

M&A transactions generally result in a buyer owning the business or assets of a target company. The buyer and seller may structure the transaction in different ways, depending on tax and legal issues. The three most common structures are asset purchases, stock purchases, and mergers.

在并购的过程中通常的结果是由买方拥有目标公司的业务或资产。买方和卖方可以根据税收和法律方面的考量，以不同的方式构建交易的形式。最常见的并购结构有三种，分别是资产收购、股票收购以及兼并。

### **Asset Purchase**

#### **资产收购**

In an asset purchase, the buyer purchases some or all of the assets of the target company. The main benefit to an asset purchase is that the buyer has the flexibility to pick and choose the assets and liabilities it wishes to acquire, leaving behind those assets and liabilities it does not want. This structure is often used, for example, when acquiring a single business unit within a company, such as a division. An asset purchase may also allow the buyer to exclude liabilities the buyer does not want to assume; however, some liabilities (including some environmental liabilities) may transfer with the business by law even if excluded by contract.

在一个以资产收购为主的交易中，买方会收购目标公司的部分或全部资产。资产收购的主要好处是买方可以灵活的选择其希望购买的资产和债务，并将不希望购买的资产和债权留给卖方。这种结构常常用在，比如说，购买一个公司的单个业务单位，像是一个部门。资产收购的方式也可能能让买方避免其不想承担的卖方方面的负债，但是有些债务（比如与环保方面有关的责任）即使在合同中排除，也会依据法律的规定一同转移给买方。

Structuring a transaction as an asset purchase generally involves a greater amount of legal work compared to a stock purchase or merger. Some assets, such as machinery and inventory, may be easily transferred via a simple bill of sale. Certain other assets, however, require considerably more effort. Intellectual property, such as trademarks and patents, often requires a separate assignment and recordation with the appropriate government office. Transfers of real estate usually require title insurance and recordation of a deed. The buyer may need input from legal experts in these areas and others to ensure that its ownership rights are protected.

构建一项资产转让的交易比股票转让或是兼并需要更多法律咨询和程序的工作。有些资产，例如机器和存货，可以简单地通过一个买卖契约的方式来转移。而其他一些类型的资产则会需要更多的程序。像是知识产权，包括商标和专利，通常需要单独的转让合同以及完成相关政府部门所需的登记。转让房地产通常需要产权保险和契约的登记。买方需要在这些及其他领域方面专精的律师提供咨询和帮助以确保其权利。

Third-party consents may also be required in order to properly transfer certain assets from the seller to the buyer. If the buyer wishes to acquire a contract that contains a “no assignment” provision, the contract counterparty must give its consent before the transfer can be completed. Considerable time and effort can be spent in trying to obtain these consents. Contract counterparties may even view this as an opportunity to renegotiate the terms of the contract or extract concessions. In addition, certain licenses and permits may require government approval prior to being transferred to the buyer. Identifying all required third-party consents at an early stage will help avoid delays at closing.

为确保某些资产可以适当的从卖方转移至买方，第三方同意也可能会是需要的。如果买方希望从卖方转移过来的合同中有“禁止转让”的条款，则该合同的另一方必须先同意该转让才能将该合同从卖方转给买方。取得这些同意可能会花费大量时间与精力。那些合同的另一方甚至可能利用此机会重新协商那些预备转让的合同的条款来争取更多的利益。同时，有些执照和许可在转让给买方前可能需要政府方面的批准。所以，在交易的早期阶段就应该确认所有必需的第三方同意，以避免造成交割的延迟。

## **Stock Purchase**

### **股票收购**

In a stock purchase, the buyer acquires all or substantially all of the stock of the target company from the stockholders. In contrast to an asset purchase, all of the target company’s assets and liabilities will transfer with the stock of the company—with the buyer unable to pick and choose the assets and liabilities it wants—and the buyer will also receive any unknown and undisclosed liabilities of the target. The buyer in a stock purchase transaction will try to reduce this risk through protections in the stock purchase agreement, such as representations and warranties about the target.

