Mergers, Acquisitions, IPO, Technology transfer. I.P. acquisition and business wind-ups

Merger

Merger refers to consolidation of two or more companies to form an all-new entity with a new name. Merger assists the companies in uniting their strengths, resources and weaknesses. Merger leads to a reduction in trade barriers and competition.

Types of Merger

- Horizontal
- Vertical
- Congeneric
- Reverse
- Conglomerate

v/s

Acquisitions

Acquisition is the purchase of an entity by another entity. This can be done either by acquiring ownership over 51% of its share capital or by taking over the assets of the company. The acquiring company is more influential in terms of structure, operations and size as compared to the target company.

Types of Acquisition

- Hostile
- Friendly
- Buyout

TYPES OF MERGERS

HORIZONTAL MERGER

This kind of merger exists between two companies who compete in the same industry segment. The two companies combine their operations and gains strength in terms of improved performance, increased capital, and enhanced profits. This kind substantially reduces the number of competitors in the segment and gives a higher edge over competition.

VERTICAL MERGER

A kind in which two or more companies in the same industry but in different fields combine together in business. In this form, the companies in merger decide to combine all the operations and productions under one shelter. It is like encompassing all the requirements and products of a single industry segment.

CO-GENERIC MERGER

A kind in which two or more companies in association are some way or the other related to the production processes, business markets, or basic required technologies. This kind offers great opportunities to businesses as it opens a hue gateway to diversify around a common set of resources and strategic requirements.

CONGLOMERATE MERGER

Conglomerate merger is a kind of venture in which two or more companies belonging to different industrial sectors combine their operations. All the merged companies are no way related to their kind of business and product line rather their operations overlap that of each other. This is just a unification of businesses from different verticals under one flagship enterprise or firm.

What is Reverse Merger?

A reverse merger is a merger in which a private company becomes a public company by acquiring it. Reverse merger saves a private company from the complicated process and expensive compliance of becoming a public company.

Advantages	Disadvantages
• The private company becomes a public company at a lesser cost and gets listed on the exchange without IPO. • Reverse merger helps in saving of taxes of private companies.	• Lawsuits for various reasons are very common during the reverse merger. • Reverse merger leads to reverse stock splits. This further leads to a reduction in the number of shares held by the shareholders.

TYPES OF ACQUISITIONS

Friendly acquisition - Both the companies approve of the acquisition under friendly terms.

Reverse acquisition - A private company takes over a public company.

Back flip acquisition- A very rare case of acquisition in which, the purchasing company becomes a subsidiary of the purchased company.

Hostile acquisition - Here, as the name suggests, the entire process is done by force.

Technology transfer-1/2

- Technology transfer is the movement of data, designs, inventions, materials, software, technical knowledge or trade secrets from one organization to another or from one purpose to another.
- The technology transfer process is guided by the policies, procedures and values of each organization involved in the process.
- Also known as transfer of technology (ToT), technology transfer can take place between universities, businesses and governments, either formally or informally, to share skills, knowledge, technologies, manufacturing methods, and more.
- This form of knowledge transfer helps ensure that scientific and technological developments are available to a wider range of users who can then help develop or exploit it. This transfer can occur horizontally across different areas or vertically by moving technologies, for example, from research centres to research and development teams.

Technology transfer-2/2

- Tech transfer is promoted at conferences organized by groups like the Association of University Technology Managers, so that investors can assess the prospect of commercialization for a ground breaking new product or service.
- This commercialization can involve the creation of joint ventures, licensing agreements and partnerships to share the risks and rewards. This can also be coupled with the raising of venture capital, which is generally more common in the United States than in Europe, for example. Research institutions, governments and businesses may also use the services of technology transfer offices to help with the process. These offices may include economists, engineers, lawyers, marketing experts and scientists.
- An important part of tech transfer is the protection of intellectual property (IP) associated with innovations developed at research institutions. This can mean licensing patented intellectual property to outside businesses or the creation of start-up companies to license the IP.
- However, before innovations can be brought to market they need to be developed through technology readiness levels (TRL). TRLs 1-3 focus on research while levels 6-7 and higher sees a product move towards production. Bridging the gap between these different levels can be complex and time-consuming, as it requires the development of research into prototypes and then to fully tested and reliable finished products.

