

## Control Acquisition to Amalgamation: Listed-on-Listed Acquisitions

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## Background

There are various integrated commercial, regulatory, tax, accounting, and stamp duty considerations that arise when a listed company acquires a controlling stake in another listed company from its promoter group, triggers a mandatory open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (the "Takeover Code"), and subsequently amalgamates the target into itself through a scheme of arrangement sanctioned by the NCLT under Sections 230 to 232 of the Companies Act, 2013.

This two-stage structure, control acquisition followed by amalgamation, has become the dominant template for listed-on-listed consolidation in India. The article examines the multi-disciplinary considerations at each stage.

## Key Mechanics

In Stage 1, the acquirer (a listed company) purchases a controlling stake, typically exceeding 50%, from the target's promoter group at a negotiated price. This triggers a mandatory open offer to public shareholders of the target under the Takeover Code. The acquirer funds the acquisition through cash (internal accruals, debt, or a combination), and the target becomes a subsidiary of the acquirer.

In Stage 2, the acquirer proposes a scheme of amalgamation under which the target (transferor company) merges into the acquirer (transferee company), and the target then ceases to exist. The residual minority shareholders of the target receive equity shares of the acquirer at a swap ratio determined by an independent valuation. The scheme is then

sanctioned by the NCLT after obtaining SEBI and stock exchange approvals, and shareholder and creditor approvals.

The structure separates the pricing event (Stage 1) from the integration event (Stage 2). The exiting promoter receives cash certainty at a negotiated premium. Public shareholders of the target receive two sequential protections: the open offer provides a regulated exit at a determined price for the public shareholders who intend to exit, while the merger provides an opportunity to participate in the equity upside of the merged entity, for the continuing public shareholders. The acquirer absorbs the cash outflow to buyout the promoters of the target, and the public shareholders who participate in the open offer in Stage 1, and uses listed equity (through the swap ratio) as a currency rather than additional cash for the subsequent Stage 2.

## **Key Commercial Considerations**

From the perspective of the acquirer, the two-stage structure offers several advantages. First, the acquirer obtains control of the target immediately upon completion of the share purchase, without waiting for NCLT sanction, which can take 11-12 months. Second, the merger eliminates the subsidiary structure, avoids dual compliance, simplifies governance, and enables full operational integration. Third, using equity as merger consideration for the residual minority preserves cash and balance sheet flexibility, which is particularly relevant where the acquirer is simultaneously pursuing multiple acquisitions or organic capacity expansion.

From the perspective of the target's shareholders, the key considerations differ by constituency. The exiting promoter group values price certainty and a clean exit. Public shareholders who tender in the open offer receive cash at a price determined under the Takeover Code. Public shareholders who do not tender, and who instead receive shares in the acquirer through the merger participate in the equity upside and bear the risk-reward of the combined entity's future performance.

## **Key Regulatory Considerations**

### **1. Takeover Code: Open Offer Pricing**

For a direct acquisition, the offer price floor under Regulation 8(2) is the highest of: (a) the highest negotiated price per share under the agreement attracting the open offer obligation; (b) the volume-weighted average price paid or payable for acquisitions by the acquirer or PACs during the 52 weeks preceding the public announcement; (c) the highest

price paid or payable for any acquisition by the acquirer or PACs during the 26 weeks preceding the public announcement; (d) the volume-weighted average market price for 60 trading days preceding the public announcement on the stock exchange with maximum trading volume (applicable only where shares are frequently traded); and (e) for infrequently traded shares, a fair price determined taking into account valuation parameters including book value and comparable trading multiples.

## 2. Merger: SEBI/ Stock Exchange Approval and NCLT Sanction

The merger process begins with the approval of the boards of both companies, along with the approval of their respective audit committees and independent directors. A valuation report from an independent chartered accountant and a fairness opinion from the merchant banker are obtained at this stage. The scheme is then filed with the stock exchanges under Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, read with the SEBI Master Circular on Schemes of Arrangement dated 20 June 2023, for obtaining no-objection certificates from the BSE/ NSE/ SEBI.

