CHAPTER 2

VARIOUS FORMS OF RESTRUCTURING

INTRODUCTION

As a result of globalisation, to day the business firms are operating in highly competitve enviranment. In today's business world, profitable growth constitutes one of the prime objective. It can be achieved by doing various forms of restructuring.

The most commonly applied types of restructure include:

- Financial restructuring through restructuring the capital base or raising finance;
- Technological restructuring involving alliances with overseas companies to exploit technological expertise;
- Market restructuring involving decisions with respect to product market segments;
- Organisational restructuring involving establishing internal structures and procedures for improving the capability of the personnel.

WHEN TO RESTRUCTURE?

A number of test questions for management to pose when considering whether to 'restructure' or not could include:

- Are the parent and its subsidiary operating in separate industries?
- Are the growth rates between the parent and subsidiary divergent?
- Do financial analysts make separate mention of the subsidiary's future prospects?

- Is there any evidence of key employees being lost to smaller competitors as a result of the subsidiary being subsumed within a larger, more amorphous whole?
- Changes in corporate management (usually with golden parachutes)
- Retention of corporate management
- Sale of underutilised assets
- Outsourcing of operations such as payroll and technical support to a more efficient third party
- Moving operations such as manufacturing to lower-cost locations
- Reorganisation of functions such as sales, marketing, and distribution
- Renegotiation of labour contracts to reduce overhead
- Refinancing of corporate debt to reduce interest payments
- Forfeiture of all or part,of the ownership share by pre-structuring stock holders

Need and Rationale of Restructuring

The important rationale behind every corporate restructuring are:

- To flatten organisations so that it could encourage culture of initiatives and innovations
- To increase focus on core areas of work and to get closer to the customer
- To reduce *cost* reduce level of hierarchy/reduce communication delay
- To reshape the organisation for the new era
- To develop the organisation on the guidelines of consultant/stake holder

Forms of Corporate Restructuring

Business firms in their pursuit of growth, engage in a broad range of restructuring activities. Actions taken to expand or contract a firm's basic operations or fundamentally change its asset or financial structure are referred to as corporate restructuring activities. Corporate restructuring is a broad umbrella that covers many things. One of them is the merger or takeover. From the viewpoint of the buyer, M&A represents expansion and from the perspective of the seller, it represents a change in ownership that may or may not be voluntary. In addition to mergers, takeovers, and contests for corporate control; there are other types of corporate restructuring like divestitures, rearrangements, and ownership reformulation.

These corporate restructuring activities can be divided into two broad categories - operational and functional. Operational restructuring refers to outright or partial purchase or sale of companies or product lines or

downsizing by closing unprofitable, non-strategic facilities. Financial restructuring refers to the actions taken by the firm to change its total debt and equity structure.

An overview of all these restructuring activities is shown in a summarised form in Table 2. The grouping is a bit random but indicates the direction of the emphasis in these various practices.

Table 2: Forms of Restructuring Business Firms

Expansion

Mergers and Acquisitions

Tender offers

Asset acquisition

Joint ventures

Contraction

Spin-offs

Split-offs

Divestitures

Equity carve-outs

Assets sale

Corporate Control

Anti-takeover defenses

Share repurchases

Exchange offers

Proxy contests

Changes in Ownership Structures

Leveraged buyout

Junk bonds

Going private

ESOPs and MLPs

Each type of activity mentioned in the table is briefly explained below:

Expansion

Expansion is a form of restructuring, which results in an increase in the size of the firm. It can take place in the form of a merger, acquisition, tender offer or a joint venture.

Merger

Merger is defined as a combination of two or more companies into a single company where one survives and the others lose their corporate existence. The survivor acquires all the assets as well as liabilities of the merged company or companies. Generally, the surviving company is the buyer, which retains its identity, and the extinguished company is the seller.

Merger is also defined as amalgamation. Merger is the fusion of two or more existing companies. All assets, liabilities and the stock of one company stand transferred to Transferee Company in consideration of payment in the form of:

- Equity shares in the transferee company,
- Debentures in the transferee company,
- Cash, or
- A mix of the above modes.

Example: Merger of Sahara Airline with Jet Air; and was given the name as Jet light. Air Deccan with kingfisher Airline.

Acquisition

Acquisition in the general sense is acquiring the ownership in the property. In the context of business combinations, an acquisition is the purchase by one company of a controlling interest in the share capital of another existing company. Acquisition is an act of acquiring company's effectinye Control by one company over assets as management of another company without any combination of companies. Thus, in an acquisition two as more campanies may remain independent seperate legale entity, but there may be change in control of the company.

Methods of Acquisition

An acquisition may be affected by:

(a) Agreement with the persons holding majority interest in the company management like members of the board or major shareholders commanding majority of voting power;

(b) Purchase of shares in the open market;

(c) To make takeover offer to the general body of shareholders;

(d) Purchase of new shares by private treaty;

(e) Acquisition of share capital through the following forms of considerations viz. Means of cash, issuance of loan capital, or insurance of share capital.

Example: Hutch company was acquired by Vodafone.

Amalgamation

This type of merger involves fusion of two or more companies. After the merger, the two companies lose their individual identity and a new company comes into existence. A new firm that is hitherto, not in existence comes into being. This form is generally applied to combinations of firms of equal size. One company is absorbed into and blended with another company. However, the term will be used interchangeably with 'Merger' whenever the circumstances would so require.

Example: The merger of Brooke Bond India Ltd, with Lipton India Ltd, resulted in the formation of a new company, Brooke Bond Lipton India Ltd.

Absorption

This type of merger involves fusion of a small company with a large company. After the merger, the smaller company ceases to exist.

Example: The recent merger of HDFC Bank and Times Bank. After the merger, Times Bank ceased to exist while the expanded HDFC Bank continued.

Tender Offer

Tender offer involves making a public offer for acquiring the shares of the target company with a view to acquire management control in that company.

Example: India Cements giving an open market offer for the shares of Raasi Cements.

Asset Acquisition

Asset acquisitions involves buying the assets of another company. These assets may be tangible assets like a manufacturing unit or intangible assets like brands. In such acquisitions, the acquirer company can limit its acquisitions to those parts of the firm that coincide with the acquirer's needs.

Example: The acquisition of the cement division of Tata Steel by Laffarge of France. Laffarge acquired only the 1.7 million tonne cement plant and its related assets from Tata Steel.

The asset being purchased may also be intangible in nature. For example, Coca Cola paid Rs.170 crore to Parle to acquire its soft drinks brands like Thums Up, Limca, Gold Spot, etc.

HLL bought the brands of Lakme.

Joint Venture

In a Joint Venture, two companies enter into an agreement to provide certain resources towards the achievement of a particular common business

goal. It involves intersection of only a small fraction of the activities of the companies' involved and usually for a limited duration. The venture partners according to the pre-arranged formula share the returns obtained from the venture. Usually, the multinational companies use this strategy to enter into the foreign markets.

Example: DCM Group and Daewoo Motors entered into a joint venture to manufacture automobiles in India.

Contraction

Contraction is a form of restructuring, which results in a reduction in the size of the firm. It can take place in the form of a spin-off, split-off, divestiture or an equity carve-out.

Spin-offs

Spin-offs make sense if the subsidiary is a supplier to the parent and this prevents the subsidiary from developing a market with the parent's key competitors. Selling a stake in a company, on the other hand, may be the most suitable choice if the company requires better access to capital. Alternatively, tracking stocks may be appropriate if a subsidiary can take advantage of its parent's lower cost of borrowing to finance its operations, or if one or other of the entities can offset taxable profits against operating losses.

A spin-off is a transaction in which a company distributes on a *pro rata* basis all of the shares it owns in a subsidiary to its own shareholders. Hence, the stockholders proportional ownership of shares is the same in the new legal subsidiary as well as the parent firm. The new entity has its own management and is run independently from the parent company. A spin-off does not result in an infusion of cash to the parent company.

Example: Kotak Mahindra Capital Finance Ltd. formed a subsidiary called Kotak Mahindra Capital Corporation by spinning off its investment division.

Split-offs

In a split-off, a new company is created to takeover the operations of an existing division or unit. A portion of the existing shareholders receives stock in a subsidiary (new company) in exchange for the parent company stock. The logic of split-off is that the equity base of the parent company is reduced reflecting the downsizing of the firm. Hence, the shareholding of the new entity does not reflect the shareholding of the parent firm. A split-off does not result in any cash inflow to the parent company. A split-off is the outright sale of a company subsidiary doesn't fit into the parent companies core strategy.The market may be Undervaluing the combined businesses due to a lack of synegy between the parent and the subsidiary. As a result, management and the Board decide that the subsidery is better off under different ownership.

Example: On 30th Sept 2009 ABNAMRO files to Split-off Royal Bank of Scotland (RBS) owned assets after a 2007 takeover.

Split-ups

In a split-up, the entire firm is broken up in series of spin-offs, so that the parent company no longer exists and only the new off-springs survive. A split-up involves the creation of a new class of stock for each of the parent's operating subsidiaries, paying current shareholders a dividend of each new class of stock, and then dissolving the parent company. Stockholders in the new companies may be different as shareholders in the parent company may exchange their stock for stock in one or more of the spin-offs.

Example: Restructuring of APSEB - The Andhra Pradesh State Electricity Board (APSEB) was split-up in 1999 as part of the power sector reforms. The power generation business and the transmission and distribution business was transferred to two separate companies called APGENCO and APTRANSCO, respectively. APSEB ceased to exist as a result of the split-up.

