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Corporate Restructuring Tools and Procedure For Evaluating the Decision For Mergers & Amalgamations

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Abstract
Restructuring a company through the use of mechanisms like mergers and amalgamations is a complicated process that requires thorough examination. This abstract offers a brief summary of the primary processes that must be followed before judgments on such restructuring activities may be made. The procedure starts with a strategic study to determine the purpose of the restructuring by taking into consideration a variety of criteria, including the dynamics of the market and potential synergies. It is essential to conduct complete financial due diligence, which entails conducting an in-depth analysis of the businesses involved in the transaction and their respective financial situations. Equally vital is conducting legal due diligence in order to detect any legal limits. In order to ensure a seamless integration following the reorganisation, cultural compatibility is also evaluated.

Key words: Corporate restructuring, mergers, amalgamations etc.

Introduction

Mergers and amalgamations are key tools that are frequently utilised in the process of corporate restructuring, which is a strategic process that aims to improve the effectiveness and competitiveness of a business. The choice to go through with such a restructure necessitates an in-depth review process that must be carried out in order to guarantee the viability and effectiveness of the upcoming adjustments. This introduction offers a summary of the primary components that are considered during the decision-making process for corporate restructuring. Particular emphasis is placed on the significance of strategic analysis, financial and legal due diligence, and cultural compatibility concerns. As businesses negotiate this complex environment, the development of a comprehensive reorganisation strategy becomes vital. This plan will guide the merger of various organisations and enable a smooth transition. This brief introduction lays the groundwork for a more in-depth investigation into the complexities surrounding corporate restructuring decisions and the tools utilised in the process of transformation.

Major M&A in the 1997 to 1999

Top 10 M&A deals worldwide by value (in mil. USD) from 1997 to 1999

Rank	Year	Purchaser	Purchased	Transaction value (in mil. USD)
1	1999	Vodafone Air touch PLC	Mannesmann	1,83,000
2	1999	Pfizer	Warner-Lambert	90,000
3	1998	Exxon	Mobil	77,200
4	1999	Citicorp	Travelers Group	73,000
5	1999	SBC Communications	Ameritech Corporation	63,000
6	1999	Vodafone Group	Air Touch Communications	60,000
7	1998	Bell Atlantic	GTE	53,360
8	1998	BP	Amoco	53,000
9	1999	Qwest Communications	US WEST	48,000
10	1997	World com	MCI Communications	42,000

Source: "Mergers, Acquisitions and Corporate Restructurings", by Patrick A Gaughan.

Corporate Restructuring is a tool that is used by corporate to meet the challenges posed by a dynamic business environment. The dictionary meaning of the word restructuring is "to give new structure to rebuild or re-arrange."Corporate restructuring thus implies rearranging the business for increased efficiency and profitability. It is basically a process undertaken by business enterprise for the purpose of bringing about a change for the better and to make business competitive. In other words, it is a comprehensive process, by which a company can consolidate its business operations and strengthen its position for achieving corporate objectives- synergies and continuing as competitive and successful entity.

Restructuring is basically the corporate management term for the act of reorganizing the legal, ownership, operational, or other structures of a company for the purpose of making it more profitable, or better organized for its present needs. Alternate reasons for restructuring include a change of ownership or ownership structure, demerger, or a response to a crisis or major change in the business such as bankruptcy, repositioning, or buyout. Restructuring may also be described as corporate restructuring, debt restructuring and financial restructuring.

Executives involved in restructuring often hire financial and legal advisors to assist in the transaction details and negotiation. It may also be done by a new CEO hired specifically to make the difficult and controversial decisions required to save or reposition the company. It generally involves financing debt, selling portions of the company to investors, and reorganizing or reducing operations.

The basic nature of restructuring is a zero sum game. Strategic restructuring reduces financial losses, simultaneously reducing tensions between debt and equity holders to facilitate a prompt resolution of a distressed situation.

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The key drivers for corporate restructuring are:

- To focus on core strength and efficient allocation of managerial capabilities and infrastructure.
- Consolidate and economy of scale by expansion and diversification to exploit extended domestic and global markets.
- Revival and rehabilitation of a sick unit by adjusting losses of the unit with the profits of a healthy company.
- Acquiring constant supply of raw materials and access to scientific research and technological development.
- Improving return on capital employed through appropriate restructuring of debt and equity funding so as to reduce the cost of servicing.

