

BUSINESS ACQUISITIONS & MERGERS

(Introduction)

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ISSUES TO BE COVERED

1. TYPES OF BUSINESS ACQUISITIONS
2. LEGAL DUE DILIGENCE
3. CONFIDENTIALITY AGREEMENTS
4. SHAREHOLDERS AGREEMENTS
5. SHARES SALES AND PURCHASE AGREEMENTS
6. ASSETS SALES AND PURCHASE AGREEMENTS
7. MERGER PROCESS
8. LIABILITY OF SELLERS
9. LIABILITY OF PURCHASERS
10. COMPETITION CONSIDERATIONS
11. EMPLOYMENT CONSIDERATIONS

TYPES OF BUSINESS ACQUISITIONS

Share deals: purchase of shares of a company

Assets deals: purchase of assets owned by a company

Capital increase: acquiring control of a company through participation to an increase of its share capital

Mergers: merger of two previously independent companies

Spin off: the opposite of a merger

Hostile take overs: hostile acquisitions of listed companies

LEGAL DUE DILIGENCE

Purpose of LDD

Auditors reports & financial accounts

Identify who the owner is

Identify the value of the business

Identify difficulties of business restructuring

Identify whether the business will continue to be an ongoing concern

Common problems

- Transactions with affiliated companies

CONFIDENTIALITY AGREEMENTS

What is confidential ?

Impact of IP rights

Duration of confidentiality

Disguised restrictions

Specific performance

SHAREHOLDERS AGREEMENTS

Management clauses

Share transfer restrictions

- First option
- Tag along
- Drag along

Legality with company law

By laws

SHARES SALE AND PURCHASE AGREEMENTS

Sale of an accounting positions

The impact of financial accounts

Warranties; the impact of warranties
common warranties

COMPETITION PROBLEMS

- Concentration of business leads to lessening of competition
- Notification of mergers and acquisitions
- Transactional problems

EMPLOYMENT LAW PROBLEMS

Mergers usually result to unemployment

An attempt to preserve employees rights