Unit II: Mergers and Acquisitions

- Motives behind M&A
- Theories of M&A,
- Process of M&A
- Fast track merger.
- Cross border M&A:
  - concept,
  - benefits &
  - difficulties.
- Due diligence process.
- **Methods of payment and financing options in M&A**
- **Takeover defense tactics**
- **Reasons for failure of M&A**

Genesis of Merger and Acquisition

	Period	Events coinciding with beginning of wave	Events coinciding with end of wave
Wave 1	1890's- 1903	Economic expansion; industrialisation processes; introduction of new state legislations on incorporations; development of trading on NYSE; radical changes in technology	Stock market crash; economic stagnation; beginning of First World War
Wave 2	1910's – 1929	Economic recovery after the market crash and the First World War; strengthen enforcement of antimonopoly law	Stock market crash; beginning of Great Depression
Wave 3	1950's – 1973	Economic recovery after the Second World War; tightening of anti-trust regime in 1950	Stock market crash; oil crisis; economic slowdown
Wave 4	1981 – 1989	Economic recovery after recession; changes in anti-trust policy; deregulation of fin. services sector; new financial instruments and markets (e.g. junk bonds); technological progress in electronics	Stock market crash
Wave 5	1993 – 2001	Economic and financial markets boom; globalization processes; technological innovation, deregulation and privatisation	Stock market crash; 9/11 terrorist attack
New wave ?	2003 - ?	Economic recovery after the downturn in 2000–2001	n.a.

Genesis of Merger and Acquisition

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	Wave # 1	Wave # 2	Wave # 3	Wave # 4	Wave # 5
Period	1893-1904	1910s-1929	1955-1975	1984-1989	1993-2000
Predominant means of payment	Cash	Equity	Equity	Cash / Debt	Equity
M&A outcome	creation of monopolies	creation of oligopolies	Diversification / conglomerate building	'bust-up' takeovers; LBO	Globalization
Predominant nature of M&A	Friendly	Friendly	Friendly	Hostile	Friendly
Beginning of wave	Economic expansion; new laws on incorporations; technological innovation.	Economic recovery; better enforcement of antitrust laws.	Strengthening laws on anti-competitive M&A's; Economic recovery after WW 2.	Deregulation of financial sector; Economic recovery.	Strong economic growth; Deregulation and privatization.
End of wave	Stock market crash; First World War.	The Great Depression.	Market crash due to an oil crisis.	Stock market crash.	Burst of the internet bubble; 9/11 terrorist attack.

Genesis of Merger and Acquisition

- First wave, 1897–1904
- Second wave, 1916–1929
- Third wave, 1965–1969
- Fourth wave, 1984–1989
- Fifth wave, 1992–2001
- Sixth wave, 2004–2007

Source: Mergers, Acquisitions, and Corporate Restructurings, Seventh Edition. Patrick A. Gaughan. © 2018 John Wiley & Sons, Inc. Published 2018 by John Wiley & Sons, Inc.
doi:10.1002/9781119380771.ch2

Theories of Mergers and Acquisitions

Merger by Rational Choice

- Efficiency theory
- Monopoly theory
- Raider theory
- Valuation theory

Beneficial to SH

- Empire building theory

Beneficial to managers of Acquiring Company

- Process theory
- Disturbance theory

Friedrich Trautwein "Merger Motives and Merger Prescription"

Theories of Mergers and Acquisitions

Efficiency Theory

M&A are planned and executed to achieve synergies thereby adding to enterprise valuation.

Theories of Mergers and Acquisitions

Synergy

Mergers are driven by synergy

Synergy refers to the type of reactions that occur when two substances or factors combine to produce a greater effect together than that which the sum of the two operating independently could account for. The ability of a combination of two firms to be more profitable than the two firms individually. In this companies can create great shareholders value than if they are operated separately.

There are two types of synergy:

- Revenue generating synergies
- Cost reduction synergies

Theories of Mergers and Acquisitions

Synergy

There are two types of synergies:

- Revenue generating synergies: which generates much higher growth rate and turnover than the individual companies growth rates during independent operations.
  - Tough to achieve
- Cost reduction synergies: if combined operations result in cost savings in any of the areas viz., manufacturing, marketing, operations, manpower, corporate overheads, etc.

- Estimated synergies fail to materialize
- Knowingly overestimating synergies

Theories of Mergers and acquisitions

Revenue generating Synergy example: ICICI merger with ICICI bank.

Theories of Mergers and Acquisitions

Efficiency Theory

There are five types of synergies:

- Operating synergy
- Financial synergy
- Manufacturing synergy
- Marketing synergy
- Tax synergy

Theories of Mergers and acquisitions

Operating synergy

Operating synergy is improved by Economies of scale and Economies of scope.

Economies of scale: reduction of average cost with increase in volume or production.

Horizontal Merger eliminates duplication of activity.
Vertical mergers bring in economies of scale by acquiring control over the supplier and distribution.

Warehouses, transportation facilities, software and common services, like accounts and finance, tax, HR, administration etc.
Eg.: Jet Airways acquired Sahara Airlines

Theories of Mergers and acquisitions

Economies of scope

Average total cost of production decreases as a result of increasing the number of different goods produced.

Currently employed set of skill or an asset can better be utilised to achieve economies of scope.

Eg.: Kleenex has achieved economies of scope through the diversification of its simple tissue paper. The company expanded its product line to service numerous, unrelated end users, such as consumers and hospitals, all of which required a unique type of paper product.

Theories of Mergers and acquisitions

Financial Synergy

This means that debt capacity of two combined firm will be larger than summation of debt capacities of two individual firms.

Financial synergy also arises from credit rating of both the firms, tax differential of both the firms, proportion of use of internal and external funds.

Weighted average cost of capital can be reduced with financial synergy.

Better gearing ratio or improved financial parameters.

Eg.: Merger of Reliance Petrochemicals with Reliance Industries

Theories of Mergers and acquisitions

Manufacturing Synergy

It involves combining core competence of the acquirer company and target company in the different areas of manufacturing, technology, design and development, procurement, etc.

It also mean rationalizing usage of the combined manufacturing capacities.

Eg.: Tata steel taking over Corus (2007) – 76 million benefits.

Theories of Mergers and acquisitions

Marketing Synergy

Involves using either common sales force, or distribution channel or media to push the products and brands of both the acquirer and target companies at lower costs than the sum total of costs the two companies would incur in independent marketing operations.

It can also involve leveraging on the brand equity of one of the two companies to push the sale of the other companies products.

Eg.: HLL acquiring Lakme brand and its cosmetics business.

Theories of Mergers and acquisitions

Tax synergy

Involves merging a loss making company with a profitable one so that the profitable company against its profits of the profit making company.

Theories of Mergers and Acquisitions

Merger by Rational Choice

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Theories of Mergers and Acquisitions

Monopoly Theory

M&A are planned and executed to achieve market share and market power, at times including pricing power.

Monopoly theory works in three ways

1. Market leaders trying to consolidate their position further
2. Profitable and cash rich companies trying to gain market leadership
3. Market entry strategy

Eg.: Mittal Steel acquiring Arcelor
Tata Steel acquiring Corus – 56 - 5th place
Vodafone acquisition of Hutchison

Theories of Mergers and Acquisitions

Valuation Theory

M&A are planned and executed by the acquirer who has better information about the valuation of the target than the stock market as a whole and who estimates the real intrinsic value to be much higher than the present market capitalisation of the company.

Theories of Mergers and Acquisitions

Raider Theory

M&A activity in the specific context of PE funds where the acquirer acquires controlling stake in cash needy companies at much lower valuation than potential valuation or even present valuation, just to transfer the wealth from existing shareholders to themselves without any strategic intent of running these companies themselves.

Theories of Mergers and Acquisitions

Empire Building Theory

M&A are planned and executed by the managers for expanding their own empire rather than creating shareholder wealth.

Theories of Mergers and Acquisitions

Process Theory

M&A are the outcome of a process.

Theory views mergers as strategic decisions not as comprehensive rational choices but as outcomes of processes influenced by decision process, organisational routine and political power.

Theories of Mergers and Acquisitions

Disturbance Theory

M&A are macroeconomic phenomenon.

Theory views merger waves are caused by economic disturbances.

Theories of Mergers and Acquisitions

Differential Managerial Efficiency

It is also called managerial synergy or managerial efficiency.

If the management of one firm is better or efficient than the other and if better firm acquires the other firm the efficiency of the second firm is brought upto the level of efficiency of firm A. Efficiency is increased by merger.

- Basis for horizontal merger

Theories of Mergers and Acquisitions

Inefficient Management Theory

This is similar to the concept of managerial efficiency but both are different in concept.

The management of the company is not able to manage asset efficiently. Merger with another efficient firm provide the necessary managerial capabilities.

- Basis for conglomerate merger.

Theories of Mergers and Acquisitions

Target is not always inefficient. But only relatively inefficient. Hence, mergers is driven by differential efficiency between the target and bidder management.

Theories of Mergers and acquisitions

Diversification

Diversification may have risk reducing effect on overall business portfolio.

It is undertaken to shift from the acquiring company core product line or market into those that have higher growth prospect.

Demand for diversification may be by managers, employees, for preservation of organisation, reputation and capital.

Theories of Mergers and acquisitions

Strategic Realignment to Changing Environment

It suggests that the firms use the strategy of M&As as ways to rapidly adjust to changes in their external environments in regulatory framework and technological innovation. When a company has an opportunity of growth available only for a limited period of time slow internal growth may not be sufficient.

Technical changes contributes to new products, industries, market.

The use of IT is likely to encourage mergers which are less expensive and faster way to acquire new technology and owner knows that how to fill a gap in current offering or to entering new business.

Due to dynamically changing environment, mergers provide perhaps fastest route to respond the changes in industry and market.

Theories of Mergers and acquisitions

Hubris Hypothesis

Hubris hypothesis implies that managers look for acquisition of firms for their own potential motives and that the economic gains are not the only motivation for the acquisitions.

Theories of Mergers and acquisitions

Information and signaling

The announcement of mergers negotiation or a tender offer may convey information or signals to market participants that future cash flows are likely to increase and that future will increase in future values.

There are two versions of this theory:
First, the tender offer by a bidder itself signifies undervaluation and lead to revaluation of shares by market.

Second, the offer itself inspires the target to implement more powerful strategy. The tender offer on target firm signals that there is a untapped potential in the target.

Theories of Mergers and acquisitions

Market Power / Share

Mergers are initiated by dominating the market. Increased relative market share of the bidder provides it a potential to realize monopoly gains.

Mainly mergers are undertaken to improve ability to set and maintain prices above competitive level.

