

LESSON 1

TYPES OF CORPORATE RESTRUCTURING

REGULATORY FRAMEWORK

- Companies Act, 2013
- The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
- The National Company Law Tribunal Rules, 2016
- Foreign Exchange Management Act, 1999
- Competition Act, 2002

INTRODUCTION

There are two primary modes of business growth: **organic** and **inorganic**.

- **Organic growth** occurs through **internal strategies** such as capital or business restructuring. It **involves increasing customer base, sales, and revenue without altering the corporate entity**. Internal expansion typically unfolds gradually over time within the normal course of business.
- **Inorganic growth** **involves external strategies like mergers, acquisitions, takeovers**, and other corporate restructuring methods. These strategies can rapidly expand a company's output, customer base, market reach, and resources, often involving a change in the corporate entity. **M&A offers strategic advantages for both buyers and sellers by allowing entry into new markets, risk-sharing, and consolidation.**

In today's dynamic business environment, merely keeping pace with changes in technology, competition, and market demands is insufficient. Companies must innovate and adopt fast-track strategies like **inorganic growth** to outperform competitors and maximize shareholder value.

Corporate restructuring **refers to the redesign or reorganization of a company's operations or financial structure to enhance efficiency, competitiveness, and profitability**. It helps achieve **economies of scale, reduce costs**, and **improve overall organizational value**. It is often driven by the need to adapt to economic challenges, strategic shifts, or the pursuit of greater synergies and cash flows. Ultimately, corporate restructuring enables companies to strengthen their market position and meet both short-term and long-term objectives.

Corporate restructuring is the process of significantly changing a company's business model, management team or financial structure to address challenges and increase shareholder value. Corporate restructuring is an inorganic growth strategy.

"Amalgamation" refers to the merger of one or more companies with another, or the union of two or more companies into a single entity.

In the case of *Religare Finvest Limited vs. State of NCT of Delhi & Anr.*, Criminal Appeals Nos. 2242–2243 of 2023 (judgment dated September 11, 2023), the Hon'ble Supreme Court referred to *General Radio & Appliances Co. Ltd. vs. M.A. Khader* (1986 (2) SCR 607), where it was held that post-amalgamation, the **transferor company ceases to exist**, and the **amalgamated company attains a new legal identity**. The two companies cannot be seen as partners or jointly liable with respect to their assets and liabilities.

The Court further referenced **Stroud's Judicial Dictionary (9th ed.)**, which defines amalgamation as the "welding or blending of two or more concerns into one," and clarifies that retention of separate entities negates amalgamation. **Black's Law Dictionary (11th ed.)** describes it as the act of "combining or uniting; consolidation."

Although the **Companies Act, 2013** does not define amalgamation, it regulates the procedure and consequences, including **extinguishment of the transferor company's identity** (e.g., LVB in the given case). In *Walker's Settlement (1935) 1 Ch. D. 567*, amalgamation is described as a condition where two companies unite into a third entity or one is absorbed into the other.

In *Principal Commissioner of Income Tax (Central)-2 vs. Mahagun Realtors (P) Ltd.*, judgment dated April 05, 2022, the Supreme Court clarified that **amalgamation is distinct from winding up**. While the outer corporate shell is dissolved, the **business continues** within the transferee company. Thus, courts focus on whether a **successor or representative entity** exists to carry forward obligations or liabilities, even after amalgamation.

HISTORICAL BACKGROUND

The concept of **mergers and acquisitions (M&A)** in India remained relatively unpopular until **1988**, when only a small number of companies engaged in mostly **friendly acquisitions** through negotiated deals. The primary reason for this limited activity was the **Monopolies and Restrictive Trade Practices (MRTP) Act, 1969**, which imposed a **burdensome approval process** for mergers and acquisitions.

A significant early event in Indian M&A history occurred in **1988**, with the **unsuccessful hostile takeover attempt by Swaraj Paul** targeting **DCM Ltd. and Escorts Ltd.** This event marked a turning point, prompting increased interest from **non-resident Indians (NRIs)** attempting takeovers via stock portfolios.

