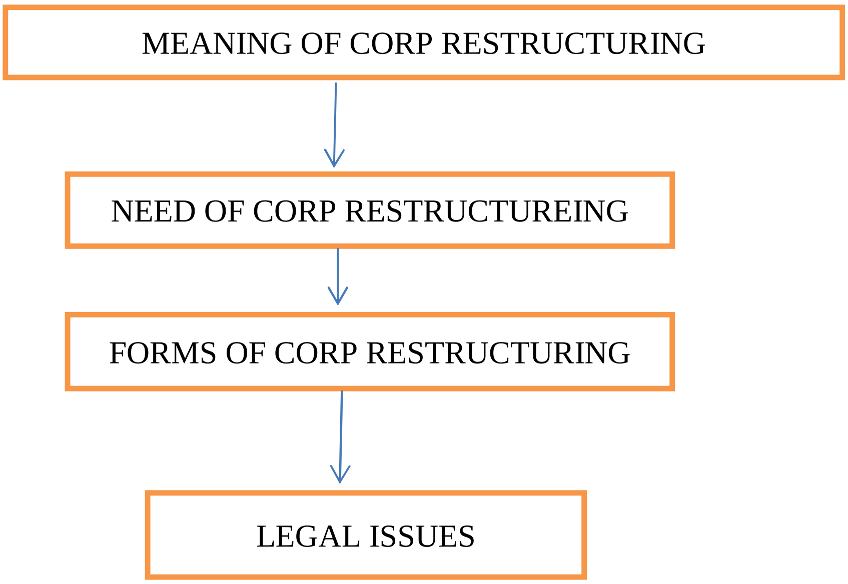
Compromise, Arrangement, Reconstruction, Amalgamation and Merger of Companies

Companies Act, 2013 (S 230-240)

Concept of Corporate Restructuring:



Corporate restructuring is the process of redesigning one or more aspects of a company. The process of reorganizing a company may be implemented due to a number of different factors, such as positioning the company to be more competitive, survive a currently adverse economic climate, or poise the corporation to move in an entirely new direction. Here are some examples of why corporate restructuring may take place and what it can mean for the company.

- Corporate restructuring refers to the changes in ownership, business mix, assets mix and alliances with a view to enhance the share holders value.

- Hence, corporate restructuring may involve ownership restructuring, business restructuring and asset restructuring.

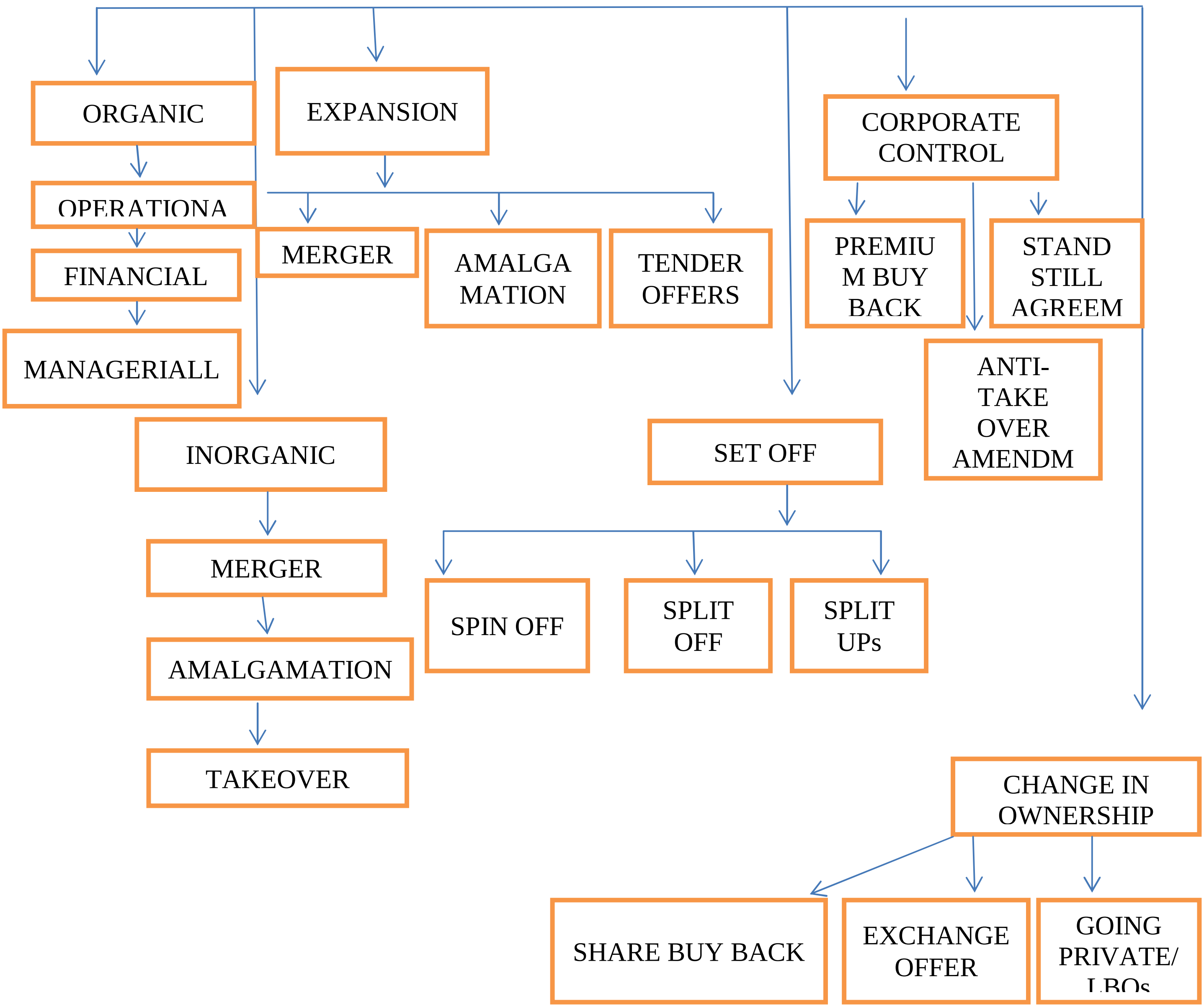
Corporate restructuring is general term used for various kinds of business transactions which are required for the growth of the company. Such business transactions are governed by different regulations in different jurisdictions.

