



# Mergers and Acquisitions

## Basic concepts

21 December 2022

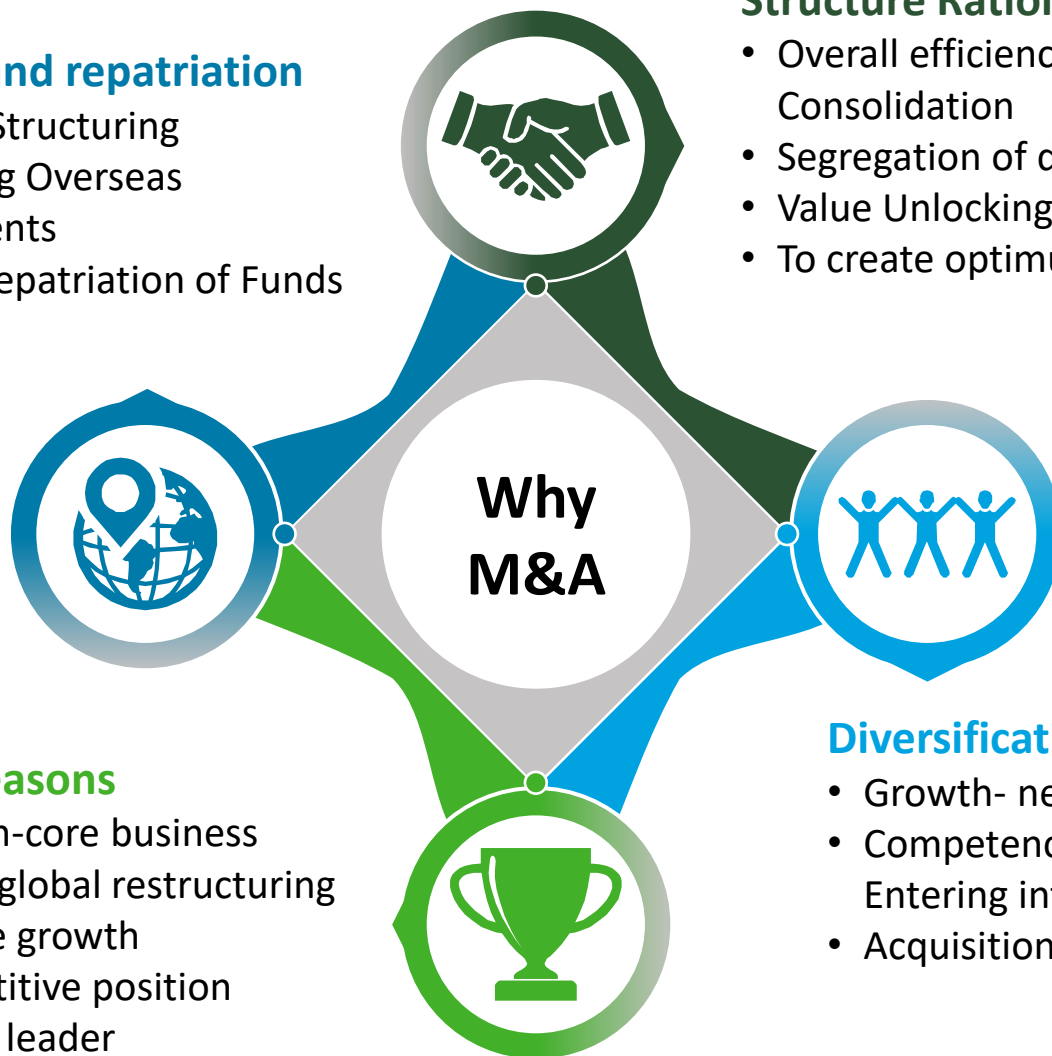
# Need for M&A

## Funding and repatriation

- Pre-IPO Structuring
- Attracting Overseas Investments
- Ease of repatriation of Funds

## Structure Rationalization

- Overall efficiency through Business Consolidation
- Segregation of different sets of business
- Value Unlocking
- To create optimum holding structures