Increase in the size of the firm is expected to result in bigger market share. The decrease in the number of firm will increase recognized interdependence.

Theories of Mergers and acquisitions

Agency problem

Takeover and mergers would be a threat because of inefficiency or agency problem.

When it takes place where there is a divergence between the goals of management and owners.

Theories of Mergers and acquisitions

Managerialism

Managers may increase the size of the firm through mergers in the beliefs that their compensation is determined by size but in practice management compensation is determined by profitability.

Managers initiate mergers to gain private benefits from the transaction irrespective of loss (or loss of profit) to the shareholders. Managers also tend to involve in mergers as they tend to be arrogant or overconfident about the success of the deal and land up entering into often inefficient transactions.

Theories of Mergers and acquisitions

Tax credit and concessions

Unused net operating loss of the target company and the revaluation or writing up of acquired asset and the tax free status of the deal influence M&A.

Loss carry forward can be setoff against the combined firm taxable income.

This means, firms with tax losses provide an opportunity to bidder with high taxable gains to reduce net tax liability through merger. Besides, merging of high growth firm with a mature firm may lead to conversion of dividend (ordinary income) into capital gain. This is helpful when there is substantial tax rate differential between dividend and capital gain.

Theories of Mergers and acquisitions

Undervaluation

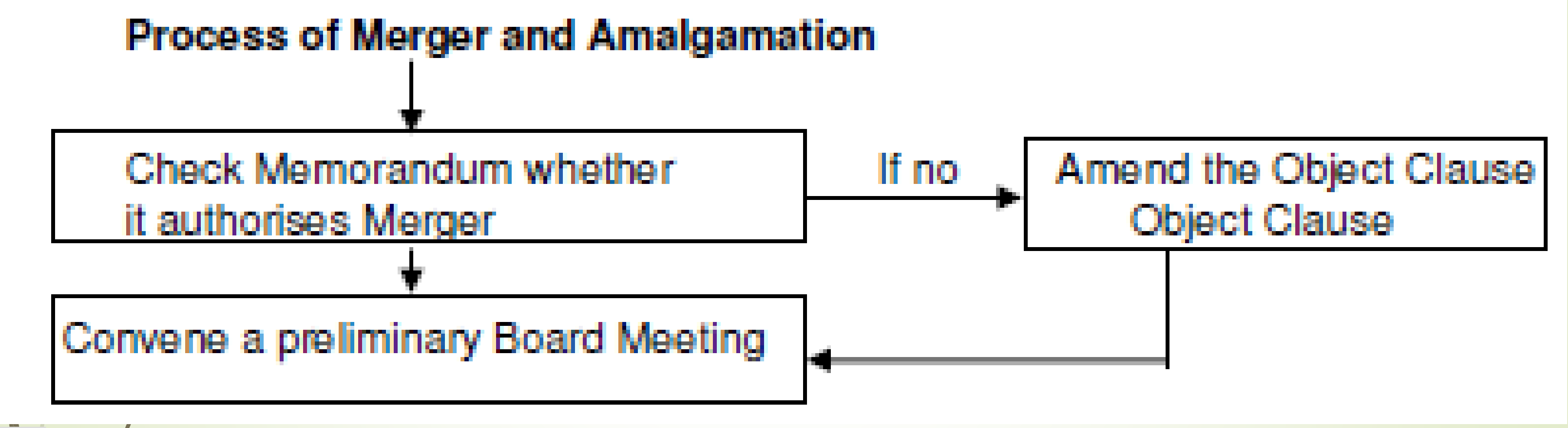
This means the target is generally undervalued by the market. This may not be due to inefficiency of the target and that is what differentiate this theory from the inefficiency theory. The undervaluation may be only due to non-release of private information which only the bidder have at that point of time.

Legal framework for Mergers and Acquisitions

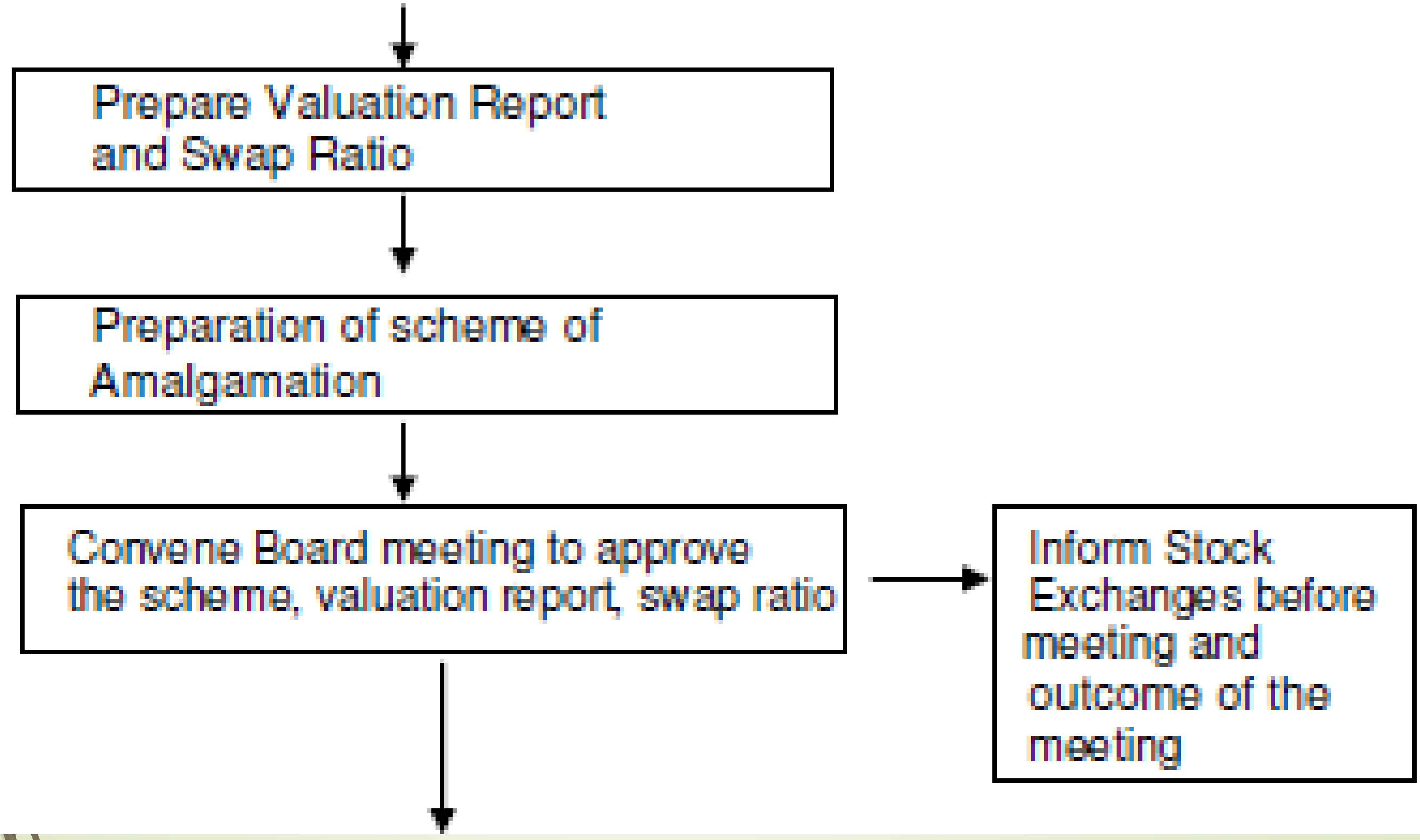
Approvals in Scheme of Amalgamation

- Approval of Board of Directors
- Approval of Shareholders / Creditors
- Approval of the Stock Exchanges
- Approval of Financial Institutions
- Approval from the Land Holders
- Approval of the Tribunal
- Approval of Reserve Bank of India
- Approval from Competition Commission of India (CCI)

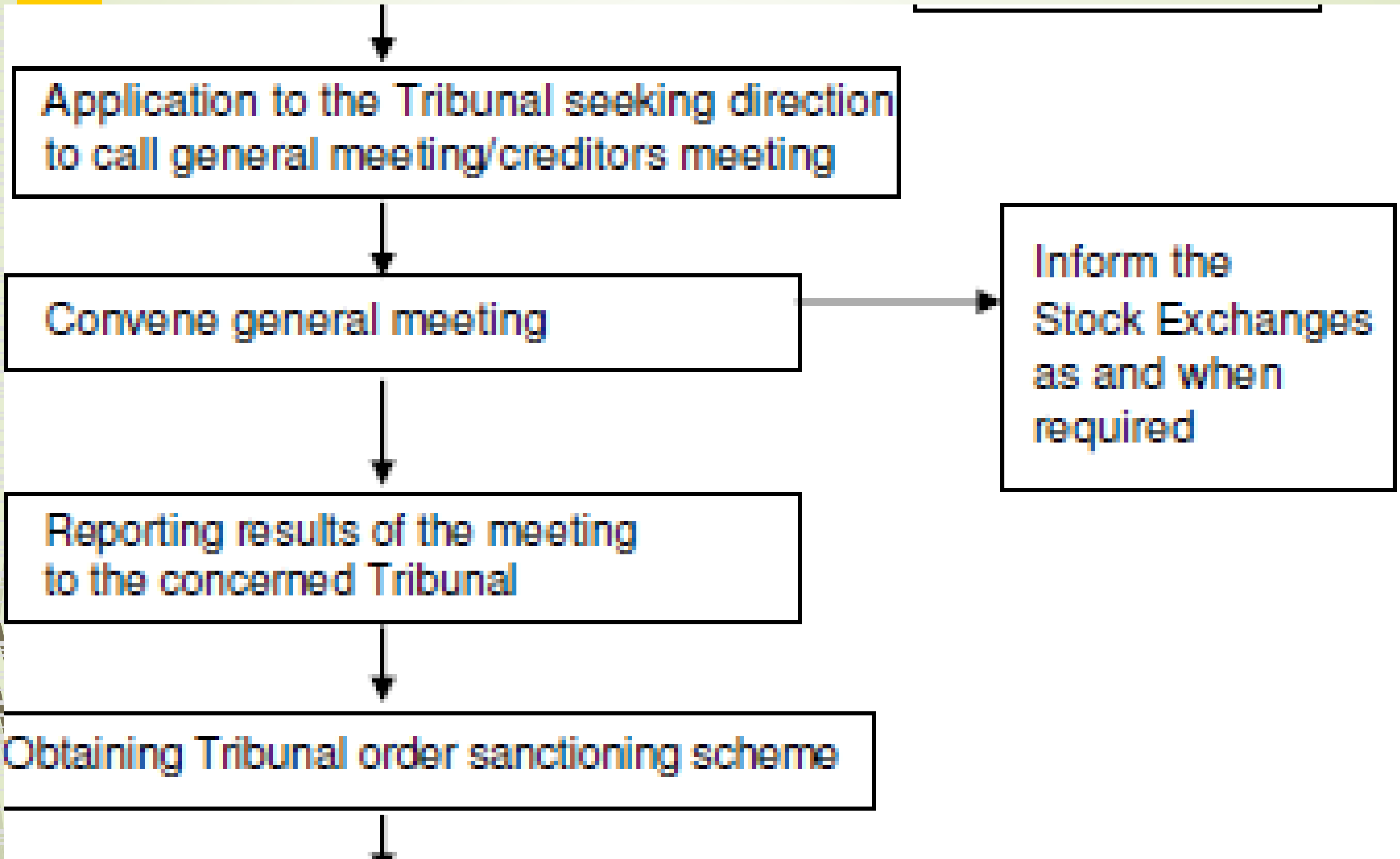
Steps Involved in a Merger- A Flow Chart



