



# **Cross border mergers and acquisitions**

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## **Presentation theme**

- ▶ M&A Overview
- ▶ Regulations impacting M&A
- ▶ Cross border mergers
- ▶ Case Studies

# M&A today

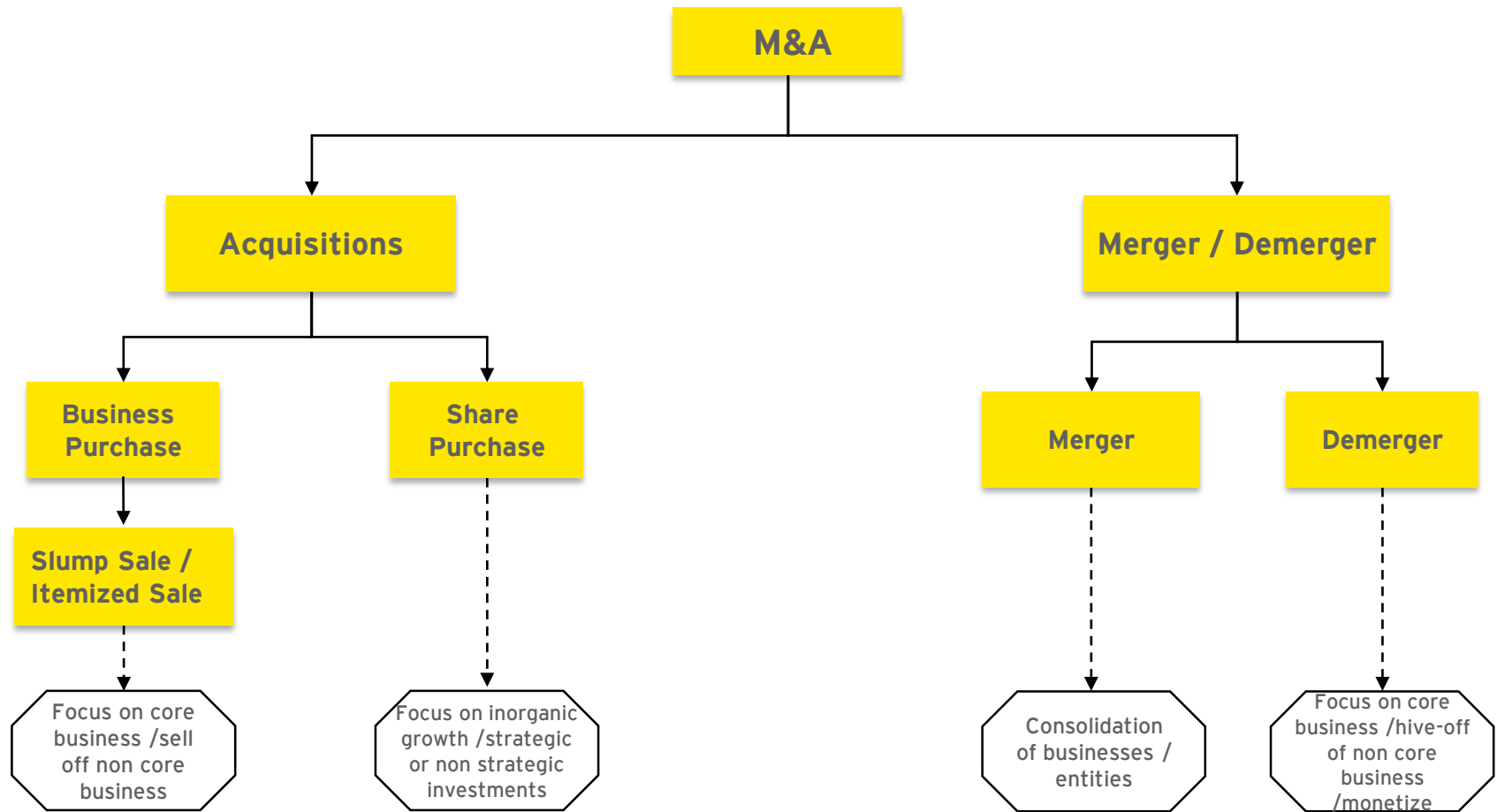
## Trends/ Drivers

- ▶ Focus on core business
- ▶ Increasing market share
- ▶ Growth is in Emerging Markets
- ▶ Promoter stake enhancement
- ▶ Reorganization of family businesses and succession planning
- ▶ Geographic expansion - natural resources, diversified customer base
- ▶ Fund raising
- ▶ Preference for Joint Ventures
- ▶ Optimization of tax structure