What are the Three Phases of Technology Transfer?

- Technology transfer activities can be broadly split into three phases; preparation, installation and utilization. These three phases are, in turn, affected by technological, organizational and environmental factors.
- However, some people point to six steps in the technology transfer process, these are:
  - Invention disclosure
  - Evaluation
  - Patent application
  - Assessment and marketing
  - Patent licensing
  - Commercialization
- These steps take an innovation forward to a commercial product via market evaluation, intellectual property protection and licensing, as well as promotion and commercialization for the marketplace.

Why is Technology Transfer Important?

- Technology transfer is an important part of the technological innovation process, promoting scientific and technological research and the associated skills and procedures to wider society and the marketplace.
- Tech transfer allows research to develop from the discovery of novel technologies along the value chain to disclosure, evaluation and the protection of these breakthroughs. From here, marketing, licensing and further development of products allow the research to become an impactful product, process or service for society. In addition, the financial returns afforded by a successful product can be reinvested into further research to begin the cycle again.
- As a result, technology transfer creates revenues for universities to use for faculty recruitment, funding and more research. Companies are able to tap into the advances brought about by this academic research without having to spend on internal R&D to create new products to drive business forward.
- The advantages of successful technology transfer can be felt through national and regional economies via growth through innovation, new ventures and stronger industry to boost employment.
- Finally, there are benefits for society as a whole, whether that is saving lives, better health, a cleaner environment, and technical advances to deliver new capabilities, products and services.

How Technology Transfer is Adapted by SMEs

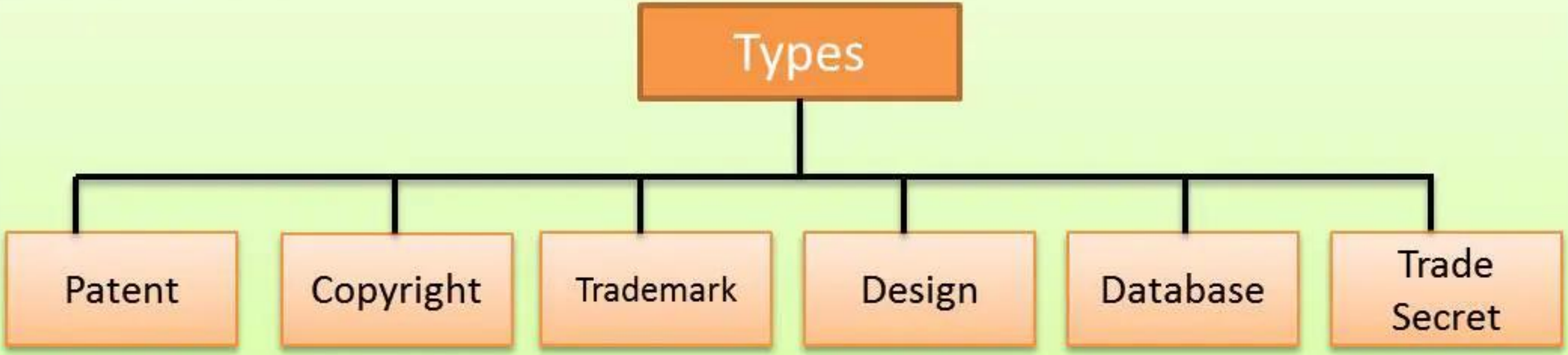
- Technology transfer is important for small and medium sized enterprises (SMEs), who are able to utilise the process to help them compete with larger competitors. Rather than having to pay for internal R&D, SMEs are able to form alliances with fellow companies and research institutes to produce innovations, reduce financial risks or share technologies.
- SMEs adapt technology transfer to support their needs, address obstacles and challenges, acquire and develop technologies and access new research that they can take forward.
- Using tech transfer methods allows SMEs to react to challenges and provide positive contributions to technological advances, economic growth and their own ability to innovate.

Examples of Technology Transfer

- Examples of technology transfer can be found across virtually every scientific and industrial area, from pharmaceuticals and medical devices to alternative energy solutions, computing, transport, artificial intelligence, robotics, agriculture, aerospace, environmental improvements and many more.
- Many of the products and technological advances we take for granted in our everyday lives came from university or institute research before being transferred to the marketplace through technology transfer procedures.