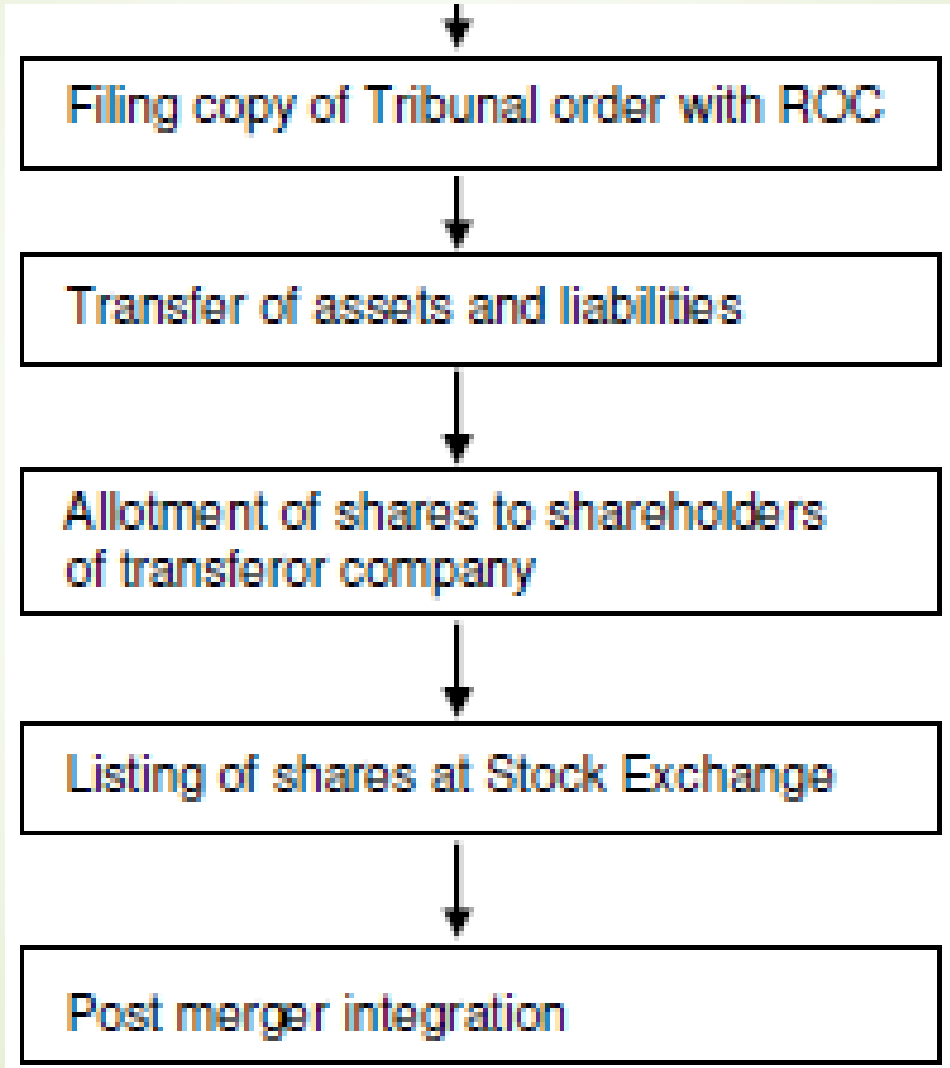
Steps Involved in a Merger- A Flow Chart Contd.



Steps Involved in a Merger- A Flow Chart Contd.



Steps Involved in a Merger- A Flow Chart Contd.



Fast track Merger

FTMs Historical Background

- Companies Act, 1956 did not provide a simple procedure for M&As of certain type of companies.
- It prescribed a cumbersome and time-consuming process for all companies irrespective of their size, net worth and turnover.
- The legal provisions pertaining to merger process were stipulated in sections 391-394 of the Companies Act, 1956.
- This procedure was perceived to be very confusing, complex and time-taking by all stakeholders involved in the process.
- The process involved, *inter alia*, drafting a merger scheme, taking judicial approval for the scheme, getting Board and shareholders authorization etc. It defeated the very purpose for which mergers were entered into and proved to be a deterrent for companies looking for collaborations, rather than a facilitator.

Legal Regime behind Fast Track Mergers

Section 233 of the Companies Act, 2013 has introduced the concept of fast track mergers. It carved out an exception from the regular merger procedure.

It exempted **small companies** and **holding and subsidiary** companies entering into merger arrangements from the regular merger procedure as stipulated under sections 230-232 of the Companies Act, 2013.

Section 233 of the Companies Act, 2013 along with Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 lay down the entire legal framework of fast track mergers.

Need

The following benefits were offered:

- Simplified procedure for merger
- No judicial approval required
- Separate procedures for certain type of companies would enable them to expand without any roadblocks
- Form filings required also significantly reduced

Holding Company

Section 2(46) of the Companies Act, 2013 describes holding company as:

- “holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.”

Explanation: For the purpose of this clause, the expression ‘company’ includes any body corporate.

Wholly owned subsidiaries (WOS): This is a company whose 100% shares are owned by its holding company.

Subsidiary Company

“subsidiary company” or “subsidiary”, in relation to any other company means a company in which the holding company—

i. controls the composition of the Board of Directors; or
ii. exercises or controls more than one-half of the total share capital or total voting power either at its own or together with one or more of its subsidiary companies

Small Companies

"Small Company" u/s 2(85) of the Companies Act, 2013 is defined as:

"Small company" means a company, other than a public company,

i. paid-up share capital of which does not exceed **fifty lakh rupees** or such higher amount as may be prescribed which shall not be more than **ten crore rupees**; and
ii. turnover of which as per profit and loss account for the immediately preceding financial year does not exceed **two crore rupees** or such higher amount as may be prescribed which shall not be more than **one hundred crore rupees**:

Provided that nothing in this clause shall apply to,

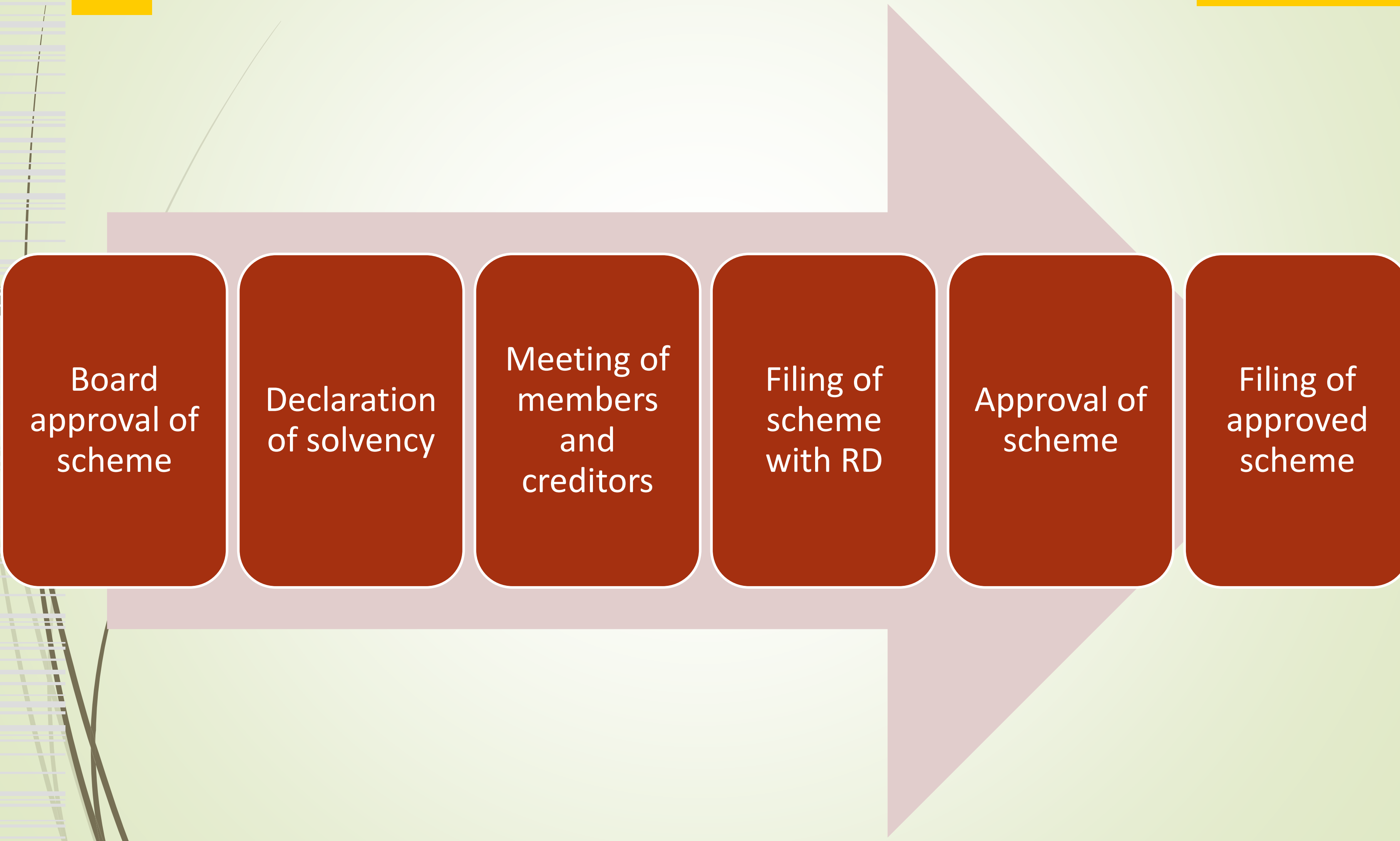
A. a holding company or a subsidiary company;
B. a company registered under section 8; or
C. a company or body corporate governed by any special Act;

Small Companies

The following are the features of a small company:

- A small company is essentially a private limited company and not a public company.
- Paid-up share capital does not exceed 50 lakh rupees
- Turnover does not exceed 2 crore rupees
- It is not a holding or subsidiary company
- It is not a company or body governed under any special Act
- It is not a company formed for charitable purposes (company within the meaning of section 8 of the Companies Act, 2013).