## Resulting in

- ▶ Cross border M&A
  - ▶ Inbound investments/acquisitions
  - ▶ Outbound investment/acquisitions
- ▶ Off loading non-core assets/businesses
  - ▶ Carve-outs
  - ▶ Divestments of stake
  - ▶ Monetization
- ▶ Domestic Mergers
- ▶ Internal restructuring
- ▶ Shareholder restructuring
- ▶ JV structuring
- ▶ Use of LLPs

# Typical M&A tools

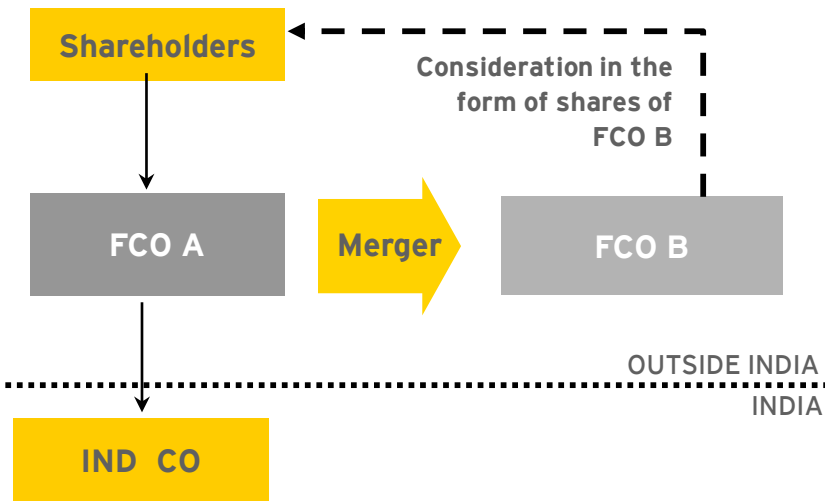


# Current tax and regulatory framework

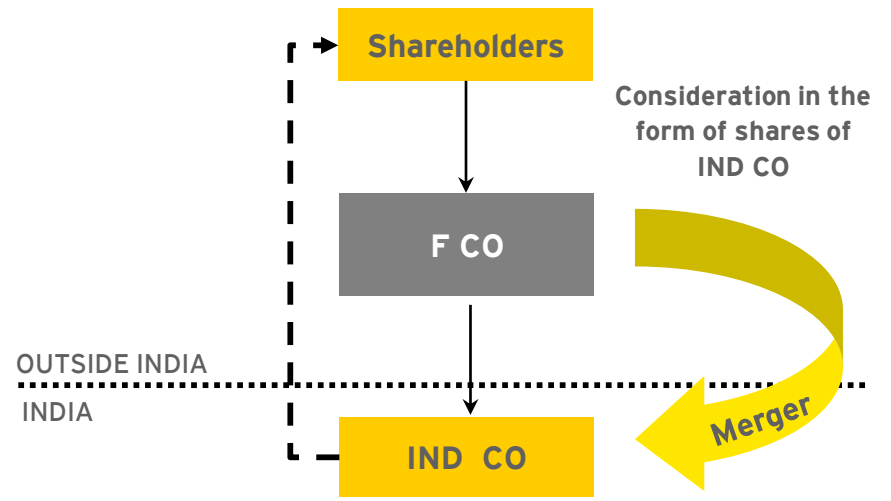


# Cross border merger situations

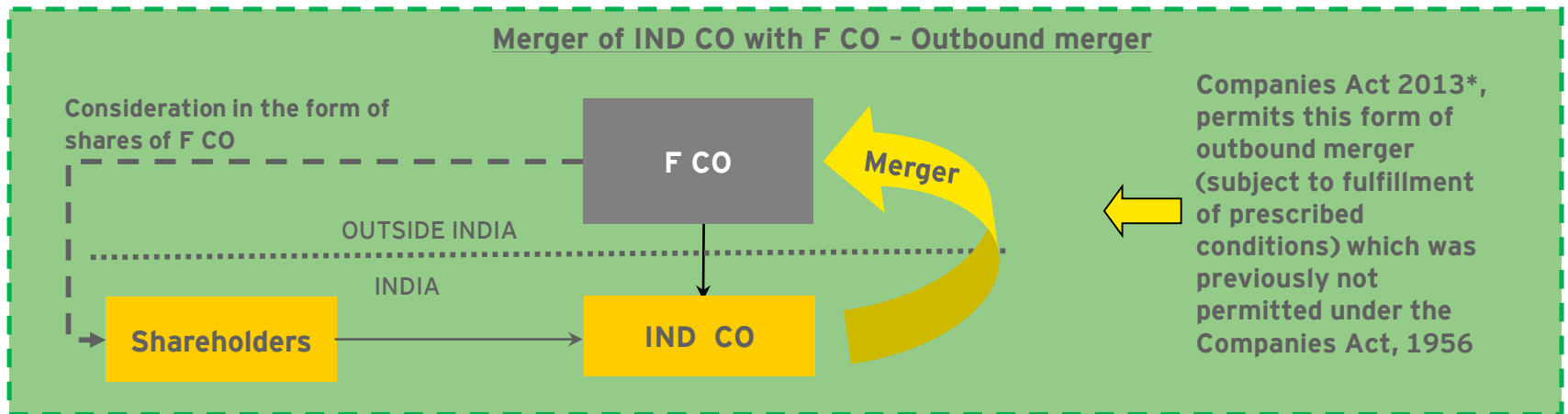
## Merger of FCO A (holding IND CO) with FCO B



## Merger of FCO with IND CO



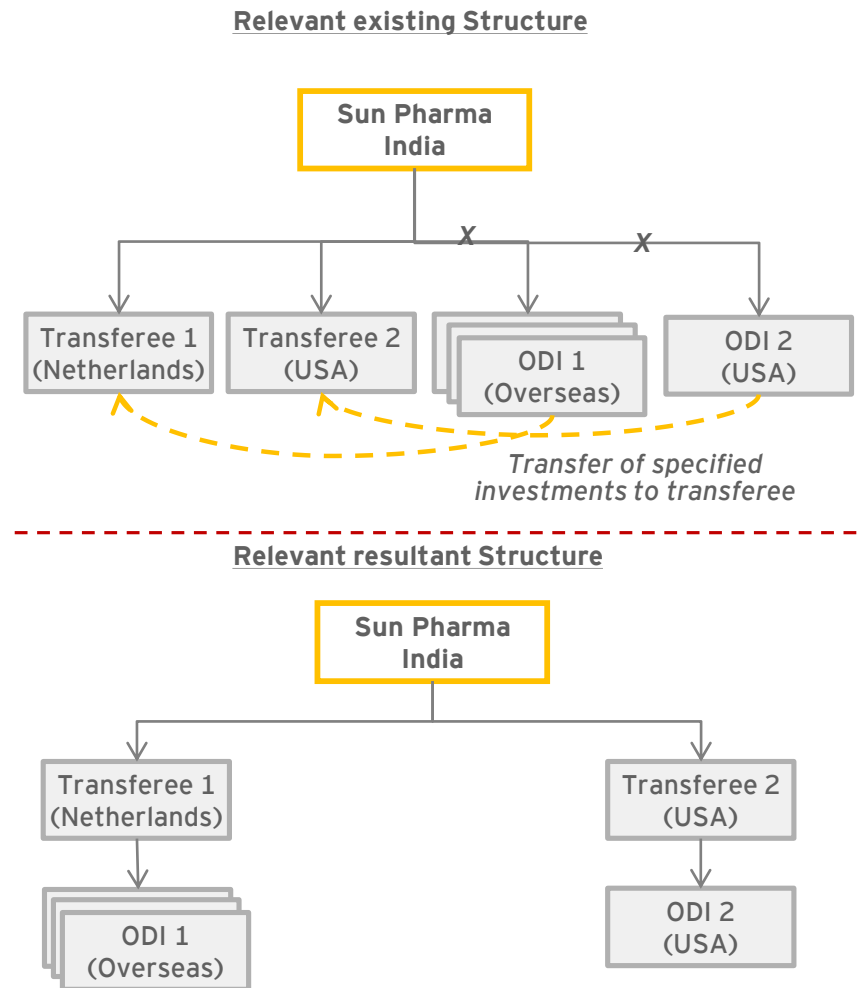
## Merger of IND CO with F CO - Outbound merger





