Three main methods of acquiring business

Acquiring a business is done through three main methods: merging with the selling company, referred to as the target company; purchasing the assets of the target company; or purchasing the stock or other equity interests of the target company. Each method has pros and cons depending on the legal, tax and business implications. Therefore, it is imperative the parties carefully consider these at the outset.

A business merger is simply a combination of two legal entities becoming one. The one that survives the merger, called the surviving entity, assumes all assets and liabilities of the other. The logistics of a merger are driven by state statute and case law, which informs the parties of the legal requirements and procedures. For example, an Oklahoma limited liability company that is the surviving entity must file articles of merger or consolidation with the Oklahoma Secretary of State containing details of the merger and entities involved. Additionally, the parties should review the organizational documents to ensure compliance with any contractual procedures.

Purchasing the assets of the target company means the buyer acquires the assets of the target company, including real property, IP, equipment, inventory, and licenses. The buyer also acquires contractual liabilities and tax obligations. This method affords the parties great flexibility for the buyer to choose specific assets and liabilities, and to carve out liabilities the target company should keep. However, this method can be more complicated because it may need preparation of ancillary agreements to transfer contracts, tangible property, and title to certain assets.

Purchasing the stock of the target company means the buyer acquires all of the target company's assets and liabilities. In this method, the stock purchase buyer essentially acquires the target company rather than the components of the business. A stock sale can benefit sellers where it effectively transfers all liabilities without requiring all of the formalities in an asset purchase agreement, such as documents to retitle assets to the buyer. A stock acquisition generally will not have the same statutory constraints of a merger.

Each method has unique advantages and disadvantages depending on the specifics of the acquisition deal. The parties need to analyze and evaluate all the implications for each method. Careful consideration and planning lead to the best deal for both sides and prevents unnecessary complications down the line.

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