Procedure of Fast Track Merger Flowchart



Steps involved in Fast Track Mergers

The following steps need to be followed in a fast track merger:

1. First of all, both the companies need to check their Articles of Association (AoA) and assess if they have the requisite authority under them to enter into a merger. If no, then the AoA need to be amended before such merger can take place.
2. Convene the Board Meeting and prepare a draft scheme of merger or amalgamation.
3. Prepare a financial statement of assets and liabilities and get an auditor's report prepared.
4. Get the draft scheme approved in the Board Meeting.
5. Both the companies need to send a notice to the Registrar of Companies (RoC) and Official Liquidator (OL) of their respective regions inviting suggestions/objections to the scheme, if any within 30 days of issuing the notice.

Steps involved in Fast Track Mergers

6. Such notice to the RoC should be in Form CAA 9 and have the following attachments:
   - Copy of the scheme
   - Shareholding pattern of the transferee pre and post-merger
   - Last 3 years audited financial statements
   - Memorandum and Articles of Association
   - Board Resolution I Valuation Report
7. Both the companies are required to file a declaration of solvency with their respective ROCs. This declaration of solvency shall be accompanied by the following:
   - Board Resolution
   - Statement of Assets and Liabilities
   - Auditors Report

Steps involved in Fast Track Mergers

8. Sending notice of shareholders' meeting and creditors' meeting.
9. Conducting the shareholders' meeting and getting the scheme approved.
10. Conducting creditors' meeting and getting the scheme approved.
11. Filing of the results of each meeting with the Regional Director and the Official Liquidator by the transferee company.
12. Objections/Suggestions to be sent to the Regional Director by the RoC/Official Liquidator.
13. Regional director may file an application with the Tribunal if he is of the opinion that the scheme is against public interest.
14. The Tribunal can approve or disapprove the scheme.
15. If approved it shall be filed with the RoC of the transferee company and the transferor company respectively.

Procedural Aspects of Fast Track Mergers

Procedure	Timeline	Forms required	Who shall be required to comply
Convene a Board Meeting: The board meeting shall approve the scheme and pass resolutions for holding and fixing date and time for a shareholder and a creditors meeting.	NA	NA	Both the transferor and the transferee companies are required to comply.
Notice of the Proposed Scheme: The notice of the proposed scheme is to be sent to the Registrar where registered offices of both the companies are situated. The notice shall invite objections/ suggestions, if any, from the respective registrars.	To be done after the Board meeting.	Form CAA 9	Both the transferor and the transferee companies are required to comply.

Procedural Aspects of Fast Track Mergers

Procedure	Timeline	Forms required	Who shall be required to comply
Declaration of solvency: Both the companies are required to file a declaration of solvency with the ROC of the place where their registered offices are situated.	This is to be done before the meeting of shareholders or the meeting of creditors is convened.	Form CAA 10	Both the transferor and the transferee companies are required to comply.

Procedural Aspects of Fast Track Mergers

Procedure	Timeline	Forms required	Who shall be required to comply
Convening a Meeting of Members: A notice convening a meeting of the members or shareholders of the company should be sent to all the members. This notice should contain, the details of the merger, copy of the scheme and a copy of the declaration of solvency. The objections/suggestions received by the company from the registrar would be discussed and voted upon in this meeting.	Notice should be sent 21 days prior to the meeting.	NA	Both the transferor and the transferee companies are required to comply.

Procedural Aspects of Fast Track Mergers

Procedure	Timeline	Forms required	Who shall be required to comply
Convening a Meeting of Creditors: A notice convening a meeting of the creditors of the company should be sent to all the creditors. This notice should contain, the details of the merger, copy of the scheme and a copy of the declaration of solvency. The scheme is to be approved by a majority that is nine-tenths in value of the creditors or class of creditors of the respective companies.	Notice should be sent to the creditors 21 days before the meeting.	NA	Both the transferor and the transferee companies have to comply.

Procedural Aspects of Fast Track Mergers

Procedure	Timeline	Forms required	Who shall be required to comply
Filing of the Scheme: A copy of the scheme along with the results of all the meetings shall be filed with the regional director. A copy of the scheme along with Form CAA 11 is also required to be formed with the ROC and the Official Liquidator. The former shall be filed in Form GNL1 and the latter shall be hand-delivered or sent through speed post or registered post.	Within 7 days of the meeting of creditors.	Form CAA 11 Form GNL 1	Only transferee company is required to comply.

Procedural Aspects of Fast Track Mergers

Procedure	Time -line	Forms required	Who shall be required to comply
Approval of the Scheme by Regional Director: If the ROC or the Official Liquidator approves the scheme then the regional director shall register the same and issue a confirmation. If the ROC or Official Liquidator have objections then they may communicate the same to the Regional Director. The Regional Director, if is of the opinion that the scheme is not in public interest then it may file an application in Form CAA 12 before the Tribunal, to consider the scheme under section 232 (regular merger process). If the Tribunal is of the opinion that the scheme should be considered under section 232 it should direct accordingly otherwise the scheme shall be approved.	NA	NA	NA

Procedural Aspects of Fast Track Mergers

Procedure	Timeline	Forms required	Who shall be required to comply
Filing the confirmation order with the ROC: A copy of the confirmation of the scheme approved by the ROC or the Official Liquidator should be sent to the Registrar where the transferee's registered office is situated. The registrar shall register the scheme and issue a confirmation which shall then be filed with ROC of the place where the transferor's registered office is situated.	Within 30 days of the receipt of the confirmation of the scheme.	Form INC-28	Both the transferor and the transferee companies are required to comply.

Cross-border Merger and Acquisitions

International mergers and acquisitions are also termed as global M&A or cross-border M&A.

These M&A refer to those M&A that are taking place beyond the boundaries of a particular country.

Home Country: State of origin of the company(s) that make an acquisition (the acquiring company) in other countries.

Host Country: Country(s) where the target company is situated.

Cross-border Merger and Acquisitions

Cross border Mergers and Acquisitions are deals between foreign companies and domestic firms in the target country.

Or

M&A of companies that have headquarters in two different countries.

Or

M&A of companies with headquarters in same country but branches across the world.

Asia-Pacific Economic Cooperation (APEC)

Cross-border M&As are defined here as any transactions in assets of two firms belonging to two different economies. Therefore, cross-border M&As can take place between two firms located in different economies, or within one economy between two firms belonging to two different economies.

Cross-border Merger and Acquisitions

- A cross border merger refers to any merger, amalgamation or arrangement between an Indian company and foreign company in accordance with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified under the Companies Act, 2013.
- Section 234 of the Companies Act, 2013 notified by the Ministry of Corporate Affairs provides the legal framework for cross border mergers in India. This has been brought into effect from 13th April, 2017, hence operationalising the concept of cross border merger.

Cross-border Merger and Acquisitions

The following laws, govern cross border mergers in India:

- Companies Act, 2013
- SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
- Foreign Exchange Management (Cross Border Merger) Regulations, 2018
- Competition Act, 2002
- Insolvency and Bankruptcy Code, 2016
- Income Tax Act, 1961
- The Department of Industrial Policy and Promotion (DIPP)
- Transfer of Property Act, 1882
- Indian Stamp Act, 1899
- Foreign Exchange Management Act, 1999 (FEMA)
- IFRS 3 Business Combinations

Types of Mergers

The concept of inbound and outbound mergers was introduced in the Companies Act, 2013 as part of Section 234 of the Act.

Under the Companies Act, 1956, only inbound mergers were permitted.

The Foreign Exchange Management (Cross Border Merger) Regulations, 2018 (Merger Regulations 2018) are effective from March 20, 2018.

Mergers which follow the Merger Regulations are deemed to be automatically approved by the RBI and do not require a separate approval.

Types of Mergers

The company which take over the assets and liabilities of the companies involved in the cross-border merger is called `Resultant Company'.

A Resultant Company may be either Indian or foreign.

Types of Mergers – Inbound Merger

An Inbound merger is one where a foreign company merges with an Indian company resulting in an Indian company being formed.

Types of Mergers – Inbound Merger

Following are the key regulations which need to be followed during an inbound merger:

- **Transfer of Securities -** The resultant company of the cross-border merger can transfer any security including a foreign security to a person resident outside India in accordance with the provisions of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

  However, where the foreign company is a joint venture/ wholly owned subsidiary of an Indian company, such foreign company is required to comply with the provisions of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004) (**Overseas Direct Investment ODI Regulations**).

Types of Mergers – Inbound Merger

Following are the key regulations which need to be followed during an inbound merger:

- **Branch/Office outside India -** An office/branch outside India of the foreign company shall be deemed to be the resultant company's office outside India for in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015.

Types of Mergers – Inbound Merger

Following are the key regulations which need to be followed during an inbound merger:

- **Borrowings -** The borrowings of the transferor company would become the borrowings of the resulting company. The Merger Regulations has provided a period of 2 years to comply with the requirements under the External Commercial Borrowings (ECB) regime. The end use restrictions are not applicable here. Cross Border Mergers require hedging of External Commercial Borrowings (ECB) as well. An External Commercial Borrowings (ECB) is an arrangement between Indian Buyer and Foreign Bank whereby Foreign Bank is funding to Indian Corporate via Foreign Currency Loan having specific amount, tenor. FEMA does permit hedging of loan taken from outside Bank in Indian Books.

Types of Mergers – Inbound Merger

Following are the key regulations which need to be followed during an inbound merger:

- **Transfer of Assets -** Assets acquired by the resulting company can be transferred in accordance with the Companies Act, 2013 or any regulations framed thereunder for this purpose. If any asset is not permitted to be acquired, the same shall be sold within two years from the date when the National Company Law Tribunal (NCLT) had given sanction. The proceeds of such sale shall be repatriated to India.

Types of Mergers – Inbound Merger

Following are the key regulations which need to be followed during an inbound merger:

- **Opening of overseas bank accounts for resultant company -** The resultant company is allowed to open a bank account in foreign currency in the overseas jurisdiction for a maximum period of 2 years in order to carry out transactions pertinent to the cross-border merger.

Types of Mergers – Outbound Merger

An outbound merger is one where an Indian company merges with a foreign company resulting in a foreign company being formed.