Prior to **1991**, India's economy was **closed**, heavily regulated, and required multiple licenses and registrations to set up industries. The **rigid regulatory framework** provided limited scope for business restructuring.

However, the **Industrial Policy of 1991** ushered in **economic liberalization**, encouraging **foreign investment, technology transfer**, and **industrial de-licensing**. As a result, Indian companies began actively restructuring to take advantage of **new global opportunities** and confront emerging challenges.

In the current age of **intense global competition and rapid technological advancement**, Indian industrialists have recognized **restructuring** as a strategic means to achieve **global scale and competitiveness**.

NEED AND SCOPE

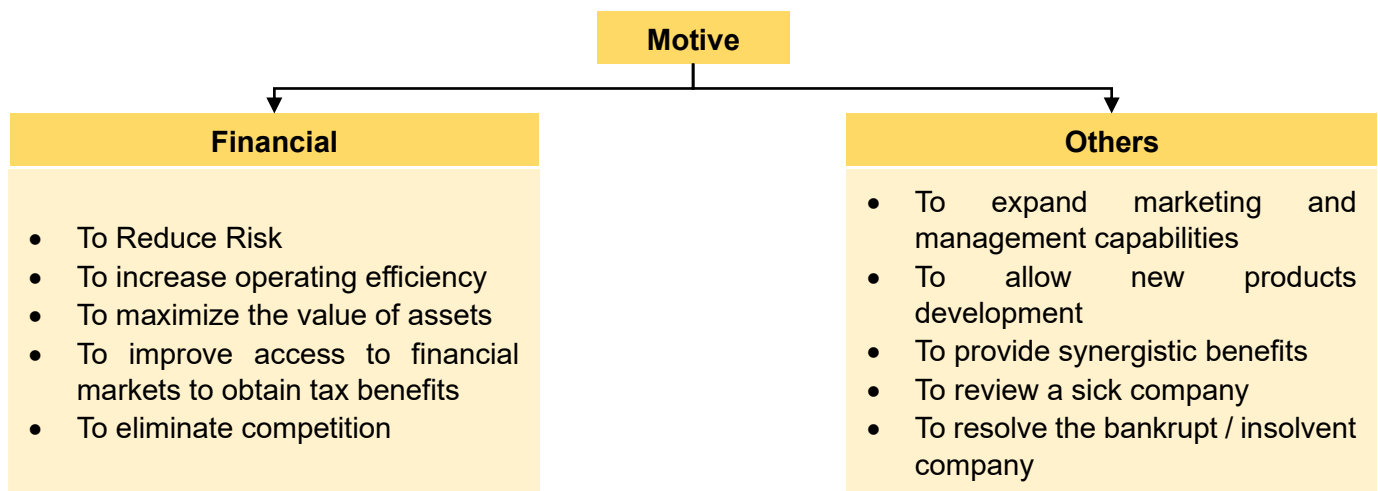
Corporate Restructuring is concerned with arranging the business activities of the Corporate as a whole so as to achieve certain pre-determined objectives at corporate level. **OBJECTIVES** may include the following: *(Direct Ques can be asked)*

- To **enhance shareholders value**
- **Deploying surplus cash** from one business to finance profitable growth in another
- **Exploiting inter-dependence** among present or prospective businesses
- **Risk reduction**
- **Development of core-competencies**
- **To obtain tax advantages** by merging a loss-making company with a profit-making company
- Revolution in information technology has made it necessary for companies **to adopt new changes for improving corporate performances.**
- **To become globally competitive**
- **To increase the market share**
- **Convertibility of rupee has attracted medium-sized companies to operate in the global markets.**
- Competitive business necessitated to have sharp focus on core business activities, **to gain synergy benefits, to minimize the operating costs, to maximize efficiency in operation and to tap the managerial skill to the best advantage of the firm.**
- **By diversification of business activities**, the minimization of business risk is possible and it enables the firm **to achieve at least the minimum targeted rate of return**
- With **the integration of sick unit into the successful unit, the adjustment of unabsorbed depreciation and write off of accumulated loss is possible and thereby the successful unit can have strategic tax planning.**

