**M&A STRUCTURES, ADVANTAGES, AND DISADVANTAGES OF EACH TYPE**

Over the past decade, M&A activity in Vietnam has increased greatly. The market has witnessed many big deals, such as between KEB Hana Bank (South Korea) and BIDV, or between VinCommerce and Masan Group, etc. The positive factors helping motivate the Vietnamese M&A market include the changes to the legal framework on enterprises and investment, the participation in new-generation FTAs, or the internal development of enterprises.

An M&A transaction can be implemented in many forms. This article will review these M&A structures along with the advantages and disadvantages of each type to help investors have an insight, from which investors can make a choice that tailors to their business needs and characteristics.

**M&A definition**

“Mergers and Acquisitions”, abbreviated as M&A, translated into Vietnamese as “Sáp nhập và Mua lại”, is an umbrella term referring to activities of consolidation through forms of financial transactions. In fact, there are still certain differences between Mergers and Acquisitions in the form of implementation, the nature of the transaction or the legal consequence after the transaction is completed.

There are three types of transaction structures that can be applied to an M&A deal, including: acquisition of assets of the selling enterprise (also known as the target company); acquisition of shares (for joint-stock companies) or acquisition of capital contribution (for limited liability companies); or, merger.

## ****1. Asset acquisition****

In this structure, the target company will transfer its assets to the buyer. The target company's assets usually include land use rights, factories, warehouses, machinery, production equipment, intangible assets such as trademarks, patents, copyrights, etc.

Advantages:

* Be flexible in choosing the type of property to buy and sell.
* Not directly responsible for the debts of the target company.
* The owner, capital contributor or shareholder still owns the target company.

Disadvantages:

* Some assets of the target company cannot be transferred. For example: commercial advantages, customer data.
* High tax rate.

According to the provisions of Article 2 of Circular No. 96/2015/TT-BTC, in property transactions, income from real estate transfer and investment project transfer is subject to corporate income tax at the tax rate of 20%.

* Since each type of asset has different transfer conditions, the execution time is longer than other transaction structures.

In some cases, based on its data source, if the tax agency thinks that the transfer price is not suitable with the market price, the property transfer price will have to be independently appraised by a third party and provided with a written appraisal for review.

## ****2. Shares or capital contribution acquisition****

In contrast to the asset acquisition, the buyer will buy shares of shareholders or contributed capital of members to own the target company. From there, the buyer will own all of the company's assets.

Advantages:

* Fewer tax costs, especially for sellers.
* The acquisition of shares or capital contribution is easy to negotiate.
* Less cost and time to implement

Disadvantages:

* Investors need to meet some investment conditions
* The acquisition of shares or capital contribution is synonymous with the fact that the buyer will also buy the financial responsibilities of the target company. For this reason, the buy usually buys shares or contributed capital through a subsidiary to avoid unspecified debts.

## ****3. Merger****

Merger is the process in which one or several enterprises transfer all their assets, rights, obligations, and legitimate interests to another enterprise, and at the same time terminate their business activities.

Disadvantages:

* The value of the target company is difficult to determine.
* Internal conflicts in management after the merger.
* Conflicts and incompatibility between company cultures.
* Some potential shareholders leave the company because they do not believe in the merger.

Advantages:

* Taking the existing market position advantage of the merged enterprises.
* Business performance will be raised.