- Outbound investment is permitted only with companies incorporated in the countries mentioned in the Annexure-B of the Companies Amalgamation Rules.

Annexure-B of the Companies Amalgamation Rules

Jurisdictions specified in clause (a) of sub-rule (2) of rule 25A [Annexure-B]

i. whose securities market regulator is a signatory to International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with SEBI, or
ii. whose central bank is a member of Bank for International Settlements (BIS), and
iii. a jurisdiction, which is not identified in the public statement of Financial Action Task Force (FATF) as:
   a) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
   b) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

Types of Mergers – Outbound Merger

The following are the major rules governing an outbound merger:

- **Issue of Securities -** The securities issued by a foreign company to the Indian entity, may be issued to both, persons resident in and outside India. For the securities being issued to persons resident in India, the acquisition should be compliant with the ODI Regulations. Securities in the resultant company may be acquired provided that the fair market value of such securities is within the limits prescribed under the Liberalized Remittance Scheme..

Types of Mergers – Outbound Merger

The following are the major rules governing an outbound merger:

- **Branch Office -** An office of the Indian company in India may be treated as the branch office of the resultant company in India in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016.

Types of Mergers – Outbound Merger

The following are the major rules governing an outbound merger:

- **Other changes**

a) The borrowings of the resulting company shall be repaid in accordance with the sanctioned scheme.

b) Assets which cannot be acquired or held by the resultant company should be sold within a period of two years from the date of the sanction of the scheme.

c) The resulting foreign company can now open a Special Non-Resident Rupee Account in terms of the FEMA (Deposit) Regulations, 2016 for a period of two years to facilitate the outbound merger.

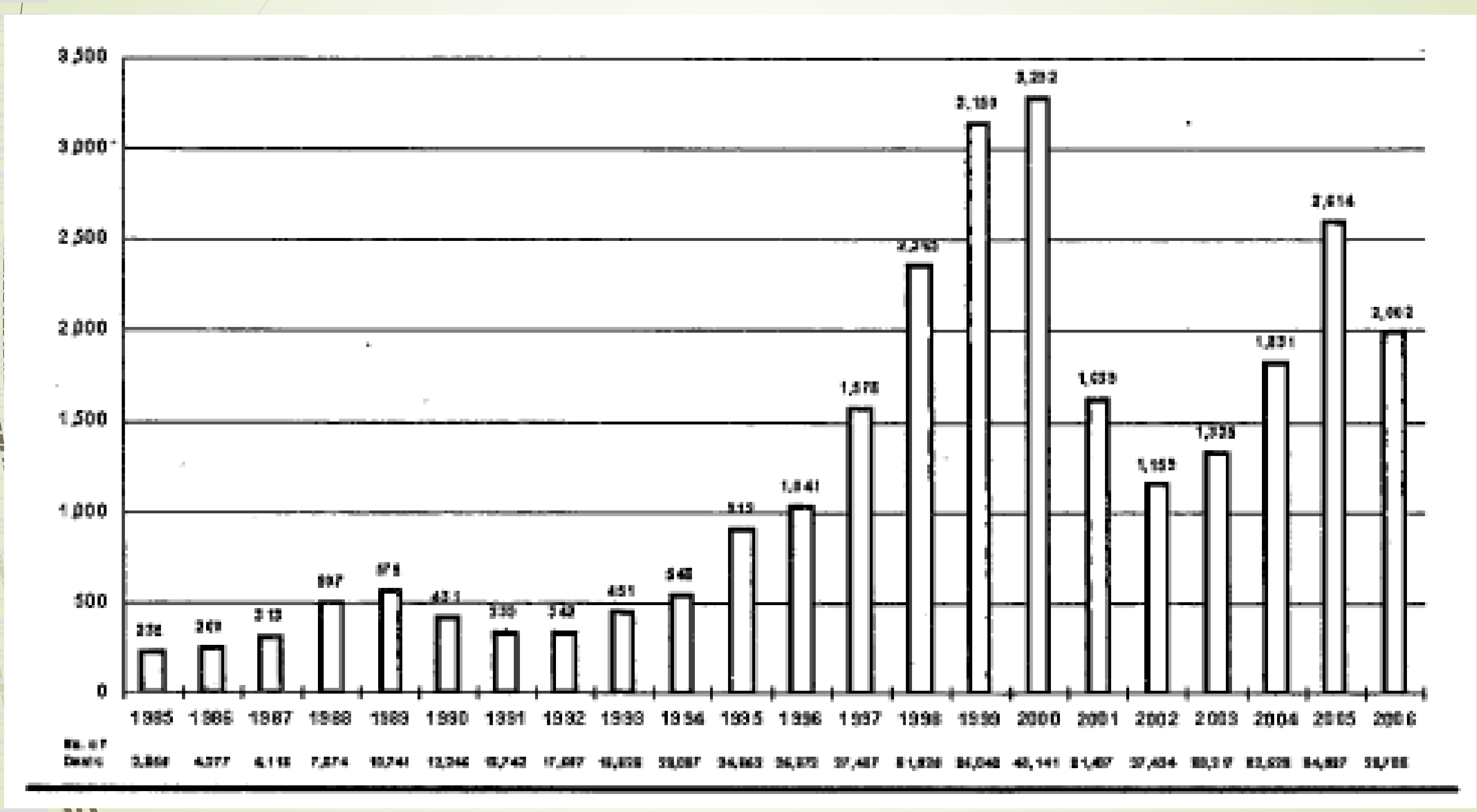
Benefits of Cross Border Mergers

- Diversification: A merger often leads to product diversification, whereas a cross border in addition to offering diversification of products also leads to geographical diversification. This is extremely important for companies which want to make their global presence felt.
- Achieving cost effectiveness: When a company seeks to enter new markets, it takes some resources and money to build capacity. Having an existing infrastructure and resources in the new market helps in achieving cost effectiveness.
- Technological advancement: Mergers enable both the parties to use each other's intellectual properties hence enhancing technical know-how.
- Distribution: Cross border mergers help in creating a large distribution network transcending boundary.

Risks of Cross Border Mergers

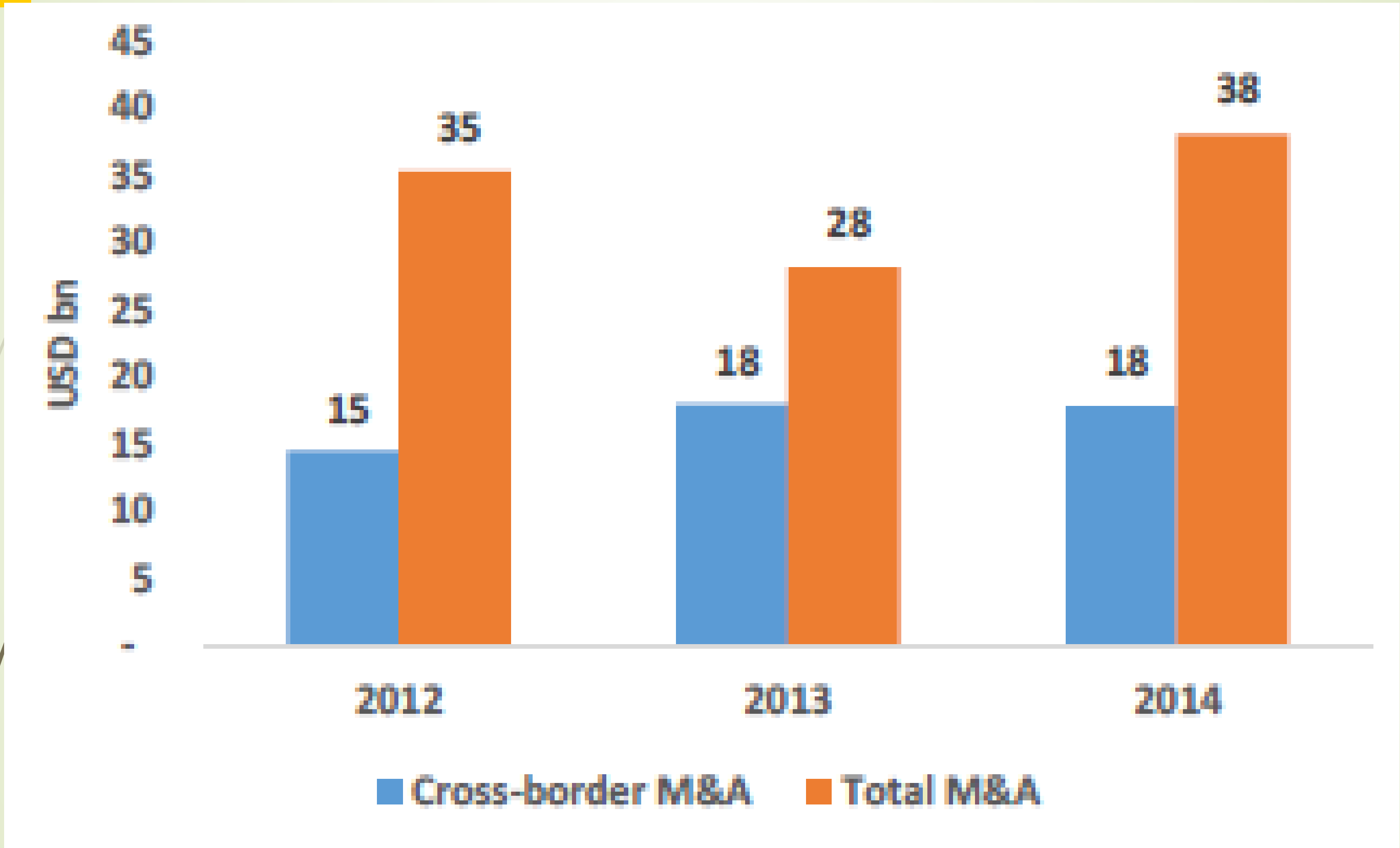
- Despite Double Tax Avoidance Agreements, the tax implications in the host countries may prove to be complex and tedious. This may increase costs as a local professional is required to be hired.
- Regulatory landscape: The laws and regulations in the host country would be different and may be difficult to comply. An unusable regulatory landscape may pose risks to a cross border merger.
- Political scenario: It is essential to assess the political situation of the country before one enters into a merger with an entity belonging to that country. Unstable politics may lead to difficulties in carrying out business.