Divestiture

Diverstiture is a transaction through which a firm sells a portion of its assets as a division to another company. It involves selling some of the assets or division for cash or securities to a third party which is an Outsider.These assets may be in the form of plant, division on product line, subsidiary and so on. Divestiture process is a form of contraction for selling company and means of expansion for the purchasing company. For a business, divestiture is the removal of assets form books. Businnesses divest by the selling of ownership stake, the closure of subsidiaries, the bankruptcy of division and so on. The buyers benefit due to low acquisition cost of a complately established product line which is easy to combine in his existing business and increase profit and marke share. The seller can concentrate after divestiture more on profitable segment and consolidarte its business activities. The motive for diversture is to generate cash for the expansion of other product line to get rid of poorly parforming operation, to streamline the comparate or to resturucture the company's business consistent with its stritegic goals. Divestiture enables the selling firm to have more lean and focussed operation. This in turn, helps the selling company to increase effieficiency and profitability.

A divestiture is a sale of a portion of the firm to an outside party, generally resulting in an infusion of cash to the parent. A firm may choose to sell an undervalued operation that it determines to be non-strategic or unrelated to the core business and to use the proceeds of the sale to fund investments in potentially higher return opportunities. It is a form of expansion on the part of the buying company.

Example: On 2 nd July 2007 ELi Lilly announces the divestiture of its antibiotic brand Distacle (R) (cefaclor), gives marketing rights to M/S pharmalink.

Equity Carve-out

Equity carve-out means reducing their expoure to a riskier line of business. In the process of equity carve-out, some of the share of subsidiary are offered for sale to the general publice for increasing cash flow without loss of control. A carve-out occurs when a parent company sells a minority (usually 20% or less) stake in a subsidrary for an IPO on rights offering. In this form of restructuring, an established brick-and-mortar company looks up with the venture investors and a new management team to launch a spin-off. In most cases, parent company will spinoff the remaing interests to existing shareholders at a later date when the stock price is much higher.

An equity carve-out involves the sale of a portion of the firm through an equity offering to outsiders. New shares of equity are sold to outsiders who give them ownership of a portion of the previously existing firm. A new legal entity is created. The equity holders in the new entity need not be the same as the equity holders in the original seller.

Example: Equity Carve-Out between Lanco Infrastructure and GVK Power and Intrastructure for setting up new division for their power business.

Assets Sale

It involves the sale of tangible or intangible assets of a company to generate cash, when a corporation sells off all its assets to another company, it becomes a corporate shell with cash and/or securities as its sole assets. The firm may then distribute the cash to its stockholders as a liquidating dividend and go out of existence. The firm may also choose to continue to do business and use its liquid assets to purchase other assets or companies.

Example: On 16th Sept 2009 Royal Bank of Scotland group Plc has resumed assets sale talks with standord chartered Plc.

Corporate Control

Firms can also restructure without necessarily acquiring new firms on divesting existing corporations. Corporate control refers to the third group of corporate restructuring activities, which involves obtaining control over the management of the firm. Control is the process by which managers influence other members of an organisation to implement the organisational strategies. The various techniques of obtaining corporate control are explained further.

Takeover Defense

With the high level of hostile takeover activity in the recent years, takeover defense, both pre-bid and post-bid have been resorted to by the companies. Pre-bid defenses, also called preventive defenses, are employed to prevent a sudden, unexpected hostile bid from gaining control of the company. When preventive takeover defenses are not successful in fending

off an unwanted bid, the target implements post-bid or active defenses. These takeover defenses intend to change the corporate control position of the promoters.

Example: South korean Steal giant POSCO swapped stakes on 3th April 2007 with Hundai Heavy Industries the world largest shipyard to strengthen its defense aagainst any hostile take over.

Share Repurchases

This involves the company buying its own shares back from the markets. This leads to reduction in the equity capital of the company. This, in turn, strengthens the promoter's controlling position by increasing his stake in the equity of the company. It is used as a takeover defense to reduce the number of shares that could be purchased by the potential acquirer.

Example: Recently, Sterlite Industries had proposed a buyback of its shares through the open market to acquire a maximum of 25 per cent of the equity.

Exchange Offers

It provides one or more classes of securities, the right or option to exchange part or all of their holdings for a different class of securities of the firm. The terms of exchange offered necessarily involve new securities of greater market value than the pre-exchange offer announcement market value. Exchange offer involves exchanging debt for common stock, which increases leverage, or conversely, exchanging common stock for debt, which decreases leverage. They help a company change its capital structure while holding the investment policy unchanged.

Example: On 11th Nov.2009 Tata Steal had launched an exchange offer of new foureigh currency convertible bonds fopr existing $ 857 million convertible Alternative Reference Securities (CARS) due 20012

Proxy Contests

A proxy contest is an attempt by a single shareholder or a group of shareholders to take control or bring about other changes in a company through the use of the proxy mechanism of corporate voting. In a proxy fight, a bidder may attempt to use his or her voting rights and garner the support from other shareholders to expel the incumbent board or management.

Changes in Ownership Structure

Changes in the ownership structure represent the fourth group of restructuring activities which results in restructuring the ownership of a firm. A firm's ownership structure affects, and is affected by other variables, and these variables also influence the market value. These variables include the levels of principal-agent conflict and information asymmetry and their effects on other variables such as the firm' operating strategy, dividend policy and capital structure. The various technique of changing the ownership structure are explained below.

Leverage Buyout

It is a strategy involving the acquistion of another company using a significant amount of borrowed money (bonds or loans) to meet the cost of acquisition. It is nothing but the takeover of a company using the acquired firm's assets and cash flow to obtain financing. In LBO, the assets of the company being acquired are used as collateral for the loans in addition to the assets of the acquiring company. A LBO occurs when a financial sponsor gains control of a majority of a target Company's equity through the use of borrowed money or debt. The purpose of LBO is to allow companies to make large acquisitions without having to commit a lot of capital. LBO are risky for the buyers if the purchase is highly leverage.

Leveraged buyout is a financing technique where debt is used in the acquisition of a company. The term is often applied to a firm-borrowing fund to buy back its stock to convert from a publicly-owned to a privately-owned company. A management buyout is a LBO in which managers of the firm to be taken private are also equity investors.

Going Private

It refers to the transformation of a public corporation into a privately held firm. Ii involves purchase of the entire equity interest in a previously public corporation by a small group of investors.

ESOP

An Esop is a type of defined contribution benefit plan that buys and hold common stock. Esop is a qualified defined contribution, employee benefit plan designed to invest primarily in the stock of the sponsoring employer. Contributions are made by the sponsoring Employee. Esop is a trust established by a corporate which acts as a tax-qualified, defind contribution retirement plan by making the corporation's employees owners. Esops are often used as a corporate finance strategy and are also used to align the intrests of a company's employees with those of the company's shareholders. It can be used to keep plan participants foused on company performance and share price appreciation.

An employee stock option plan is a mechanism whereby a corporation can make tax deductible contributions of cash or stock into a trust. The assets are allocated to the employees and are not taxed until withdrawn by them. ESOPs are involved in mergers and LBOs in two ways: as a financing vehicle for the acquisition of companies, including through LBOs, and as an anti-takeover defense. ESOPs are most commonly used to provide a market for the shares of departing owners. Successful closely-held companies to motivate and reward employees or to take advantage of incentives to borrow money for acquiring new assets in pre-tax rupees. ESOPs are a contribution to the employee, not of employee purchase.

Example: On 4th June 2007 NDTV alloted 21,605 shares to their employees like Prannoy Roy.

MLPs

A master limited partnership is a type of limited partnership whose shares are publicly traded. The limited partnership interests are divided into units which trade as shares of common stock. In addition to trade ability, it has the advantage of limited liability for the limited partners. MLPS employed during the late 1970s and early 1980s, as a means of assets Securitisation financing initialy among the real estate based business. Today's MLPs are predominantly active in the energy, lumber and real estate industrial developing contries.

This kind of structure is however not prevalent in our country, though there was a move some time back to design necessary regulatory framework for floating such organisations, particularly in the context of divergent needs of the IT sector. Unlike a corporation an MLP is considered to be the aggregate of its partness rather than a separate entity. MLPs are a type of Limited Partnership in which the shares are publicly traded. The Limited partnership interests are divided into units which are traded as shares of common stock. Shares of ownership are refessed to as units MLPs generally operate in the natural resource, Financial services etc. There are two types of partners in this MLPs. They are called as genral partners and limited partners. The general partner is the party responsible for the business and bears unlimited liability. The limited is the person or group that provides the capital to the MLP and recevied peroidic income distribution from the MLP's cash flow and have no day-to-day management role in the partnership. MLPs allow the pass-through income, meaning that they are not subject to corporate income taxes. The Partnership doesn't pay taxes from the profit the money is only texed when unit holders receive distribution.

Example: Kinder Margan Energy Partners (KMP) is the larget independent owner and operator of petroleum Products pipeline in the United Stade.

De-Merger Or Corporate Splits Or Division

De-merger or split or divisions of a company are the synonymous terms signifying a movement in the company. It is just opposite to combination. Division of a company takes place when part of its undertaking is transferred to newly-formed company or to an exiting campany.

Privatisation also forms an important part of the restructuring process. The different forms of restructuring may include:

(1) Expansion

(2) Sell-Off

(3) Corporate Control

(4) Change in Ownership

Expansion: Expansions may include mergers, tender offers and joint ventures. Mergers per se, may either be horizontal mergers, vertical mergers or conglomerate mergers. In a tender offer, the acquiring firm seeks controlling interest in the firm to be acquired and requests the shareholders

of the firm to be acquired, to tender their shares or stock to it. Joint ventures involve only a small part of the activities of the companies involved.

Sell-Off: Sell-Off may either be through a spin-off or divestiture. Spin-Off creates a new entity with shares being distributed on a pro-rata basis to the existing shareholders of the parent company. Split-Off is a variation of Sell-Off. Divestiture involves sale of a portion of a firm/company to a third party.

Example: On 3rd Nov 2009 Pritain's two Largest retail lenders. Lloyds Banking Group and RBS have agreed to sell hundreds of branches.

Corporate Control: Corporate control includes takeovers, buy-backs where the management of the firm wishes to have complete control and ownership. Takeovers may be friendly takeovers or hostile takeovers.

