

Fauri Law

Acquisition Agreement



Business Law
Presentation 2026



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Basic Forms of Acquisitions

Type of Agreements



01

Basic Forms of Acquisitions



	Description	Example
Asset Purchase Agreement	In an asset acquisition, the purchaser acquires specific assets and liabilities of the Target. After the deal closes, the buyer and seller maintain their separate corporate identities and the seller retains those assets and liabilities not purchased by the buyer.	This could include equipment, fixtures, furniture, licenses, trade secrets, trade names, accounts payable and receivable, and more
Share Purchase Agreement	Buyer acquires shares of target directly from target's shareholders in exchange for purchase price.	Share purchase Agreement between the buyer and seller shareholder of the target company.
Amalgamation (Merger)	An amalgamation is a statutory transaction in which two corporations merge into one continuing corporation.	A vertical short-form amalgamation A horizontal short-form amalgamation

Acquisition Provisions

Basic Terms and Conditions

02



Acquisition Provisions



Acquisition Provisions



Purchase Price

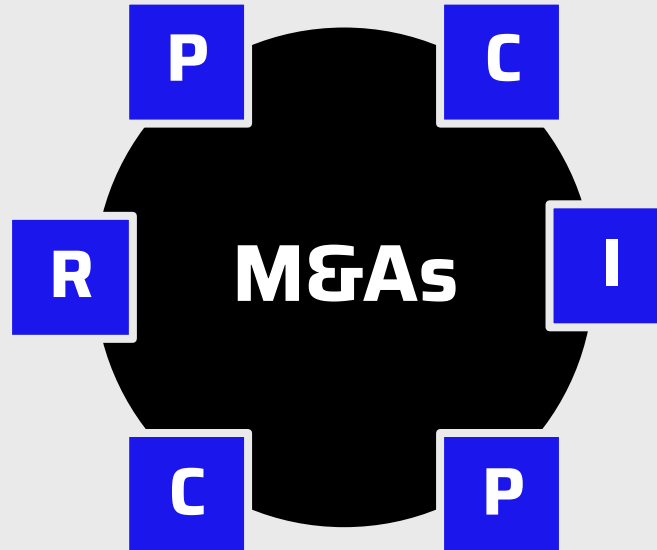
Amount and source of payment

Representation and Warranties

Disclosures

Covenants

Positive and Negative



Closing Conditions

Specified conditions must be met

Indemnifications

Pay damages

Post Closing

Matters after acquisition

Purchase Price



Purchase Price

- Amount of payment
- Source of payment
- Working capital or other purchase price adjustment
- Earn-out, escrow, or holdback arrangements

Purchase Price Adjustment

- Purchase price is agreed to by the parties at the signing of the agreement, but typically adjusted (i) at closing and/or (ii) after closing. These adjustments are intended to take into account changes in the target's business between signing and closing or information about the target that is only available after closing.

Representation and warranties



01

Representations are statement of past or existing facts

02

Reps and warranties are dynamic, they are snap shot of the target

03

Provide buyer with the right to terminate the agreement if they are inaccurate at the time of closing

04

Warranties are promises that existing or future facts are or will be true

05

Serve as a means to acquire information regarding the assets and liabilities of the the target

06

Allocate risks between the buyer and the seller

Types of Representations and Warranties



Transactional

- Generally made by all parties and cover matters such as parties' ability to enter into acquisition agreement and consummate transactions contemplated. Generally not controversial.

Operational

Generally only made by seller and usually relate to target's operations. Heavily negotiated.

- Financial statements
- Compliance with the law
- Litigation
- Specialist areas (tax, benefits, environments, etc.)

Qualifications of Reps and Warranties

Examples of representations without qualifiers:

→ The bag is full

Examples of Representations with qualifiers:

→ **Acknowledge**: to the Company's knowledge, the bag is full.

→ **Materiality**: the bag is materially full.

→ **Time**: since January 1, 2022, the bag has been full.

→ **Disclosure**: except as set forth in schedule ____, the bag is full.

→ **Hybrid**: except as set forth in schedule ____, to the Company's knowledge, the bag is full



Covenants



Positive Covenants

Define what the parties shall do

Negative Covenants

Define what the parties shall not do

Closing Covenants

Pre-closing and Post-closing covenants

Pre-Closing Covenants

Pre-closing covenants typically apply between signing and closing of the transaction and aim to preserve the target's business and facilitate the closing.

Parties' covenant to satisfy closing conditions:

- ◆ Cooperation on *Competition Act* matters.
- ◆ Buyer to obtain financing.
- ◆ Seller to obtain third-party consents

Seller covenant to operate in ordinary course of business:

- ◆ Preserve business for buyer's benefit.
- ◆ Obtain buyer approval for certain actions.

Exclusivity and right of access to target.



Post-Closing Covenants

- Confidentiality, non-competition and non-solicitation.
- Authorization to act for both parties in certain matters of mutual interest (amended tax return, remediation of environmental problems, for example).
- Employee benefits related matters (preservation of plans).
- Maintenance and access to records.
- Post-closing service (collection of AR, transition service for a carve-out transaction).





Closing Conditions

Specified conditions must be met



03

Closing Conditions

Specified conditions must be met in order for the party receiving the benefit of the condition to be obligated to consummate the transaction. If the condition(s) are not met, the party can refuse to close.

→ Buyer closing conditions may include:

- ◆ Bring down of representations and warranties.
- ◆ Compliance with covenants.
- ◆ Third-party consents, including Competition Act.
- ◆ No Material Adverse Change (MAC) or Material Adverse Effect (MAE).
- ◆ Shareholder approval, where required.
- ◆ Financing.



Indemnifications

Potential indemnification claims

04



Indemnifications

Indemnification provisions define the recourse parties will have against each other after closing.

Indemnification requires the indemnifying party to pay damages, including legal fees and expenses associated with defending and settling any claim, after closing in the event of a breach of the indemnifying party's representation, warranty, or covenant..



Limitation on Indemnification



01 Survival Period

02 Caps

03 Baskets of deductibles

04 Materiality scrape

05 Buyer's acknowledge

06 Net of insurance or tax benefits



Thank you !

Questions ?

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