

WHAT IS THE DIFFERENCE BETWEEN A MERGER AND AN ACQUISITION?



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Introduction A merger is the act or process of combining two or more businesses. When one company takes over another company and establishes itself as the new owner it is called an acquisition.

There are two main types of acquisition:

Share purchase: The buyer buys the shares from the shareholders and acquires all of the target company's assets, liabilities, rights and obligations.

Asset purchase: The buyer buys assets (and certain agreed liabilities) that form the business. The buyer can 'cherry pick' and leave behind any assets or liabilities it does not want.

Most acquisitions involve private companies or businesses but, if the buyer or seller is a public limited company, additional legal formalities will need to be considered and complied with.

What is the legal process?

No two acquisitions are the same. However, a typical acquisition – of shares or assets – can be divided into five distinct stages: pre-contact; contract; pre-completion; completion; and post-completion.

Pre-contract: The parties do not immediately enter into a sale and purchase agreement. The buyer makes thorough investigations of the target and heads of terms are agreed and circulated, recording the main agreed points and the basis upon which the parties will proceed with the transaction. The buyer will often in this stage engage lawyers and accountants to carry out checks on the target companies and their assets. This is called the due diligence process.

Contract: When both parties are ready to commit themselves contractually, they will enter into a sale and purchase agreement. The seller will also hand a disclosure letter to the buyer at the same time, disclosing matters relating to the target and its affairs.

Pre-completion: Completion can take place immediately after the sale and purchase agreement has been signed. However, sometimes there is a gap between signing the contract and completion where, for example, the contract has been made conditional upon the happening of certain events.

During this period the parties are concerned with the satisfaction of any outstanding completion conditions and ensuring there has been no change in the general state of the assets of the target during the intervening period.

Completion: On completion, title to the assets which are the subject of the acquisition are formally transferred to the buyer in return for the buyer providing the purchase price.

Post-completion: The post-completion formalities will vary in each jurisdiction according to the required method of transfer. They can include, for example, the payment of stamp duty or the transfer

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This briefing is only intended to give a brief summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the contact details below.

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