

Traps For the Conventional M&A Thinker

Glenn D. West
Weil, Gotshal & Manges LLP
October 6, 2022

18TH ANNUAL
MERGERS AND ACQUISITIONS
INSTITUTE

UT LAW

CLE

Continuing
Legal Education

1

Purpose

- According to Vice Chancellor Laster:

Lawyers draft in the shadow of existing precedent. A major benefit of precedent is to clarify the meaning of contractual terms so that parties can deploy them with confidence.

Symbiont.IO, Inc. v. Ipreo Holdings, LLC, 2021 WL 3575709 (Del. Ch. Aug. 13, 2021).

2

The Latest on Anti-Assignment/Change of Control Clauses

3

3

Anti-Assignment/Change of Control Clauses

- Neither party hereto may assign this Agreement [or any of its rights hereunder] to any other person, without the prior written consent of the other party.
- Neither party may assign any of its rights or obligations hereunder, directly or indirectly, by operation of law or otherwise, without the other party's prior written consent.
- **IS A SALE OF TARGET STOCK OR A REVERSE MERGER PROHIBITED BY EITHER OF THESE CLAUSES IF THE TARGET IS A PARTY?**

4

4

Anti-Assignment/Change of Control Clauses

- Neither Party may, directly or indirectly, transfer this Agreement, or its rights and duties hereunder, by assignment, pledge or hypothecation, merger, consolidation, reorganization or similar event, change in its management or control, sale or transfer of securities or otherwise by operation of law, without the prior written approval of the other party.
- **HOW ABOUT THIS CLAUSE—Sale of Target Stock or Reverse Merger?**

5

5

Anti-Assignment/Change of Control Clauses

- **The phrase “directly or indirectly” does not necessarily cover a stock sale occurring above the target, no more than by “operation of law” covers a reverse triangular merger.**

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Traps for the Conventional M&A Thinker

Also available as part of the eCourse

[2022 Mergers and Acquisitions eConference](#)

First appeared as part of the conference materials for the
18th Annual Mergers and Acquisitions Institute session

"Traps for the Conventional M&A Thinker: More From Glenn West"