

15.5: Summary and Exercises

Summary

Beyond the normal operations of business, a corporation can expand in one of four ways: (1) purchase of assets, (2) merger, (3) consolidation, and (4) purchase of another corporation's stock.

A purchase of assets occurs when one corporation purchases some or all of the assets of another corporation. When assets are purchased, the purchasing corporation is not generally liable for the debts of the corporation whose assets were sold. There are several generally recognized exceptions, such as when the asset purchase is fraudulent or to avoid creditors. Some states have added additional exceptions, such as in cases involving products liability.

In a merger, the acquired company is absorbed into the acquiring company and goes out of business. The acquiring corporation assumes the other company's debts. Unless the articles of incorporation say otherwise, a majority of directors and shareholders of both corporations must approve the merger. There are two main types of merger: a cash merger and a noncash merger. A consolidation is virtually the same as a merger, except that the resulting entity is a new corporation.

A corporation may take over another company by purchasing a controlling interest of its stock, commonly referred to as a takeover. This is accomplished by appealing directly to the target company's shareholders. In the case of a large publicly held corporation, the appeal is known as a tender offer, which is not an offer but an invitation to shareholders to tender their stock at a stated price. A leveraged buyout involves using the target corporation's assets as security for a loan used to purchase the target.

A shareholder has the right to fair value for his stock if he dissents from a plan to merge, consolidate, or sell all or substantially all of the corporate assets, referred to as appraisal rights. If there is disagreement over the value, the shareholder has the right to a court appraisal. When one company acquires 90 percent of the stock of another, it may merge with the target through a short-form merger, which eliminates the requirement of consent of shareholders and the target company's board.

Certain federal regulations are implicated in corporate expansion, particularly the Williams Act. States may impose conditions on admission of a foreign corporation to do business of a purely local nature but not if its business is exclusively interstate in character, which would violate the Commerce Clause. Among the requirements are obtaining a certificate of authority from the secretary of state and maintaining a registered office with a registered agent. But certain activities do not constitute doing business, such as filing lawsuits and collecting debts, and may be carried on even if the corporation is not licensed to do business in a state. Under long-arm statutes, state courts have jurisdiction over foreign corporations as long as the corporations have minimum contacts in the state. States may also tax corporate activities as long as the tax does not unduly burden interstate commerce.

Dissolution is the legal termination of a corporation's existence, as distinguished from liquidation, the process of paying debts and distributing assets. A corporation may be dissolved by shareholders if they unanimously agree in writing, or by majority vote of the directors and shareholders. A corporation may also be dissolved involuntarily on one of five grounds, including failure to file an annual report or to pay taxes. Shareholders may sue for judicial liquidation on a showing that corporate assets are being wasted or directors or officers are acting illegally or fraudulently.

Exercises

1. Preston Corporation sold all of its assets to Adam Corporation in exchange for Adam stock. Preston then distributed the stock to its shareholders, without paying a debt of \$150,000 owed to a major supplier, Corey. Corey, upon discovery that Preston is now an empty shell, attempts to recover the debt from Adam. What is the result? Why?
2. Would the result in Exercise 1 be different if Adam and Preston had merged? Why?
3. Would the result in Exercise 1 be different if Gorey had a products-liability claim against Preston? Why? What measures might you suggest to Adam to prevent potential losses from such claims?
4. In Exercise 1, assuming that Preston and Adam had merged, what are the rights of Graham, a shareholder who opposed the merger? Explain the procedure for enforcing his rights.
5. A bus driver from Massachusetts was injured when his seat collapsed while he was driving his bus through Maine. He brought suit in Massachusetts against the Ohio corporation that manufactured the seat. The Ohio corporation did not have an office in Massachusetts but occasionally sent a sales representative there and delivered parts to the state. Assuming that process was served on the company at its Ohio office, would a Massachusetts court have jurisdiction over the Ohio corporation? Why?

SELF CHECK QUESTIONS

1. In a merger, the acquired company
 1. goes out of existence
 2. stays in existence
 3. is consolidated into a new corporation
 4. does none of the above
2. An offer by an acquiring company to buy shareholders' stock at a stipulated price is called
 1. an appraisal
 2. a short-form merger
 3. a tender offer
 4. none of the above
3. The legal termination of a corporation's existence is called
 1. liquidation
 2. bankruptcy
 3. extinguishment
 4. dissolution
4. The most important constitutional provision relating to a state's ability to tax foreign corporations is
 1. the Commerce Clause
 2. the First Amendment
 3. the Due Process Clause
 4. the Privileges and Immunities Clause
5. An act that is considered to be a corporation's "transacting business" in a state is
 1. collecting debts
 2. holding directors' meetings
 3. filing lawsuits
 4. none of the above

Answers

1. a
2. c
3. d
4. a
5. d

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