Companies restructure themselves for two basic purposes:

1. Survival
2. Growth

First is to ensure its survival in adverse situation or competitive environment and second is to ensure growth by means of organic or inorganic restructuring

Forms of Corporate Restructuring:



Organic or internal restructuring is as a result of internal change or change within the company by means of change in its business operation, financial or managerial structure either as a split or consolidation of existing structure of the company.
External or inorganic change resulted due to absorption, consolidation or acquisition of two separate corporate entities.

- **Merger**

The Oxford dictionary[1] defines a merger as a 'combining of two or more commercial organizations into one in order to increase efficiency and sometimes to avoid competition'. Although there is no specific definition of the term merger, under the provisions of the Indian Companies Act, 2013, it does have a specific legal connotation[2]. In a merger transaction, two legal entities merge together and there is only one resultant legal entity, which is generally referred to as the 'surviving company'. All mergers are statutory mergers since all mergers occur as specific formal transactions in accordance with the laws or statutes of the states where the entities are incorporated[3].
A merger refers to the process whereby at least two companies combine to form one single company. Business forms make use of mergers and acquisitions for consolidation of market as well as for gaining a competitive edge in their industry. Merger is a financial tool that is used for enhancing long term profitability by expending their operations. Mergers occur when the merging companies have their mutual consent as different from acquisitions, which can take the form of a hostile takeover.Merger and Amalgamation may take two forms:

- **Absorption is a combination of two or more companies into an existing company**
- **Consolidation is a combination of two or more companies into new company**

The acquiring company,also referred to as the amalgamated company or the merged company acquires the assets and liabilities of the target company or amalgamating company. Typically, shareholders of the amalgamating company get shares of the amalgamated company in

[1] *The Oxford Dictionary for The Business World*, (New York: Oxford University Press, 1993)

[2] Sec.391 to Sec.394 refer to mergers
[3] Foster Reed Stanley,&Lajoux Reed,*The Art of Mergers and Acquisitions*,p4(Washington:McGraw Hill,2002)

exchange for their existing shares in the target company. Merger may involve absorption or consolidation[4].

- **Amalgamation**

Ordinarily amalgamation means merger. Oxford's[5] dictionary describe amalgamation as a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company becoming substantially the shareholders in the company which is to carry on the blended undertaking. Amalgamation has no definite legal meaning. It contemplates a state of things under which two companies are so joined as to form a third entity, or one company is absorbed into and blended with another company. [6]

- **Consolidation**

Consolidation is known as the fusion of two existing companies into a new company in which both the existing companies extinguish. Thus, consolidation is mixing up of the two companies to make them into a new one in which both the existing companies lose their identity and cease to exist. The mix-up assets of the two companies are known by a new name and the shareholders of two companies become shareholders of the new company. None of the consolidating firms legally survives. There is no designation of buyer and seller. All consolidating companies are dissolved. In other words, all the assets, liabilities and stocks of the consolidating companies stand transferred to new company in consideration of payment in terms of equity shares or bonds or cash or combination of the two or all modes of payments in proper mix.[7]

- **Acquisition**

Acquisition is a generic term used to describe a transfer of ownership.[8]In the context of business combinations, an acquisition is the purchase byone company of a controlling interest in the share capital of another existing company. An acquisition may be affected by (a)agreement with the persons holding majority interest in the company management like

[4]*Supra* note 1.

[5]*Supra* note 5.
[6]*S.S. Somayajulu v HopcPrudhomme& Co*. 1963 2 Comp LJ 61 (AP)
[7]Verma.J.C, *Corporate Mergers Amalgamation & Takeovers*p343,(New Delhi: Bharat Publications, 2002)
[8]*Supra* note 8 at 6

members of the board or major shareholders commanding majority of voting power; (b)purchase of shares in 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 of one company may be by either all or anyone of the following form of considerations viz. means of cash, issuance of loan capital, or insurance of share capital.[9]

- **Takeover**

Takeover differs from merger in approach to business combinations i.e. the process of takeover, transaction involved in takeover, determination of the 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 offer or 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.[10]Corporate takeovers take two forms friendly and hostile. In a friendly takeover, the controlling group sells its controlling shares to another group of its own accord. In a hostile takeover, an outside group launches a hostile attack to takeover the control of the company without the concurrence of the existing controlling group. This is done by means of an open offer to shareholders of the target company. The bidder in such a case, as per the current Take over Code, makes a public offer to takeover not less than 20 per cent of the voting shares of the target company at a hefty price which normally exceeds the market price enormously[11].

---

[9] *Supra* note 14

[10] Datey ,V.S., *SEBI Substantial Acquisition of Shares and Takeovers Regulation 1997* p243,(New Delhi: Taxmann Publication, 2003)

[11] *Hostile Takeovers Sharks on the prowl*,(visited on 28th September 2003 http://www.icfaipress.org/archives/Analyst/1998/may/Cover-