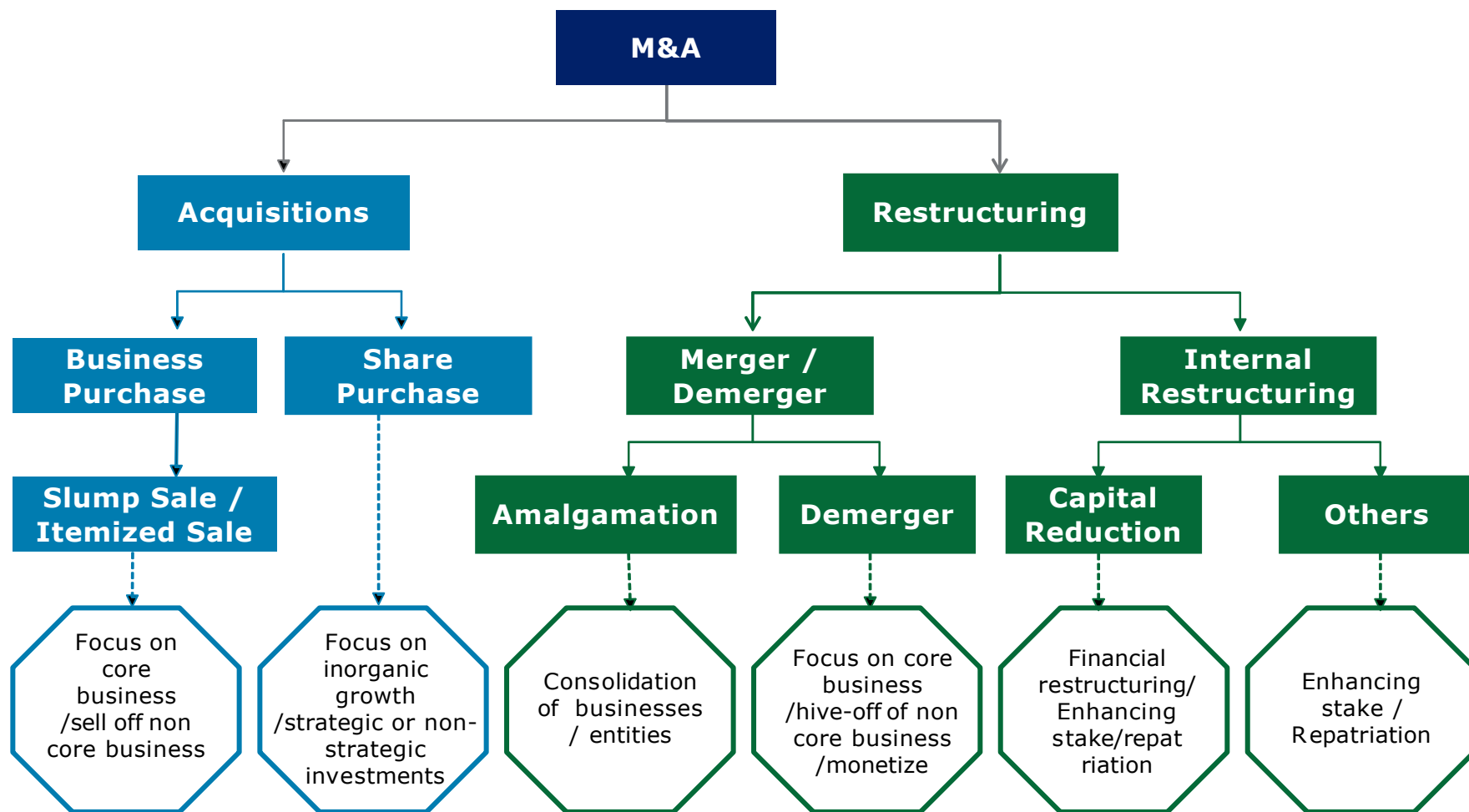
## Other reasons

- Exit non-core business
- Part of global restructuring
- Achieve growth
- Competitive position
- Market leader
- Economies of scale

