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LEGAL ASPECTS OF CORPORATE COMBINATIONS IN MODERN MERGERS AND ACQUISITIONS PRACTICE IN THE UNITED STATES OF AMERICA

Soyibnazarov Nurmukhammad Abdunazar ugli
LLM alumnus, Pennsylvania State University

Abstract

Mergers and acquisitions (M&A) play a central role in corporate restructuring and economic development in the United States. This article examines the legal framework governing corporate combinations within the U.S. legal system, focusing on consensual transactions, tender offers, and shareholder rights under corporate and securities law. The analysis explores common transaction structures, including stock purchases, asset acquisitions, and various merger forms, as well as the regulatory oversight imposed by federal securities and antitrust laws. Particular attention is given to the role of shareholder voting, appraisal rights, and disclosure obligations under the Delaware corporate law regime. The article also discusses contemporary developments affecting M&A activity, such as private equity transactions, special purpose acquisition companies (SPACs), and emerging technological sectors such as artificial intelligence and blockchain-based enterprises.

Keywords: Mergers and acquisitions, corporate law, tender offers, shareholder rights, Delaware corporate law, securities regulation, antitrust law, SPACs.

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Introduction

Corporate mergers and acquisitions constitute a fundamental mechanism for corporate growth, restructuring, and market consolidation within the United States economy. Through these transactions, companies may combine assets, acquire control of competitors, or restructure their corporate ownership. The legal regulation of these transactions involves a complex interaction between federal securities regulation, antitrust enforcement, and state corporate law - particularly the corporate law of Delaware, which governs a large portion of U.S. corporations through the Delaware General Corporation Law.

The legal structure of M&A transactions typically involves negotiations between the acquiring company and the target company, due diligence investigations, and the drafting of transaction agreements that determine the legal and financial terms of the transaction. In addition to consensual transactions negotiated between management teams, the U.S. system also recognizes tender offers, which allow a bidder to acquire shares directly from shareholders. This article analyzes the legal aspects of corporate combinations in the United States by examining the principal transaction structures, the regulatory framework governing mergers and acquisitions, and the rights of shareholders during such transactions.

The starting point of any consensual M&A transaction is the determination of the value of the target company. The acquiring company must determine the price it is willing to pay, while the target's shareholders and management assess the minimum acceptable value for their shares. Financial valuation methods—such as discounted cash flow analysis, comparable transactions, and market multiples—are commonly used to determine the value of the target. Once preliminary valuation is established, the acquirer typically conducts a due diligence investigation. This process allows the acquiring firm to examine the financial condition, liabilities, contractual obligations, intellectual property, and regulatory compliance of the target company. In most transactions, the parties enter into a confidentiality agreement before sharing sensitive information. The

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scope of due diligence may vary depending on the form of consideration offered. When the acquirer pays entirely in cash, the target may conduct limited due diligence on the acquirer. However, when the consideration consists of shares of the acquiring company, the target shareholders generally undertake a more extensive investigation to evaluate the value and risk associated with the offered securities.

2. Transaction structures.

Once *valuation* and *due diligence* are completed, the parties determine the appropriate legal structure for the transaction. U.S. corporate law provides several possible transaction structures.

- a) In a **stock purchase** transaction, the acquiring company purchases the shares of the target corporation directly from its shareholders. Payment may be made in cash, securities of the acquiring company, or a combination of both. This structure is commonly used for closely held corporations because it allows the acquirer to obtain control of the target while leaving the corporate entity intact.
- b) In an **asset acquisition**, the acquiring company purchases specified assets of the target company and assumes only certain liabilities agreed upon in the transaction agreement. Following the sale of assets, the target company typically liquidates and distributes the proceeds to its shareholders. Shareholders who disagree with the transaction may seek judicial appraisal of their shares.
- c) A **direct merger** occurs when the target company merges directly into the acquiring company. By operation of law, all assets and liabilities of the target automatically transfer to the surviving corporation. The target's shareholders receive consideration specified in the merger agreement unless they exercise appraisal rights.
- d) In a **reverse subsidiary merger**, the acquiring company forms a subsidiary that merges with the target company. The subsidiary ceases to exist, and the target company survives as a wholly owned subsidiary of the acquiring firm. One

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advantage of this structure is that the liabilities of the target remain within the surviving target corporation rather than transferring directly to the parent company.

e) In a **forward subsidiary merger**, the target company merges into a subsidiary of the acquiring company, and the subsidiary survives. In this structure, the assets and liabilities of the target transfer to the subsidiary rather than remaining in the original corporate entity.

f) Some jurisdictions following the Model Business Corporation Act permit *compulsory share exchanges*. Under this structure, the target shareholders are required by operation of law to transfer their shares directly to the acquiring company in exchange for specified consideration.

g) A **short-form merger** occurs when a parent corporation owns a substantial majority of the shares of a subsidiary. In such cases, the parent may merge the subsidiary into itself without a vote of the subsidiary's minority shareholders.

3. Drafting the Merger Agreement

The merger agreement represents the central legal document governing the transaction. It identifies the parties involved and specifies the structure of the deal. Key provisions typically include:

- Identification of the assets or shares being acquired;
- The consideration to be paid to shareholders;
- Representations and warranties of the parties;
- Conditions to closing;
- Procedures for completing the transaction.