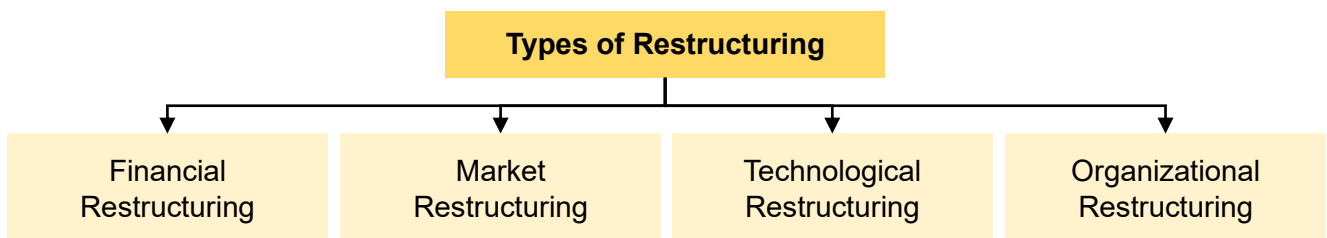
Corporate Restructuring : An Example

ABC Limited has surplus funds but it is not able to consider any viable projects. Whereas XYZ Limited has identified viable projects but has no money to fund the cost of the project. The merger of ABC Limited and XYZ Limited is a mutually beneficial option and would result in positive synergies for both the Companies.

Motives behind Corporate Restructuring (Direct Ques can be asked)



TYPES OF RESTRUCTURING (Case based ques for identification of type of restructuring can be asked)



I. Financial Restructuring (Case based/ Direct ques can be asked)

Financial restructuring **deals with restructuring of capital base and raising finance for new projects**. Financial restructuring **helps a firm to revive from the situation of financial distress without going into liquidation**.

Financial restructuring is **done for various business reasons**:

- **Poor financial performance**
- **External competition**
- **Erosion or loss of market share**
- **Emerging market opportunities**

It **involves Equity Restructuring** like **buy-back, Alteration/Reduction of capital** and **Debt Restructuring** like **restructuring of the secured long-term borrowing, long-term unsecured borrowings, Short term borrowing** which are explained in detail in further later.

II. Market and Technological Restructuring *(Case based/ Direct ques can be asked)*

Market Restructuring involves strategic decisions about the **product market segments** a company chooses to operate in, typically aligned with its **core competencies**.

Technological Restructuring occurs when new technologies alter industry operations. This often leads to **employee layoffs**, **training programs**, and **partnerships with third parties** possessing technical expertise or resources, all aimed at enhancing efficiency.

For instance: **Tata Consultancy Services Ltd.** is restructuring to focus on three core areas: **Cloud, Agile, and Automation**. Its plan encompasses a broad-spectrum including **manufacturing, product, technical, technological, financial, employment, organizational, procurement**, and **management restructuring**.

Similarly, **Disney's global technology group** and its **parks-and-resorts division** are undergoing reorganization by

eliminating certain positions and introducing new ones aligned with long-term technology objectives.

Examples of market and technological restructuring strategies include:

Joint Ventures, Strategic Alliances, and **Franchising**.

III. Organisational Restructuring *(Case based/ Direct ques can be asked)*

Organizational Restructuring **involves establishing internal structures and procedures for improving the capability of the personnel in the organization to respond to changes**. These changes need to have the cooperation of **all levels of employees**. Some companies **shift organizational structure to expand and create new departments to serve growing markets**. Other companies **reorganize corporate structure to downsize or eliminate departments to conserve overheads**.