## Diversification

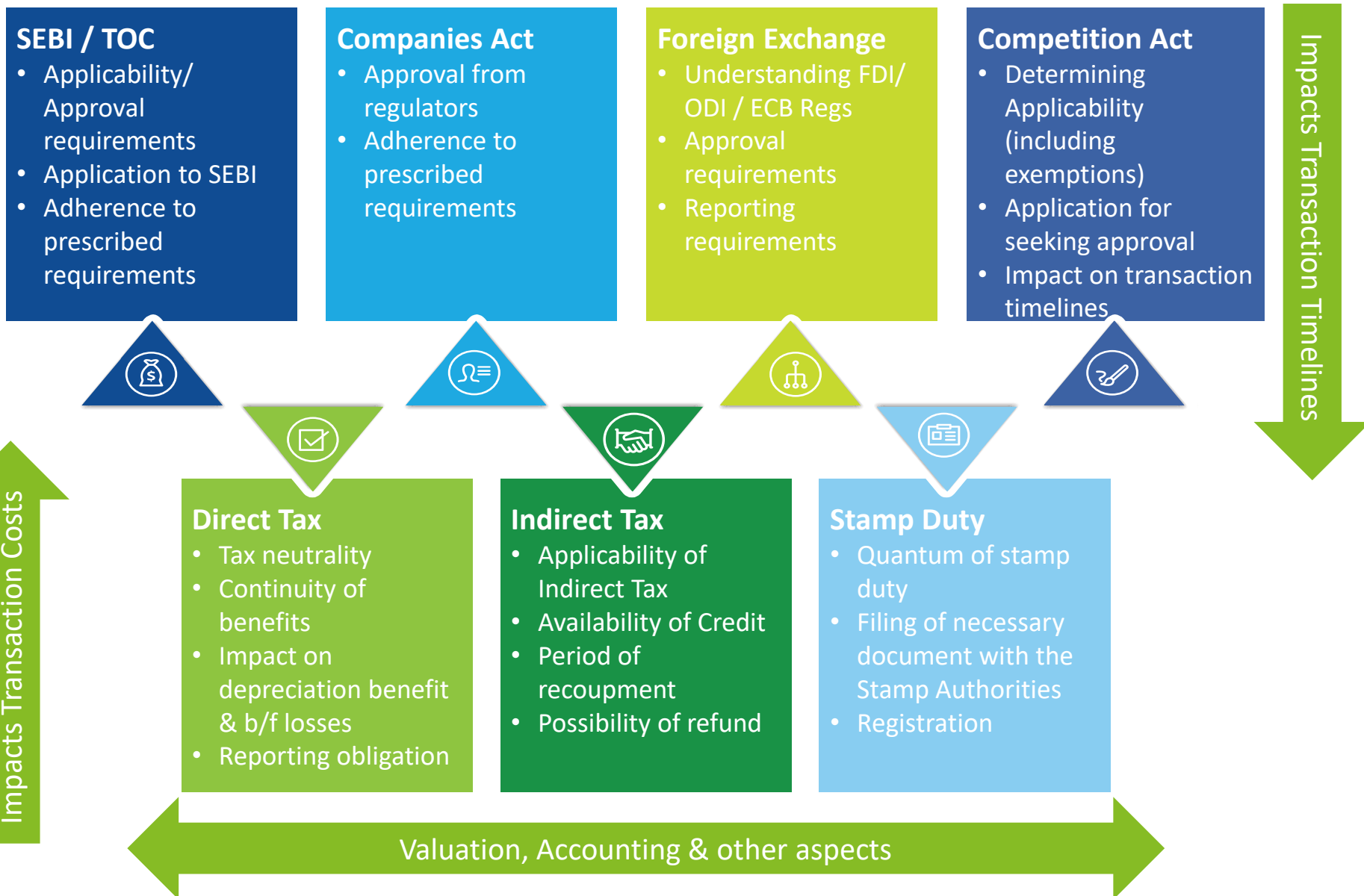
- Growth- new technology
- Competence capability or market space  
Entering into new segment
- Acquisition of new business