在一个以股票收购为主的交易中，买方从持股东手中获得目标公司的全部或绝大部分的股票。但与收购资产不同的是，目标公司的全部资产和负债都将随着公司的股票转移，即买方不能选择其希望收购的资产和负债，同时买方也将接受目标公司未知和未告知的债务。在股票收购的交易中，买方会想办法通过股票收购合同来保护其利益，比如要求卖方对目标公司做出陈述和保证，来降低这类风险。

The primary benefit of doing a stock purchase deal is its simplicity. Because the target company is simply moving to a new owner, all of the assets remain with the target company. Most of the assignment and third-party consent procedures that can cause delays in an asset purchase transactions are unnecessary in a stock purchase transaction. However, the buyer should identify any contracts with “change of control” provisions, as these agreements may terminate upon a change in ownership of the target company.

股票收购的最大好处就是简单。因为目标公司只是简单的被转移到新的股东，所有资产还是留在公司。在资产收购中可能导致延期的资产转让程序和寻求第三方同意的过程在股票交易中是不必要的。但是买方必须确定目标公司所有含有“控制改变”条款的合同，因为这些合同可能因为目标公司的所有权产生变化而终止。

Stock purchases are more complex if the target is a publicly traded company, in which case the buyer must launch a tender offer for the target's shares. The buyer may also need to "squeeze out" minority shareholders, who may have "appraisal rights" to request a court to determine the fair value for their shares.

如果目标公司是一家上市的公司，股票收购则会更复杂。因为在这种情况下，买方必须用“收购要约 (tender offer)”的方式来购买目标公司的股票。若小股东不愿将股票卖出，买方还可能将他们“逼退”。但这些小股东有“估价权”来要求法院确定他们股票的被强迫收购的价值。

## Merger

### 兼并

In a merger, the buyer enters into a merger agreement with the target company causing the two entities to be merged by operation of law. The shareholders of the target company will receive the shares of the buyer company, cash, or a combination of stock and cash. This is often done using a new subsidiary created by the buyer to be merged with the target. This is called a "triangular merger" because there are three parties: the buyer, the buyer's subsidiary, and the target.

在一个以兼并为主的交易中，买方通过依法律准许的步骤与目标公司签订一个合并合同来实现两个企业的合并。目标公司的股东可获得买方公司的股票，现金或者是二者的组合。通常买方用一个新组建的子公司与目标公司合并。这种情况被称作“三方兼并”，因为有三个当事方：买方、买方的子公司和目标公司。

A merger is similar to a stock purchase in that assets transfer automatically without the need for third-party consents (except in the case of "change of control" provisions as mentioned above). Also as in a stock purchase, the buyer acquires all liabilities, known and unknown, of the target company.

兼并与股票收购交易的相似之处在于无需第三方同意，买方的资产即会自动转移到买方（但前文所述有“控制改变”条款的情况除外）。同时，与股票收购一样，买方将承担目标公司所有债务，包括已知和未告知的债务。

One advantage of a merger transaction is that it can usually be accomplished with the consent of the holders of a majority of the target company's shares. This is in contrast to a stock purchase, in which each shareholder must consent to a sale of its stock. Dissenting shareholders, however, may have "appraisal rights" to request a court to determine the fair value for their shares.

兼并交易的一个好处是只要目标公司的持大多数股份的股东同意就可以完成。这一点不同于股票交易，因为不需要每个持股人都同意出售其股票。但是，反对兼并的股东可能有“估价权”要求法院确定他们的被强迫收购的股票的价值。

A merger is a more complex process if the target company is a public company. The buyer will require the shareholders' consent to the merger. To obtain this consent, a shareholders' meeting must be held so that the shareholders can vote for the merger, and the buyer and seller will have to coordinate the preparation for that meeting and the solicitation of shareholder proxies to vote in favor of the merger.

如果目标公司是一家上市公司，则兼并交易会更为复杂。买方必需取得股东的同意，且为此，必须召开股东大会来投票决定。而且买方和卖方将必须协调筹备该股东大会并取得股东对合并的支持。