Worldwide M&A Announced — 1988 to 2006



Source: Grant Thornton (September 2006)

India Cross Border M&A trend: 2012-2014



Source: Grant Thornton Annual Deal Tracker 2014, EY Confidence Spurs M&A: Transactions 2015

Cross-border Merger and Acquisitions

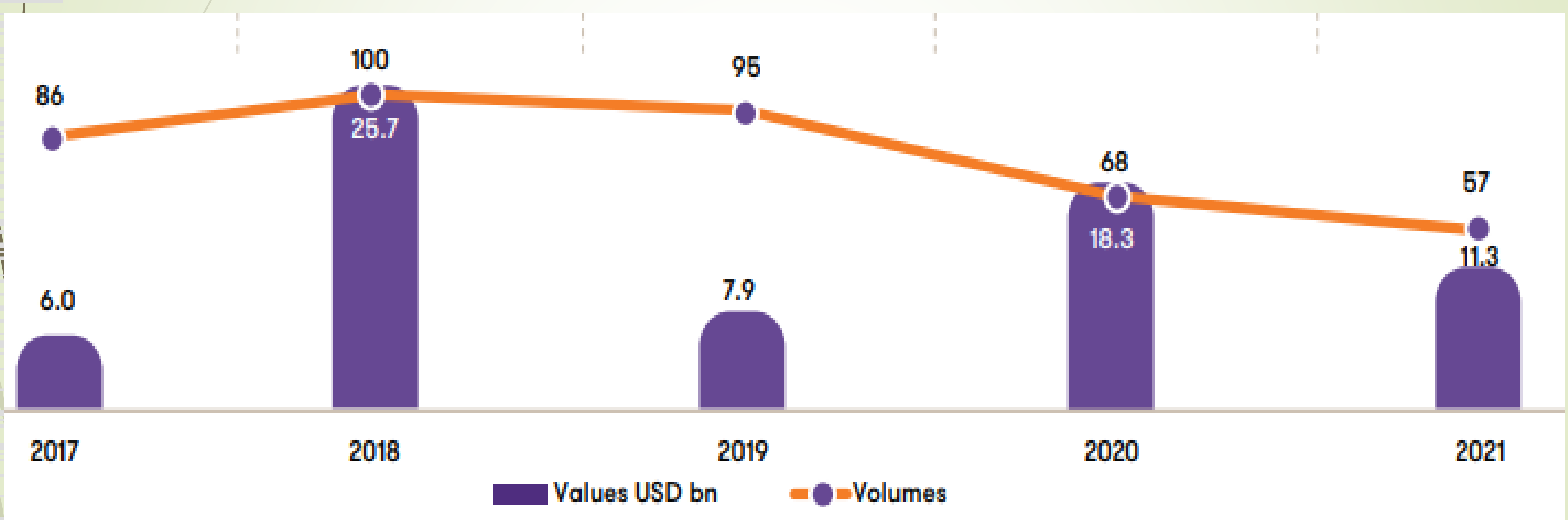
Cross border deal accounted for almost 50% of M&A value in 2014.

M&A Deal

M&A deal summary	Volume			Value (USD mn)		
Year	2019	2020	2021	2019	2020	2021
Domestic	266	215	379	17,733	16,306	23,594
Inbound	95	68	57	7,905	18,291	11,324
Outbound	82	77	63	1,995	2,948	8,011
Grand total	**443**	**360**	**499**	**27,633**	**37,545**	**42,929**

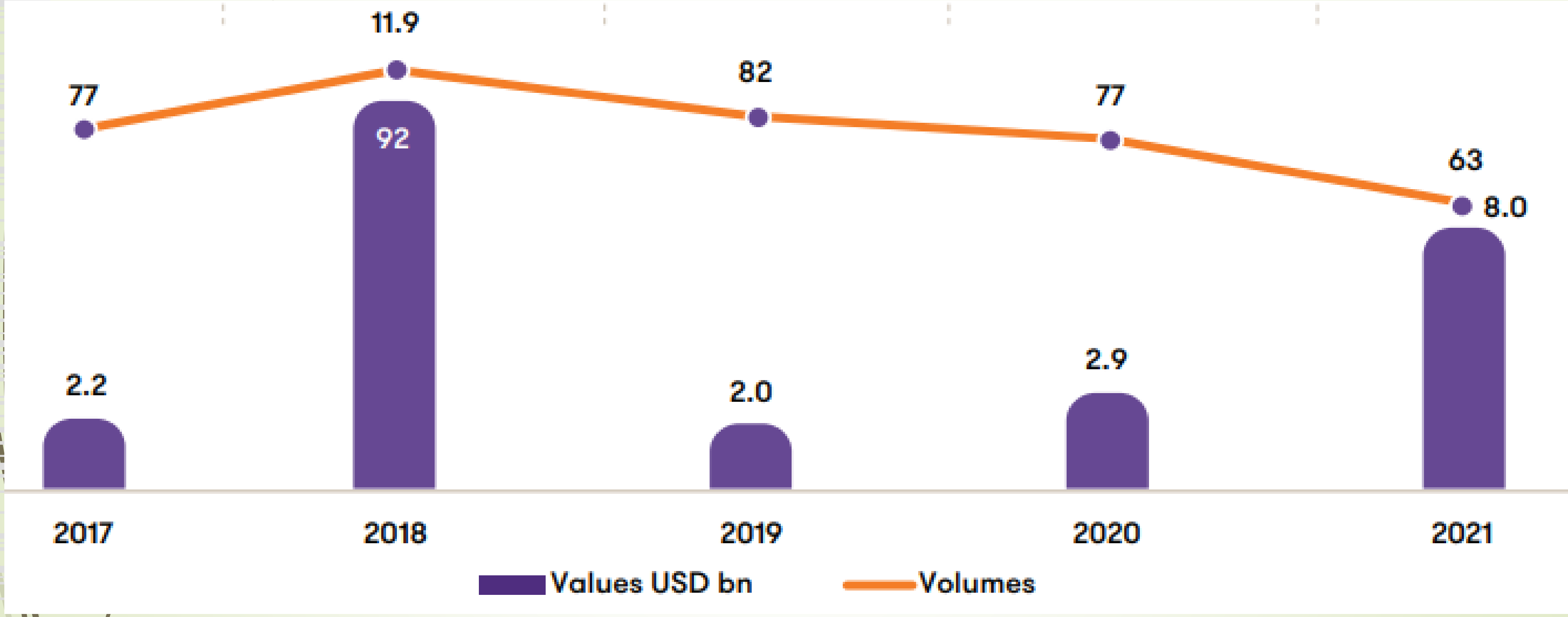
Source: Grant Thornton

Inbound M&A Deal Trend



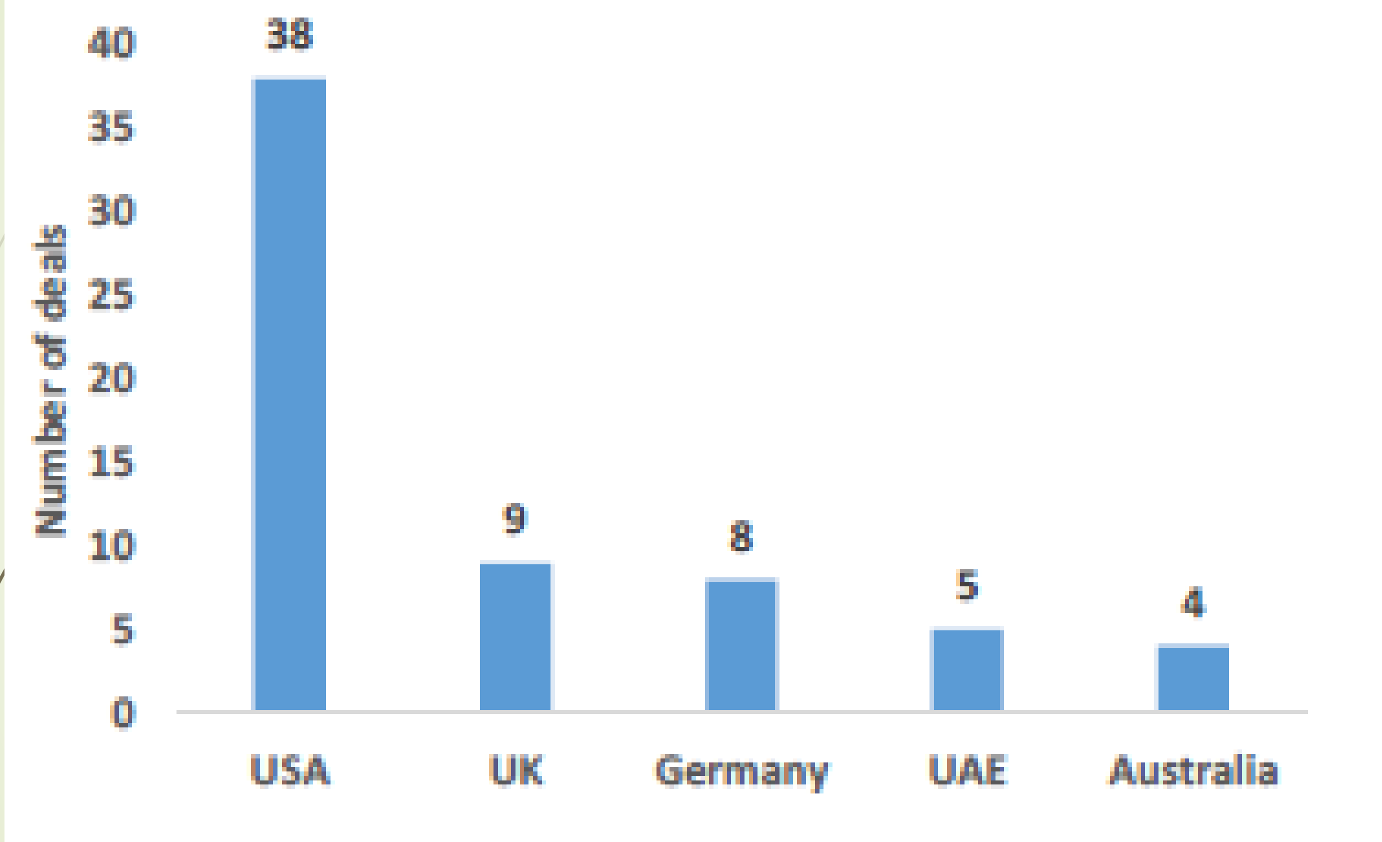
Source: Grant Thornton

Outbound M&A Deal Trend



Source: Grant Thornton

Top 5 targeted nations by Indian companies: 2014



Source: Grant Thornton Annual Deal Tracker 2014, EY Confidence Spurs M&A: Transactions 2015