# Modes of M&A in India



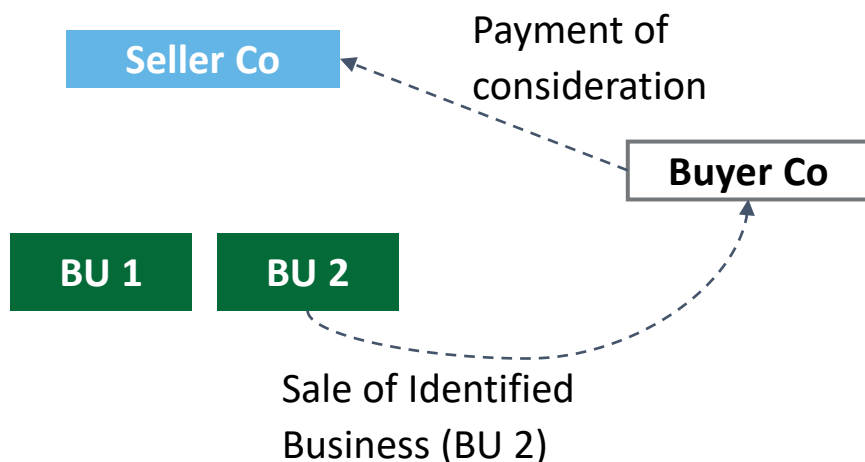
# Legislative Framework of M&A in India

# Snapshot of Indian laws impacting M&A



# Business acquisitions

# Slump sale



\*BU= Business Undertaking

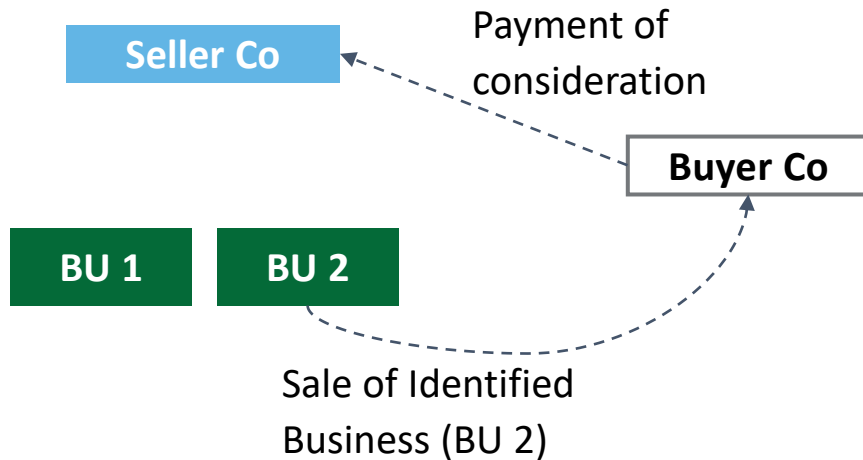
Dalmia Group to acquire cement business from Jaiprakash Associates

Mahindra to acquire Rivigo's B2B express biz for Rs 225 crore in slump sale

## Concept

- Transfer of identified business to another entity for a lump-sum consideration
- Buyer to settle the consideration in cash / kind
- Values not to be assigned to individual assets / liabilities
- Undertaking defined to include –
  - A part of an undertaking
  - Unit or division of an undertaking
  - Business activity taken as a whole

# Slump sale



\*BU= Business Undertaking

## Key Tax Considerations

- Specific computation mechanism prescribed
- Tax net worth certificate for capital gains impact
- No Indexation Benefit
- Satisfaction of 'Undertaking' criteria
- Tax Break to buyer on assets acquired
- Succession of past tax liabilities

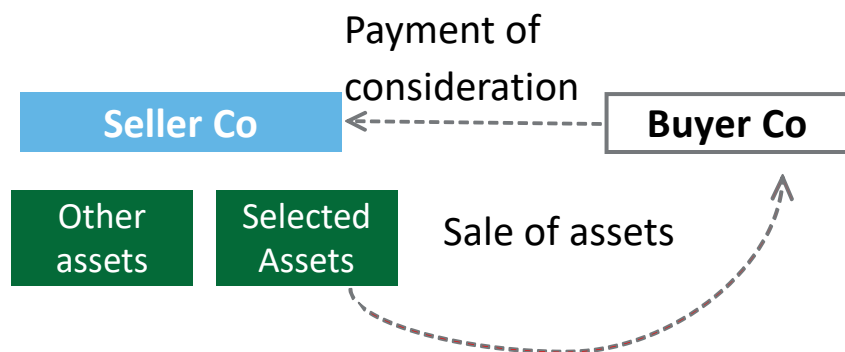
### Thinking Box:

- *Transfer of undertaking with negative net worth?*
- *Leaving behind few assets – whether qualifies as undertaking*



# Itemized - sale of Business

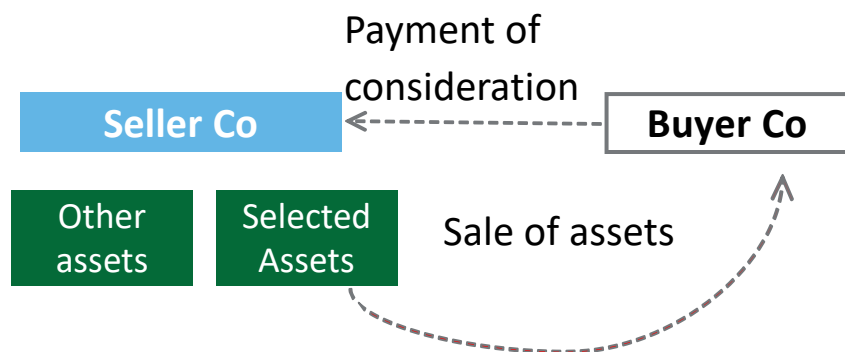
## Concept



- Cherry picking of assets & allocation of value to individual assets
- Consideration is identified against each asset
- Not necessary what is transferred constitutes a business undertaking

