

Mergers and Acquisitions

What is a Merger? The word Merger has a strictly legal meaning and has nothing to do with how the combined companies operate in the future. A merger occurs when one corporation is combined with and disappears into another corporation. All mergers are statutory mergers, since all mergers occur as specific formal transactions in accordance with the laws, or statutes, of the states where the company's are incorporated. The post-transaction operations or control of a company has no relevance on whether a merger has occurred or not.

What is an Acquisition? An Acquisition is the process by which the stock or assets of a corporation become owned by a purchaser. The transaction may take the form of a purchase of stock or a purchase of assets.

What's the difference between a Merger and an Acquisition? An Acquisition is the generic term used to describe a transfer of ownership, and Merger is a distinctive, technical term of a particular legal procedure that could or could not happen following an acquisition. It is far more common for an acquisition to occur without a following merger in today's marketplace.

What is a Leveraged Buyout? A Leveraged Buyout (LBO) is a transaction whereby a company's stock or assets are purchased with borrowed money, making the company's new capital structure to be a high percentage of debt. An acquisition of all the selling company's stock, usually by a newly formed corporation created for the sole purpose of the acquisition, followed immediately by a merger of the buyer's new company with the acquired company, so that the assets of the acquired company become available to the buyer to secure debt.

What is an Earnout? An Earnout is a method of compensating a seller based on the future earnings of a company. It is the contingent portion of the purchase price. A common type of earnout provides for additional payments to a seller if the earnings exceed agreed-upon levels. Another type of earnout may provide that certain debt given to the seller as part of the acquisition price be paid out early if earnings exceed agreed-upon levels.

What are the different forms of transactions? There are three general types of transactions in the acquisition of a business. The purchase of the assets of the business, the purchase of the stock of the business owning the assets, and a merger of the buyer with the business.

What is an Asset Transaction? The acquired company transfers the assets of the business to the purchaser. These could include equipment, inventory, and real estate, as well as intangible assets such as contract rights, leases, patents, trademarks, etc. These could be all or a portion of the assets owned by the selling company. The acquired company executes the specific types of documents necessary to transfer the assets, such as deeds, bills of sale, and assignments.

What is a Stock Transaction? The seller transfers the shares in the acquired corporation to the purchaser in exchange for an agreed-upon payment. A Stock Transaction is appropriate when tax costs or other problems of doing an asset transaction make an Asset Transaction less appealing.