# Case Study 1 - Sun Pharma Consolidation of overseas investments

- ▶ Sun Pharmaceuticals Industries Limited (**Sun Pharma**) has entered into a scheme of arrangement with Sun Pharma (Netherlands) B.V (**Transferee 1**) and Sun Pharmaceuticals Holdings USA Inc. (**Transferee 2**) for structuring its Overseas Direct Investments (**ODI**) and loans and advances
- ▶ Pursuant to the scheme, specified investment undertaking 1 comprising of ODI (**ODI 1**) (including equity, loans and advances and debt instruments) in 7 foreign companies is proposed to be transferred to Transferee 1
- ▶ Further, specified investment undertaking 2 (**ODI 2**) comprising of ODI in Sun Pharmaceutical Industries INC (USA) is proposed to be transferred to Transferee 2
- ▶ The book value of Investments transferred by Sun Pharma India to Transferee 1 and Transferee 2 was proposed to be added to the corresponding book values of Transferee 1 and 2 in the books of Sun Pharma India
- ▶ The scheme specifically provides that transfer of investments shall be considered as a gift for the purpose of Income-tax Act, 1961.
- ▶ Application has been filed with Ahmedabad NCLT. Final hearing pending.



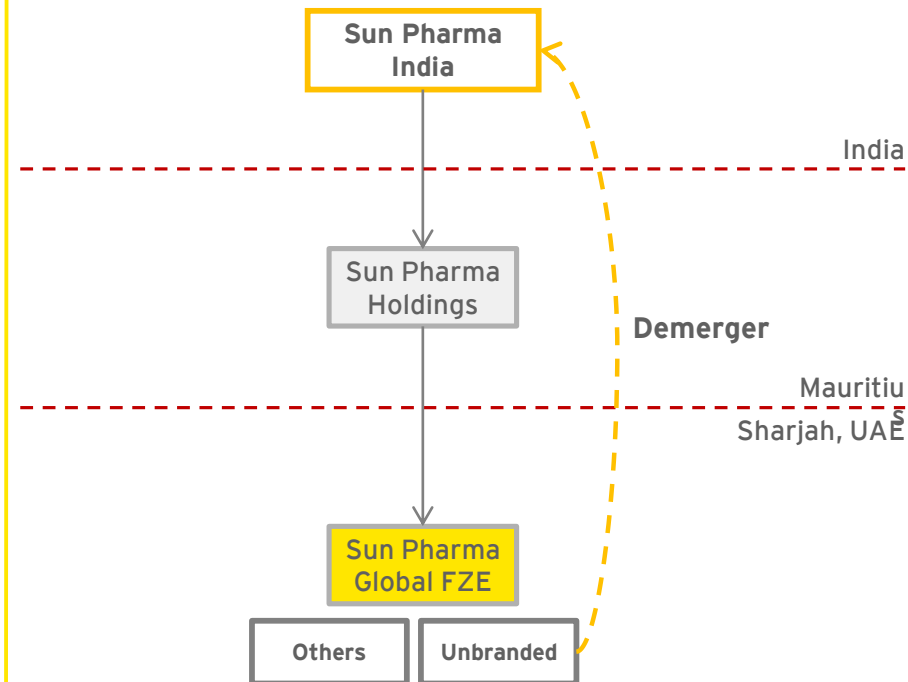
# Case Study 2 - Sun Pharma Inbound demerger