Continent wise Inbound Merger

North America

2019	2020	2021
32	16	27
1,571	12,716	451

Europe

2019	2020	2021
22	26	14
3,405	3,673	8,060

Asia

2019	2020	2021
38	24	15
2,538	1,895	2,763

Africa

2019	2020	2021
1	-	-
106	-	-

Australia/ Oceania

2019	2020	2021
2	2	1
285	6	50

Year
Volume
Value USD mn

Continent wise Outbound Merger

North America

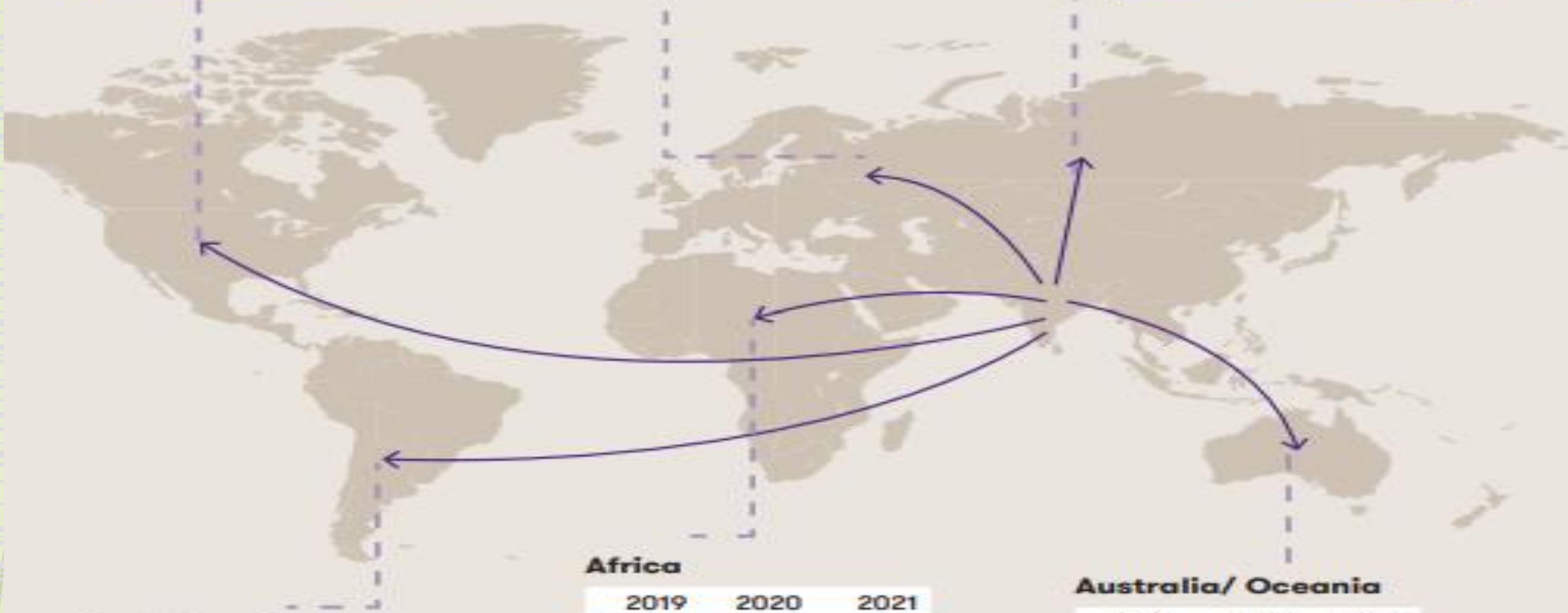
Year	2019	2020	2021
Volume	31	32	28
Value USD mn	688	2,375	2,009

Europe

Year	2019	2020	2021
Volume	29	24	22
Value USD mn	1,111	259	2,364

Asia

Year	2019	2020	2021
Volume	16	12	8
Value USD mn	176	101	3,601



Africa

Year	2019	2020	2021
Volume	3	2	
Value USD mn	10	14	

Australia/ Oceania

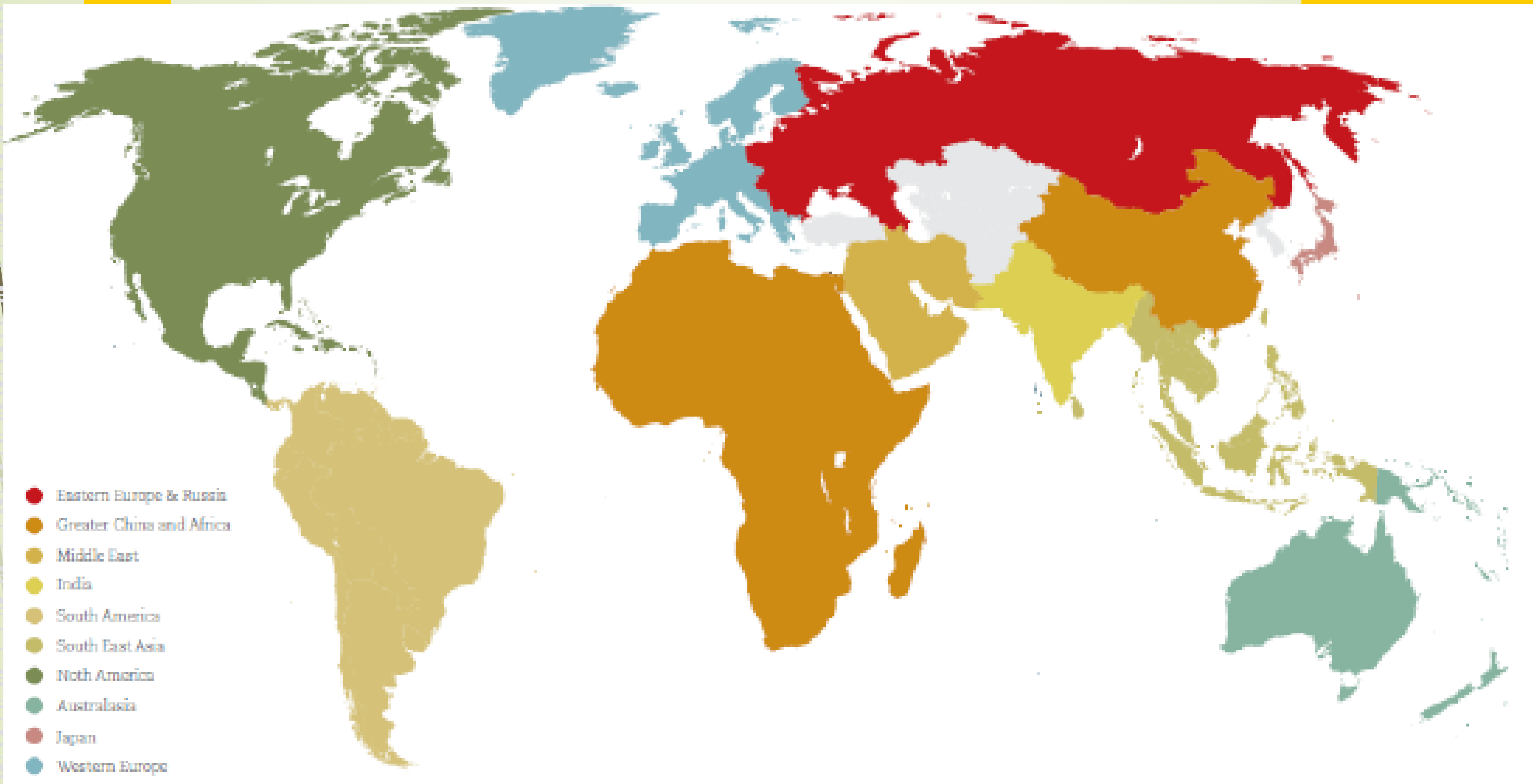
Year	2019	2020	2021
Volume	3	6	4
Value USD mn	10	177	29

South America

Year	2019	2020	2021
Volume		1	1
Value USD mn		22	9

Year
Volume
Value USD mn

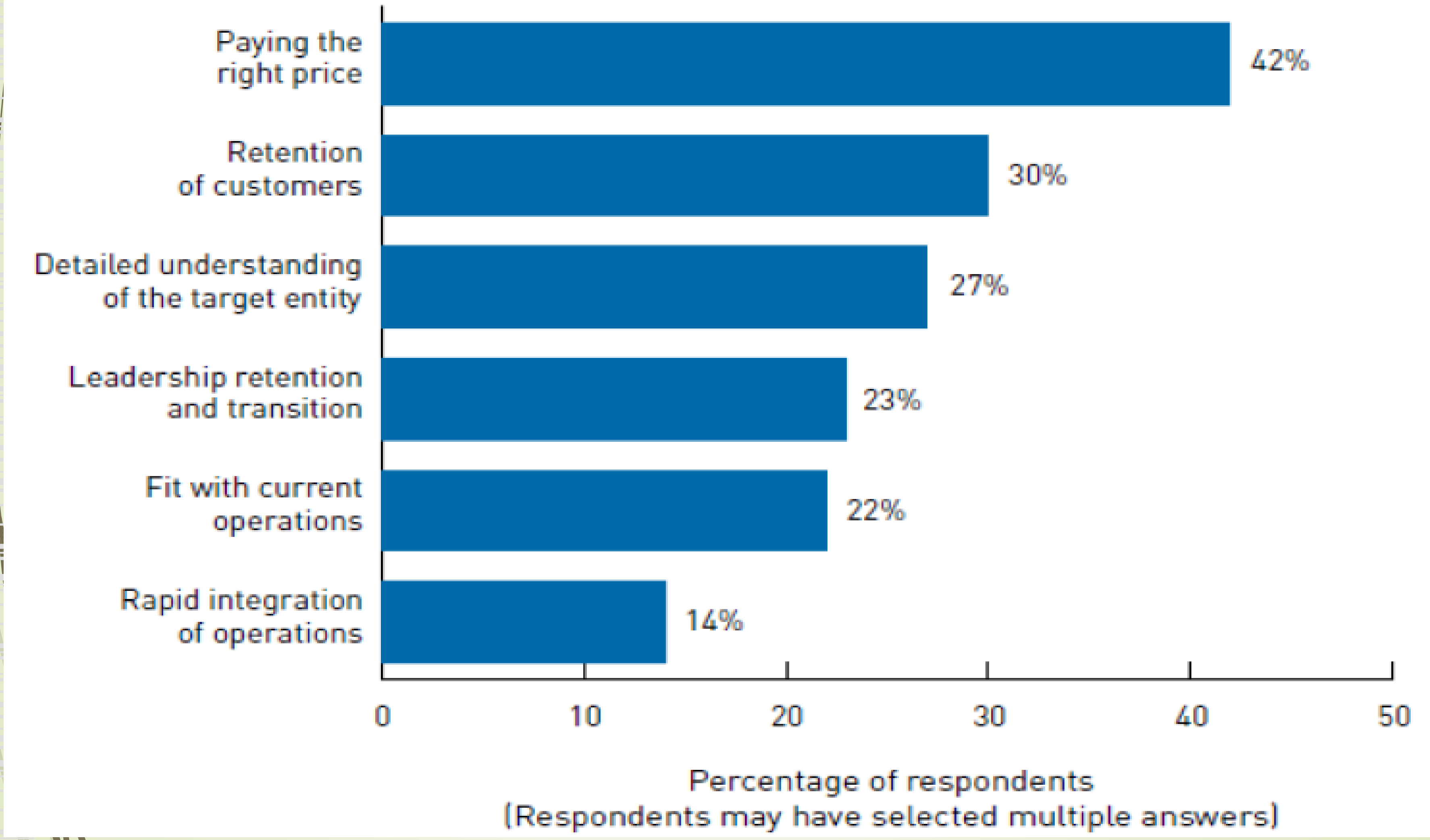
Challenging zones for cross border M&A



Map indicates level of challenges perceived by respondents during their most recent cross-border acquisitions.