Intellectual Property Rights

Intellectual property is the creations of the minds of an individual which has a commercial and moral value. Intellectual property rights (IPR) grants exclusive rights to an author for utilizing and benefiting from their creation.



Intellectual Property Overview (Highlights)

	Copyright	Trademark	Patent	Trade Secret
Law Source	U.S. Copyright Act (Federal) Title 17 U.S. Code	Lanham Act (Federal) Title 15 U.S. Code; state statutes; and common law	U.S. Patent Act (Federal) Title 35 U.S. Code	State statutes (Uniform Trade Secrets Act); common law
Subject Matter (Protected)	Art, writings and other forms of expression; not facts or ideas	Words, symbols, logos, designs or slogans that identify and distinguish products or services	Utility Patent: inventions Design Patent: ornamental (non-functional) designs	Formula, device, pattern, program, technique, or process
Protection Standard	Originality; authorship; fixation in tangible medium	Distinctiveness; secondary meaning; use in commerce	Novelty; non-obviousness; and utility (ornamentally for design patents; distinctiveness for plants)	Commercial value; unknown or unavailable information; effort to maintain secret
Protection Scope	17 U.S. Code §106: rights of reproduction, distribution, performance, public display, and derivative works	15 U.S. Code §1051: rights in U.S.; likelihood of confusion; and §1125(a) false designation of origin §43(a), false description, dilution	35 U.S. Code §154: right to exclude others from making, using, offering for sale, or selling the invention	Defense against misappropriation: acquisition by improper means or disclosure without consent
Protection Duration	Life of author plus 70 years	Perpetual until abandonment or loss of distinctness or secondary meaning	Utility/Plant: 20 years Design: 15 years	Potentially protected forever until publicly disclosed
Rights of Others	Fair use; compulsory licensing (music); independent creation	Truthful communication; fair use and collateral use (commentary)	Unless licensed, none.	Independent discovery; reverse engineering
Examples	Harry Potter books, movies and music soundtrack recordings	Coca-Cola name, distinctive logo and trade dress of bottle shape	iPhone mobile device, both utility and design aspects	Coca-Cola formula and KFC secret recipe

I.P. acquisitions

- Acquiring IP includes **managing the chain of title to company-developed IP**. Employee agreements and independent contractor agreements should clearly deal with IP ownership issues. Take stock and create an inventory list of your company's existing and potential IP. Exploiting IP is maximizing the acquired IP's value.
- While effective IP management has always been important, it has become even more critical with the proliferation of technology. Because intellectual property is defined as a company’s *non-physical* assets, software, software as a service (SaaS), and other emerging technologies are all considered IP

Managing Intellectual Property During M&A - 1/2

Below are areas that require special attention during M&A transactions.

Doing Due Diligence Before An Acquisition

- In relation to IP, the goal of the due diligence stage is to take inventory of a company's intangible assets, and to determine whether there are outstanding transfer pricing and tax risks associated with the intangibles. Specific documentation is necessary to properly assess the ownership of IP, which requires advisors to trace each asset back to its source to determine who owns it and whether it's legally protected IP (e.g. patents) or economically owned IP (e.g. goodwill).
- Based on this documentation, the combined company can assess what transfer pricing risks may exist and make critical go-forward determinations. Have IP-owners been properly compensated in the past? an ownership of the IP be transferred? Should it be? How does current ownership line up with the IP-ownership goals after the acquisition?
- Details like these should be addressed *before* an acquisition is finalized. Companies should consider consulting an intellectual property attorney to review IP inventories and intercompany contracts during the due diligence phase

Managing Intellectual Property During M&A - 2/2

Determining The Value Of Intellectual Property

- When evaluating intellectual property assets in mergers and acquisitions, don’t rely on your accounting valuation alone to determine value for tax or other purposes. It can serve as a guide point, but often accounting valuations can produce vastly different values when compared with tax valuations. Companies can either do their own valuation or engage an external advisor like Valentiam; however, it’s important to keep in mind that there are two different methods for valuing intangibles, and they are fundamentally different in nature.
- **Accounting valuations**, or *purchase price allocations*, are generally used to determine an asset’s value in the event of a merger or acquisition. These are inherently different from **transfer pricing valuations**, which are completed for tax purposes.