Change in Ownership: Change in ownership may either be through an exchange offer, share repurchase or going public.

Business firms engage in a wide range of restructuring activities that include mergers, acquisitions, amalgamation, slump sale, take over, spin-off, etc.

Take over

A 'takeover' is 'acquisition' and both the terms are used interchangeably. Takeover differs from merger in approach to business combinations i.e. The process of takeover, transaction involved in takeover, determination of share exchange or cash price and the fulfillment of goals of combination all are different in takeovers than in mergers. For example, process of takeover is unilateral and the offeror company decides about the maximum price. Time taken in completion of transaction is less in takeover than in mergers, top management of the offeree company being more co-operative.

Takeover in the general parlance of the term would mean acquisition of shares, not with an intention to invest in the securities of that company but to acquire the management or take control of the company. In other words, when a person i.e. the acquirer either by himself or along with certain other persons acquires a substantial quantity of shares, with an implicit or an explicit agreement either orally or in writing, to acquire control of a company (referred to as the target company), a takeover bid is supposed to be have been made.

It is a well-established fact that such an important activity as takeovers shall be a regulated activity and regulatory bodies of developed nations all over the world, have put a set of Taken over Regulations in place in their respective countries. Securities And Exchange Board of India, the regulatory body of the capital markets in India, had also promulgated the Takeover Regulations in the year 1994 and after administering it for two years, realised that the Regulations needed to be amended to meet the ever-growing changes and dynamism in the capital markets. With this objective in mind, SEBI formed a Committee under the Chairmanship of Justice PN Bhagwati, comprising several eminent personalities from various spheres of

the capital market. On the basis of the report of the Committee, SEBI promulgated the Takeover Regulations on February 20, 1997. These Regulations referred to as the SEBT (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and commonly called as the "Takeover Code" has been amended several times, to be in line with the needs and requirements of the changing capital markets of India.

Example: Tata takeover Daewoo trucks; Tata Tea take over Tetley

Substantial Acquisition of Shares

As discussed in the introductory paragraph, a person has to make a substantial acquisition of shares in order to have made a takeover bid. The Takeover Code does not define the word "substantial", but it deals in detail, the circumstances, or the acquisition of such percentage of shares, which will attract the provisions of the Takeover Code.

Acquisition of 5% or More Shares of a Company

In the first place if a person, acquires shares carrying voting rights, in any manner, which along with the shares already held by him would entitle him to exercise either 5% or 10% 14% or 54% or 74%, he must disclose at every one of these stages, the shares and voting rights held by him. Such disclosures shall be made to the company and to all the stock exchanges where the shares of this company are listed. This provision therefore requires the acquirer to inform the company and the stock exchanges when his acquisition entitles him to exercise 5% of the voting rights or 10% of the voting rights or 14% of the voting rights or 54% of the voting rights or 74% of the voting rights. This requirement covers all such acquisitions by way of subscription in a public issue, rights issue, preferential issue, market purchases, or any other manner whatsoever. This acquisition shall also include shares acquired by way of pledge except where the pledgee is a bank or a financial institution and such pledgees shall inform the company and the stock exchanges where the shares of the company are listed when the acquisition in this manner reaches any of the above mentioned limits.

The acquirer shall inform the company and the stock exchanges within two days of receipt of intimation of allotment of shares or acquisition of shares. The company shall in turn inform the stock exchange within 7 days of receipt of such information the aggregate shareholding of such persons.

Acquisition of 15% or More of the Shares of any Company

An acquirer who acquires shares or voting rights entitling him to exercise 15% or more of the voting rights in a company, shall do so only after he makes a public announcement. A public announcement is an invitation given by the acquirer to the other shareholders of the company to acquire their shares at a price, calculated in accordance with the SEBI Takeover Regulations. As per the regulations, an acquirer must make an offer for a minimum of 20% of the share capital/voting rights of the company in a public announcement commonly referred to as an open offer.

Consolidation of Holdings

Any acquirer, who already holds shares or voting rights which entitles him to exercise 15% or more of the voting rights in a company, but not more than 55% of the voting rights in a company, is entitled to acquire shares either by himself or through persons acting in concert with him or with persons acting in concert with him. Such additional shares which would entitle him to exercise 5% of the voting rights in a company in a period of 12 months ending March 31, every year. For reckoning this additional 5% voting rights, only the purchases made by the acquirer is considered and the sales made by him will not be included netted off. In case the acquirer either by himself or through persons acting in concert with him were to acquire (purchase) shares which would entitle him to exercise more than 5% of the voting rights in a company, such a person may do so only after making a public announcement.

In case the acquirer, along with persons acting in concert with him has already shares which will entitle him to exercise 55% or more of the voting rights of the company, but not more than 75% of the voting rights in a company, and he is interested in further consolidation of holdings, he may do so, after making a public announcement. Such a public announcement shall be for such percentage of shares so as not to defeat the provision of minimum public shareholding specified in the listing agreement entered into with the stock exchanges.

The Listing Agreement entered into with the stock exchanges normally stipulates that the minimum public shareholding in a company shall be 25% in order that the company continues to remain listed. In certain cases however, a company may apply to SEBI and obtain a relaxation under Section 19(2)(b) of the Securities Contract (Regulations) Rules, 1957, as per which it is sufficient if a company has 10% as its public shareholding, in order to remain listed.

From the above proviso, it is evident that in case the minimum public shareholding requirement is 25%, an acquirer, along with persons acting in concert with him shall acquire such percentage of shares only so that the public shareholding in the company does not fall below 25%. For example, if A the promoter of the company along with the persons acting in concert with him holds 55% of the share capital/voting capital of the company, he shall be eligible to acquire another 20% of the voting capital of the company. In case A along with persons acting in concert with him holds 60% of the capital/voting capital of the company, he is eligible to acquire only another additional 15% of the voting capital of the company, in order to ensure that the promoters' holding does not exceed 75% of the share capital or voting capital of the company.

On the other hand, if a company is one which has obtained a 19(2) (b) relaxation and the minimum public shareholding requirement is 10%, then the acquirer along with persons acting in concert with him shall be eligible to acquire, such additional shares after making a public announcement, so that the public shareholding in the company is retained at 10% of the share

capital/voting rights of the company. For example, if the promoter A along with persons acting in concert with him already holds 60% of the Voting capital/share capital of the company and the company has obtained a 19(2) (b) relaxation, he is eligible to acquire up to another 30% of the share capital/voting rights of the company (the minimum number of shares that is to be acquired in an open offer be 20% of the share capital/voting capital of the company.) However, in case with the persons acting in concert with him holds 74% of the share capital of the company and the company has obtained a 19(2) (b)relaxation, then he is eligible to ensure another 16% of the share capital/voting rights of the company only after making a public announcement, in order to ensure that the promoters holding does not exceed 90% of the share capital of the company.

Acquisition of Control

Where there is an acquisition of control, with or without acquisition of shares, i.e. change of management, an open offer shall be made to acquire a minimum of 20% of the share capital from the other existing shareholders of the company. Such acquisition of control of a company can be by way of a direct acquisition or by way of an indirect acquisition of an listed company, which in turn holds/manages a listed company. All acquisitions, whether made in India or abroad, by virtue of which the Indian company is also acquired, is covered by the Regulations and the acquirer is required to make an open offer.

If the change in control takes place after the approval of the shareholders by means of a special resolution in a general meeting of the company, no open offer is required to be made. The company shall ensure that the special resolution is passed by way of a postal ballot exercise in accordance with the rules provided for the same in the Companies Act, 1956 and the Passing of the Resolution by Postal Ballot Rules, 2001.

Exemptions

The following acquisitions are exempted from the compliance of the requirement with regard to making a public announcement in the Takeover Code itself. In other words, in case of acquisitions made in the following manner and in compliance of the conditions attached thereto, the acquirer need not comply with the requirements of making an open offer.

(a) Allotment made pursuant to an application made in public issue is automatically exempt. However, if the allotment is a firm allotment, then exemption would be available only if full disclosures with regard to the identity of the firm allottee, the number of shares that the firm allottee proposes to subscribe to, the consequential change in the board of directors of the company and the shareholding pattern voting rights shall the disclosed upfront in the prospectus. In case there would be a change in control or management of the company, consequent to the firm allottee subscribing to the shares, that fact shall also be disclosed in the prospectus.

(b) Allotments made pursuant to all application in a rights issue is also automatically exempt. The exemption is available only to the extent of the applicant's entitlement in the rights issue and to the extent of 55% provided in the Regulations. However, this limit of 55% will not apply in case the applicant declares his intention to subscribe beyond his entitlement in case of the rights issue is undersubscribed upfront in the Rights Letter of Offer issued in this regard.

(c) Allotment made to underwriters pursuant to an underwriting agreement entered into at the time of a public issue rights issue is automatically exempt.

(d) Inter-se transfers

- (i) amongst companies within the same group (Group as defined under the Monopolies and Restrictive Trade Practices Act, 1969),
- (ii) relatives as defined under Section 6 of the Companies Act, 1956,
- (iii) amongst Promoters, Promoters has been defined under the Regulations and inter-se transfers amongst such persons would only be exempt. In order to claim this exemption, both the transferor and transferee must have held shares of the company for at least three years prior to the proposed acquisition
- (iv) amongst Indian Promoters and Foreign Promoters. In order to avail this exemption, both the transferor and transferee must have held shares of the company for at least three years prior to the proposed acquisition, and
- (v) amongst Promoters and Persons acting in concert with the promoters. In order to avail exemption under this category, the shares should be held for at least 3 years from the date of closure of public offer made under the Takeover Regulations.

The exemptions under Inter-se transfer of shares amongst promoters, relatives, Indian Promoters and Foreign Collaborators and amongst Promoters and Persons, acting in concert is available only if both the transferor and transferee have been filing all the reports required under the Takeover Regulations.