Source: Mergermarket Report –Asia on the Buyside: The Key to Success, Aug 2010

What constitutes a successful Cross Border deal



Source: Mergermarket Report –Asia on the Buyside: The Key to Success, Aug 2010

Issues in Cross border M&A

- Legal problems
- Accounting issues
- Weak understanding of fundamentals of acquired business
- Technological differences
- Strategic issues
- Fundamental differences across countries
- Tendency of overpay
- Failure to integrate
- HR issues

Cross-border Merger and Acquisitions
Case Study: Tata - Corus Deal

- Acquisition of Corus Group Plc by Tata Steel Limited (TSL), was the biggest overseas acquisition by an Indian company.
- TSL emerged as the fifth largest steel producer in the world after the acquisition. The acquisition gave Tata Steel access to Corus' strong distribution network in Europe. Resultant company was Tata Steel Europe Ltd.
- Tata Steel had first offered to pay 455 pence per share of Corus, to close the deal at US$ 7.6 billion on October 17, 2006.
- Counter offer: CSN (Companhia Siderúrgica Nacional is the second major steel-maker company in Brazil) then counter offered 475 pence per share of Corus on November 17, 2006. Within hours of Tata Steel increased its original bid for Corus to 500 pence per share, Brazil's CSN made its formal counter bid for Corus at 515 pence per share in cash, 3% more than Tata Steel's Offer.

Cross-border Merger and Acquisitions Case Study: Tata - Corus Deal Contd.

- Finally, an auction was initiated on January 31, 2007, and after nine rounds of bidding, TSL could finally clinch the deal with its final bid 608 pence per share, almost 34% higher than the first bid of 455 pence per share of Corus. The deal (between Tata & Corus) was officially announced on April 2nd, 2007 at a price of 608 pence per ordinary share in cash.
- Indian Steel Giant Tata Steel Limited (TSL) finally acquired the Corus Group Plc (Corus), European steel giant for US$ 13.70 billion. The merged entity, Tata-Corus, employed 84,000 people across 45 countries in the world. It had the capacity to produce 27 million tons of steel per annum, making it the fifth largest steel producer in the world as of early 2007.

Cross-border Merger and Acquisitions Case Study: Tata - Corus Deal Contd.

Tata Corus Deal Synergy

1. Tata was one of the lowest cost steel producers in the world and had self sufficiency in raw material. Corus was fighting to keep its productions costs under control and was on the look out for sources of iron ore.
2. Tata had a strong retail and distribution network in India and South East Asia and was a major supplier to the Indian auto industry and hence there would be a powerful combination of high quality developed and low cost high growth markets.
3. Technology transfer and enhanced R&D capabilities between the two companies that specializes in different areas of the value chain.
4. There was a strong culture fit between the two organizations both of which highly emphasized on continuous improvement and ethics, i.e., 'The Corus Way' with the core values and code of ethics, integrity, creating value in steel, customer focus, selective growth and respect for people etc., were strong synergies.

Cross-border Merger and Acquisitions
Case Study: Daiichi - Ranbaxy

Ranbaxy Laboratories Limited, India's largest pharmaceutical company, is an integrated, research based, international pharmaceutical company producing a wide range of quality, affordable generic medicines, trusted by healthcare professionals and patients across geographies. Ranbaxy's continued focus on R&D has resulted in several approvals in developed markets and significant progress in New Drug Discovery Research. The Company's foray into Novel Drug Delivery Systems has led to proprietary 'Platform technologies' resulting in a number of products under development. The Company is serving its customers in over 125 countries and has an expanding international portfolio of affiliates, joint ventures and alliances, ground operations in 49 countries and manufacturing operations in 11 countries.

Cross-border Merger and Acquisitions Case Study: Daiichi - Ranbaxy Contd.

- Daiichi Sankyo Company was established in 2005 through the merger of two leading Japanese pharma companies. This integration created a more robust organization that allows for continuous development of novel drugs that enrich the quality of life for patients around the world. A central focus of Daiichi Sankyo's research and development are thrombotic disorders, diabetes, hypertension etc.
- Ranbaxy and the Singh family, the largest and controlling shareholders of Ranbaxy (the "Sellers"), entered into a binding Share Purchase and Share Subscription Agreement (the "SPSSA") with Daiichi Sankyo, pursuant to which, Daiichi Sankyo to acquire the entire shareholding of the Sellers in Ranbaxy and further seek to acquire the majority of the voting capital of Ranbaxy at a price of Rs. 737 per share with the total transaction value expected to be between US$3.4 bn to US$4.6 bn. On the post closing basis, the transaction would value Ranbaxy at US$8.5 bn.

Cross-border Merger and Acquisitions
Case Study: Daiichi - Ranbaxy Contd.

Highlights of the Acquisition

- To take the Company to a new orbit and a higher growth trajectory
- To catapult the combined entity as the World's 15th biggest drug maker
- To become the largest generic Company in Japan, the world's second largest pharma market
- Complementary business model
- Global reach covering mature and emerging markets
- Strong growth potential
- Cost competitiveness

Cross-border Merger and Acquisitions Case Study: Daiichi - Ranbaxy Contd.

Acquisition stages

Date	Particulars
June 11, 2008	Signing of Agreement by Daiichi with Ranbaxy and its Promoters
June 14, 2008	Public announcement by Daiichi to the shareholders of Ranbaxy to acquire additional 20% equity shares at `737 per share under the Takeover Code.
June 27, 2008	Submission of draft letter of offer by Daiichi to SEBI for its observations.
July 15, 2008	Approval of preferential allotment of equity shares and warrants to Daiichi by the shareholders of Ranbaxy.

Cross-border Merger and Acquisitions Case Study: Daiichi - Ranbaxy Contd.

Acquisition stages Contd.

Date	Particulars
Aug16, 2008	Opening of open offer
Sep 4, 2008	Closing of open offer
Oct 15, 2008	Acquisition of 20% equity stake by Daiichi pursuant to open offer
Oct 20, 2008	Ranbaxy becomes subsidiary of Daiichi upon increase in Daiichi’s stake to 52.5% (including preferential allotment and transfer of 1st tranche shares from Promoters)

Cross-border Merger and Acquisitions Case Study: Daiichi - Ranbaxy Contd.

Acquisition stages Contd.

Date	Particulars
Nov 7, 2008	Daiichi acquires balance 11.42% shares from the Promoters off the stock market and the deal is concluded. Daiichi's equity stake in Ranbaxy reached up to 63.92%

Cross-border Merger and Acquisitions Case Study: Daiichi - Ranbaxy Contd.

Approvals Obtained

Ministry of Finance mandates prior approval of FIPB, if the foreign investor is already having an existing joint venture or technology transfer / trademark agreement in the ‘same’ field, as on January 12, 2005.

Since Daiichi was already holding equity stake in Uni-Sankyo Limited, a company engaged in ‘same’ business as Ranbaxy, prior approval of FIPB was obtained.

This foreign investment required prior approval of Cabinet Committee on Economic Affairs (CCEA), the clearance was received from CCEA by Daiichi in the month of October, 2008.

Cross-border Merger and Acquisitions Case Study: Daiichi - Ranbaxy Contd.

Synergies

The Synergies are

1. Their respective presence in the developed and emerging markets. Ranbaxy's strengths in the 21 emerging generic drug markets can allow Daiichi Sankyo to tap the potential of the generics business,
2. Both Daiichi Sankyo and Ranbaxy possess significant competitive advantages, and have profound strength in striking lucrative alliances with other pharmaceutical companies.
3. R&D perhaps playing the most important role in the success of these two players.
4. The patent perspective of the merger clearly indicates the intentions of both companies in filling the respective void spaces of the other and emerge as a global leader in the pharmaceutical industry.

Cross-border Merger and Acquisitions
Case Study: Daiichi - Ranbaxy Contd.

According to Ranbaxy newsletter it will provide a new and stronger platform to harness Ranbaxy's capabilities in drug discovery/development, manufacturing and global reach, helping it establish a significant milestone in the Company's mission of becoming a 'Research based International Pharmaceutical Company'.

Cross-border Merger and Acquisitions Case Study: Daiichi - Ranbaxy Contd.

This transaction will create significant long-term value for all stakeholders through:

- A complementary business combination that provides sustainable growth by diversification, that spans the full spectrum of the pharmaceutical business;
- An expanded global reach that enables leading market positions in both mature and emerging markets with proprietary and nonproprietary products;
- Strong growth potential by effectively managing opportunities across the full pharmaceutical life cycle, cost competitiveness by optimizing usage of R&D and manufacturing facilities of both companies, especially in India.
- Ranbaxy will be able to leverage its extensive front-end presence through a larger product flow and ascend the pharma value chain by enhancing drug discovery capabilities. It will also widen the scale and scope of the biosimilars opportunity.

Cross-border Merger and Acquisitions Case Study: Daiichi - Ranbaxy Contd.

- Ranbaxy has also established the ‘Synergy Office’ in July 2009 which has the task of promoting synergies and thereby helping maximize the opportunities for Ranbaxy and Daiichi Sankyo to expand their global operations.
- Pharmaceutical companies are working together on a number of areas including drug discovery and development, marketing and manufacturing. Surely a healthy trend, it will go a long way in addressing the growing imperative of the global pharmaceutical industry to lower the cost of medicines while addressing availability challenges around the world.

Practical Aspects

Some practicalities which need to be kept in mind while entering cross border mergers are:

- Conduct due diligence on the other firm.
- Conduct a risk-benefit analysis before entering into the merger.
- Valuation of both the firms is essential so as to predict the competition law treatment of the merger.
- Make sure that when you enter into an outbound merger it is with a company from one of the prescribed jurisdictions.
- Have an in-depth analysis of the host country's regulatory and political landscape ready before you take the decision of the merger.