Learn how to manage transfer pricing policy integration and ensure compliance with regulatory guidelines during a merger or acquisition.

- **Simplifying The Ownership Structure**

It can be particularly challenging to manage intangibles when an acquisition leads to legal ownership in multiple tax jurisdictions.

- **Protect Intellectual Property During An Acquisition**

Even with these tips in mind, there are still so many details to get right to protect intellectual property rights in mergers and acquisitions.

Initial Public Offerings- 1/2

- An unlisted company (A company which is not listed on the stock exchange) announces initial public offering (IPO) when it decides to raise funds through sale of securities or shares for the first time to the public.
- In other words, IPO is the selling of securities to the public in the primary market. A primary market deals with new securities being issued for the first time. After listing on the stock exchange, the company becomes a publicly-traded company and the shares of the firm can be traded freely in the open market.
- The company which issues shares to the public is referred to as the issuer. There are two common types of IPO.
  - **Fixed Price Offering**
    - Fixed Price IPO can be referred to as the issue price that some companies set for the initial sale of their shares.
  - **Book Building Offering**
    - In the case of book building, the company initiating an IPO offers a 20% price band on the stocks to the investors. The interested investors bid on the shares before the final price is decided

Initial Public Offerings- 2/2

- IPO is used by small and medium enterprises, startups and other new companies to expand, improve their existing business.
- An IPO is a way for companies to acquire fresh capital, which in turn can be used to finance research, fund capital expenditure, reduce debt and explore other opportunities.
- An IPO will also bring in transparency into affairs of the company since it will be required to inform financial numbers and other market-related developments on time to the stock exchanges.
- The company's investment in various equity and bond instruments will come under greater scrutiny after it gets listed. IPO of any company brings great deal of attention and credibility. Analysts around the world report on investment decisions of the clients.

Investing in an IPO:

- Investors betting on an IPO can earn handsome returns if they are wise and have some expertise.
- The investors can form a choice by going through the prospectus of the companies initiating IPO.
- They need to go through the IPO prospectus carefully to form an informed idea about the company’s business plan and its purpose for raising stocks in the market. However, one must be watchful and have a clear understanding of analyzing financial metrics in order to identify the opportunities.
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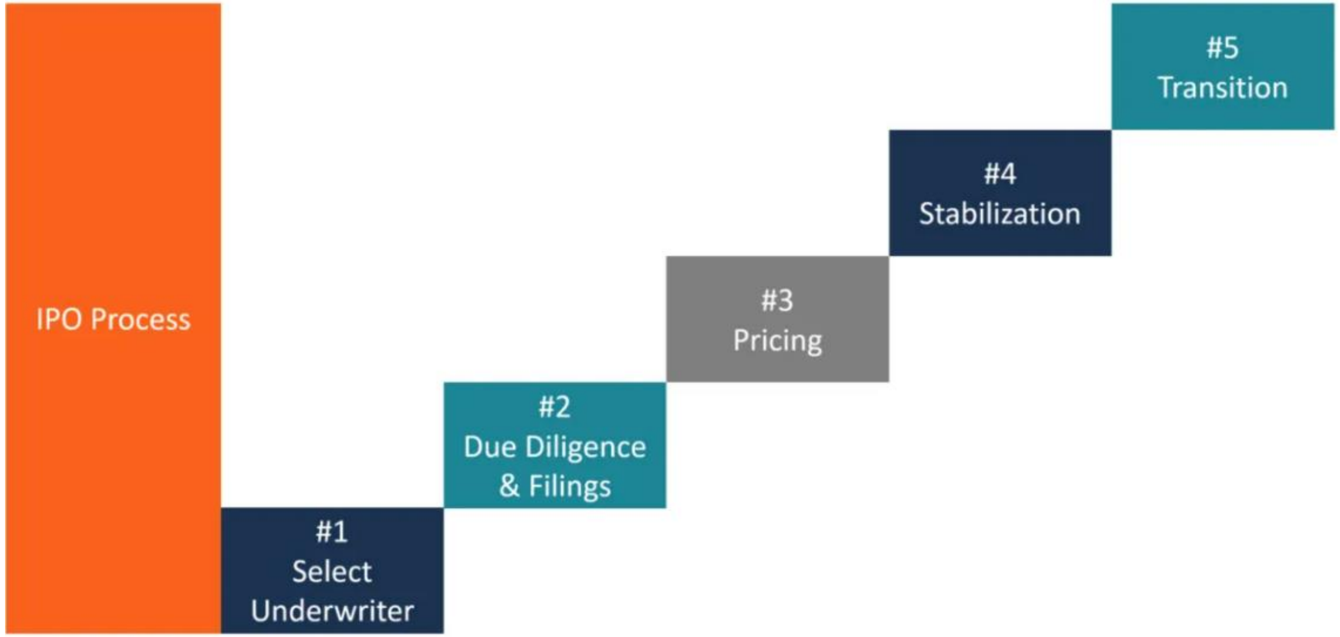
IPO Process – 1/8