Once the stock exchange and SEBI approvals are in place, the scheme is taken to the NCLT under sections 230 to 232 of the Companies Act, 2013. In the NCLT process, meetings of the shareholders and creditors of both companies are convened, where the scheme must be approved by a majority in number representing at least 75% in value of the shareholders (or creditors, as the case may be) present and voting. For this statutory majority, the promoters of the acquirer are entitled to vote on the scheme. Following the requisite approvals, the NCLT sanctions the scheme. As part of the overall process, the approval or no-objection of the Regional Director, the Registrar of Companies, and the Official Liquidator is obtained, and notices are served on the income tax authorities.

Separately, since both the transferor and transferee are listed companies, and given that the merger would likely result in a change of more than 5% of the shareholding of public shareholders in each such listed company, the approval of the majority of minority shareholders (i.e., public shareholders) of both listed companies is required under the aforementioned SEBI Master Circular. For the majority of minority vote, the votes of the promoters and promoter group are excluded, and the scheme is considered approved only if the votes cast by public shareholders in favour of the scheme exceed the votes cast against it, at each company independently.

**3. Promoter Declassification:** If the promoters of the target hold certain shareholding but which is less than 10% (i.e., partial sale) and are not envisaged to manage or control or participate in the administration of the acquirer (which would be so in case of a control acquisition), then it is possible for the scheme to provide that such promoters of the target would be declassified as promoters and be re-classified as public shareholders of the combined entity post-amalgamation.

## 4. FEMA

Issuance of shares by the transferee company to non-resident shareholders of the transferor pursuant to an NCLT-sanctioned amalgamation is generally permitted under the automatic route of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, subject to sectoral caps and conditions.

## 5. CCI Approval

Where the acquisition of control in Stage 1 meets the asset or turnover thresholds prescribed under the Competition Act, 2002, a prior notification to the Competition Commission of India (“CCI”) may be required. The combination analysis must be undertaken at the stage of acquisition itself, and not deferred to the merger stage, since control is effectively acquired upon completion of the share purchase. In practice, this may introduce a timing dependency between signing and closing of the share purchase agreement, particularly where CCI approval is a condition precedent. The subsequent amalgamation in Stage 2 may not independently trigger a fresh notification if it is regarded as a mere internal reorganisation within the same group post-acquisition, though this position must be evaluated in the context of the specific facts and control structure.

## 6. Timeline Risk

The structural separation between Stage 1 (control acquisition) and Stage 2 (amalgamation) inherently creates a temporal gap during which the target operates as a subsidiary of the acquirer. This interregnum, which may extend over 11-12 months pending regulatory approvals and NCLT sanction, introduces execution risk. Market conditions, financial performance of either entity, or regulatory developments during this period may impact the originally envisaged swap ratio, valuation assumptions, or even the commercial rationale for the merger. Additionally, minority shareholders who do not tender in the open offer remain exposed to this interim uncertainty, without a guaranteed exit until the scheme is implemented. Structuring flexibility, including appropriate long-stop dates and conditionality in the scheme documentation, becomes relevant to manage this gap.

## Key Tax Considerations

**A. At the time of Acquisition:** A practically significant tax risk arises at Stage 1 itself, in the hands of the acquirer. Under Section 56(2)(x) of the 1961 Act, if listed shares are

acquired at a price below their fair market value, the difference is taxable as income from other sources at the acquirer's applicable tax rate. In a control acquisition, the negotiated price is typically agreed and locked at the time of signing the share purchase agreement. However, due to regulatory timelines, including open offer obligations under the Takeover Code, there is inevitably a time lag between the signing date and the actual date of share transfer. If the market price of the target's shares rises during this intervening period, the acquirer faces a potential tax exposure on the difference between the agreed transaction price and the higher market price prevailing on the date of actual acquisition, even though the acquirer had no control over the price movement. For instance, if the transaction price agreed on the signing date is Rs. 110 per share and the market price on the date of actual acquisition (post completion of the open offer) has moved to Rs. 120, the difference of Rs. 10 per share could be taxed as income from other sources in the hands of the acquirer. This is a live issue in deal-making, and industry has represented to the government for either a safe harbour provision (similar to the 10% threshold available for immovable property transactions) or a clarification that the relevant date for determining fair market value under Section 56(2)(x) should be the date of signing of the agreement rather than the date of actual share transfer.