KINDS OF RESTRUCTURING

- **Financial:** It deals with restructuring of capital base and raising funds for new a new project which involves like Merger, Joint Venture and Strategic Alliance.
- **Technological:** It deals inter alia, alliances with other companies to exploit technological expertise.
- **Market:** It involves decisions with respect to product market segments, where the company plans to operate based on its core competencies.

Organizational: It involves establishing internal structure and procedures for improving the capabilities of personnel in the organization to respond to change. This kind of restructuring is required in order to facilitate and implement the above three kinds of restructuring.

CORPORATE RESTRUCTURING TOOLS Business portfolio restructuring can be done by varieties of ways like

- AMALGAMATION
- MERGER
- DEMERGER
- SLUMP SALE
- TAKEOVER
- JOINT VENTURE
- FOREIGN FRANCHISES
- STRATEGIC ALLIANCES ETC.

AMALGAMATION

Amalgamation is an 'arrangement' or 'reconstruction'. Amalgamation is a legal process by which two or more companies are joined together to form a new entity or one or more companies are to be absorbed or blended with another and as a consequence the amalgamating company loses its existence and its shareholders become the shareholders of a new Company or the amalgamated Company. In simple terms, amalgamation is merger of two or more business into a single entity.

Amalgamation as defined in section 2 (1B) of the Income Tax Act, 1961 means the merger of one or more companies with another company or the merger of two or more companies to form one company in such a manner that the following conditions are satisfied: a) All the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation. b) All the liabilities of the amalgamating company or companies immediately before the amalgamation becomes the liabilities of the amalgamated company by virtue of the amalgamation c) Shareholders holding at least three-fourths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamated company or its nominee) becomes the shareholders of the amalgamated company by virtue of the amalgamation.

MERGERS

A Company which is looking forward to accelerate its growth and want to enter into a new business area which may or may not be connected to its existing business operations may generally have three alternatives available to them:

1) The formation of a new Company.
2) The acquisition of an existing Company.

3) Merger with an existing Company.

And for a Company or any business organization desiring immediate growth and quick returns, mergers can offer attractive opportunity as they obviate the need to start from 'scratch' and reduce the cost of entry into an existing business. The changing economic environment is creating its own compulsions for consolidation of capacities and with this growing competition and economic liberalization, the last two decades have witnessed a large numbers of corporate mergers. However, this will need to be weighted against the fact unless the shareholders of the transferor company (merging company) are paid the consideration in cash, part of the ownership of the existing business with the former owner.

One plus one makes three: this equation is the special alchemy of a merger or an acquisition. The key principle behind buying a company is to create shareholder value over and above that of the sum of the two companies. Two companies together are more valuable than two separate companies - at least, that's the reasoning behind M&A. This rationale is particularly alluring to companies when times are tough. Strong companies will act to buy other companies to create a more competitive, cost efficient company. The companies will come together hoping to gain a greater market share or to achieve greater efficiency. Because of these potential benefits, target companies will often agree to be purchased when they know they cannot survive alone.

DEFINITION

A merger can be defined as the fusion or absorption of one company by another. It may also be understood as an arrangement, whereby the assets of two (or more) Companies get transferred to, or come under the control of one company (which may or may not be one of the original two companies).

It can also be said as the combination of two or more companies generally by offering the stockholders of one Company securities in the acquiring company in exchange for the surrender of their stock. In a merger one of the two existing companies merges its identity into another existing Company or one or more existing Companies may form a new Company and merge their identities into a new Company by transferring their businesses and undertaking including all assets and liabilities to the new Companies, which is herein called as the merged Companies. The shareholders of the Company or Companies, whose identity or identities has or have been merged, are then issued shares in the capital of the merged Company.

DIFFERENCE IN CONCEPTION AS TO MERGER AND AMALGAMATION

"Very often, the two expressions 'merger' and 'amalgamation' are taken as synonymous. But there is, in fact, a difference.