The agreement also may contain contractual provisions such as no-shop clauses, which prevent the target company from soliciting competing offers, or go-shop provisions, which allow the target to seek better offers during a specified period.

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4. Federal Regulatory Framework

Federal securities law plays a crucial role in M&A transactions, particularly when securities are used as consideration. If the acquiring company issues securities as part of the transaction, the offering generally must be registered under the Securities Act of 1933 and filed with the U.S. Securities and Exchange Commission. In contrast, if the acquirer pays solely in cash, the transaction may not require securities registration. Large mergers must comply with federal antitrust review procedures under the Hart–Scott–Rodino Antitrust Improvements Act. The parties must file a pre-merger notification with antitrust authorities such as the Federal Trade Commission and the United States Department of Justice. These agencies review proposed mergers to determine whether they may substantially lessen competition in violation of antitrust law.

5. Tender Offers

A tender offer is a transaction in which a bidder offers to purchase shares directly from the shareholders of a target company. Unlike a merger negotiated between corporate boards, a tender offer allows the bidder to bypass the target's management. Tender offers may be friendly—when supported by the target board—or hostile, when the bidder proceeds without management approval. Two types of tender offers are considered here: In a cash tender offer, the bidder offers cash to purchase shares from the target's shareholders. The bidder must publicly file tender offer materials with the U.S. Securities and Exchange Commission. In an exchange offer, the bidder offers securities instead of cash. Because securities are issued, the bidder must file a registration statement under the Securities Act. Tender offers are frequently used in two-step acquisitions. First, the bidder acquires a controlling percentage of shares through the tender offer. Second, the bidder completes a merger to acquire the remaining shares. Under Delaware law, if the acquirer obtains a majority of shares through the tender offer, it may subsequently merge the target with fewer procedural requirements.

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6. Shareholder Voting and Appraisal Rights

Under the Delaware General Corporation Law §251, a merger generally requires approval by most of the outstanding shares of the corporation entitled to vote. Corporate charters may require a higher voting threshold but cannot require a lower one. Shareholders typically vote on mergers during annual or special meetings, and voting may occur through proxies distributed in advance of the meeting. Shareholders who dissent from a merger may exercise appraisal rights, allowing them to request a judicial determination of the fair value of their shares under DGCL §262. Delaware courts determine fair value using valuation methods accepted within the financial community. The Delaware Supreme Court recognized this flexible approach in *Weinberger v. UOP, Inc.*, rejecting earlier rigid valuation formulas and allowing courts to consider any relevant valuation techniques. Directors of the target corporation must disclose all material information necessary for shareholders to make informed decisions regarding the transaction. The Delaware Supreme Court emphasized this duty in *Skeen v. Jo-Ann Stores, Inc.*, holding that directors must disclose information that would significantly alter the total mix of information available to shareholders. Shareholder appraisal rights allow dissenting shareholders to request judicial determination of the fair value of their shares. The Delaware Supreme Court broadened acceptable valuation methodologies in *Weinberger v. UOP, Inc.* The court rejected rigid valuation formulas and allowed courts to consider any financial techniques generally accepted in the financial community¹.

7. Fiduciary Duties in Mergers and Acquisitions

Directors of the target company owe fiduciary duties to shareholders when negotiating or approving a merger. These duties include the duty of care, duty of loyalty, and the obligation to act in the best interests of shareholders. A landmark case establishing the standard for director liability in merger negotiations is *Smith*

¹ *Weinberger v. UOP, Inc.*, 457 A.2d 701 (Del. 1983).

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v. Van Gorkom. In this case, the court held that directors breached their duty of care when approving a merger without adequately informing themselves of the company's value or conducting a proper evaluation of the transaction². This case emphasizes that directors must conduct adequate due diligence and rely on proper financial analysis before approving a merger agreement.

6. Contemporary Trends in M&A.

Private equity firms play an increasingly significant role in the M&A market. These firms typically raise capital from institutional investors and wealthy individuals to acquire companies, improve their performance, and later sell them for profit. Many acquisitions involve leveraged buyouts, in which a large portion of the purchase price is financed with debt. Special Purpose Acquisition Companies (SPACs) have emerged as a popular alternative method for taking companies public. A SPAC raises capital through an initial public offering with the sole purpose of acquiring another company within a specified time. Emerging technologies such as artificial intelligence and blockchain have also influenced modern M&A activity. Technology firms increasingly pursue acquisitions to obtain advanced technological capabilities, including artificial intelligence development.

In conclusion, the legal framework governing mergers and acquisitions in the United States is shaped by the interaction between state corporate law, federal securities regulation, and antitrust oversight. Consensual transactions, tender offers, and various merger structures provide flexibility for corporate combinations while ensuring protection for shareholders and market competition. Delaware corporate law plays a central role in defining shareholder rights, voting requirements, and appraisal remedies. Meanwhile, federal agencies such as the Securities and Exchange Commission and antitrust authorities ensure transparency and competitive fairness in the marketplace. As economic

² Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985).

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conditions, technological developments, and financial innovations continue to evolve, the legal regulation of M&A transactions will remain an essential component of corporate governance and market regulation.

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1. Delaware General Corporation Law § 251.
2. Delaware General Corporation Law § 262.
3. Securities Act of 1933, 15 U.S.C. § 77a et seq.
4. Hart–Scott–Rodino Antitrust Improvements Act, 15 U.S.C. § 18a.
5. Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983).
6. Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985).