

The Sale of All or a Substantial Part of Assets or a Business

-- in Conjunction with the Analysis
of the Theory of Parity

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Abstract

In Taiwan, the sale of all or a substantial part of a firm's assets or the business itself is regulated by both the Company Law and the Business Merger and Acquisition Law. When these two laws are cross referenced, an important issue surfaces, namely, the issue of consideration, which has long been ignored. The Company Law does not appear to address the issue of the consideration involved in the sale of assets or a business, while the Business Merger and Acquisition Law emphasizes the role played by stock as one of the possible considerations in the acquisition of such assets or a business. If this is the case, then, the differences perceived to exist among the sale of all or a substantial part of the assets/business, a merger and a division, as well as the general assumptions regarding the rights and obligations of the different parties involved should be clearly drawn up. Besides, the remedies offered to dissenting shareholders, commonly known as appraisal rights, should be revisited simultaneously.

The difficulties faced by the courts also include, among other things, the validity of the resolution passed by the general meeting as regards the sale of the assets or the business, for instance in the case where the conditions for the requisite quorum or the method of resolution are not met.

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This problem also reveals the importance of the theory of parity, i.e. the demarcation of powers between the general meeting and the board of directors. Should we decide to have a clear line drawn between the general meeting and the board of directors for the exclusive competence that each is entitled to, both the policy and the ambit of the competence need to be thoroughly examined. At the present time, these issues are not attracting the attention of the legislature. The agenda of the general meeting is often loose, and shareholders are to a certain extent deprived of the right to information. When combined with the topic of the sale of the assets or the business, the theory of parity and the interests of shareholders should be taken into account on the same occasion.

Keywords: Sale of all or a substantial part of assets or a business, merger, division, acquisition, wind-up, appraisal right, the reduction of capital, the general meeting, special resolution, shareholder proposals, theory of parity, the exclusive competence of the board of directors