Arcelor Mittal Nippon Steel (AM/NS) for certain Ports and Power infrastructure assets from Essar

# Itemized - sale of Business



## Key Tax Considerations

- No succession of past tax liabilities
- Gains on sale of capital assets – taxable as LTCG/ STCG
- Gain on sale of depreciable assets – taxable as per Section 50
- Minimum sales consideration: Section 50C (land / building) & section 50CA (unquoted shares)

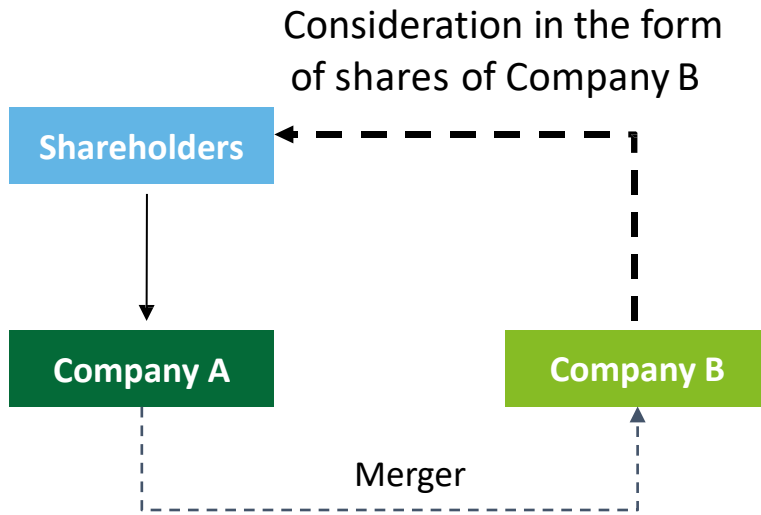
# Slump sale v. Itemized sale



# Mergers

# Merger

## Concept



- Merger refers to consolidation of two or more entities
- Involves transfer of assets and liabilities from one or more transferor companies to a transferee company
- Transferee company to issue shares to the shareholders of transferor company
- NCLT process to be followed

