

## **CORPORATE RESTRUCTURING/ALTERNATIVES TO WINDING UP**

### **Forms of corporate restructuring/alternatives to corporate insolvency include:**

(NOV 2017,Q7C, MAY 2015,Q2B)

#### **1. Compromises**

Compromise includes any settlement of a matter or disputes between a company and its creditors or members by mutual concession

#### **2. Scheme of Arrangement**

It includes a re-organization of the share capital of the company by the consolidation of shares of different classes or by division of the shares into shares of different classes or both. It also includes a variation of the special preferential rights on preference shares.

#### **3. Reconstruction**

Reconstruction implies the formation of a new company to take over the assets of an existing company with the idea that the persons interested and the nature of the business remains the same.

#### **4. Takeovers or Acquisitions**

A takeover is a purchase of one company (target) by another (the acquirer).

#### **5. Mergers**

Merger means an arrangement whereby the assets of two or more companies become vested in order the control of one company.

### **Reasons for Corporate Restructuring (Takeovers, mergers and reconstructions)**

(June 2013, Q6B,

1. Increase market share
2. Reduction of operating cost
3. Achieve economies of scale
4. Avoid liquidation.
5. Enhancing financial stability.
6. Achieve diversification

## **Schemes of Arrangement**

It is reorganization of the company's share capital thereby making compromises/arrangement with either members or creditors or class of either.

### **Statutory Provisions relating to schemes of arrangement and compromises/Procedure of schemes of Arrangement (Sept 2015 Q 7A)**

1. The court may on application by the creditors or members or liquidator order a meeting of the creditors or members as the case may be
2. The scheme is approved by a majority in number representing not less than 3/4 in value of creditors or members.
3. The scheme is sanctioned by the court in which case the court will have to determine whether the schemes complies with the law
4. Where a scheme of arrangement involves a reduction of capital, the court must not sanction it unless a special resolution for the reduction of capital is passed in accordance with the provisions of the Act.
5. A certified copy of the court order and resolution is filed with the registrar

### **Powers of the court to facilitate scheme of arrangement/Reconstruction (Dec 2011 Q1 C)**

- To supervise the carrying out of the scheme of arrangement or compromise.
- Power to give direction or make such modification as may be appropriate for the proper working of the arrangement or compromise.
- Where it is satisfied that the sanction of a compromise or arrangement cannot be worked satisfactory, it may on its motion make the order of company winding up.
- Order transfer of the whole or part of the undertaking and property or liabilities of the company.
- The allotment of shares and debentures in that company without winding up.
- The continuation of any legal proceedings.
- The dissolution of the old company without winding up.
- Provision for dissentients.
- Such incidental and consequential matters necessary to secure the scheme to be effective.

**Information/Explanatory statement relating to compromises to be sent to creditors or members**

- a) A statement explaining the effect of the compromise or arrangement.
- b) The place at which creditors or members are entitled to attend the meeting must be indicated.
- c) Necessary explanation as regards to any deed securing the issued debentures.
- d) Any material interest of the directors in the scheme of arrangement

Every creditor or member shall be furnished with a copy of the statement by the company free of charge. It is the duty of each company director and any trustee of debenture holders of the company to give notice of his interest in the scheme.

**Reconstruction**

It involves transfer of assets of an existing company to a new company. There are two types of reconstruction namely: **(June 2011 Q6B)**

- **External reconstruction** refers to the sale of the business of the existing company to another company formed for that purpose. In this case, a company is liquidated and another new company is formed.
- **Internal reconstruction** refers to internal re organization of financial structure of the company. It permits the existing company to be continued. Generally the share capital is reduced to write off the past accumulated losses of the company.

**Modes of reconstruction**

1. Scheme of arrangement
2. Reduction of share capital
3. Variation of class rights
4. Resale of assets to another company

**Distinction between a scheme of arrangement and a reconstruction;  
(Dec 2012 Q7B)**

<b>Scheme or arrangement</b>	<b>Reconstruction</b>
It involves re-organization of the share capital of the company	Involves selling of the assets of the company to a new company
Sanctioned by court.	Sanctioned by the resolution of members.

Settlement of dispute by mutual consensus.	Existing company is wound up voluntarily.
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## **Take over bid**

A takeover is a purchase of a company (the target) by another company (acquirer).