LEGAL FRAMEWORK OF CORPORATE RESTRUCTURING

Corporate Restructuring in India is governed by the following Acts, Rules, etc.:

- Chapter XV of The Companies Act, 2013 (the Act) The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
- Chapter IV of the Companies Act, 2013 the Companies (Share Capital and Debentures) Rules, 2014 - Buy Back of shares/ purchase of own securities
- The National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016 - Reduction of share capital
- The Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016
- Income Tax Act, 1961
- Accounting Standards
- Foreign Exchange Management Act, 1999

- Competition Act, 2002
- Indian Stamp Act, 1899
- State Stamp Acts
- Insolvency and Bankruptcy Code, 2016 and Rules & Regulations thereon Intellectual Property Rights.

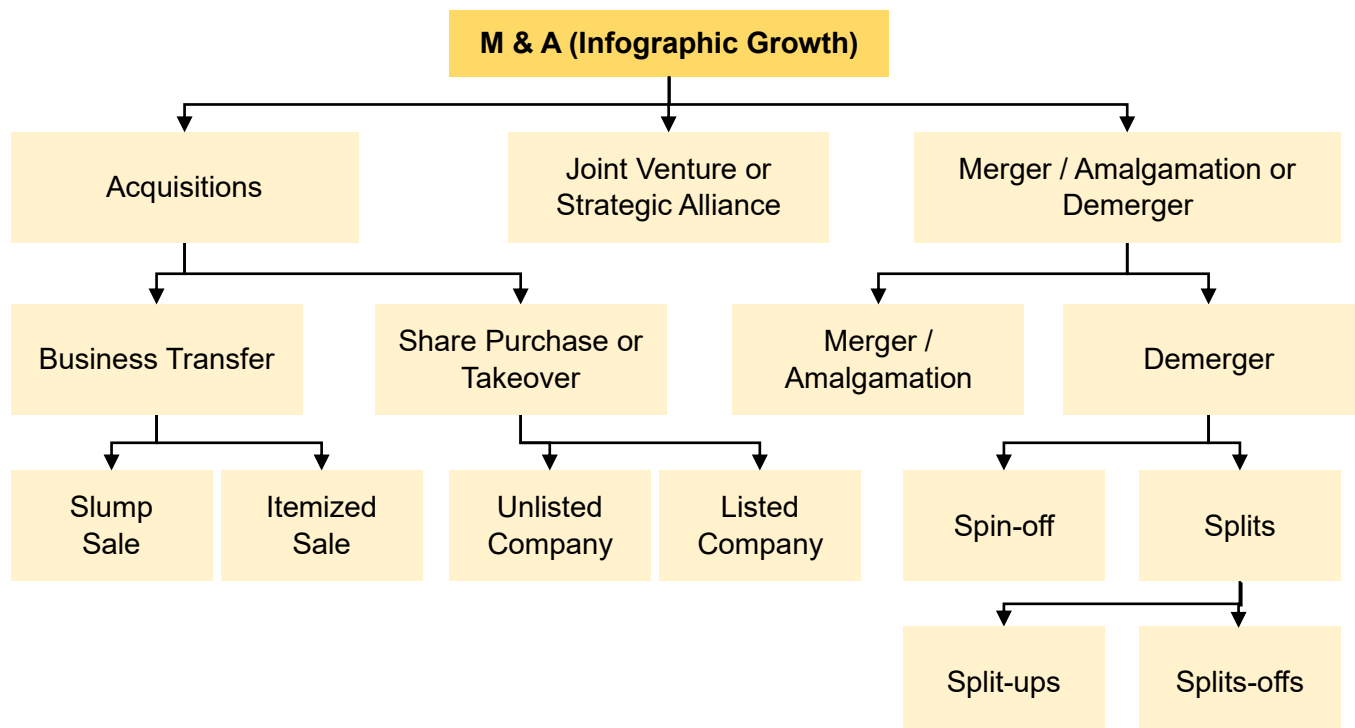
Mergers/Acquisitions and Amalgamation

Mergers and Acquisitions (M&A) involve the transfer or combination of company ownership and are key tools in

strategic management. They help businesses **grow, restructure**, and improve their **competitive position**.

