

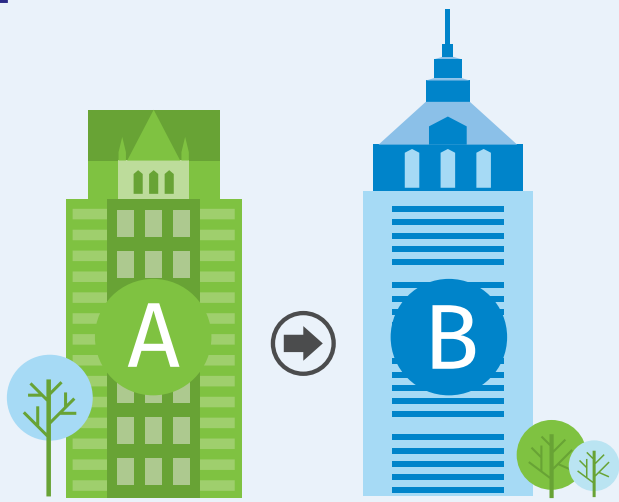
CT Corporation

4 Main Types of Mergers

A merger is a combination of two or more business entities in which the assets and liabilities of all the entities are transferred to one, which continues in existence, while all the others cease to exist.



1 "General" Merger



Approval Requirements by Entity Type

Corporation

- Approval by boards of each constituent
- Approval by shareholders of merged corporation(s)
- Shareholders of the survivor usually do not have to approve
- Shareholder approval may be required

Limited Liability Company (LLC)

- Requirements may be set forth in the operating agreement
- Statutory default rule may require majority or unanimous approval

Limited Partnership (LP)

- As provided in partnership agreement or statutory default rule

General Partnership (GP), Limited Liability Partnership (LLP)

- As provided in partnership agreement or statutory default rule

- › Target (A) merges into acquirer (B)
- › A's shareholders/members/partners receive ownership interests in the acquirer, cash or other property
- › "General" meaning no special requirements must be met
- › Corporation, LLC, LP, GP, and LLP laws have "general" merger statutes

2 Parent-Subsidiary Merger



Parent-Subsidiary (Upstream Merger)

- › Subsidiary entity merges into parent entity using "short form" merger procedures
- › Parent is required to own a certain statutory percentage (in most states it's 90%)
- › Shareholder vote unnecessary to approve merger
- › Avoids costly proxy solicitations and meetings of publicly traded companies
- › Amendment of the parent's formation document is restricted
- › LLC/LP laws may or may not authorize short form procedure



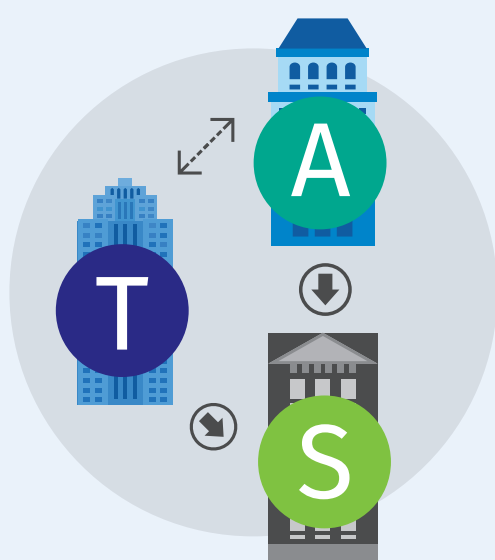
Parent-Subsidiary (Downstream Merger)

- › Parent entity merges into a subsidiary entity using "short-form" procedures
- › Can use to change the parent's home state
- › Some corporation laws permit short form merger of parent into subsidiary
 - Parent must own a certain percentage of subsidiary
 - Parent's shareholders must approve the merger
 - Amendment of the survivor's formation document may be restricted
- › Use the general merger statute if short form provision is unavailable

3 Triangular Mergers

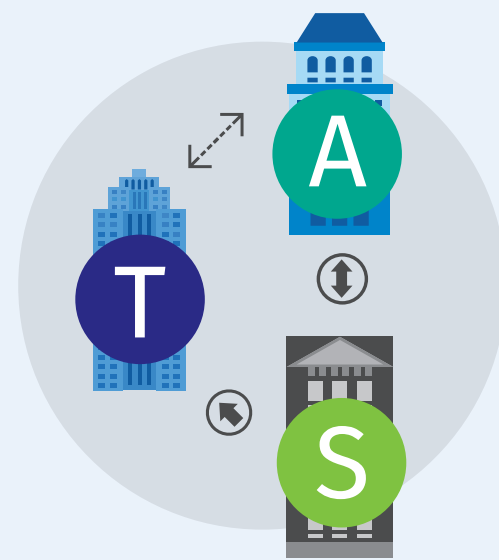
- › Involves three parties: acquirer, subsidiary formed by acquirer, and the target
- › Only the target and subsidiary merge

- › Statute must permit ownership interests of one constituent to be exchanged for ownership interests of a non-constituent entity



Forward Triangular Merger

- › Merger subsidiary (S) created specifically for the transaction.
- › Target (T) merges into subsidiary (S)
- › Subsidiary (S) survives, Target (T) disappears.
- › Owners of Target receive ownership interests in Parent/Acquirer (A), not merger sub (S)
- › Parent/Acquirer (A) not a constituent
- › Parent/Acquirer (A) not liable for obligations & liabilities of Target



Reverse Triangular Merger

- › Subsidiary (S) is created specifically for the merger transaction
- › Subsidiary (S) merges into target (T)
- › Target (T) survives; subsidiary (S) disappears
- › Two exchanges take place:
 - Target's (T) owners get ownership interests in the acquirer (A)
 - Subsidiary's (S) owners get ownership interests in Target (T)
- › Parent/Acquirer (A) not a constituent
- › Parent/Acquirer (A) not liable for obligations & liabilities of Target

4 Multi-Entity Mergers

- › General, parent-subsidiary, and triangular mergers may involve cross-entities.
- › Involves mergers between different entity types
Example: a corporation merging with an LLC
- › Also referred to as cross-entity, inter-entity or interspecies merger

Did you know?

There can be more than two parties to a merger and the parties may be different types of entities



Regardless of type, each merger has unique elements and challenges. CT's team of experts can help you avoid common compliance pitfalls throughout the deal lifecycle. To learn more, visit us at [CT Corporation](#).

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