# Mergers & Acquisitions and Joint Ventures

**Mergers and acquisitions** are defined as the consolidation of companies. These are modes by which different business entities combine. **Joint ventures,** on the other hand, are the way for two business entities to build a contractual arrangement and work together to achieve the common goal of growth and profits.

## Primary Difference:

* **The merger** is a union of two or more entities to form one entity. The Mergers and Acquisitions may be a result of the accumulation of assets and liabilities of the entities with a view to forming one business with the uniform objectives, finances, access to technologies and shared market base.
* **The acquisition** is a takeover by one entity by controlling the share capital, assets and/or liabilities of the target or acquired entity.
* **Joint Ventures** are coming together of two or more businesses for a purpose such as entering into a new business and/or new expertise, or for investments, which may or may not be for a limited duration.

## Reasons for Companies Taking Steps for Mergers and Acquisitions

1. Two separate companies together create more value compared to being on an individual stand.
2. The objective of wealth maximization
3. Financial synergy for lower cost of capital
4. It is always expected from a combination of the companies to involve lower expenses and cost of capital and yield higher revenues.
5. One of the best ways of restructuring structure of corporate units giving a new life to the existing companies.
6. Improving company’s performance and accelerate growth
7. Economies of scale
8. Diversification for higher growth products or markets
9. Acquisition of technologies
10. To increase market share and positioning giving broader market access
11. Strategic realignment and technological change
12. Tax considerations
13. Undervalued target
14. Diversification of risk
15. Enabling exploration of new portfolios or business sectors for the said entities
16. M&A also results in market leadership when between entities of same/similar industries.

## Reasons for Entering Into a Joint Venture

1. The various reasons for creating a joint venture include the ability to combine assets, capital, expertise, technology, strengths, and knowhow of separate businesses with an added advantage of the sharing of prospective risks.
2. Joint Venture aids the entities that wish to enter a foreign market with which they are not familiar. It allows the parties to undertake potentially high-risk investments without the exposure to unlimited liability.
3. The parties to a joint venture can define at the outset of the project, the extent to which the parties shall be for costs which ensures flexibility with respect to the flexibility in operations of the business activity.
4. A joint venture may be entered into with a potential competitor may reduce or eliminate competition in the market.

## Mergers and Amalgamations

The term ‘merger’ was not defined under the Companies Act, 1956 (“CA 1956”), and under Income Tax Act, 1961 (“ITA”). The Companies Act, 2013 (“CA 2013”) without providing a definition of the term has explained the concept. According to the Act, a ‘merger’ is a combination of two or more entities into one single entity. The resultant entity is not just the accumulation of assets and liabilities of the distinct entities, but the organization of the two entities into one single business. In a merger, one or more parties to the Mergers and Acquisitions cease to exist and merge into one single entity that survives, i.e. one of the parties to the merger survives and retains its identity.

The Income Tax Act defines a similar term ‘amalgamation’ as the fusion of one or more companies to form another entity. Thus, in amalgamation, two or more companies Mergers and Acquisitions into a third new company while the existing companies lose their existence.

The Companies Act 1956 in Sections 390 to 394 and The Companies Act 2013 in Sections 230 to 234 deal with the schemes of arrangement or compromise between a company, its shareholders and/or its creditors. Depending on the requirements of the merging entities, several different types of mergers have been identified:

1. **Horizontal Mergers** also referred to as a ‘horizontal integration’. It takes place between entities engaged in competing businesses with an objective of eliminating the competition and moving closer to a monopoly in the market. It occurs between companies producing similar products, goods and offering similar services. These forms of the merger are thoroughly scanned by the competition commission.
2. **Vertical Mergers** are a combination of entities which are at different stages of the industrial, production or technical process. The entities have businesses which are complementary to each other. It has the objective of moving towards greater independence and self-sufficiency.
3. **Cogeneric Mergers** is a type where the merging entities are in related markets but are not offering the same products. In such merger, the entities share similar sales and distribution channels and merge with an object to increase the customer base.
4. **Conglomerate Mergers** is a merger between two entities which belong to unrelated industries. The objective of the merger can range from the utilization of financial resources to enlargement of debt capacity or add value to the outstanding shares by increased net earnings per share etc. It helps to diversify the business without having to incur large initial investment.
5. **Cash Merger** is a form where the **Shareholders** of one entity receive cash instead of shares in the resulting merged entity. It forms an effective an exit for the cashed out shareholders.
6. **Triangular Merger** is the type resorted to, for regulatory and tax reasons and is a tripartite agreement.
7. **Reverse Merger** is where the private company acquires the majority shares of a public company in its own name. It serves as a shot for the unlisted companies to become a **Public Limited Company** without IPO.
8. **De-Merger,** as the name suggests, is where a single business is fragmented into units to either operate on their own or be dissolved or be sold.