Merger is fusion of two or more entities and it is a process in which the identity of one or more entities is lost i.e. Merger is restricted to a case where the assets liabilities of the companies get vested in another company, the Company which is merged losing its identity and its shareholders becoming shareholders of the other Company. On the other hand,

Amalgamation is blending together of two or more business entities in a fashion that both lose their identities and a new separate entity is born. It is an arrangement, whereby the assets and liabilities of two or more Companies become vested in another Company (which may or may not be one of the original companies) and which would have its shareholders substantially, all the shareholders of the amalgamating Companies."

CATEGORIES OF MERGER

- Horizontal Mergers
- Vertical Mergers
- Co generic Mergers
- Conglomerate Mergers
- Cash Merger
- Triangular Merger

OBJECTIVES BEHIND MERGER AND AMALGAMATIONS

- To achieve economies of Scale
- To reduce the gestation period for new business
- To compete globally
- To utilize the liquidity available with the company for achieving growth through diversification
- To acquire and maximize the available managerial skills to increase the profitability
- To Diversify the risk
- To avail the taxation advantages under the Income Tax Act, 1961
- In the Public Interest

PROCEDURE FOR EVALUATING THE DECISION FOR MERGERS AND AMALGAMATIONS The three important steps involved in the analysis of mergers and acquisitions are:-

Planning – of acquisition will require the analysis of industry-specific and firm-specific information. The acquiring firm should review its objective of acquisition in the context of its strengths and weaknesses and corporate goals. It will need industry data on market growth, nature of competition, ease of entry, capital and labour intensity, degree of regulation, etc. This will help in indicating the product-market strategies that are appropriate for the company. It will also help the firm in identifying the business units that should be dropped or added. On the other hand, the target firm will need information about quality of management, market share and size, capital structure, profitability, production and marketing capabilities, etc.

Search and Screening – Search focuses on how and where to look for suitable candidates for acquisition. Screening process short-lists a few candidates from many available and obtains detailed information about each of them.

Financial Evaluation – of a merger is needed to determine the earnings and cash flows, areas of risk, the maximum price payable to the target company and the best way to finance the merger. In a competitive market situation, the current market value is the correct and fair value of the share of the target firm. The target firm will not accept any offer below the current market value of its share. The target firm may, in fact, expect the offer price to be more than the current market value of its share since it may expect that merger benefits will accrue to the acquiring firm.

APPROVALS IN SCHEME OF AMALGAMATION

a) Approval of Board of Directors
b) Approval of Shareholders/ Creditors
c) Approval of the Stock Exchanges
d) Approval of Financial Institutions
e) Approval from the Land Holders
f) Approval of the High Court
g) Approval of Reserve Bank of India

DEMERGER

Demerger is a common form of corporate restructuring. In the past we have seen a number of companies following a demerger route to unlock value in their businesses.
Under the Income-tax Act, 1961, "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement, by a demerged company of its one or more undertakings to any resulting company in such a manner that all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company the transfer of the undertaking is on a

going concern basis. The demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

Conclusion :

Corporate restructuring is essential for companies seeking efficiency, competitiveness, or market expansion. Mergers and acquisitions are key to this approach. Various methods are used to evaluate these choices.

First, financial analysis methods like DCF, NPV, and EPS analysis are essential. These techniques assist determine if a merger or amalgamation will be more valuable than the individual enterprises. Legal and regulatory compliance. Antitrust laws and other regulations govern mergers and acquisitions. Legal due diligence guarantees no hidden liabilities or legal obstacles hamper the process. Market analysis matters too. This comprises assessing market share, competition, and synergies from the merger. Understanding market dynamics helps anticipate combined entity success.

Equally crucial are organisational and cultural evaluations. Corporate cultures, management styles, and operational systems may greatly affect post-merger or amalgamation integration.

Procedures for review include initial proposal, due diligence, negotiation, agreement, and implementation. Financial analysts, lawyers, and consultants are crucial at these periods.

Finally, corporate restructuring mergers and amalgamations need financial, legal, market, and organisational studies. These choices are strategic and advantageous for the organisations involved when made using suitable tools and a systematic method.

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