Global Private M&A Guide - Limited External Content - Philippines

Common deal structures

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# What are the key private M&A deal structures?

Acquisitions are the most common form of M&A transaction. Acquisitions may be structured in one of two ways: The acquiring entity may acquire shares from the shareholders of the target company (share acquisition) or acquire assets directly from the target company (asset acquisition). In a share acquisition, the acquiring entity acquires the target company, or an interest in the target company, and, indirectly, the latter's business, assets and liabilities. In an asset acquisition, the acquiring entity generally acquires only specific assets, contracts and corresponding liabilities of the target company.

Auction processes are used with increasing frequency, with binding bid offers at the final offer stage.

The Philippines also recognizes the concept of a statutory merger or consolidation. In a merger, the surviving company absorbs a target company. In a consolidation, two or more companies consolidate to form a new corporation.

Mergers and consolidations are procedurally more complicated to effect than a share acquisition or an asset acquisition, and require the approval of the SEC.

In a merger, the surviving corporation, which will be one of the constituent corporations to the merger, absorbs all of the assets and liabilities of the constituent corporations. In a consolidation, a new corporation — called the "consolidated corporation" — acquires and assumes all the assets, rights, franchises and liabilities of the constituent corporation, similar to the surviving corporation in a merger.

Effectively, a merger or consolidation is a combination of two transactions, namely:

An asset or business sale by the absorbed corporation (as the seller) in favor of the surviving corporation or consolidated corporation (as a buyer).

The dissolution of the absorbed corporation by operation of law when the merger or consolidation becomes effective.

The absorbed corporation(s) may be viewed as the seller(s), but because it will dissolve by operation of law after the merger or consolidation becomes effective, it may not receive the consideration for the transfer of its assets to the surviving corporation or consolidated corporation. Instead, what normally happens in a merger or consolidation is that the surviving corporation or consolidated corporation, as the case may be, issues shares to the stockholders of the absorbed corporation(s) as consideration for the transfer of assets of the absorbed corporation(s).

# Which entity is likely to be the target company (on a share sale) or the seller (on an asset sale)?

There are three forms of business vehicles that are recognized in the Philippines:

Sole proprietorships

Partnerships

Corporations

Of the three, the corporation is generally the most common.

Unlike a sole proprietor and a general partner (who have unlimited liability), the liability of shareholders of an incorporated stock corporation is generally limited to their investment in the corporation.

Foreign corporations may register branch offices, representative offices, regional headquarters or regional operating headquarters in the Philippines and do business through such registered entities without incorporating a stock corporation in the Philippines.

There are substantial differences between the laws and regulations that apply in M&A involving public companies and those that apply in M&A involving private companies.

# What are the different types of limited liability companies?

A Philippine incorporated stock corporation is the only type of limited liability company in the Philippines. A stock corporation has a juridical personality separate from its stockholders, and the liability of the stockholders for the obligations of the stock corporation is limited to their investment in the capital stock of the stock corporation.

Subject to compliance with nationality restrictions in certain industries, where applicable, a foreign corporation may incorporate a stock corporation in the Philippines.

# Is there a restriction on shareholder numbers?

There is no maximum number of shareholders applicable to a Philippine incorporated stock corporation, which is the only type of limited liability company in the Philippines. However, a Philippine stock corporation must have at least two individual shareholders, irrespective of whether the corporation also has juridical shareholders.

# What are the key features of a share sale and purchase?

A share acquisition is procedurally simpler and tends to be more widely used than an asset acquisition. A share acquisition basically involves the transfer from the shareholders of the target company to the buyer of the shares in the target company. In such transactions, specifically where the buyer acquires all of the outstanding shares of the target company, the buyer effectively acquires the target company with all of its assets and liabilities (including contingent and undisclosed liabilities).

# What are the key features of an asset sale and purchase?

An asset acquisition tends to be more complex than a share acquisition because the former transaction may involve the transfer of various categories of assets and liabilities to the buyer. The transfer of each category of assets and liabilities may require different legal requirements and documentation.

Unlike a share acquisition, in an asset acquisition, the seller generally retains all assets and liabilities not otherwise acquired or assumed by the buyer.

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