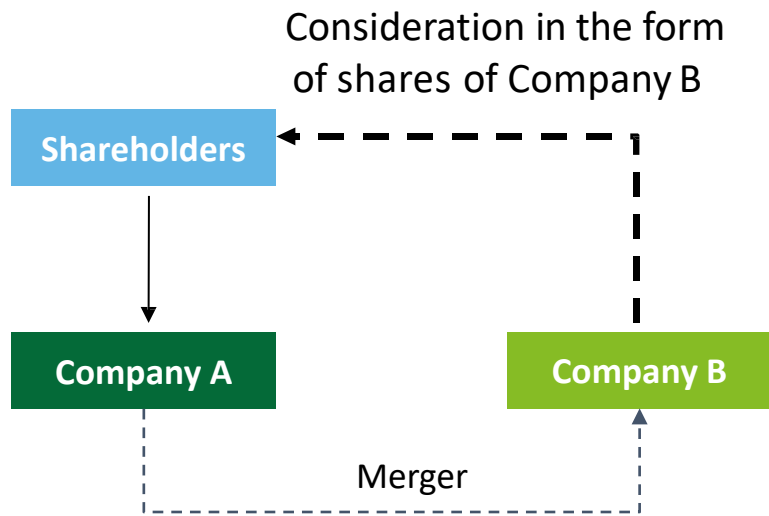
TRF Limited into  
and Tata Steel

Sony and  
Zee

Jyothy Fabricare  
Services Limited  
(WOS) with Jyothy  
Labs Limited

Vodafone  
& Idea

# Merger



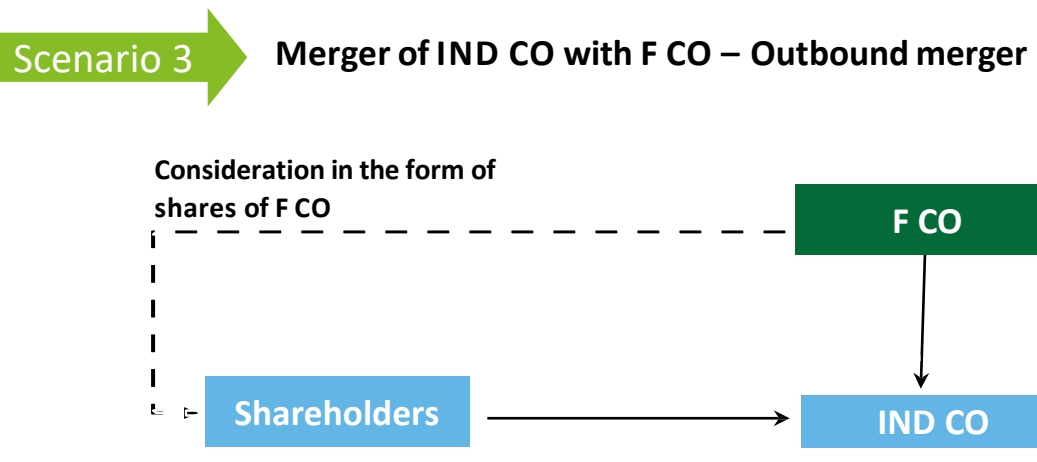
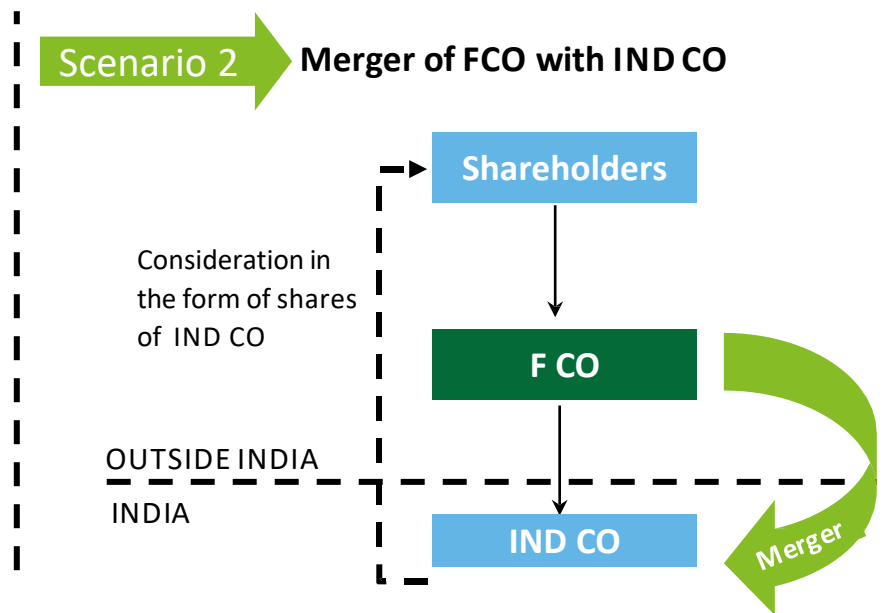
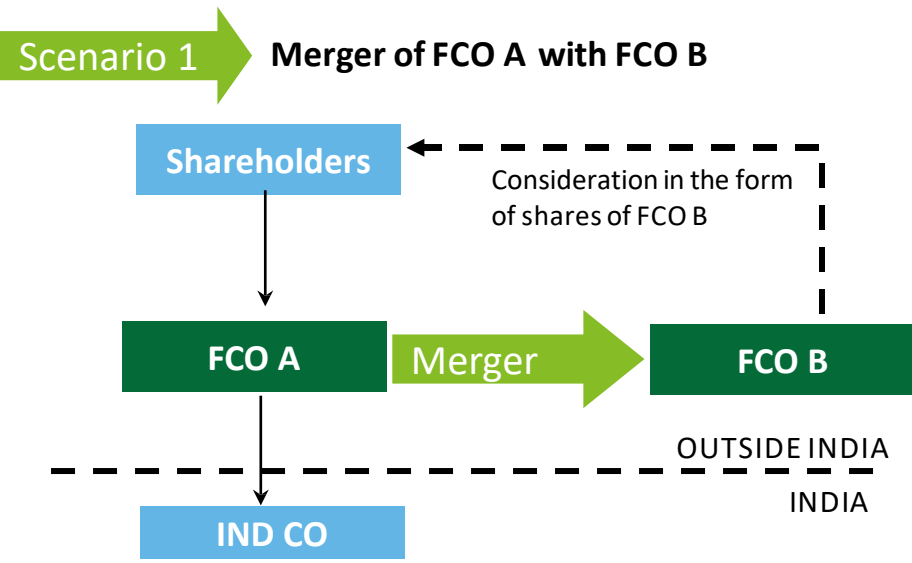
## Thinking Box