**B. At the time of Amalgamation:** The tax analysis proceeds at three levels: the amalgamating company, the amalgamated company, and the shareholders of the amalgamating company.

## 1. Company Level

**Transferor (Amalgamating Company):** Assuming that equity shares are being issued, which is so in a typical listed-on-listed amalgamation, the amalgamation would not be treated as a taxable capital gains transaction by virtue of Section 47(vi) of the Income-tax Act, 1961 (the "1961 Act"). The amalgamation is therefore tax-neutral at the amalgamating company level.

**Transferee (Amalgamated Company):** The receipt of the business by the amalgamated company pursuant to an amalgamation is not taxable under Section 56(2)(x) of the 1961 Act, since amalgamations are specifically exempted under the said provision. It is worth noting that even in the absence of such specific exemption, section 56(2)(x) taxes the receipt of property only where there is inadequacy of consideration, which would not ordinarily arise in the case of an arms' length merger where the swap ratio is determined on the basis of independent valuations. In any case, Section 56(2)(x) is an anti-abuse provision targeting transactions at undervalue, and the policy rationale for requiring an exemption for genuine amalgamations was arguably never present.

## 2. Shareholder Level

At the shareholder level, the amalgamation results in the extinguishment of the shares held by the shareholders in the amalgamating company, and the allotment of new shares in the amalgamated company in lieu thereof. The Supreme Court in *Grace Collis* held that such extinguishment constitutes a "transfer" within the meaning of Section 2(47) of the 1961 Act.

However, Section 47(vii) provides that such transfer shall not be regarded as a transfer for the purposes of capital gains, subject to two conditions: the amalgamated company must be an Indian company, and the transfer must be in consideration of the allotment of shares in the amalgamated company (not cash or other consideration such as debentures). Where both conditions are satisfied, no capital gains tax is triggered at the point of amalgamation in the hands of the shareholders.

The cost of acquisition of the new shares received in the amalgamated company is deemed to be the cost of the original shares in the amalgamating company and the period of holding of the new shares includes the period for which the original shares were held. Capital gains are therefore deferred to the point of eventual disposal of the shares in the amalgamated company. However, two issues arise in relation to grandfathering of costs, from a shareholders perspective:

#### **a. Grandfathering under section 55(2)(ac) of the 1961 Act**

The merger itself is tax-neutral. However, on eventual sale of shares received in the amalgamated company, section 112A of the 1961 Act taxes long-term capital gains on listed equity shares at 12.5%. Section 55(2)(ac) of the 1961 Act provides a grandfathering mechanism for shares acquired before 31 January 2018, deeming the cost of acquisition as FMV as on 31 January 2018 (unless the original cost was even higher).

**Key Issue:** how does this grandfathering operate for shares received in the amalgamated company through the merger? Since the new shares issued by the amalgamated company were not "acquired" prior to 31 January 2018, the question is whether the cost of acquisition of such new shares should be determined on the basis of the grandfathered cost of the original shares in the amalgamating company. Logically, it should be, since the cost of acquisition and the period of holding both relate back to the cost and date of the original acquisition under Sections 49(2) and 2(42A) respectively. An express clarification in this regard is warranted.

#### **b. Treaty Grandfathering**

The 2017 Protocol amendments to the India-Mauritius DTAA and the India-Singapore DTAA

grandfathered investments "acquired" before 1 April 2017. In an amalgamation, shares in the amalgamated company are received by operation of the scheme, with grandfathering of cost and holding period. There is no "acquisition" in the commercial sense.