(e) acquisition of shares in the ordinary course of business by a registered stock broker, a registered market maker, a public financial institution on its own account, banks and financial institution as pledgees. Acquisition by International Financial Institutions like the ADB, IBRD, IFC, etc, a merchant banker pursuant to a safety net programme and acquisition of shares by a person in exchange of shares under an open offer are also automatically exempt.

(f) Acquisition of shares by way of transmission of shares and acquisition of shares by a Government Company within the meaning of Section 617 of the Companies Act, 1956 are exempt.

(g) Transfer of shares by a state-level Financial Institution to a co-promoter of a company is exempted, providing transfer of shares is one of the conditions stated in the agreement entered into between the state-level Financial Institution and the Co-promoter of the company in this regard.

(h) Any transfer of shares from a Venture Capital Fund or Foreign Venture Capital investors registered with SEBI to the promoters of a Venture Capital Undertaking is automatically exempt. However, such transfer of shares shall be one of the clauses in the agreement entered into between the Venture Capital Fund and the-promoters of the Venture Capital Undertaking.

(i) Any acquisition of shares under a scheme framed under Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 or under any arrangement or reconstruction or amalgamation or merger or de-merger under any Indian or Foreign law or regulation is exempted.

(j) Any acquisition of shares of an unlisted company is also automatically exempted under this Regulation. However, if such acquisition of an unlisted company either in India or abroad, would entitle the acquirer to acquire control over a listed company in India, such acquisitions would not be automatically exempt.

(k) Acquisition of Global Depository Receipts would also be exempted, till such time these Depository Receipts are not converted into equity shares carrying voting rights.

Apart from the above, if an acquirer is of the opinion that the acquisition proposed to be made befits an exemption, he may make an application in the specified format to SEBI along with the prescribed fee. SEBI on receipt of the applicator will refer the same to a Takeover Panel, constituted in this regard. The panel after examination of the facts presented in the application and such additional information that they may call in this regard, grant an exemption to the applicant.

Reports to be Filed in Case of Exemptions

In case of acquisitions by inter-se transfer of the shares, by Government companies and by transfer of shares by a state-level financial institution to a promoter of a company exceeds 5% of the total voting share capital of the company, such an acquirer shall file a report with the stock exchanges, at least 4 days before the acquisition.

In case of acquisition by allotment in a public issue, rights issue, *inter- se* transfer of shares and transfer from state-level financial institution to the co-promoter, wherein the acquisition along with shares already held by the acquirer entitles the acquirer to exercise 15% of more of the share capital of the company, the acquirer shall file a report to the SEBI in the prescribed format along with the prescribed fee.

Continuous Disclosures

Periodical Disclosures

Every person who holds more than 15% of the shares or the voting rights of the company shall disclose his holding to the company on or before April 21, of every year.

Every promoter of the company, irrespective of his holdings, shall disclose the number of shares or voting rights held by him to the company on or before April 21 every year. Disclosure of shareholding shall be made by the promoters of the company within 21 days from the record date, fixed for the purposes of declaration of dividend.

Every company which receives the information as detailed in the preceding paragraph shall disclose the changes in the shareholdings of the persons who hold more than 15% as well as in the shareholding of the promoters by April 30 of every year to the stock exchange. Such disclosures shall also be made by the company with regard to the disclosures received during the record date for the purposes of dividend to the stock exchange.

0ther Disclosures

Every acquirer who acquires shares, which taken together with the shares already held by him entitles him to exercise 5% or 10% or 14% or 54% or 74% of the shares or voting rights of the company shall disclose at every one of the stages percentages mentioning aggregate of his shareholding to the company. Such a disclosure shall also be made by the acquirer to the stock exchanges where the shares of the company are listed. The disclosure shall be done by the acquirer within 2 days of him making such an acquisition. The company in turn shall inform the stock exchanges within a period of 7 days from the date of receipt of information.

In case of acquisitions made by the persons who hold more than 15% of the share capital or voting rights of the company, but less than 55% of the share capital or voting rights of the company, disclosures shall be made by them to the company and to the stock exchanges where the shares of the company are listed, of the purchase or sale aggregating 2% or more of the share capital of the company. Such disclosure shall be made within 2 days of making such a sale or purchase. The company in turn shall inform the stock exchanges where the shares of the company are listed within 7 days of receipt of information.

Requirements of a Public Announcement

When to Make

When an acquirer is required to make a public announcement, he shall do so within 4 working days from the date of entering into an agreement to acquire the shares or deciding to acquire the shares. For example, if there is a memorandum of understanding to acquire the shares of a

company by means of a negotiated takeover, the public announcement shall be made within 4 days of the Memorandum of Understanding. If the public announcement is to be made pursuant to a preferential allotment or such other allotment, following a Board Resolution, the announcement shall be made within 4 days of the Board Meeting approving the allotment.

Where to Make

Public announcement shall be made in one English National Daily and one Hindi National Daily having wide circulation and in one Regional Daily with wide circulation at the place where the registered office of the company is situated and a regional language daily with wide circulation at the place of the stock exchange where the shares of the company are most frequently traded.

A copy of the public announcement shall be filed with SEBI, the stock exchanges where the shares of the company are listed and a copy shall also be sent to the registered office of the target company.

Appointment of Merchant Banker

Before the release of the public announcement, the acquirer shall appoint a merchant banker and it is the merchant banker who shall release the public announcement and manage the open offer till the settlement of consideration to the shareholders. The merchant banker shall file a copy of the public announcement with SEBI.

Specified Date

The Public announcement shall specify a "Date" which shall be the Specified Date for the purpose of determining the names of the shareholders to whom the letter of offer shall be sent. The Specified date shall be a date which shall not be more than 30 days from the date of public announcement.

Offer Price

The offer to acquire the shares from the other existing shareholders shall be made at a price which shall be the highest of:

(a) The negotiated price under an agreement entered into for the acquisition of shares.

(b) Price paid by the acquirer or persons acting in concert with him for any acquisition, including allotments in public issue, rights issue or preferential issue during the twenty-six week period prior to the date of public announcement.

(c) Average of the weekly high and low of the closing prices of the shares of the target company as quoted on the stock exchange where the shares of the company are most frequently traded during the twenty-six weeks or the average of the daily high and low of the prices of the shares as quoted on the stock exchange where the

shares of the company are most frequently traded during the two weeks preceding the date of the public announcement, whichever is higher.

In case of public announcement made for acquisition of shares, which are infrequently traded, the offer price shall be determined by the merchant banker and the acquirer after taking the following factors into consideration:

- The negotiated price under any agreement entered into for the acquisition of shares.
- The highest price paid by the acquirer or persons acting in concert with him for acquisitions, if any, including by way of allotment in public or rights or preferential issues during the twenty-six weeks period prior to the date of public announcement.
- Other parameters including return on net worth, book value of shares of the target company, earning per share, price earning multiple vis-a vis the industry average.

The offer price shall be paid either by way of Cash, or

- by way of issue, exchange and or transfer of shares (other than preference shares) of acquirer company, or
- by issue, exchange and or transfer of secured instruments of the acquirer company with a minimum "A" grade rating from a credit rating agency registered with the Board, or
- a combination of all the three options mentioned above.

Minimum Number of Shares to be Acquired

The public offer to be made by the acquirer shall be for a minimum of 20% of the voting capital of the company. In case the public announcement is made by an acquirer who holds more than 55% of the share capital, but less than 75% or 90% of the share capital as the case may be, the acquirer shall acquire such minimum number of shares so that the public shareholding does not fall below the minimum stipulated under the Listing Agreement entered in to with the stock exchanges.

In case the acquirer were to make a public announcement to acquire the minimum 20%, after acquiring more than 55% of the share capital of the company through a memorandum of understanding or agreement, the acquirer shall acquire only such number of shares under the agreement, so that the minimum public shareholding requirement of the listing agreement is not violated.

If a public announcement is made consequent to a global arrangement and the public shareholding in the company falls below the limit specified in the Listing Agreement, the acquirer shall undertake to raise the level of public shareholding to the levels specified within twelve months from the date of closure of the public offer the level of public shareholding can be increased either by issue of new shares in accordance with the SEBI

(Disclosure and Investor Protection) Guidelines, 2000 or by way of disinvestment through an offer for sale or sale of the acquirers' holdings through the stock exchange.

Acceptance of Shares on a Proportionate Basis

In case the numbers of shares offered for sale by the shareholders are more than the shares agreed to be acquired by the person making the offer, such persons shall accept the shares received from the shareholders on a proportionate basis in consultation with the merchant banker. The merchant banker and the acquirer shall ensure that the basis acceptance is decided in a fair and equitable manner and does not result in non- marketable lots. This provision shall, however, not apply where the shares are held in a dematerialised form.

Provision of Escrow Account

In order to ensure security for performance of the obligation of the acquirer, the Regulations require that the acquirer shall open an escrow account. The escrow shall be calculated as 25% for and up to Rs.100 crore payable as consideration and 25% up to Rs.100 crore plus 10% thereafter for all amounts exceeding Rs.100 crore.

The escrow account shall consist of either cash deposit with a scheduled commercial bank or bank guarantee in favour of a merchant banker or deposit of acceptable securities with appropriate margin with the merchant banker.

PAYMENT OF CONSIDERATION

The acquirer shall within a period of seven days from the date of closure of the offer open a special account with the Bankers to the Issue. The acquirer shall deposit such sum which taken together with 90% of the amount lying in the escrow account will make up the entire sum due and payable to the shareholders as consideration for acceptances received and accepted by the acquirer. The unclaimed balance lying to the credit of the account at the end of 3 years from the date of deposit shall be transferred to the Investor Protection Fund of the regional stock exchange of the target company.

In case the consideration is payable by way of exchange of securities, the acquirers shall ensure that the securities are actually issued and dispatched to the shareholders.