## Acquisitions

An ‘acquisition’ or ‘takeover’ is a term to define buying of another company and gain its ownership. Such process may be friendly or hostile and may be processed through agreements between the two or more parties or purchase of shares from the open market or by presenting an offer for acquisition to the entire body of shareholders. **Key** **features of the acquisition are**:

* The acquiring company buys the target company’s stock and other assets with a purpose of claiming complete ownership of the company.
* The acquiring company thus becomes the policy and decision maker.
* After a takeover, the acquiring company requires no approvals from the target company or its shareholders.
* Acquisitions may be paid for either in form of the acquiring company’s stock or in cash or in a combination of both.

## two types of Acquisitions:

1. **Asset Acquisition**The acquirer chooses the assets or liabilities to be purchased and buys some or all of the target’s assets and/ or liabilities directly from the seller. If all the assets are acquired, the target stands liquidated.  
   The acquirer decides judiciously to avoid any unwanted asset. This makes the whole process is tedious and pricey.
2. **Stock Acquisition**  
   It is where all of the assets and liabilities of the seller are sold upon the transfer to the acquirer. It is much simpler and less tedious process.

## Joint Venture

**The Companies Amendment Act 2017 explains the** expression of **Joint Venture** as “a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement”.

Mergers & Acquisitions and Joint Ventures is a commercial enterprise formed as an arrangement between two or more parties who hold a joint control over it. India does not have any exclusive or specific regulations and laws relating to Joint Venture and the enterprise is subject to the regulations specific to the business form it takes and the sector it desires to operate. A joint venture is made for a specific purpose, whereas the time duration may or may not be limited.

## Advantages of a Joint Ventur**e**

1. Joint Venture provides the opportunity to gain **new insights** and expertise to operate in a new market/ domain.
2. Joint Venture provides a **better access to resources**, technology, knowledge, specialty, and capital. This gives the Joint Venture arrangement upper hand against its competitors.
3. The parties during the tenure of the Joint Venture **share the costs as well as the risks**. If the Venture fails, then the losses shall also be borne by the parties to the venture.
4. Joint ventures are **flexible, temporary** and the exit procedures are fairly easy for the parties whenever required.
5. **Foreign collaborations** become convenient, credible and profitable.

## What is a Joint Venture Agreement?

Joint Venture in India is not regulated by any specific Legislation or rules but follow the regulations as per the business structure it forms as and the market it operates in.

Mergers & Acquisitions and Joint Ventures which forms as a Company shall be governed by the provisions of the Companies Act. 2013; A Joint Venture which forms as an LLP shall be governed by the provisions of The **Limited Liability Partnership** Act, 2008.

Also, a Mergers & Acquisitions and Joint Ventures must be in accordance with the provisions of the **Indian Contract Act**. Thus the execution of a Joint Venture Agreement is of utmost importance. A wisely drafted Joint Venture Agreement shall mitigate the risk with respect to the control, operations, management, and cost and profit-sharing of the Venture and also regard the exit and termination of the Joint Venture. It protects the interest of the parties by foreseeing the possibility of disputes in the future. It thus aids in the development of a smoother relationship between the parties to the Joint Venture.

## Procedure of Joint Ventures With Foreign Companies

[Mergers & Acquisitions](https://enterslice.com/mergers-and-acquisitions-services) and Joint Ventures with a foreign partner or an NRI or PIO partner, require government approvals in India. Also, [FDI](https://enterslice.com/learning/foreign-direct-investment-fdi-compliance/) is sector specific. There are some sectors which have been prohibited for foreign companies and investments in permitted sectors/activities can be made through **Automatic route** or **Approval route. The extent of FDI permitted is different for all sectors and must be thoroughly researched for.**