**Key Issue:** does the grandfathering survive the merger? Logically, since the 1961 Act deems the merger not to be a "transfer" and the holding period relates back to the original date of acquisition, the grandfathering should survive. However, the literal use of the word "acquired" in the treaty text creates a residual risk. Revenue could argue that shares in the amalgamated company were "acquired" on the effective date of the merger (post-1 April 2017), rendering treaty grandfathering unavailable. An express clarification, that the date of acquisition of new shares relates back to the date of original acquisition under the relevant DTAA, is warranted.

### Key IndAS Aspects

Since the target would become a subsidiary of the acquirer at the time of the merger, the amalgamation is a business combination of entities under common control. Appendix C to Ind AS 103 mandates the pooling of interests method: assets and liabilities at carrying amounts, no fresh recognition of intangibles or goodwill, and preservation of the transferor's reserves in their original form.

However, the nuance lies in what "carrying amounts" means in a two-stage transaction. The original acquisition (Stage 1) was not a common control transaction and was accounted for using the acquisition method in the acquirer's consolidated financial statements: identifiable assets of the target at fair value, with the excess of consideration over net identifiable assets recognised as goodwill. The IndAS Technical Facilitation Group has clarified that in a parent-subsidary merger, the carrying values to be adopted in the parent's standalone financial statements (post-merger) are those recorded in the consolidated financial statements of the parent, on the rationale that the standalone financials, to the extent of this common control transaction, are a continuation of the consolidated group.

**The consequence:** the fair value uplifts on identifiable assets and the goodwill recognised at the acquisition stage in the CFS migrate into the standalone financial statements of the surviving entity post-merger. The merger does not create new intangibles, but the earlier acquisition-method intangibles migrate from the consolidated financial statements to standalone financial statements. This distinction, between creation and migration of intangibles, is critical.

From a tax perspective, goodwill is not a depreciable asset under section 32 of the 1961 Act. However, other intangible assets separately identified at the acquisition stage (such as

customer relationships, brand value, or mining rights) may qualify for tax amortisation at 25%.

From an accounting perspective, intangible assets with a definite useful life are amortised, whereas intangible assets with an indefinite useful life (and goodwill) are not amortised but are subject to annual impairment testing. For intangible assets that are amortised in the books, the amortisation charge directly impacts the reported EPS and profitability of the amalgamated company in the post-merger period.

## **Key Stamp Duty Considerations**

The NCLT order sanctioning an amalgamation is an "instrument" classifiable as a "conveyance" under the Indian Stamp Act, 1899, and is subject to stamp duty. Rates and computation methodology vary by state. States such as Maharashtra, Gujarat, and Karnataka have specific articles for amalgamation orders; other states levy duty under the residuary "Conveyance" article.

Several issues arise in practice. First, the valuation date: certain states compute stamp duty on the basis of the FMV as on the appointed date of the scheme or on the basis the original valuation date, not the date of the NCLT order. Given that the gap between the original valuation date (i.e., board approval), the appointed date (which could be retrospective or prospective) and NCLT sanction, it exposes uncertainty in an otherwise determinate transaction. Second, multi-state exposure: where the transferor has immovable property across multiple states, stamp duty is payable in each state where immovable property is situated. Given the significant variation across states, the stamp duty analysis is necessarily fact-specific and must be assessed with reference to the applicable state stamp law, the location of the transferor's immovable properties, and the valuation date adopted in the scheme.

## **The Big Picture**

The two-stage listed-on-listed structure, combining an immediate control acquisition with a subsequent statutory amalgamation, reflects a calibrated balance between commercial certainty and regulatory architecture. The first stage delivers pricing finality and control, while the second stage achieves legal integration and balance sheet consolidation.

The framework is largely tax-neutral and procedurally well-trodden, but its execution is contingent on synchronising multiple regulatory regimes that operate on different triggers and timelines. The real complexity does not lie in any one framework, but in managing the

interfaces between them, particularly where timing gaps, valuation assumptions, and minority shareholder dynamics intersect.

As consolidation cycles deepen, the structure will continue to remain relevant, but its success will depend less on mechanical compliance and more on anticipating these interface risks at the structuring stage itself.