

# Mergers & Acquisitions:

## Mitigating the risk through a proper deal structure

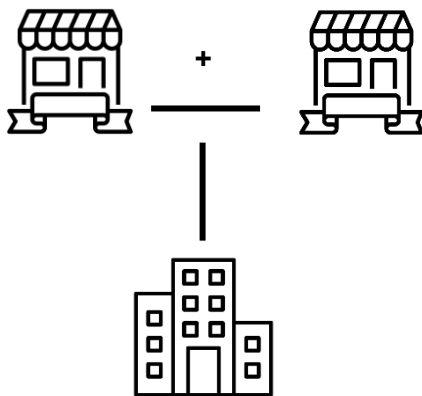
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## Introduction

The term mergers and acquisitions (“M&A”) refers to the consolidation of companies or assets through financial transactions which aims to develop and manage the company’s portfolio. With the pressure from the internal parties who intended to develop the company, M&A are usually become one of the answer for the stakeholders even the success rate is not truly promising.

M&A are often used interchangeably, however, these two words are slightly different which can be illustrated as follows:

### MERGERS



Describe as two companies that join forces to move forward as a new entity.

### ACQUISITIONS



Describe as one company takes over another company and establishes itself as the new owner.

Based on the practical views in Indonesia, there are several reasons that might be the background for M&A to take place, such as: (1) creating synergies; (2) achieving higher revenue; (3) strengthen the market; and/or (4) resolving the business problem.

Regardless what the aim is, it is very important for the business entity **to ensure the process on executing the M&A will be successfully conducted without leaving any risks behind** towards the stakeholders and/or the business entity itself.

## A proper deal structure will lead to a successful M&A

M&A deal structure is extremely important, as it essentially outlines a set of terms that is prioritizing the objectives of a merger or acquisition and ensuring that the top-priority objectives of all parties involved are satisfied.

Developing a proper M&A deal structure might be intricate and challenging because there are factors such as financing means, corporate control, business plan, market conditions, prevailing laws and other related factors must be considered. Therefore, deal structuring process requires all parties involved to affirm their stance on the negotiation, how much risks they can tolerate and conditions which may canceled the negotiations.

In Indonesia, there are **three most common ways** to structure an M&A deal which will present the specific advantages and disadvantages for stakeholders such as:

Ways of Structuring	Advantages	Disadvantages
<p><b>Asset Acquisition</b></p> <p>A well-known deal structure where the buyer company chooses which assets it wants to purchase from the selling company</p>	<ul style="list-style-type: none"> <li>• The buyer company has the option on the assets to be sold.</li> <li>• The transaction will not affect the selling company as a corporate entity and will not waive its liabilities.</li> </ul>	<ul style="list-style-type: none"> <li>• The buyer company may not be able to acquire non-transferable assets such as patents.</li> <li>• This transaction may lead to high-impact tax costs for both parties.</li> <li>• Time-intensive process</li> </ul>
<p><b>Stock Purchase</b></p> <p>A majority amount of the seller's voting stock shares are acquired by the buyer, which means control of the seller's assets and liabilities are transferred to the buyer company.</p>	<ul style="list-style-type: none"> <li>• Taxes are minimized, especially for the seller company.</li> <li>• Less time-consuming.</li> </ul>	<ul style="list-style-type: none"> <li>• Legal or financial liabilities of the seller company will be transferred to the buyer company.</li> <li>• Dissenting shareholders will be an issue.</li> </ul>
<p><b>Merger</b></p> <p>Combining two organizations to form one corporate entity.</p>	<ul style="list-style-type: none"> <li>• Generally a simple deal process.</li> <li>• Only require the approval of a simple majority of shareholders.</li> </ul>	<ul style="list-style-type: none"> <li>• Often underestimated since all assets and liabilities are instantly passed to the acquirer.</li> </ul>

In structuring a deal, **the advantages and disadvantages must be considered very well** by the stakeholders along with other influencing factors to reach a conclusion on which way of structuring that will be adopt.

## Agreement is Fundamental

M&A agreements are complex and involve many moving parts, including the negotiation. In order to ensure that the process of executing the M&A will prevent or lessen the risks which may occurred in the future, lot of stakeholders and/or the business entity in Indonesia are convinced that a written agreement is fundamental.

As a process that shall be undergo by the stakeholders and/or the business entity, M&A agreements must include the following key terms such as:

1. Deal structure;
2. Representations and Warranties;
3. Pre-Closing Covenants;
4. Closing Conditions;
5. Indemnification;
6. Termination Rights; and
7. Post-Closing Covenants.

Having said that, it is truly important for the stakeholders and/or business entity to engage a team of experienced in M&A as advisors in order to ensure that the abovementioned key terms are regulated under the M&A Agreement which will be the reference for all parties that is related to the M&A transaction to perform their rights and obligations.

## Conclusion

In order to mitigate the risk which may occurred in the process of M&A, the stakeholders and/or the business entity shall firstly comprehend the M&A deal structures that will be adopt for such transaction since a proper deal structure will lead to a successful merger or acquisition deal.

In Indonesia, the stakeholders and/or the business entity must understand the national prevailing laws that govern and applicable regarding the implementation of M&A transactions in order to secure their transaction. We, Dwinanto Strategic Legal Consultant (“**DSL**C”), are experienced in carrying out M&A transactions and ready to secure your business transactions.

**Disclaimer:** This article is provided for general discussion only and is not intended as legal opinion so that it does not have binding legal force and is not binding as a Judicial Decision.

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