The Takeover Regulations in India are comprehensive and include every possible scenario including competitive offers and revision of bids once a public announcement has been made. The Regulations do not however permit any withdrawal of bid except on certain occasions. No defences are provided to the target company to protect itself from hostile takeovers. On the other hand, certain obligations are cast on the Target Company. The

company is also not permitted to advise its shareholders on the course of action to be taken in case a hostile takeover is made.

Hostile Takeovers

Hostile Takeover is not defined under the Takeover Regulations.

When a bidder makes an offer for another company, it will usually inform the board of the target company beforehand. If the board of the target company is of the opinion that the offer is such that the shareholders will be best served by accepting, it will recommend the offer be accepted by the shareholders. In a friendly takeover, the management teams of the acquiring and target companies negotiate the terms of the deal covering issues such as how shares in the new company will be divided and then both companies' boards of directors and shareholders approve it.

A takeover would be considered "hostile" if

- the board rejects the offer, but the bidder continues to pursue it, or
- if the bidder makes the offer without informing the board beforehand.

There are several reasons why a company might want or need a hostile takeover. They may think the target company can generate more profit in the future than the selling price. That's why so many companies have subsidiaries that don't have anything in common — they were bought purely for financial reasons. Currently, strategic mergers and acquisitions are more common. In a strategic acquisition, the buyer acquires the target company because it wants access to its distribution channels, customer base, brand name, or technology. In some cases, purchasers use a hostile takeover because they can do it quickly, and they can make the acquisition with better terms than if they had to negotiate a deal with the target's shareholders and board of directors

The target company may not want to be acquired for various reasons. Perhaps, they are a company that simply wants to stay independent or else members of management might want to avoid acquisition because they are often replaced in the aftermath of a buyout. They are simply protecting their jobs. The board of directors or the shareholders might feel that the deal would reduce the value of the company, or put it in danger of going out of business. In this case, a hostile takeover will be required to make the acquisition. The main consequence of a bid being considered hostile is practical rather than legal. If the board of the target co-operates, the bidder will be able to conduct extensive due diligence into the affairs of the target company. It will be able to find out exactly what it is taking on before it makes a commitment. A hostile bidder will know only the information of the company that is publicly available and will therefore be taking more of a risk.

A hostile takeover usually involves a public offer of a specific price, usually at a substantial premium over the prevailing market price, good for a limited period, for a substantial percentage of the target company's

shares. Unlike a merger, which requires the approval of the target company's board of directors as well as voting approval of the shareholders, a public offer can provide voting control to the acquirer without the approval of the target company's management and directors.

The Takeover Regulations does not recognise hostile takeover directly. However, it does contain provisions considering the fact that there could be hostile takeovers. Under the takeover regulations, it is presumed that, takeovers, hostile or otherwise, should provide shareholders opportunity to determine in which 'group' they would like to remain and also to avail benefits of best offers.

Example: Kraft Launches hostile takeover bid far cadbury.

Defenses

The array of takeover defenses includes amendments to memorandum and articles of association to create super majority, dual-class restructurings that, by creating two classes of shares, concentrate voting control with management; litigation against the hostile bidder (usually alleging violations of competition and securities laws); and purchasing the hostile bidder's foothold stock at a premium to end the takeover threat (so-called green-mail payments). Although these particular defenses often are effective at delaying the hostile bidder, they rarely are enough to keep a target company in the existing management's hands. The two defensive weapons that are generally seen used against the hostile bidder are the poison pill and the takeover regulations.

Who Benefits?

While companies fight tooth and nail to prevent hostile takeover, it isn't always clear why they're fighting. Because the acquiring company pays a premium for the shares, shareholders usually see an immediate benefit when their company is the target of an acquisition. Conversely, the acquiring company often incurs debt to make their bid, or pays well above the market value for the target company's shares. This drops the value of the bidder, usually resulting in lower share values for shareholders of that company.

One view is that hostile takeovers have an overall harmful effect on the economy, in part use they often fail. When one company takes over another, management may not understand the technology, the business model or the working environment of the new company. The debt created by takeovers can slow growth and consolidation often results in layoffs.

Another cost of hostile takeover is the effort and money that companies put into their takeover defense strategies. Constant fear of takeover can hinder growth and stifle ratio, as well as generating fears among the employees about job security.

Purpose of Mergers & Acquisitions

The purpose for an offeror company for acquiring another company shall be reflected in the corporate objectives. It has to decide the specific objectives

to be achieved through acquisition. The basic purpose of merger or business combination is to achieve faster growth of the corporate business. Faster growth may be had through product improvement and competitive position.

Types of Mergers

Merger or acquisition depends upon the purpose of the offeror company it wants to achieve. Based on the offerors' objectives profile, combinations could be vertical, horizontal, circular and conglomeratic as precisely described below with reference to the purpose in view of the offeror company.

(A) Vertical Combination

A company would like to takeover another company or seek its merger with that company to expand espousing backward integration to assimilate the resources of supply and forward integration towards market outlets. The acquiring company through merger of another unit attempts on reduction of inventories of raw material and finished goods, implements its production plans as per the objectives and economises on working capital investments. In other words, in vertical combinations, the merging undertaking would be either a supplier or a buyer using its product as an intermediary material for final production. The following main benefits accrue from the vertical combination to the acquirer company i.e.

(1) It gains a strong position because of imperfect market of the intermediary products, scarcity of resources and purchased products;

(2) Has control over products specifications.

Merger of coal Mining and Railway company is the best example.

(B) Horizontal Combination

It is a merger of two competing firms which are at the same stage of industrial process. The acquiring firm belongs to the same industry as the target company. The main purpose of such mergers is to obtain economies of scale in production by eliminating duplication of facilities and the operations and broadening the product line, reduction in investment in working capital, elimination in competition, concentration in product, reduction in advertising costs, increase in market segments and exercise better control on market.

Merger of Orange and BPL created as Hutch and BPL.

(C) Circular Combination

Companies producing distinct products seek amalgamation to share common distribution and research facilities to obtain economies by elimination of cost on duplication and promoting market enlargement. The acquiring company obtains benefits in the form of economies of resource sharing and diversification.

(D) Conglomerate Combination

It is an amalgamation of two companies engaged in unrelated industries like DCM and Modi Industries. The basic purpose of such amalgamations remains utilisation of financial resources and enlarges debt capacity through re-organising their financial structure so as to service the shareholders by increased leveraging and EPS, lowering average cost of capital and thereby, raising present worth of the outstanding shares. Merger enhances the overall stability of the acquirer company and creates balance in the company's total portfolio of diverse products and production processes.

Gugarat ejas Lte. and egujarat Finance company Ltd.

Forward Triangular Merger

Acquirer
100%
Subsidiary
Merge
Target

Resulting structure

Acquirer
100%
Subsidiary

Mechanism

- The acquirer drops down a 100% subsidiary
- The target merges with the acquirer's subsidiary
- The shareholders of the target are issued shares of the acquirer
- Consequently, the acquirer holds 100% in the subsidiary

Rationale

- Isolation of acquirer from target's pre-existing liabilities

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Reverse Triangular Merger

Acquirer
100%
Subsidiary
Merge
Target

Resulting structure

Acquirer
100%
Target

Mechanism

- The acquirer drops down a 100% subsidiary
- The acquirer's subsidiary merges with the target
- The acquirer issues shares to the shareholders in the target
- Consequently, the acquirer holds 100% in the target

Rationale

- No assets are transferred or contracts assigned. No third party consents required
- Eliminates need for acquirer's shareholders to approve the transaction
- Avoidance of corporate level tax at the target level as compared to a forward triangular merger

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Advantages of Mergers

Mergers and takeovers are permanent form of combinations which vest in management complete control and provide centralised administration which are not available in combinations of holding company and its partly owned subsidiary. Shareholders in the selling company gain from the merger and takeovers as the premium offered to induce acceptance of the merger or takeover offers much more price than the book value of shares. Shareholders in the buying company gain in the long-run with the growth of the company not only due to synergy but also due to "boots trapping earnings".

Mergers and acquisitions are caused with the support of shareholders, manager's and promoters of the combining companies. The factors, which motivate the shareholders and managers to lend support to these combinations and the resultant consequences they have to bear, are briefly noted below based on the research work by various scholars globally.

(1) From the Standpoint of Shareholders

Investment made by shareholders in the companies subject to merger should enhance in value. The sale of shares from one company's shareholders to another and holding investment in shares should give rise to greater values i.e. The opportunity gains in alternative investments. Shareholders may gain from mergers in different ways viz.

From the gains and achievements of the company i.e. through

(a) Realisation of monopoly profits;

(b) Economies of scales;

(c) Diversification of product line;

(d) Acquisition of human assets and other resources not available otherwise;

(e) Better investment opportunity in combinations;

One or more features would generally be available in each merger where shareholders may have attraction and favour merger.

(2) From the Standpoint of Managers

Managers are concerned with improving operations of the company, managing the affairs of the company effectively for all-round gains and growth of the company which will provide them better deals in raising their status, perks and fringe benefits. Mergers where all these things are the guaranteed outcome get support from the managers. At the same time, where managers have fear of displacement at the hands of the new management in an amalgamated company and also resultant depreciation from the merger then support from them becomes difficult.

(3) Promoter's Gains

Mergers do offer to company promoters the advantage of increasing the size of their company and the financial structure and strength. They can convert a closely held and private limited company into a public company without contributing much wealth and without losing control.

(4) Benefits to General Public

Impact of mergers on general public could be viewed as aspect of benefits and costs to:

(a) Consumer of the product or services;

(b) Workers of the companies under combination;

(c) General public affected in general having not been a user or consumer or the worker in the companies under merger plan.

(a) Consumers

The economic gains realised from mergers are passed on to the consumers in the form of lower prices and better quality of the product which directly raise their standard of living and quality of life. The balance of benefits in favour of the consumers will depend upon the fact whether or not the mergers increase or decrease the competitive, economic and productive activity which directly affects the degree of welfare of the consumers through changes in price level, quality of products, after-sales service, etc.