1. Select a bank
2. Due diligence and filings
3. Pricing
4. Stabilization
5. Transition



IPO Process – 2/8

Step 1: Select an investment bank

- The first step in the IPO process is for the issuing company to choose an [investment bank] to advise the company on its IPO and to provide underwriting services. The investment bank is selected according to the following criteria:
- Reputation
- The quality of research
- Industry expertise
- Distribution, i.e., if the investment bank can provide the issued securities to more institutional investors or to more individual investors
- Prior relationship with the investment bank

IPO Process – 3/8

Step 2: Due diligence and regulatory filings

- Underwriting is the process through which an investment bank (the underwriter) acts as a broker between the issuing company and the investing public to help the issuing company sell its initial set of shares. The following underwriting arrangements are available to the issuing company:
- **Firm Commitment**: Under such an agreement, the underwriter purchases the whole offer and resells the shares to the investing public. The firm commitment underwriting arrangement guarantees the issuing company that a particular sum of money will be raised.
- **Best Efforts Agreement**: Under such an agreement, the underwriter does not guarantee the amount that they will raise for the issuing company. It only sells the securities on behalf of the company.
- **All or None Agreement**: Unless all of the offered shares can be sold, the offering is canceled.
- **Syndicate of Underwriters**: Public offerings can be managed by one underwriter (sole managed) or by multiple managers. When there are multiple managers, one investment bank is selected as the lead or book-running manager. Under such an agreement, the lead investment bank forms a syndicate of underwriters by forming strategic alliances with other banks, each of which then sells a part of the IPO. Such an agreement arises when the lead investment bank wants to diversify the risk of an IPO among multiple banks.

IPO Process – 4/8

An underwriter must draft the following documents:

- **Engagement Letter:** A letter of engagement typically includes:
  - Reimbursement clause: This clause mandates that the issuing company must cover all out-of-the-pocket expenses incurred by the underwriter, even if the IPO is withdrawn during the due diligence stage, the registration stage, or the marketing stage.
  - Gross spread/underwriting discount: Gross spread is arrived at by subtracting the price at which the underwriter purchases the issue from the price at which they sell the issue.
  - *Gross spread = Sale price of the issue sold by the underwriter – Purchase price of the issue bought by the underwriter*
  - Typically, the gross spread is fixed at 7% of the proceeds. The gross spread is used to pay a fee to the underwriter.
- **Letter of Intent**: A letter of intent typically contains the following information:
  - The underwriter's commitment to enter an underwriting agreement with the issuing company
  - A commitment by the issuing company to provide the underwriter with all relevant information and, thus, fully co-operate in all due diligence efforts.
  - An agreement by the issuing company to provide the underwriter with a 15% overallotment option.
  - The letter of intent does not mention the final offering price.
- **Underwriting Agreement:** The letter of intent remains in effect until the pricing of the securities, after which the Underwriting Agreement is executed. Thereafter, the underwriter is contractually bound to purchase the issue from the company at a specific price.

IPO Process – 5/8

- **Registration Statement:** The registration statement consists of information regarding the IPO, the financial statements of the company, the background of the management, insider holdings, any legal problems faced by the company, and the ticker symbol to be used by the issuing company once listed on the stock exchange. The SEC requires that the issuing company and its underwriters file a registration statement after the details of the issue have been agreed upon. The registration statement has two parts:
  - **The Prospectus:** This is provided to every investor who buys the issued security
  - **Private Filings:** this is comprised of information which is provided to the SEC for inspection but is not necessarily made available to the public
- **Red Herring Document**: In the cooling-off period, the underwriter creates an initial prospectus which consists of the details of the issuing company, save the effective date and offer price. Once the red herring document has been created, the issuing company and the underwriters market the shares to public investors. Often, underwriters go on roadshows (called the dog and pony shows – lasting for 3 to 4 weeks) to market the shares to institutional investors and evaluate the demand for the shares.