- *Appointed Date v. Effective Date*
- *Whether equity and preference shareholders should be issued equity and preference shares respectively?*
- *Tax holiday benefits*
- *MAT credit*
- *Change in shareholding – lapse of losses*

## Key Tax Considerations

- Tax neutral subject to fulfilment of certain conditions
- Carry forward & set off of losses / unabsorbed depreciation
- Depreciation allowable on proportionate basis
- Merger expenses amortizable over 5 years
- Cost of acquisition (COA)
- Period of holding
- COA of capital assets transferred to Transferee Co = Cost incurred by Transferor Co for acquiring such assets

# Cross Border Merger Situations

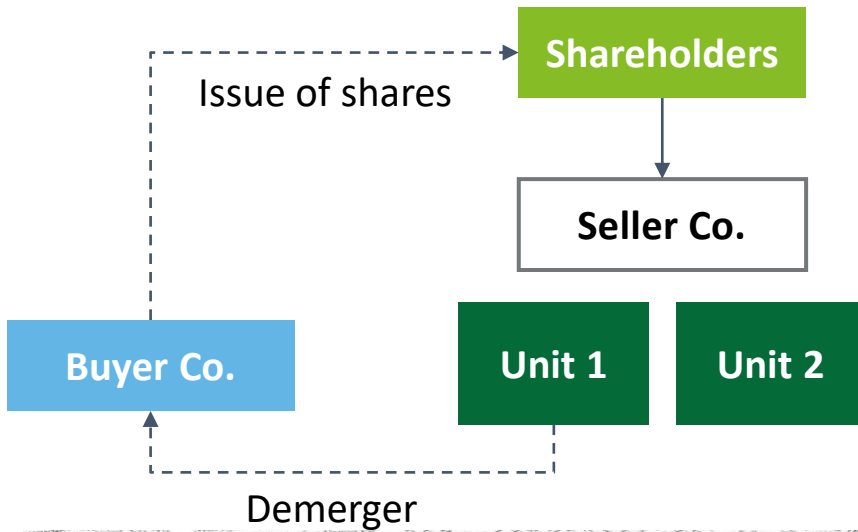


*Companies Act 2013, permits this form of outbound merger (subject to fulfillment of prescribed conditions) which was previously not permitted under the Companies Act, 1956.*

# Demerger



# Demerger



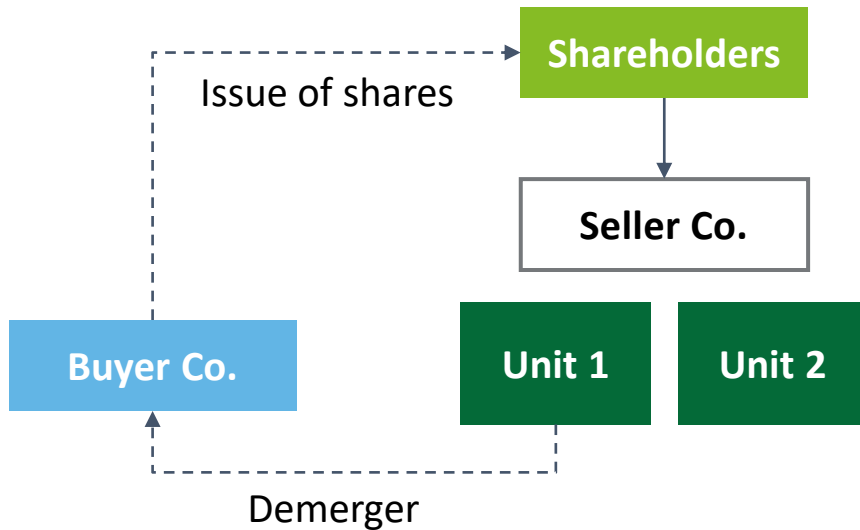
## Concept

- Demerger involves transfer of identified business from one company to another
- In consideration, company which acquires business, issues shares to shareholders of selling company
- Demerger is an NCLT approved process similar to merger

