Introduction to Mergers & Amalgamations

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Modes of M&A in India
Overview - Modes of M&A in India

M&A

Acquisitions

Business Purchase

Slump Sale / Itemised Sale

Focus on core business/sell off non core business

Share Purchase

Focus on inorganic growth/strategic or non strategic investments

Buyback

Enhancing stake/repatriation

Capital Reduction

Financial restructuring/Enhancing stake/repatriation

Amalgamation

Consolidation of businesses/entities

Merger / Demerger

Demerger

Focus on core business/hive-off of non core business/monetize

Introduction to Amalgamations
Merger / Amalgamation - Basic concept
What do you mean by merger / amalgamation?

- Merger refers to consolidation of two or more entities
- Involves transfer of assets and liabilities from one or more transferor companies to a transeree company
- In consideration, typically the transeree company issues shares to the shareholders of transferor company
  - Consideration could be in any “form” – However, considering tax neutrality conditions the same is discharged by way of issue of shares

Key difference between “Merger” and “Amalgamation” in India

**Merger** – “combination of two or more enterprises whereby the assets and liabilities of one are vested in the other, with the effect that the former enterprise loses its identity”

**Amalgamation** – “combination of two corporate entities where the assets and liabilities of both are vested in a third entity, with the effect that both former entities lose their identities to form a new entity”

Terms merger and amalgamation appear synonymous, there is a difference between two – All amalgamations are necessarily merger, but all mergers may not necessarily be amalgamation
Types of Merger / Amalgamation

▶ Cogeneric mergers
  ▶ Mergers takes place between companies operating in same industry
  ▶ Further classified into:
    ▶ Horizontal merger – Merger take place between companies engaged in same business activities
    ▶ Vertical merger – Merger take place between companies which are engaged in different functions within same business activities

▶ Conglomerate mergers
  ▶ Merger takes place between companies operating in different industry

▶ Other type of mergers
  ▶ Up-stream merger – Subsidiary company is merged with its Parent company
  ▶ Down-stream merger – Parent company is merged with its Subsidiary company
  ▶ Reverse merger – Sound financial company is merged with loss making company or unlisted company is merged with listed company to get automatic listing
Merger / Amalgamation – Key drivers

- Acquisitions
- Consolidation of operations – to exploit synergy
- Develop focused brand image/ stronger market standing through single flagship entity
- Takeover of sick company
- Consolidation of Promoter holdings

- Tax savings
- Fund constraint
- Eliminate multiple layers of holding
- Eliminate no. of companies in group
- Balance sheet right sizing
- Automatic listing of Co – Reverse Merger
- SEBI TOC compliance
Domestic merger / amalgamation situations

Merger of Company A with Company B

Consideration in the form of shares of Company B

Shareholders

Company A

Merger

Company B

Merger of Companies A & B with Company C

Consideration in the form of shares of Company C

Shareholders

Shareholders

Shareholders

Company A

Company B

Company C

Merger of SUB Co with HOLD Co

No shares to be issued by HOLD Co

HOLD Co

Merger

100%

SUB Co

Merger of HOLD Co with SUB Co

Consideration in the form of shares of SUB Co

HOLD Co

Merger

100%

SUB Co

Merger

100%
Cross border merger situations

Merger of F CO 1 (holding I CO) with F CO 2
- Shareholders
- Consideration in the form of shares of F CO 2
- OUTSIDE INDIA
- INDIA
- F CO 1
- Merger
- F CO 2
- I CO

Merger of F CO with I CO
- Shareholders
- Consideration in the form of shares of I CO
- OUTSIDE INDIA
- INDIA
- F CO
- Merger
- I CO

Merger of I CO with F CO
- Shareholders
- Consideration in the form of shares of F CO
- OUTSIDE INDIA
- INDIA
- F CO
- Merger
- I CO

*However Companies Bill 2012 proposes to allow such mergers subject to certain approvals*

Extant company law provisions do not allow this form of merger *
Key regulatory reactions on mergers

### Income tax
- Tax neutrality
- Availability of tax exemptions
- Transfer of tax credits
- Step up in tax basis

### Companies Act
- High Court approval
- Approval of shareholders and creditors
- Post implementation procedures

### Stamp duty
- Valuation of shares
- Indian Stamp Act vs. State Stamp Act
- Valuation of immovable property
- Set-off of stamp duty

### SEBI & Stock exchange
- Listing of shares / New Co
- Stock exchange approvals
- Take over code implications
- Filing compliances

### Exchange control
- Issue of shares to non resident on merger
- FDI / RBI – Approval / automatic route

### Cross border
- Host jurisdiction compliances
- Tax implications in host jurisdiction

### Accounting
- Method of accounting
  - Pooling of interest
  - Purchase method
- Expense accounting
- Cancellation of investment

### Other regulations
- Competition Act
- Indirect tax
- Accounting
- Industry specific law
# Glossary

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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AIM</td>
<td>Alternative Investment Market</td>
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<tr>
<td>Co</td>
<td>Company</td>
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<td>DDT</td>
<td>Dividend Distribution Tax</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>LSE</td>
<td>London Stock Exchange</td>
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<td>M&amp;A</td>
<td>Merger &amp; Amalgamation</td>
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<tr>
<td>NBFC</td>
<td>Non Banking Financial Company</td>
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<td>PE</td>
<td>Private Equity</td>
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<td>RBI</td>
<td>Reserve Bank of India</td>
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<td>SEBI</td>
<td>Securities and Exchange Board of India</td>
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Thank You

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