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Mergers & Acquisitions



Did you know !

The largest employer in the world is the Indian Railways, employing over a million people

- J.1 Reorganization and mergers**
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India is emerging as an active player in the world of mergers and acquisitions (M&As). M&As continue to be an important tool for inorganic growth, which is evident from the plethora of deals Indian companies have entered in the recent past.

J.1 Reorganization and mergers

Reorganization of a company through compromise (sacrifice by shareholders, creditors and others on their claims and entitlements to resurrect the company) or by an arrangement between the company and its shareholders or creditors requires the sanction of the jurisdictional High Court and approval of shareholders, creditors and other regulatory authorities. The power to approve reorganization and mergers has recently been shifted from the High Courts to the National Company Law Tribunal (NCLT). However, the NCLT is still in the process of being formed.

J.2 Acquisitions

Acquisition entails gaining control over the management of another company, typically through acquiring shares with voting rights. Thus, in case the shares of the company are closely held by a small number of persons, an acquisition can be effected in agreement with the shareholders. However, where the shares of the company are largely held by the general public, provisions of SEBI (Substantial Acquisition of Shares and Takeovers Regulations, 2011 (“the Takeover Code”) as well as other relevant regulations issued by the SEBI need to be complied with.

J.3 Demergers

A demerger is a reorganization tool that is increasingly being used by companies to segregate their core and non-core businesses. As in the case of mergers, demergers are also a court-driven process, which require the sanction of jurisdictional High Courts/the NCLT, along with the approval of shareholders, creditors and other regulatory authorities.

J.4 Slump sale

A slump sale involves the transfer of an identified business activity from one entity to another for a lump sum consideration without assigning values to individual assets/liabilities. Unlike a demerger, a slump sale is not mandatorily a court-driven process and can be achieved through a simple shareholders' resolution and legal agreements.

J.5 Buy-back of shares

The Companies Act permits a company to buy back its share capital up to a ceiling of 10% of the paid-up equity capital and free reserves, provided this is sanctioned in the company's board meeting. A company is also likely to buy back up to 25% of its paid-up capital and free reserves, provided the buy-back is sanctioned by a special resolution of shareholders. No offer of buy back shall be made within a period of 12 months from the date of the preceding offer of buy-back, if any.

The Companies Act also prescribes certain conditions relating to reserves, as well as a bar on the company issuing further shares of the same class for a period of six months, and debt equity ratios, etc., for a company to be eligible to buy back shares. The procedure for affecting a buy-back is relatively simple and does not require a court process. Companies listed on a stock exchange in India are subject to the guidelines prescribed by SEBI in this regard. Private and unlisted public companies are governed by the "Private Limited Company and Unlisted Public Limited Company (Buy-Back of Securities) Rules, 1999" prescribed in this regard.

J.6 Capital reduction

Capital reduction is a court-regulated process whereby a company can pay off its shareholders by cancelling or reducing their capital or cancelling their share capital against accumulated losses.

Capital reduction requires the sanction of the jurisdictional High Court/ NCLT and other regulatory authorities. The process also requires the company to obtain the sanction of various parties whose interest is likely to be affected as a result of the capital reduction scheme.

J.7 A comparative study of mergers, demergers, slump sale and acquisition

Regulations/provisions	Merger	Demerger	Slump sale	Acquisition
Companies Act	Section 391 – 394 procedure	Section 391 – 394 procedure	Section 293 approval (only in case of a public company)	Section 372 (for acquirer)
IT Act - Taxability				
Shareholders	Tax neutral ¹	Tax neutral ¹	Not applicable	Taxable
Shareholders Company				
Company	Tax neutral ¹	Tax neutral ¹	Taxable ³	Not applicable
Carry forward of losses	Available ¹	Available ¹	Non Available	Available ⁶
The Takeover Code (open offer) ²	Specific exemption ⁹	Specific exemption ⁹	May be triggered ⁴	May be triggered ⁷
Exchange control regulations/Foreign Direct Investment guidelines	Intimation to RBI ⁵	Intimation to RBI ⁵	Guidelines for issue of shares to be followed ⁵	Approval from RBI and FIPB ⁸
Typical time frame	4-5 months	3-4 months	1-2 months	1-2 months

1 Subject to fulfilment of certain prescribed conditions

2 Only applicable to listed entities

3 Specific computational methodologies prescribed

4 If shares are issued as a consideration

5 Subject to sectoral caps

6 In the case of widely held companies – certain conditions need to be complied with in the case of closely held companies

7 If prescribed limits are exceeded

8 Subject to sectoral caps and declarations in prescribed form

9 In a scenario where the listed company is party to the "scheme" In a scenario where listed company is not party to the "scheme", certain conditions need to be satisfied to avail the exemption.