(b) Workers Community

The merger or acquisition of a company by a conglomerate or other acquiring company may have the effect on both the sides of increasing the welfare in the form of purchasing power and other miseries of life. Two sides of the impact as discussed by the researchers and academicians are: **firstly,** mergers with cash payment to shareholders provide opportunities for them to invest this money in other companies which will generate further employment and growth to uplift the economy in general. **Secondly,** any restrictions placed on such mergers will decrease the growth and investment activity with corresponding decrease in employment. Both workers and communities will suffer on lessening job opportunities, preventing the distribution of benefits resulting from diversification of production activity.

(c) General Public

Mergers result into centralised concentration of power. Economic power is to be understood as the ability to control prices and industries output as monopolists. Such monopolists affect the social and political environment to tilt everything in their favour to maintain their power ad expand their business empire. These advances result into economic exploitation. But in a free economy a monopolist does not stay for a longer period as other companies enter into the field to reap the benefits of higher prices set in

by the monopolist. This enforces competition in the market as consumers are free to substitute the alternative products. Therefore, it is difficult to generalise that mergers affect the welfare of the general public adversely or favourably. Every merger of two or more companies has to be viewed from different angles in the business practices which protects the interest of the shareholders in the merging company and also serves the national purpose to add to the welfare of the employees, consumers and does not create hindrance in administration of the Government polices.

The programme being conducted today and this backgrounder mainly concentrates on corporate restructuring through Mergers & Acquisitions.

Mergers & Acquisitions

In a market-based economy, activities relating to mergers & amalgamations (M&As) are motivated by intensification of competition, industry consolidation, deregulation as well as increasingly complex and rapidly changing technologies. Conceptually, mergers can be described from a structural, industrial or operational perspective. Some of the few important elements in an M&A deal is strategic planning, careful structuring, legal and regulatory issues, valuation, accounting, taxation and other financial aspects. The professions, which are expected to play key roles in this process would be investment bankers as well as legal and regulatory experts. However, there are many other professionals who may also play significant roles in successful completion of the deal.

Investment bankers are quite often at the forefront of the mergers and acquisition process. They offer strategic, technical advice and merger opportunities, screen the potential buyers and sellers, provide services for valuation and deal structuring. Investment bankers assist in the process of attractive strategic options and evaluation for realiing the primary objectives in M&A deals.

The legal framework surrounding M&A transactions has tended to be complex and the services of experts like company secretaries in various fields of company law, taxation laws, and securities laws are essential for successful completion of M&A deals.

Simultaneously, accountants are required to provide services on optimal tax structure, financial structuring and on providing financial due diligence.

There are several objectives of M&As. Synergy is a widely used justification for making acquisitions. The synergies could be operational and financial. Operating synergies would relate to economies of scale resulting in gains in efficiency. Financial synergy would refer to the impact of M&A on the cost of capital of the acquiring firm or the newly formed firm resulting from M&As. Another objective of M&A may be diversification of the business for achieving stability and gains in profitability.

Globally, M&As in recent years have centered around industries which have been subject to significant deregulation. These industries include financial services, healthcare, utilities, media, telecommunications &

defense, mainly due to the advent of deregulation, which stimulates competition.

It may be of interest to know that M&A activity in USA came in five identifiable waves between 1897 and the beginning of the 21st century. The fifth wave which began in the Nineties has been termed as the age of mega mergers.

There are discussions whether M&As payoff for shareholders. It is difficult to provide a definite answer to this question. According to some expert views, over longer periods of time, many M&As either under perform their industry peers or destroy shareholder value. There are several reasons for the failure of M&As to meet expectations. The major causes are over-estimation of synergy, the slow pace of post-merger integration and a flawed strategy.

In India, there are specific provisions in the Companies Act, 1956, which cover the legal and regulatory processes for M&As. Under this Act, there are seven sections, 390-396, including major amendments in 1965 and 2002, which contain provisions dealing with corporate re-organisation. Most of the types of re-organisations are subject to the superintendence of courts besides shareholder approvals. After introduction of the subject of compromises, arrangements and reconstruction in Section 390, powers to compromise or make arrangements with creditors and members are covered in Section 391. The section provides procedural aspects of effecting a compromise or arrangement. The court nonrmally sanctions the scheme subject to the compliance of various statutory formalities. Section 392 contains the powers of the High Court to enforce compromise and arrangements. Section 393 stipulates the disclosure norms for the purpose of effecting the compromise or arrangement. Under Section 394, there are provisions for facilitating reconstruction and amalgamation of companies. It may be observed that Section 390 to 394 including 394A cover the complete gamut of the legal and procedural aspects of the law governing corporate restructuring. The other relevant Sections 395, 396 & 396A as well as Section 494 are all enacted to deal with specific situations.

An important element of M&A transaction is the valuation of the deal. There are varieties of ways that are commonly used to value enterprises. These include the discounted cash flow, market-based, asset-oriented, cost and weighted average valuation methods. These methods provide estimates of the economic value of a company. In case a controlling interest is to be obtained, a control premium must be added to the estimated economic value of the firm to determine the purchase price. Intangible assets may represent significant source of value on a target firm's balance sheet. They tend to be difficult to value. Accounting profession has devised methodologies to reflect valuation of different types of intangible assets. The type of intangible assets may be categorised under operating intangibles, product intangibles and marketing intangibles.

The stock market is often viewed as an efficient mechanism for determining whether an acquiring company has overpaid for an acquisition.

For public companies, the exchange of the acquirer's share for the target's shares requires the calculation of appropriate share exchange ratio. Also, financial modelling in the context of M&As facilitates the process of valuation, deal structuring and selection of optimal financing plan.

The Institute of Chartered Accountants of India (ICAI) has prescribed a mandatory Accounting Standard (AS14) for amalgamation. The AS14 of ICAI generally corresponds to International Accounting Standards (IAS22) for business combinations.

Takeovers & Acquisitions

Corporate restructuring can also be influenced by the threat of corporate takeover. However, corporate takeovers or acquisitions are more prevalent in a market-based economy, wherein competitive strategies would include growth prospects based upon acquisitions or takeovers for attaining inter-alia, higher shareholder value for the companies. There are alternative strategies adopted by the corporate sector for takeovers. In a friendly takeover, negotiated settlements are arrived at after hard bargaining which remains undisclosed until the agreement for purchase and sale has been signed.A **hostile takeover** is generally considered as an unsolicited offer made by a potential acquirer that is resisted by the target company's management. According to Thompson Financial Securities Data Corporation (2000), globally about four out of five transactions were classified as friendly during the 1990s.However, 1970s and 80s were characterized by hostile takeovers.

The acceleration in the use of technology has also initiated corporate takeovers and restructuring. Consequently, large companies are often looking at acquisitions as a fast and, sometimes less expensive way to acquire new technologies and proprietary know-how to fill gaps in their products to enter new business. In USA, CISCO systems, the well-known network router company, made 42 acquisitions between 1997 & 1999 to add new products, update their current portfolio of technologies and to add emerging technologies. Quite often acquisition of technologies may also be used as a defensive weapon to keep important new technologies out of the hands of competitors. The growing importance of technologies would change the mode of evaluation with increasing importance of intangible assets such as intellectual property, and the way in which such deals are structured.

The business strategy for takeover would be similar to those of mergers and amalgamations in the corporate sector. In other words, a great deal of strategic planning in terms of research and investigations are essential pre-requisites for taking management decisions on takeovers or acquisitions. Both in-house and external advices of professionals are required to initiate the process. The major areas of the business processes of takeovers would include strategic objectives behind the move, identification of target company, financial and accounting aspects including valuation, taxation issues, legal and regulatory dimensions. The advisory team may comprise experts from all these fields of specialisation.

In view of the sensitive nature of the subject, most countries have evolved exclusive legal and regulatory frameworks in takeovers and acquisitions. In India, attempts at regulating takeovers were made, though to a limited extent, by incorporating Clause 40 in the Listing Agreement by the Central Government. With the legislation of SEBI Act, 1992, the issue of substantial acquisition of shares or takeovers came under its purview in a more comprehensive way. The takeover regulations were first promulgated by SEBI in 1994. The SEBI Regulations on Takeovers conform to the international practices and the process enables the concerned parties to adopt a transparent and codified procedures enshrined in the legislation. The appointment of merchant bankers registered by the SEBI, Public announcement and its contents, use of media, timing of public announcement etc., have all been prescribed under the regulations. The important features of the regulations are comprehensive disclosures as well as various statutory approvals required for acquisitions or takeovers.

SEBI in its recent amendments to Takeover Regulations have indicated key modifications in the policy relating to the following aspects:

(a) Flexibility to corporate restructuring;

(b) To ensure the maintenance of minimum public shareholding for continuous listing. It has been decided that the restoration of minimum public shareholding will take place through a framework provided in the revised Clause 40A of the Listing Agreement;

(c) Restrictions on market purchases, preferential allotments as in the Takeover. Regulations have been removed;

(d) Outgoing shareholder (promoter) can sell the entire stake to the incoming acquirer in case of takeover;

(e) Shareholder holding more than 55% would be able to make further acquisition, subject to making open offer.

SEBI Insider Trading Regulations would prohibit dealings in shares on the stock exchanges by an individual who is contemplating or has contemplated making an offfer for a company in another capacity, such as a director of a potential offeror dealing in shares through a nominee, as almost all the parties connected with proposed takeovers or acquisitions are considered as 'Insiders'.

