Lesson 6: M&A's

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In this module we will talk about different forms of corporate transformations. The most common transformations that we are all familiar with are **mergers and acquisitions** however when talking about such transformations we should also talk about **liquidations** and bankruptcies, also known as **insolvencies**, and we will deal with all these issues in this order. We will also deal with parties involved in all such procedures.

First of all let's talk about mergers; what is a merger? Simply put, merger is when one company is effectively absorbed by another company. In a typical merger we have two parties the **acquirer** or the **acquiring company** and the **target** also known as the **acquired company**; in this type of transaction, the acquirer becomes larger and more powerful as a result of the merger and survives; on the other hand the target or the acquired company ceases to exist. In a **consolidation** situation a new company is formed and, as a result, both companies cease to exist.

Another way a company can become larger and more powerful is by the acquisition of a controlling majority of shares of another company. This is called a **takeover bid**. When this takeover attempt is supported by the management of a company it's called a **friendly takeover** on the other hand when this takeover attempt is opposed by the board this would be called a **hostile takeover**. Once again, the result is the same as in a merger, the target company ceases to exist end and the acquirer continues.

At this point it would also be convenient to mention **joint ventures;** a joint venture is simply a joining of two companies usually for a limited period of time and usually for a specific task or project; ones this commercial task or project is achieved, a joint venture comes to an end and the two companies both continue as they were.

As I have previously mentioned, another way a company can be transformed is in a situation of liquidation. Now there could be two types of liquidation situations, a **voluntary liquidation** when the company is still **solvent** but when the company members, for whatever reason, decide to stop its operations. Another type of a liquidation is a **compulsory liquidation** also known as **winding up**; this usually happens when the company becomes **insolvent**, or in other words, when it **goes or enters into bankruptcy** (referred to as "insolvency" in the UK). In this type of situation a court can issue a winding-up order so that the company ceases its operations and its assets are **realized** meaning sold by a liquidator or an Official Receiver so that some of the creditors could be paid.

Now I wish to discuss briefly some of the key parties and Court instruments which govern situations of bankruptcy and insolvency. One such instrument is an **Administration order.** This is basically a court order which places a company that is, or is likely to become, insolvent under the control of an **administrator**.

We must also talked about the concept of **going concern;** this is simply one of the ways to sell a business usually the most preferred way of doing it because it means that the business continues during the insolvency phase which also means that production continues, jobs are saved and when the company is eventually sold, a better (meaning higher) price can be obtained.

A key person involved in a situation of insolvency of a company is a **liquidator**; this person is appointed to deal with the assets and liabilities of the company once a resolution by the board has been passed to liquidate the company or once a compulsory winding-up order has been issued by a court.

Another key person we should talk about is the **official receiver;** this is usually a court-appointed individual, it can also be a civil servant, whose task or responsibility will be to manage the head office of the company and oversee the process of liquidation to make sure that it is done in an orderly and smooth manner and that some of the creditors get paid.

When the company's assets have been realized the first individuals to be paid as a result will be the **secured creditors.** On the other hand, the last group of individuals to be paid will be the **unsecured creditors.**

Finally, it is noteworthy that in many common law jurisdictions individuals and entrepreneurs are permitted to go bankrupt at least once in their lifetime, however their bankruptcy must be **discharged,** meaning approved by Court; once this is done they become what is called as a **discharged bankrupt**; on the other hand, someone against whom a bankruptcy order has been made but who has not been discharged from the state of bankruptcy is known as **undischarged bankrupt**.