### **Procedure of a Takeover Bid (June 2012 Q4A)**

1. The offer of a take-over bid must be made by a company to acquire shares of another company (not an individual).
  2. Acceptance must be obtained within a maximum of four months from the date of the offer.
  3. At the end of the fourth month, the offeror company must serve notice on the non-accepting shareholders of the offeree company of its intention to acquire their shares on the same terms as have been accepted by the majority,
  4. On receiving the notice, non-accepting shareholders of the offeree company have one month to apply to court to order that the offeror company shall not acquire their shares,
  5. After service of notice or after the court has rejected the application by non-accepting shareholders, the offeror company may require the offeree company to transfer the shares of its non-accepting shareholders to it. It may also receive the purchase consideration to hold it in trust for the non- accepting shareholders.
  6. The minority shareholders whose shares are compulsorily acquired are entitled to benefits just like the other shareholders.
- **Information to be included by the offeror in a takeover offer document/ Information and statements required to be included in an independent adviser's circular (Dec 2014, Q6A)**
1. Information regarding the offeror- the names of its directors and shareholders who hold notifiable interest in the offeror and the extent of their holdings.
  2. Whether the offeror has any intentions regarding the continuation of the business of the offeree and if so, stating the offeror's intentions,
  3. The offeror's stated intentions regarding major changes to be introduced in the business, or strengthening the financial position of the offeree
  4. Whether there are any long term commercial justifications for the proposed takeover offer, and if so, stating the long term commercial justifications
  5. Whether the offeror has any intentions with regard to the continued employment of the employees of the offeree company and of its subsidiaries and if so, stating the offeror's intentions.
  6. A confirmation by a financial adviser of the offeror that the offeror has the financial capability to accept and carry out the take-over offer in full, where cash is involved.

7. A statement that the offeror and the offeror's financial advisers are satisfied that the take-over offer would not fail due to insufficient financial capability of the offeror and every shareholder who wishes to accept the take-over offer will be paid in full.
8. Reasonableness of the take-over offer, including the reasonableness and accuracy of profit forecasts for the offeree, if any, contained in the offer document,

**Defense techniques available to a target company to resist a hostile takeover bid by a predator ( NO 2019, Q7B, Nov 2017 Q2A)**

- **Use of White Knight:** The targeted company accepts a takeover from a more friendly company.
- **Use of Poison Pills:** Existing shareholders buy more stock so that to retain majority shareholding. The company may also take huge debt which the transferee will have to pay making the company unattractive.
- **Sale of crown jewels:** The targeted company sells off the most attractive portion, of the business thus reducing its attractiveness.
- **Scorched earth policy:** The targeted company may take a suicidal act of borrowing high debt capital to increase its gearing and financial risk thus reducing its attractiveness.
- **Use of green mail:** The targeted company makes a counter offer to acquire the shares of the predator thus reducing the advances of the predator.
- **Shark repellent** Involves amending the articles of association of the targeted company such that the acquisition or the takeover bid must be supported by a qualified (75%) of the members
- **Legal redress:** The targeted company may apply to the regulatory authority contending that the acquisition will make the predator a monopoly thus breaking the anti-monopolist laws.
- **Use of golden parachutes:** These are the generous retirement packages to be granted to the management and employees of the targeted company in the event the company is taken over. This will significantly reduce the value of the target company.

**November 2017 question two**

**MERGERS**

Merger means an arrangement whereby the assets of two or more companies become vested in or under the control of one company.

**Post-merger integration (MAY 2015, Q5a i)**

- It is combining and rearranging businesses to materialize potential efficiencies and synergies that usually motivate mergers and acquisitions.
- It involves combining the original social technical systems of the merging organizations into one newly combined system

**Types of Post-Merger Integration Strategy (MAY 2015,Q5 a ii )**

**Preservation** - The target company is preserved i.e it is left autonomous. Only financial reporting and financial processes may be integrated.

**Holding-** The acquiring company just keeps the ownership of the target company but does not integrate the target company.

**Symbiosis-** In this type it is decided where Integration is needed to 'reach the objectives of the merger integration. Both companies mutually benefit from one another.

**Absorption-** all organization and processes of the target company are to be fully integrated into the acquiring company

**Causes of failure of mergers (Nov 2016 Q5A)**

- 1) Ignorance on the part of most chief executives about the process
- 2) Lack of a common vision about what the new will stand for or how it will operate
- 3) Nasty surprises resulting from poor due diligence
- 4) Poor governance i.e lack of clarity as to who decides what
- 5) Poor communication employees need to 'know why the organizations are merging and why a merger is the best course of action,

**Advantages of mergers June 2013, Q6B)**

- 1) Competition between the companies is eliminated
- 2) The amount of capital may be increased by the combined companies
- 3) Reduction of the operating costs thereby avoiding duplication
- 4) Benefits of large scale production can be secured
- 5) Reduction in management costs

**Disadvantages of mergers**

- 1) Creates monopoly which may be harmful to the society
- 2) Identity of the old companies disappear
- 3) It may result in overcapitalization
- 4) Goodwill of the old companies is reduced
- 5) Management of the company may become difficult due to different cultures

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