Company Secretaries have a key responsibility in providing all secretarial, legal and regulatory practices and procedures for completion of M&A deal. Provisions under Companies Act, 1956, the Companies Court Rules 1959, as well as other laws, viz., Factories Act, Industries (Development & Regulation) Act, Foreign Exchange Management Act, SEBI regulation on takeovers and Listing agreement of stock exchanges are required to be duly complied with. The Secretarial duties may be divided into pre-merger and post-merger activities with detailed planning of activities to complete the process in a reasonable period of time. Preparation of documents, necessary approvals of competent authorities, advisory role and effective association in all steps leading to the execution of the takeover deals. In other words,

company secretaries would be an integral part of the takeover process from beginning to the end.

Amalgamations and Mergers

A company may decide to accelerate its growth by developing into new business areas, which may or may not be connected with its traditional business areas, or by exploiting some competitive advantage that it may have. Once a company has decided that it wishes to enter a new business area, the question that arises is how it should achieve its aims.

There can be three possibilities:

- the formation of a new company
- the acquisition of an existing company
- merger with an existing company

The decision as to which of these three options to take will depend on the company's assessment of:

- the cost that it is prepared to pay
- the likelihood of success that it requires
- the degree of managerial control that it requires

Matters to be considered prior to amalgamation are:

(1) Direct tax implication of amalgamation such as:

   (i) Tax implications on the sale or exchange of shares in amalgamation in the hands of the shareholders.

   (ii) Carry forward of losses of companies.,

(2) Legal proceedings against the companies.

(3) Customs and excise laws and procedures under the same.

(4) In case of listed companies, permissions required from SEBI, Stock Exchanges, etc.

(5) Stamp Duty implication on transfer of assets to other companies.

(6) Valuation of the companies and their shares.

(7) Valuation of business and its goodwill.

(8) Formalities under the listing agreements.

(9) In case of amalgamation of MNCs or with MNCs, permissions from RBI, FEMA Act, FIPB, etc.

(10) The Depository Law, Income-Tax Act and Rules, and Securities Contracts Regulation Act are some of the other Acts to be considered.

Types of Amalgamations and Mergers

Generally speaking, amalgamations fall into two broad categories:-

(i) Amalgamation is the nature of merger

(ii) Amalgamations in the nature of purchase

An Amalgamation in the nature of merger is an amalgamation, where all the assets and liabilities of the transferor company becomes, after amalgamation, the assets and liabilities of the transferee company. In this category are those amalgamations where there is a genuine pooling not merely of the assets and liabilities of the amalgamating companies but also of the shareholders' interests and of the businesses of these companies. The business of the transferor company is intended to be carried on, after the amalgamation, by the transferee company. The accounting treatment of such amalgamations should ensure that the resultant figures of assets, liabilities, capital and reserves more or less represent the sum of the relevant figures of the amalgamating Companies.

In the second category are those amalgamations. in which one company acquires another company and, as a consequence, the shareholders of the company that is acquired normally do not continue to have a proportionate share in the equity of the combined company, or the business of the company, which is acquired, is not intended to be continued. Such amalgamations are amalgamations in the nature of 'purchase'.

In an amalgamation, the combined company, formed out of the transaction is called the "amalgamated company". The amalgamated company also called the transferee company. The company or companies, which are merged, are called the "amalgamating companies". The amalgamating company or companies are also called the "transferor company or companies."

Cross-Border Merger

Cross-border amalgamations and mergers takes place when two companies of different countries merge together. Company jurisprudence of most countries provide a legal mechanism to facilitate merger of companies belonging to different countries.

De-merger

A de-merger involves restructuring a corporate or trust group by splitting it into two or more entities or groups, with the underlying owners holding one or more of those entities or groups directly. De-merger, though not defined in the Companies Act, 1956 has been defined in the Income-Tax Act, 1961 (given later).

A de-merger could be affected by any of the following three methods:-

(1) de-merger by agreement between promoters; or

(2) de-merger, under the scheme of arrangement with approval by the court under Section 391;

(3) de-merger, under voluntary winding up

Some of the reasons for A&M are:

(a) Synergistic operational advantages - Coming together to produce a new or enhanced effect compared to separate effects

(b) Economies of scale (scale effect) - Reductions in the average cost of production, and hence, in the unit costs, when output is increased, to enable to offer products at more competitive prices and thus, to capture a larger market share

(c) Reduction in production, administrative, selling, legal and professional expenses

(d) Benefits of integration - Combining two or more companies under the same control for their mutual benefit, by reducing competition, saving costs by reducing overheads, capturing a larger market share, pooling technical or financial resources, co-operating on research and development, etc. Integration may be horizontal (or lateral) or vertical and the latter may be backward integration or forward integration.

(e) Ensuring proper supply of cheaper raw materials or regular sales

(f) Optimum use of capacities and factors of production

(g) Tax advantages - Carry forward and set-off of losses of a loss-making amalgamating company against profits of a profit-making amalgamated company, e g, S.72A of the ITA.

(h) Financial constraints for expansion - A company, which has the capacity to expand but cannot do so due to financial constraints may opt for merging into another company which can provide funds for expansion.

(i) Strengthening financial strength

(j) Diversification and reduction of earnings volatility

(k) Advantage of brand-equity

(l) Loss of objectives with which several companies were set up as independent entities

(m) Survival

(n) Competitive advantage: The factors that give a company an advantage over its rivals

(0) Eliminating or weakening competition

(p) Revival of a weak or sick company

(q) Sustaining growth

(r) More efficient use of larger resources and funds

(s) Larger strength of the company facilitates better opportunities in the international market

(t) This helps in economic expansion of the company as well as the industry

(u) Operational advantages

(v) Access to quality management personnel

In summary, some of the benefits of amalgamation can include:

- Increased marketing opportunities
- Decreased costs through economies of scale
- Development of a cohesive strategic approach
- Simplified administration at the company level
- Spreading of risk
- More effective allocation of resources
- Increased quality or quantity of services
- Improved Government or corporate support

Risks Involved in A&M

Major A&M have to be handled carefully because they leave little scope for trial and error and are difficult to reverse. The risks involved are not merely financial ones. A failed merger can disrupt work processes, diminish customer confidence and can have a significant impact on brand and product loyalty, damage the company's reputation, cause employees to leave and result in poor employee motivation levels.

Many mergers fail at the integration stage. So, it is important to understand the risks involved in integration and the ways to manage these risks. The integration process should be guided by a strategic vision, which should be backed by an operating strategy which takes into account how the value chain performance can be improved, whether competitors will react aggressively, and if they do, how they can be dealt with. Vision and operating strategy must be supported by proper systems and processes to align the behaviour of managers with corporate objectives. In some areas, the two entities should be tightly integrated while in others they should be left alone. What to integrate and what to leave alone is a matter of judgment.

Reasons for Failure of Mergers

Even the best planned mergers can fail due to external pressures and unforeseen circumstances. In the case where there are "take-overs" by larger, more powerful organisations, or mergers where a large body unites with a smaller one, it should not be assumed that the larger body's ways of operating should be adopted automatically. It is important to take an approach which adopts the best practices of both organisations. To avoid disputes and disappointment, careful thought will need to be given to ways of providing a voice for the smaller organisation in future decision-making.

Only where there is full commitment on both sides will the arrangement last long enough to be successful and create value for all the partners involved. Successful amalgamations are the result of honest self-analysis, chemistry and compatibility. The best results come from people who believe in the outcome, have a shared vision and a philosophy of creating a new organisation that takes the best from all the individual partners.

Managing the Risks

It is necessary to emphasise the need for a comprehensive role for the HR function in the negotiations before a merger deal is finalised. HR managers usually enter the discussions much later, to deal with issues like compensation. Instead, if they join the discussions at an early stage and conduct a cultural audit, potential trouble spots can be identified, very early on. Some of the points to be considered in the integration process:

- The integration team should build organisational capability by retaining talented manpower.
- Downsising activities must be managed with a great deal of sensitivity. Otherwise, they may fuel a large-scale exodus of people. A related issue is finding the right roles for the people.
- Clarity in specifying the roles for employees and what their new jobs will be after the merger and to whom they will report.
- Systems and procedures that are implemented must be in line with the strategic intent of the acquisition.
- The integration team must identify the cultural traits that are consistent with the business goals of the merged entity and take steps to spread them across the two entities. The team must manage cultural differences by collaborating with managers throughout the organisation.
- Post-merger drift tendencies should be minimised by managing the transition quickly. If decisions and changes are not implemented fast, the acquirer may become focused on internal issues and lose sight of customers and competitors.Decisions about layoffs, restructuring, reporting relationships, etc., must be made within days of the deal being signed and communicated quickly to the employees. However, care must be taken to ensure that people are treated with respect and sensitivity.
- Employees tend to be selective while receiving messages, during the early days of a merger, when anxiety levels are high. So, some messages may have to be repeated. Besides internal communication with employees, management must also keep external stakeholders such as customers, vendors and the community informed.
- When a company has decided to pursue a strategy of growth by A&M, clearly defined integration plans can be helpful. The company should identify the team which will conduct the due diligence (due diligence

in brief for an amalgamation is given later) and the team which will plan and implement the merger. Checklists must be prepared to indicate the tasks and suggested deadlines. A standard business process for managing acquisitions might be an effective method.

Communicating Effectively

Communication plays an important role during the integration of the pre-merger entities. Genuine communication increases the perceived benevolence of the management and promotes trust. It minimises the negative reactions of employees in the amalgamated company. A good communication strategy is necessary to ensure that rumours are not allowed to fill the information gap. Employees must be informed about the company, the proposed changes and the impact of these changes on the employees. All efforts should be made to reassure the employees of the amalgamated company and familiarise them with the strategic intentions and philosophy of the company. In the case of cross-border A&M, the role of communication is even more critical.

Immediately after the A&M, employees need to know what will happen to their job, their colleagues and their company. It is only through honest communication that their anxieties can be set at rest. Here, the quality of communication is the over-riding factor. Later, when employees have to adjust to the changes, frequency of communication becomes important. Frequent communication, however, does not imply that all details can be communicated, especially when the management itself is not clear about what will happen. Transparency and frankness will send the right signals to the employees even if all the information cannot be shared with them.

