



## MERGERS & ACQUISITIONS

With the liberalization of the Indian economy and the removal of restrictive arrangements such as monopolies and restrictive trade practices, corporate India is advancing more and more towards a merger culture. In India, the real reasons for a merger are not purely economic. In a recent survey of 60 companies conducted by Capital Market, 56 per cent of the executives interviewed stated that they would prefer vertical integration, 35 per cent horizontal expansion, only 9 per cent were in favour of mergers for tax purposes and none were willing to go for unrelated diversification. There is however, a discrepancy between what the executives say and the underlying reality. The reason has to do with core competence rather than economic factors.

Other related terms used with reference to mergers (and quite often used interchangeably) are amalgamations, consolidations, acquisitions and take-overs. However all of these are different from one another to a certain extent. The following are the proper definitions of the above-mentioned terms:

- **Merger:** A merger is defined as the combination of two or more companies into a single company where one survives and the other loses its corporate identity. The survivor acquires the assets as well as the liabilities of the merged company or companies.
- **Amalgamation:** Halsbury's Laws of England describes amalgamation as a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company becoming substantially the shareholders of the company which is to carry on the blended undertaking. At times, amalgamation is described as encompassing both mergers as well as acquisitions, while at others it is used interchangeably with mergers.
- **Consolidation:** Technically, consolidation is the fusion of two existing companies into a new company in which both the existing companies are extinguished. The difference between consolidation and merger is that in a merger one of the two or more merging companies retains its identity, while in a consolidation all the consolidating companies are extinguished and a completely new company is born.
- **Acquisition:** An acquisition is the purchase by one company of a controlling interest in the share capital or another existing company. This means that even after the take-over, although there is a change in the management, both the firms retain their separate legal identity.

- **Take-over:** A take-over is an acquisition and both these terms are used interchangeably.

Legislation having a bearing on acquisitions and mergers include the Companies Act 1956, the Sick Industrial Companies (Special Provisions) Act 1985 and the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997.

Sections 391-396 of the Companies Act 1956 deal with the merger and acquisition of companies. Section 394 of the Companies Act 1956 is the main section dealing with the reconstruction and amalgamation of companies.

### **Court's Approval**

This section requires companies to make application to the court under section 391, which empowers the court to sanction the compromise or arrangement proposed by the companies. Section 392 further empowers the High Court to enforce a compromise or arrangement ordered by the court under section 391 of the Companies Act. Section 393 provides supporting provisions for compliance with the provisions or directions given by the court. Sections 395, 396 and 396A are supplementary provisions relating to amalgamation. Section 395 deals with the power to amalgamate without going through the procedure of the court.