M&A creates greater value by combining two companies, aiming for **wealth maximization** and **market expansion**. It also enhances **brand reach**, improves **product offerings**, and benefits **consumers** through better technology and competitive prices.

A **merger** forms one new entity, while an **acquisition** involves one company absorbing another. Overall, M&A is a form of **corporate restructuring** that drives **growth, profitability**, and **market share**.



Reasons for Mergers & Acquisition

All **mergers and acquisitions (M&A)** aim to create **synergy**, where the combined value of companies exceeds their individual worth. The success of M&A hinges on achieving this synergy through **revenue gains** and **cost reductions**.

By merging, the companies hope to benefit from the following:

1. **Becoming bigger:** Many companies use M&A **to grow in size and leapfrog their rivals**. While it can take years or decades to double the size of a company through organic growth, this can be achieved much more rapidly through mergers or acquisitions.
2. **Pre-empted competition:** This is a very powerful motivation for mergers and acquisitions, and is the primary reason why M&A activity occurs in distinct cycles.
3. **Domination:** Companies also engage in **M&A to dominate their sector**. However, since a combination of two behemoths would result in a potential monopoly, such a transaction would have to face regulatory authorities.
4. **Tax benefits:** Companies also use **M&A for tax purposes**, although this may be an implicit rather than an explicit motive.
5. **Economies of scale:** Mergers also translate into **improved economies of scale which refers to reduced costs per unit that arise from increased total output of a product**.
6. **Acquiring new technology:** **Staying competitive** by **acquiring companies with innovative technologies**.
7. **Improved market reach and industry visibility** **Expansion into new markets** and **improved brand presence**, along with **better access to capital due to increased investor confidence**.

M&A take place:

- by purchasing assets
- by purchasing common share
- by exchange of shares for assets
- by exchanging shares for shares

M&A include a number of different transactions such as:

1. Mergers
2. Acquisitions
3. Amalgamation
4. Consolidations
5. Tender offers
6. Purchase of assets
7. Management buy-out

1. MERGERS

The **terms "merger" and "amalgamation"** are not explicitly defined under the Act, though they are often used interchangeably. However, a **subtle distinction** exists between the two:

- A **MERGER** is the fusion of two or more companies, where **one or more entities lose their identity**, resulting in a **single existing company**.
- An **AMALGAMATION** involves the **blending of two or more undertakings** into a **new legal entity**, with all original companies **losing their identities**.

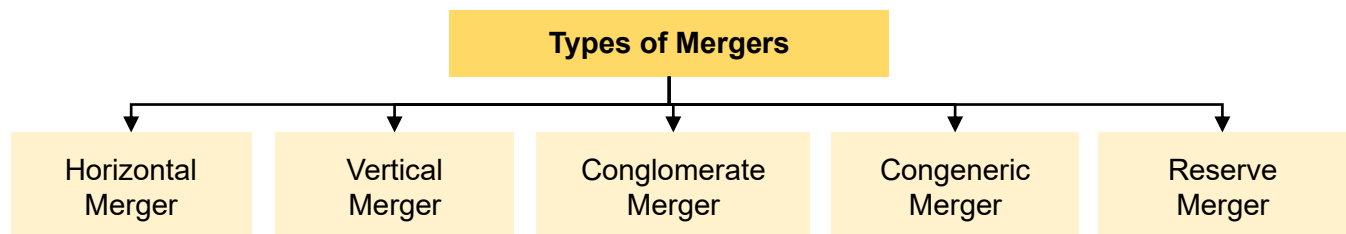
In an amalgamation:

- The **transferor company** is the one merging (*also called the amalgamating company*).
- The **transferee company** is the entity that results from the merger (*also called the amalgamated company*).

A **merger** can occur through **amalgamation, absorption, or the formation of a new company**. It requires approval from the **Board of Directors** and **shareholders**. After completion, the acquired company **ceases to exist**.