IPO Process – 6/8

Step 3: Pricing

- After the IPO is approved by the SEC, the effective date is decided. On the day before the effective date, the issuing company and the underwriter decide the offer price (i.e., the price at which the shares will be sold by the issuing company) and the precise number of shares to be sold. Deciding the offer price is important because it is the price at which the issuing company raises capital for itself. The following factors affect the offering price:
- The success/failure of the roadshows (as recorded in the order books)
- The company's goal
- Condition of the market economy
- IPOs are often underpriced to ensure that the issue is fully subscribed/ oversubscribed by the public investors, even if it results in the issuing company not receiving the full value of its shares.
- If an IPO is underpriced, the investors of the IPO expect a rise in the price of the shares on the offer day. It increases the demand for the issue. Furthermore, underpricing compensates investors for the risk that they take by investing in the IPO. An offer that is oversubscribed two to three times is considered to be a "good IPO."

IPO Process – 7/8

Step 4: Stabilization

- After the issue has been brought to the market, the underwriter has to provide analyst recommendations, after-market stabilization, and create a market for the stock issued.
- The underwriter carries out after-market stabilization in the event of order imbalances by purchasing shares at the offering price or below it.
- Stabilization activities can only be carried out for a short period of time – however, during this period of time, the underwriter has the freedom to trade and influence the price of the issue as prohibitions against price manipulation are suspended.

IPO Process – 8/8

Step 5: Transition to Market Competition

- The final stage of the IPO process, the transition to market competition, starts 25 days after the initial public offering, once the "quiet period" mandated by the SEC ends.
- During this period, investors transition from relying on the mandated disclosures and prospectus to relying on the market forces for information regarding their shares. After the 25-day period lapses, underwriters can provide estimates regarding the earning and valuation of the issuing company. Thus, the underwriter assumes the roles of advisor and evaluator once the issue has been made.

Metrics for judging a successful IPO process

The following metrics are used for judging the performance of an IPO:

- **Market Capitalization**: The IPO is considered to be successful if the company's market capitalization is equal to or greater than the market capitalization of industry competitors within 30 days of the initial public offering. Otherwise, the performance of the IPO is in question.
- *Market Capitalization = Stock Price x Total Number of Company's Outstanding Shares*

- **Market Pricing**: The IPO is considered to be successful if the difference between the offering price and the market capitalization of the issuing company 30 days after the IPO is less than 20%. Otherwise, the performance of the IPO is in question.

Why do companies go public?

- New capital
  - Almost all companies go public primarily because they need money to expand the business
- Future capital
  - Once public, firms have greater and easier access to capital in the future
- Mergers and acquisitions
  - Its easier for other companies to notice and evaluate a public firm for potential synergies
  - IPOs are often used to finance acquisitions

Benefits from Going Public

Benefits of going public

- Access to funds to satisfy investment needs
- Facilitate profitable exit by founders and employees(!)
- Lower cost of capital due to liquidity and diversification. Shares are move valuable to investors when they are more liquid and can be held as part of a diversified portfolio.
- Market timing. Raising funds at times that the stock market valuations are high (possibly times of over-valuation)

Costs

- Transaction costs. Investment banker fees (around 7% of fund raised).
- Founders often give up control (counter example…Google)
- Regulation by Securities and Exchange Commission (SEC). Requirement of Audited Financial Statements.
- (Under) Prising

ADVANTAGES OF IPO

- Enlarging and diversifying equity base
- Enabling cheaper access to capital
- Creating multiple financing opportunities, equity convertible debt, cheaper bank loans, etc
- Increasing exposure , prestige and public image
- Attracting and retaining better management and employees through liquid equity participation

Disadvantages of the IPO

- Expensive
  - A typical firm may spend about 15-25% of the money raised on direct expenses
- Reporting responsibilities
  - Public companies must continuously file reports with the SEC and the stock exchange they list on
- Loss of control
  - Ownership is transferred to outsiders who can take control and even fire the entrepreneur

