstom's energy business. Alstom is a French multinational company specializing in power generation and rail transport.

Through the acquisition, GE expanded its presence in the global power generation market and diversified its portfolio with additional products and services. The merger of the conglomerate allows GE to strengthen its position as an energy solutions provider and strengthen the synergy between its existing businesses and Alstom's energy assets.

In both cases, mergers allow the merging companies to diversify their business interests, enter new markets, and create value through synergy and strategic expansion into unrelated industries.

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III. Acquisitions and it's types

Acquisitions are when one company partially or fully takes over or buys another company. Usually, large companies buy small companies, but there may be cases where small companies buy large companies. Companies may acquire other companies to increase their customer base, market presence, and operations. Acquisitions are a popular way to expand a business.

Acquisitions occurs when you buy another business in the hope that it can be more profitable. While acquisitions can help a business increase market share and scale, if not done strategically, it can lead to cultural clashes and reduce employee morale. Whether you're planning a career in business administration or want to work in a company's mergers and acquisitions department, you can benefit from knowing how acquisitions work in business.

1. Friendly Acquisitions

A friendly exchange occurs when one company owns two with another the board of directors approved the transaction. It works to the advantage of both company.

In a friendly acquisitions, shareholders and managers agree together both sides of the bargain.

Examples are Flipkart-Walmart, acquisition of Whatsapp by Facebook

2. Hostile Takeover

This type of acquisition occurs when the target company doesn't give consent or permission to the acquisition. The acquiring company must raise the capital stock to force the purchase. Hostile takeovers are usually done through tender offers. In the tender offer, a corporation seeks to purchase shares from the outstanding shareholders of the target company.Shareholders have a limited time to receive, at a price higher than the current market price.

An example is the occupation of Ashok Leyland by Hindus.

IV. Legal rumination in M&A transactions

1. Due Diligence

Due diligence is at the top of every M&A lawyer's to-do list. Covering all aspects of the operation of a company targeted for its intellectual property rights, a good legal advisor equipped with solid due diligence will understand complex issues and what to focus on.

This includes existing contracts, compliance with regulatory standards, intellectual property rights, ongoing or potential litigation, labor issues, environmental issues, and even tools such as legal billing software used by organizations for legal billing are also carefully evaluated. .

The main purpose is to identify and highlight potential future risks or liabilities, to ensure no

stone is left unturned and, most importantly, to highlight issues that may lead to future litigation.

2. Deal Structure

The term "Deal structure" makes people think of financial structure, leverage, and the difference between cash and equity. The truth is that the deal structure is legal as finance.

For example, any structure agreed upon in the deal, important legal issues such as shareholder approval, tax consequences of the agreed structure, transfer of liability, third party consent requirements and foreign regulatory issues must be considered. Used).

Deciding to buy the company or just its assets (ie, not taking on any liabilities) is another consideration that the company's M & A lawyer will advise on.

3. Representations and warranties

It is now common for buyers to include various representations and warranties in the terms of sale. This is usually aimed at avoiding the risk of litigation for acquiring firms.

This is no small matter – in general, a breach of any of these representations and warranties can result in a buyer's claim for damages – which can destroy the value in the contract.

This can be a complex gray area, and even the most well-intentioned company owners can find themselves vulnerable to problems they are not always aware of.

Attorneys for sale will often try to push back against many representations and warranties on this basis.

4. Non-competes and non-solvent

Non-competes and non-solicitations are important legal clauses in all transactions, especially in the service industry.

For example, let's say a technology firm acquires a technology start-up with some of the most talented software engineers in Silicon Valley.

5. Joint and multiple liabilities

Joint or several liabilities is an extension of the purposive indemnity issue. In the case of multiple liabilities, each of the target shareholders can be responsible for the account only to the extent that they contribute to the loss (for example, the CFO can be responsible for errors in the company's financial results, but not the CTO).

6. Target compensation

Target compensation is hotly debated in the context of closing M&A transactions.

Again, this is mainly a clause that seeks to protect the acquiring company from harm.

In the event of fraud or material misrepresentation by the seller, the buyer can include an indemnification clause that can cancel the transaction and / or force the seller to return the pre-agreed amount up to the closing price.

7. Closing Condition.

The terms and conditions set out in the contract specifically contain closing conditions. As the name suggests, this condition must be met for the transaction to close.

This process is uniform across the board and typically includes board approval for the deal, no material changes to the company's trading terms, and shareholder approval.

In the case of shareholder approval, an acquirer often requires more than 80% shareholder approval to avoid complications associated with a hostile takeover (such as valuation requirements).

V. LAW REGULATION

Mergers and Acquisitions ("M&A") in India are mainly governed by **The Companies Act 2013**

The Companies Act is the main law governing the Mergers and Acquisitions In Indian law, merger is defined as the combination of two or more companies into a new or existing company. Sections 232 to 234 of the Companies Act deal with the process of mergers and acquisitions.

The company establishes procedures for mergers and acquisitions, including statutory shareholder and regulatory approval, share valuation, and treatment of minority shareholders.

Mergers are a long and complicated process, so many things go wrong once the deal is done. According to a recent Harvard Business Review article, approximately 70% to 90% of merger and acquisition deals are considered failures.

The Indian Contract Act, 1872 (as amended) ("Contract Act"), which governs contracts and the rights of parties to contract under Indian law;

The Income Tax Act, 1961 and the Central Goods and Services Tax Act, 2017 read the relevant state laws on goods and services tax (as amended) which set out tax considerations in relation to M&A in India. There are cross-border elements. Double tax avoidance agreements also play an important role;

The Competition Act, 2002 (as amended) (the "Competition Act"), which regulates the combination of companies (including M&A) and prohibits agreements in India that have an adverse effect on competition or are likely to be anti-competitive;

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The Exchange Management Act, 1999 and the rules and regulations issued thereunder (as amended) read together with the circulars, instructions and regulations issued by the Reserve Bank of India ("RBI") jointly govern foreign investment in India. ("Foreign Exchange Rules"), including the Foreign **Exchange Management (Cross-Border Mergers) Regulations, 2018** ("Cross-Border M & A Rules"), which govern mergers between Indian companies and foreign companies;

The Foreign Direct Investment Policy 2020 (as amended) read with the press note issued by the Ministry of Commerce and Domestic Trade Promotion, Ministry of Commerce and Industry, Government of India;

Various laws of the central government and the state government that regulate matters related to labor (service conditions, wages, working conditions, safety, health and welfare of workers, etc.);

The Indian Stamp Act, 1899 provides rules and regulations related to notices and negotiable instruments, contracts, share certificates etc. Read with the applicable state law governing consideration of stamp duties and fees;

The Securities and Exchange Board of India Act, 1992 and the rules and regulations issued thereunder (as amended) are read in conjunction with the circulars, notifications, instructions and guidelines issued by the Securities and Exchange Board of India ("SEBI"). The securities market in India, including acquisitions involving companies listed on the stock exchange in India ("SEBI Regulations"); and

The Insolvency and Bankruptcy Code, 2016 ("IBC") and the rules and regulations issued (as amended) govern the restructuring / creditor purchase of companies experiencing insolvency.

VI. Conclusion

Mergers and acquisitions are complex processes that require careful consideration of legal, financial and strategic factors. Legal counsel play a critical role in guiding clients through the complexities of M&A transactions, from initial due diligence to post-merger integration. By understanding the legal and regulatory framework that governs M&A transactions, companies can navigate the process more efficiently and reduce risk to achieve their strategic goals.

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