Managing Cultural Differences

Cultural differences are normally in the form of different corporate values and expectations, organisational structure, reward systems and incentives, leadership styles, decision-making processes, patterns of human interaction, work partnerships, and history of partnerships, to human resource practices. A small issue like different decision-making styles is enough to unravel an entire integration process.

More often than not, significant cultural differences exist between the pre-merger entities. Understanding these cultural differences is the first step in integration.

Consider the following examples.

- It could involve not only two national cultures but also two business cultures -one very scientific and academic and the other more commercially-oriented.
- The centralised and aggressive culture of one company could be at odds with the decentralised laid-back management style.
- The Companies situated in two different countries might struggle to understand each other and their ways of working.

- A bureaucratic culture in which different departments work separately could clash with Chrysler's cross-functional approach.
- A traditional slow moving approach could clash with a forward looking fast approach
- A company which is risk-averse and aloof would have difficulty in amalgamating with a company which is more risk-taking and accepted new ideas.

It was mentioned earlier that the extent of integration between the pre-merger entities is a matter of judgment. To a great extent, the degree of integration depends on cultural factors. An organisation has three broad types of capabilities-resources, processes and values. Resources can be easily transferred, while processes and values are deeply entrenched and are difficult to change. If the amalgamated company's processes and values have been the main contributors to its success, the company should be left well and truly alone. The amalgamating company can pump resources into the amalgamated company. If a company is being amalgamated for its resources, tight integration may make sense. Many of A&M have been aimed at merging resources in the form of products and people. Management of cultural differences is a major challenge while integrating the basic work processes, and systems. In general, when the cultural differences are too sharp, it makes more sense to keep the acquiring and acquired entities separate even at the cost of forgoing some efficiencies.

Managing High-tech A&M

A&M is an important growth strategy in high-tech businesses. It takes quite a bit of time to develop new technology in-house. A&M not only allows a firm to make use of a new technology faster, but also brings talented manpower into the organisation.

Due diligence is very important in high-tech A&M as the value of the technology being acquired is often not easy to arrive at. The due diligence (DO) report aims at factoring all critical issues which impact the decision on valuation of the target. The DO report becomes the basis for negotiating and providing in the transaction documentation comprehensive representations and warranties - where the target company or its promoters provide indemnity for their representations and warranties. Secondly, issues that cannot be immediately resolved before closing the deal are put under what is called as 'Conditions Subsequent' (CS). A certain percentage of the purchase consideration is held back in an escrow account and released only when those conditions are met by the target company or its promoters.

All A&M have to be managed with a high degree of people orientation. But this is even more so in the case of high-tech A&M. How the purchased company fits in and the role of the employees of the merged company need to be clearly communicated. Often, it makes sense to keep the new people together in a separate division and make the major promoters of the purchased company key members of the integration team. In particular, companies merged for their skill in developing breakthrough technologies,

must generally be allowed to continue as separate entities. Care should be taken not to disturb their key technical teams. By keeping people who have complementary capabilities and a good understanding of each other in one place, their productivity can be significantly enhanced.

Whenever a high-tech acquisition is planned, it is important to examine whether the employees of the company being acquired have enough incentive to stay. Employees whose stock options are already vested, may decide to quit if they sense that their importance will diminish or their creativity will be stifled after the merger. Once trust is breached, retaining talented people is virtually impossible.

Whenever a big merger deal is announced, competition authorities view it with suspicion. If they feel that the merger will limit competition, they may impose several restrictions on the new company. When a company is big and enjoys an overwhelmingly large market share, competition authorities tend to be very suspicious. The image of the company makes a difference here. Managing anti-trust issues is all about excellent public relations.

Identifying the Synergies

The aim of an A&M is to make the merged entity more valuable than the sum of the values of the pre-merger entities. As mentioned earlier, synergies can add value only if the merged entity registers a performance that is better than what is already reflected in the market prices at the time of the merger.

In short, the various factors which must be considered while working out the premium:

- Market expectations about the amalgamated company, when considered alone.
- Impact on competitors and their possible responses.
- Tangible performance gains from the merger and the management talent necessary to achieve the gains.
- Additional investments which will be necessary.
- Comparison of the A&M with alternative investments.
- Ease of implementation.

In their anxiety to close the deal or in their enthusiasm to grow, companies often strike A&M deals of questionable merit. A dispassionate analysis of the potential benefits and pitfalls involved is important before going ahead with a merger. Board members have an important role to play here, especially the external directors.

Once the decision to go ahead with the merger is announced, the focus shifts to integration. This is a task which is under-estimated by most companies. In the final analysis, it is the efficiency with which the integration process is managed that decides whether the projected synergies materialise.

Not all A&M fail. Failure is normally due to a bad business model or sloppy integration. The difficulties in planning and executing A&M make them very risky. CEOs, in their rush to complete deals should never under-estimate the risks.

Multiple Choice Questions

(1) A merger of firms engaged at different stages of production but in the same industry is called

(a) Horizontal Merger

(b) Vertical Merger

(c) Conglomerate Merger

(d) Subsidiary Merger

(e) Reverse Merger.

(2) Financial conglomerate mergers do not engage in which of the following activities?

(a) Providing a flow of funds to each segment of their operations.

(b) Providing staff expertise and staff service.

(c) Exercising control.

(d) Taking financial risks.

(e) None of the above.

(3) Which of the follawing statements is/are true regarding product extension mergers?

(a) They broaden the product lines of firms.

(b) They widen the geographic area of operations of the firm.

(c) They are also called concentric mergers.

(d) All of the above.

(e) Both (a) and (c) above.

(4) Concentric mergers differ to managerial conglomerate mergers in transferability of *which of the following functions?*

(a) General management functions

(b) Specific management functions

(c) Both Specific and General management functions

(d) Generic management functions

(e) None of the above.

(5) Which of the following statements does a synergy mean?

(a) The merger between two firms.

(b) Acquisition of one firm by another.

(c) A phenomenon where the total performance of the combined firm will be greater than the sum of individual parts.

(d) Both (a) and (b) above.

(e) None of the above.

(6) The introductory stage of an industry's life cycle is associated with which type of mergers?

(i) Vertical Mergers

(ii) Horizontal Mergers

(iii) Conglomerate Mergers

(iv) Concentric Mergers.

(a) Both (i) & (ii) above

(b) Both (i) & (iii) above

(c) Both (ii) & (iii) above

(d) Both (iii) & (iv) above

(e) All of the above.

Answer: 1) b; 2) b; 3) e; 4) b; 5) c; 6) c;

Applied Theory Questions

(1) Explain the concept of merger Acquisition and Amalgamation?

(2) What are the different types of mergers?

(3) Differentiate between sell-off and spin-off.

(4) Where are the condidates for inplementation of LBO strategy?

(5) State the different types of MLPs? Explain MLP?

(6) List the various uses of ESOPs? How ESOPs help in corporate restructuring

(7) What is corporate restructuring? What are the major forms in which it can be carried out?

(8) What do you mean by LBO? Explain its implications?

(9) Compare and contrast the different corporate implications methods?

(10) What are the implications of a corporate spin-off?

(11) How do you define a 'merger'? Discuss the different types of mergers with suitable examples.

(12) Discuss the rationale behind mergers and acquisitions.

(13) What are the key drivers that increase the merger activities?

(14) Briefly explain some of the good motives for a merger. Highlight the difficulty associated with a typical merger.

(15) What are conglomerate mergers? Distinguish between various types of conglomerate mergers.

(16) Along with the investment bankers, the financial institutions have all prospered with the catching up of mergers and acquisitions. What factors must a financial institution consider while financing mergers and acquisition?

(17) Briefly explain different forms of Restructing Business firms with suitable examples?

Case Study

Read the case study carefully and answer the following questions.

(1) Against the given backdrop, briefly describe the various defense strategies that are available with corporates to protect themselves from hostile takeovers.

The deregulation and globalisation of the economy has forced the corporates to face cut-throat competition from domestic and foreign entities. This has resulted in an immense restructuring by the corporates to enable them to take up emerging challenges. 'Most of the companies are restructuring their business portfolios by consolidating areas of their core competencies and divesting their other businesses. In addition, the notification of the Takeover Code by SEBI has opened a large market for corporate control.

All the above stated developments have resulted in an exponential growth of business for investment bankers. One among them is the valuation of firms for the purpose of acquisition/sale. The other services rendered by investment bankers include acquisition search, managing the tender offers for takeovers, identification of buyer(s) for divestitures, negotiations, etc. Arrangement of acquisition finance will open up new business opportunities to develop a franchise in high-yield securities. Management of privatisation issues is also an emerging business opportunity. With an increasing degree of hostile takeovers in the recent past, designing a takeover' defense strategy' (both pre-emptive and reactive) has turned out to be another important service offered by investment bankers.

Case Study

Read the case study carefully and answer the following questions.

(1) What do you mean by 'value creation'?

(2) Haw can managers create value for the shareholders of the company?

In life, most of us merge families through marriage and acquire assets the purchases. We might have spent many days, weeks or months plannin to ensure that the decisions would produce sufficient values for our lives. Yet we may discover in the future that not all mergers are successful and

acquired assets demonstrate their value. This is quite identical to the still of business Mergers and Acquisitions.

In a simple language, a merger is a combination of two or more entities which one corporation continues to exist. An example of a merger DaimlerChrysler - a merger between Daimler-Benz and Chrysler. acquisition, or takeover, involves a purchase of an entity, which continues to function in future, but it does so under the control of the acquirer. Acquiring of Digital Equipment Corporation is an excellent example of acquisition. Mergers tend to occur on friendly terms while acquisitions are based on either friendly or hostile situations. A merger or acquisition may result in a horizontal integration or vertical integration and may comprise firms in a related industry or unrelated industries. All M&As aim at creating "value" for the shareholders.