Corporate Restructuring
An overview and
Regulatory Aspects

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Agenda

• Modes of Corporate Restructuring

• Key Objectives

• Key determinants for deal structuring

• Tools for restructuring

• Types of M&A

• Regulatory framework

• Some Strategic Issues

• Procedural aspects

• Discussion
Modes of Corporate Restructuring
Modes of Corporate Restructuring

**Business Restructuring**
- M&A
- Demerger
- Slump sale
- Slump Sale through court process
- Asset sale

**Acquisitions**
- Cross Border Vs Domestic
- Share acquisition
  - Business acquisition
- Asset purchase vs slump purchase
- Cash Vs Share Swap OR Hybrid
- Joint Ventures
- Chapter IX

**Capital Restructuring**
- Bonus Issue
- Buy back
- Capital Reduction
- Buy back through Court Process
- Preferential issue
- Variation of Shareholders rights

**Family Arrangement**
- Scheme of Arrangement
- Merger / demerger / hive off
- Share swaps

**Compromise & Arrangement**
Key Objective for Restructuring

- Financial
- Technological
- Market
- Taxation
- Diversification
Key determinants for Deal Structuring

What to acquire?
- Asset vs. shares
  - Historic risks
  - Type of instrument

How to acquire?
- Investment structure
  - Requirement of SPV or direct buyout
  - Tax incidence – Single/multiple
  - Local Regulations

How to fund it?
- Tax efficient funding
  - Raising of debt funds
  - Ability to push debt up & down

How to extract profits?
- Profit repatriation/Exit
  - Dividend repatriation
  - Intangibles & tax breaks on the same
  - Utilization of losses
  - Capital Gains
Tools for Restructuring

- Merger/Demerger
  - Horizontal Vs. Vertical
  - Congeneric Vs. Conglomerate, Triangular

- Hive Off/Slump
  - Sale/Itemized Sale

- Takeover/Acquisition

- JV/Strategic Alliance

- Franchise
Type of M&A

Private
- Merger/Demerger
- Slump Sale/Asset Sale
- Itemized Sale/Share Sale

Public
- Merger/Demerger
- Takeover
  - Friendly, Negotiated, Hostile
- Block Vs.
  - Bulk Deal,
  - Delisting, Minority Buyout
Regulatory Framework
Regulatory framework

Companies Act → Exchange Control Laws → NBFC → Valuation and Accounting
SEBI → CCI → Sectoral Policy → IPRs Laws
Stock Exchange → SICA → Stamp Duty → Employment & Industrial Laws
Stamp Duty
Chargeability

Broadly attracted under following circumstances:

• Transfer of shares
• Issue of shares
• Gift of Shares
• Increase in Authorized share capital
• Lease deeds
• Slump Sale/Business Transfer Agreement
• Buyback
• High Court order u/s 394 of the Companies Act, 1956
Some Strategic Issues....
Strategy Issues

• Appointed Date…Interior Vs Exterior…depending on

• Reorganization of Share Capital

• Capital Reduction…existing losses vs. future losses

• Buyback

• Variation of Rights through Scheme

• Consideration for Merger/Demerger: Shares, Equity Vs Preference Vs Others

• Change of Name

• Merger and Demerger of Authorized Capital

• Listing, Delisting, Liquidity to dissenting shareholders/creditors etc.
Strategic Issues

- Transfer of License and permissions
- Valuation Mandatory or Not
- Right and entitlements of Employees...Statutory and Non-Statutory
- Modification of Scheme post sanction of Hon'ble Court
- Others
Procedure to follow
Procedure for Sec 391-394 of Companies Act, 1956

Considering proposal for Merger and Amalgamation

Preparation of Scheme of Amalgamation

Approval of the Scheme by Board of Directors of the Companies

Filing of Scheme with the Stock Exchanges, SEBI for their approval, if listed shares

Filing of Application in High Court

Seeking Shareholders and Creditors approval in meetings/ postal ballot – decision reported to Court
Procedure for Sec 391-394 of Companies Act, 1956

1. Notice to Regional Director and Official Liquidator and submission of their NOC with High Court
2. Final Hearing by High Court
3. Obtaining High Court Order and filing with Registrar of Companies
4. Annexing the copy of High Court order with Articles of Association
5. Post Merger compliances