CORPORATE LAW

What Actually Happens to a Contract When One Party Merges Into Another

By Ari Tuchman | Tuchman Law, APC | Los Angeles, CA

A merger raises two separate legal questions, and they can have different answers.

Corporate Law

Under Delaware's merger statute and California's equivalent (Corporations Code § 1107), the surviving corporation automatically succeeds to all rights, property, and obligations of the merged corporation the moment the merger takes effect — no assignment document required. As a matter of corporate law alone, contracts transfer automatically.

Contract Law

That default doesn't override the contract's own terms. Many contracts prohibit assignment "by operation of law or otherwise" without consent — language written specifically to capture mergers. If a contract treats a merger as a prohibited assignment, completing it without consent can be a breach or trigger termination, regardless of what corporate law transferred automatically.

The Outcome Depends on Structure

In a reverse triangular merger, the target survives as a wholly-owned subsidiary rather than being merged out of existence. A Delaware Chancery Court decision held this structure isn't an "assignment by operation of law," even under a clause using that phrase, because the contracting entity itself never legally transfers — only its ownership changes. A direct or forward merger, where the contracting party is merged out of existence entirely, more clearly implicates the same clause. Identical language, opposite results, depending solely on deal structure.

This is why modern contracts increasingly use a standalone change-of-control clause instead of relying on "assignment" — one that triggers on a defined ownership shift regardless of how the transaction is structured.

Before or After a Merger, Check

Whether a contract's assignment clause is broad enough to capture a merger or change of control, whether it requires advance notice or consent, and whether it creates a termination right independent of the assignment question.

Final Thoughts

The statute determines what happens to a contract as a matter of corporate law. The contract determines what either side can actually do about it. Treating those as the same question is where the risk lives.

About the Author

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