- ▶ Sun Pharmaceuticals Industries Limited (**Sun Pharma India or Transferee**) has entered into a scheme of arrangement with Sun Pharma Global, FZE (**Transferor**) for demerger of unbranded generic pharmaceutical undertaking of transferor into Sun Pharma India
- ▶ Appointed date for the scheme - 01 April 2017
- ▶ No consideration shall be payable on demerger, as the Transferor company is an Indirect wholly owned subsidiary of Transferee company
- ▶ Sun Pharma India to account for demerger as per Ind AS -103. The difference between the carrying amount of assets and liabilities acquired shall be transferred to capital reserve

## Key Consideration

- ▶ Section 234 of the Companies Act, 2013 refer only to cross border mergers and amalgamation.
- ▶ However, Ahmedabad NCLT has approved the demerger u/s 234 of the Companies Act, 2013 reading holistically with FEMA Regulations

## Relevant existing Structure

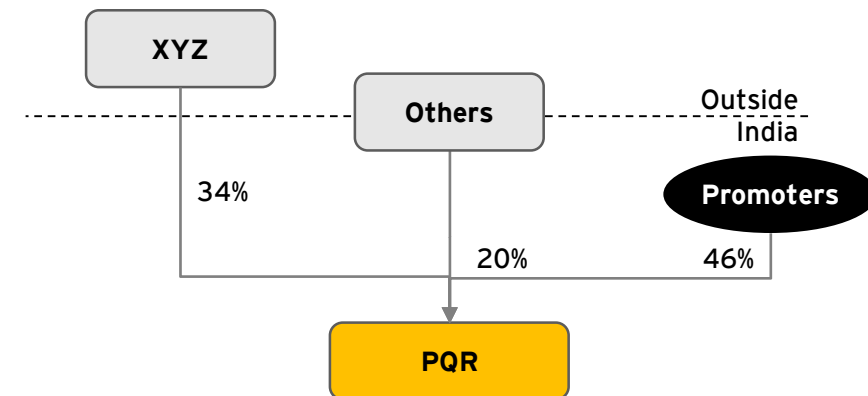




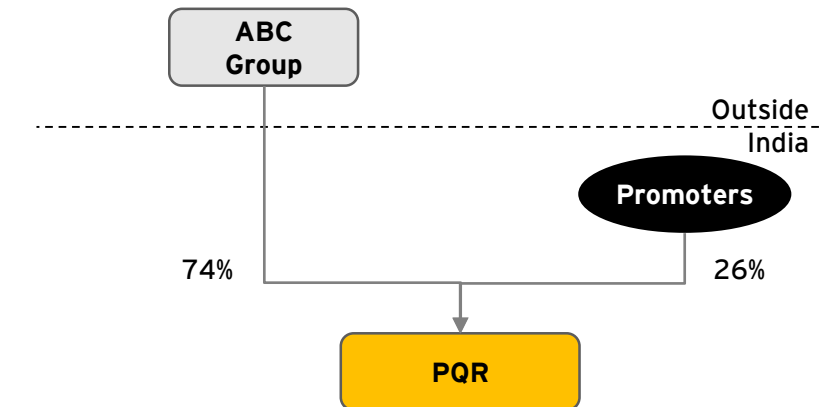
# Case study 3 - ABC Group - PQR

- ▶ ABC Group a leading Chinese healthcare provider had agreed to purchase 86.1% stake in PQR.
- ▶ When the deal was entered into, Brownfield Pharmaceuticals sector was under the 100% approval route.
- ▶ Government had subsequently relaxed the above restriction to 74% automatic route, as it stands today.
- ▶ ABC Group was awaiting government approval (from CCEA) for over a year amidst the border tensions between India and China
- ▶ Eventually, ABC Group could not obtain the approval from the government and accordingly, settled for a revised deal with a stake of 74% (for a consideration of USD 1.1 Billion)

## Pre transaction



## Post transaction





# Thank you

## **Disclaimer -**

*"This Presentation provides certain general information / broad ideas for structuring. This Presentation does not purport to identify all the issues or developments in relation to the proposed structuring. Accordingly, this Presentation should neither be regarded as comprehensive nor sufficient for the purposes of decision-making. The information provided is not, nor is it intended to be an advice on any matter and should not be relied on as such. Professional advice should be sought before taking action on any of the information contained in it.*

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