



# California Corporate & Securities Law

## When a Sale of Assets is not a “Sale-of-Assets Reorganization”

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The California General Corporation Law (CGCL) contemplates three different types of reorganizations – a merger reorganization, an exchange reorganization, and a sale-of-assets reorganization. Cal. Corp. Code § 181. Chapter 12 of the CGCL prescribes both board and shareholder approval requirements for reorganizations, including sale-of-asset reorganizations.

Readers of the CGCL, however, will note that Corporations Code Section 1001 also requires approval by the outstanding shares (Corp. Code § 152) of the principal terms of a sale of all or substantially all of a corporation’s assets (unless the transaction is in the usual and regular course of business).

This is not an example of statutory duplication. Every sale of all or substantially all of the assets of a corporation is not a “sale-of-assets reorganization”. Under the CGCL, a “sale-of-assets reorganization” is limited to “acquisitions” of all or substantially all of a corporation’s assets only in exchange in whole or in part for:

- the acquiring entity’s equity securities (or the equity securities of a domestic corporation, a foreign corporation, or an other business entity which is in control of the acquiring entity);
- the acquiring entity’s debt securities (or debt securities of a domestic corporation, foreign corporation, or other business entity which is in control of the acquiring entity) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the reorganization; or
- both of the foregoing.

Corporations Code Section 1001(a) is not limited to “acquisitions”. In fact, the word “acquisition” does not appear in the statute. Section 1001(a) is much broader – stating that a corporation may “sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets”. This creates the possibility that some transactions involving the receipt of equity or debt securities will not constitute sale-of-assets reorganizations.

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In any event, no careful parsing of these statutes is required to conclude that there is no redundancy. Section 1001(a) makes this clear by providing: “A transaction constituting a reorganization (Section 181) is subject to the provisions of Chapter 12 (commencing with Section 1200) and not this section (other than subdivision (d)).” In a future post, I’ll address the special requirements of Section 1001(d).

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