IPOs ARE COSTLY

- Direct costs
  - Fees paid to lawyers, accountants, consultants and investment banks
- Indirect costs:
  - Increased formalization in the decision process
  - Resulting burden of disclosure requirements and compliance costs
  - Increased pressure for short-term performance
  - Underpricing
- Risks
  - Exposure to takeover

1. Select an underwriter

- An underwriter is an investment firm that acts as an intermediary between a company selling securities and the investing public
- The underwriter is the principal player in the IPO

PRIMARY MARKET

- Primary Market is a market wherein corporates issue new securities for raising funds generally for long term capital requirement.

- For our purposes, think of the primary market as being synonymous with an Initial Public Offering (IPO).

DIFFERENT TYPES OF ISSUE

i. Public issue: When a company raises funds by selling (issuing) its shares (or debenture / bonds) to the public through issue of offer document (prospectus), it is called a public issue.

a) Initial Public Offer: When a (unlisted) company makes a public issue for the first time and gets its shares listed on stock exchange, the public issue is called as initial public offer (IPO).

b) Further public offer: When a listed company makes another public issue to raise capital, it is called further public / follow-on offer (FPO).

ii. Offer for sale: Institutional investors like venture funds, private equity funds etc., invest in unlisted company when it is very small or at an early stage. Subsequently, when the company becomes large, these investors sell their shares to the public, through issue of offer document and the company's shares are listed in stock exchange. This is called as offer for sale. The proceeds of this issue go the existing investors and not to the company.

iii. Issue of Indian Depository Receipts (IDR): A foreign company which is listed in stock exchange abroad can raise money from Indian investors by selling (issuing) shares. These shares are held in trust by a foreign custodian bank against which a domestic custodian bank issues an instrument called Indian depository receipts (IDR), denominated in `.

IPO Grading

IPO grading is the professional assessment of a Credit Rating Agency (CRAs) on the fundamentals of a company in relation to the other listed equity shares in India. It is mandatory for the issuer company coming with initial public offer (IPO) to obtain IPO grading from a Credit Rating Agency and disclose the same on the cover page of offer document and Application form.

Factors considered in grading

The indicative list of areas that are generally looked into by the CRA while arriving at an IPO grade includes:

- Business Prospects and Competitive Position
  - o Industry Prospects
  - o Company Prospects
- Financial Position
- Management Quality
- Corporate Governance Practices
- Compliance and Litigation History
- New Projects—Risks and Prospects

What is Liquidation?

Liquidation is the legal procedure by which the company comes to an end

DISSOLUTION/LIQUIDATION

Proprietorship	partnership	Corporation	Limited Liability Company
depends upon the proprietor	change in composition dissolves partnership	upon decision of the shareholders through voting	change in composition dissolves LCC

What makes a Company Liquidate?

If we are to analyze the reasons behind what would generally make a company liquidate, we can identify a few common issues.

- Starting a Business for the Wrong Reason
  Some businesses are started off as a hobby and merely sits in stagnancy, simply because it was set up out of necessity – and not of an identified profitable opportunity.
- Lack of Capital
  Sometimes most businesses tend to miscalculate the amount of money it may cost them to set up/run. This in turn could have detrimental effects on the establishment as a whole and might result in a much earlier liquidation.
- Lack of Successful Marketing
  Any business, regardless of how big or small, requires well thought out marketing strategies in order to grow and reach out to their target audiences. This is a key issue that may lead to most companies being unsuccessful.
- Unexplored Opportunity
  In some cases, blinded by optimism, a business is set up without fully realizing the opportunity that the business has – and manages to wrongly select the location, and even the product or service offered when being established.
- Profit target is reached
- Loss prevention
- Legal reasons
- Dramatic change in market conditions

Modes of winding ups - Companies

- Inability to pay debts
- Grounds other than inability to pay debts
- Voluntary winding-ups

Compulsory Winding ups

(Done by Tribunal)

5 Circumstances where company is wound up by Tribunal

1. Company itself wants to liquidated by Tribunal
2. Company is acting against Sri Lanka
3. Company has conducted fraudulent activities
4. Default in filing FS or annual returns for 5 years
5. Winding up on just a equitable grounds the opinion or tribunal