Foundry  
Division of  
Birla precision  
Tech to Birla  
Accucast

Saregama India  
Limited into  
Digidrive  
Distributors  
Limited

# Demerger



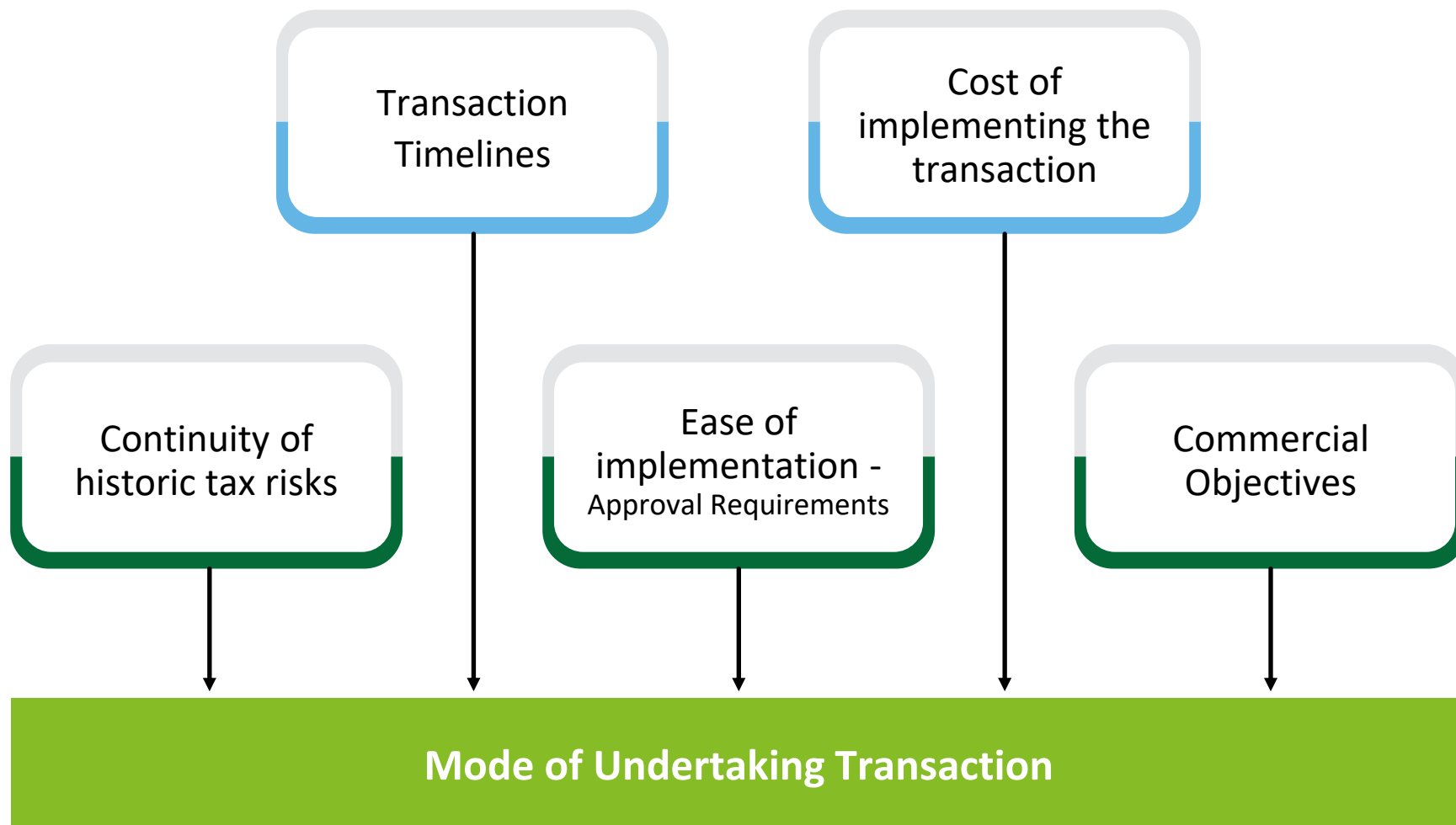
## Thinking Box

- *What constitutes an 'undertaking'?*
- *Continuity of tax holiday benefits of the Demerged Co?*
- *Whether MAT credit allowed to transferred to the Resulting Co?*

## Key Tax Considerations

- Tax neutral subject to fulfilment of conditions as per the Income Tax Act
- Carry forward & set off of losses/ unabsorbed depreciation relatable to demerged undertaking / division
- Depreciation allowable on proportionate basis
- Cost of acquisition – to be split
- Period of holding
- Recording of assets at fair value?

# Key Parameters to be considered



**Questions?**