Examples include:

- **eBay India's acquisition by Flipkart**
- **Vodafone-Idea merger**
- **Axis Bank's acquisition of Freecharge**
- **SBI's merger with its subsidiary banks**



(a) **Horizontal Merger** (*Case based/ Direct Ques can be asked*)

A **horizontal merger** occurs between companies offering **similar products in the same market** and in direct competition. Its main objectives are to **reduce competition, achieve economies of scale, gain market control**, and potentially move toward **monopoly status**.

Example:

Facebook's acquisition of Instagram for a reported \$1 billion. Both Facebook and Instagram operated in the same industry and were in similar production stages in regard to their photo-sharing services. Facebook, looking to strengthen its position in the social media and social sharing space, saw the acquisition of Instagram as an opportunity to grow its market share, increase its product line, reduce competition and access potential new markets.

Disney bought Lucas firm and both companies were involved in production of film and running the TV shows.

(b) Vertical Merger *(Case based/ Direct Ques can be asked)*

Vertical Merger is **a merger between companies in the same industry, but at different stages of production process**. In another words, it occurs between companies where one buys or sells something from or to the other.

To illustrate, suppose XYZ Ltd. produces shoes and ABC Ltd. produces leather. ABC has been XYZ's leather supplier for many years, and they realize that by entering into a merger together, they could cut costs and increase profits. They merge vertically because the leather produced by ABC is used in XYZ's shoes.

Microsoft bought Nokia to support its software and provide hardware necessary for the smartphone.

(c) Conglomerate Merger *(Case based/ Direct Ques can be asked)*

A **conglomerate merger** is a merger between two companies with **no common business areas**, combining firms from **unrelated industries**. The **target company's business** is entirely different from that of the **acquirer**. The primary objective is to **achieve larger size**, for example, a **watch manufacturer acquiring a cement company**, or a **steel manufacturer acquiring a software firm**.

Example:

Berkshire Hathway acquired Lubrizol: Berkshire Hathaway, listed on the New York Stock Exchange, operates across a wide range of industries including insurance, energy, transportation, finance, manufacturing, retailing, and services.

The Lubrizol Corporation is a specialty chemical company that develops technologies for the transportation, industrial, and consumer markets. Its products include lubricant additives for engine oils, industrial lubricants, and fuel additives for gasoline and diesel.

Berkshire Hathaway's acquisition of Lubrizol represents a merger between companies from unrelated industries, aligning with a conglomerate merger.

(d) Congeneric Merger *(Case based/ Direct Ques can be asked)*

Congeneric merger is a merger between two or more businesses **which are related to each other in terms of customer groups, functions or technology** e.g., **combination of a computer system manufacturer with a UPS manufacturer**.

PVR/INOX Merger

India's two leading cinema franchises, PVR and INOX, merged in 2022 to create the largest multiplex chain in the country with over 1500 screens. The PVR and INOX merger will result in synergies in the form of advertising revenues, reduced rental costs, and convenience fees for the merged entity, which will be called PVR-INOX.

HDFC LTD/HDFC BANK Merger

India's largest housing finance company, HDFC Ltd and the largest private sector bank, HDFC Bank, merged in 2022 in one of the biggest financial deals in India. The \$40 billion deal will result in a single entity, but the services of HDFC Ltd and HDFC Bank will continue to be provided separately.

An example of a congeneric merger is when banking giant Citicorp merged with financial services company Travelers Group in 1998. In a deal valued at \$70 billion, the two companies joined forces to create Citigroup Inc. While both companies were in the financial services industry, they had different product lines.

(e) Reverse Merger (Case based/ Direct Ques can be asked)

A **reverse merger** is a merger in which a private company becomes a public company by **acquiring it**. It **saves a private company from the complicated process and expensive compliance of becoming a public company**. Instead, it acquires a public company as an investment and converts itself into a public company.

Example of a reverse merger was when **ICICI merged with ICICI Bank in 2002**. The parent company's balance sheet was more than three times the size of its subsidiary at the time.

2. ACQUISITION

Acquisition refers to **one entity acquiring ownership of another entity's stock, equity interests, or assets**. It involves the **purchase of a controlling interest** in the share capital of an existing company.

Despite changes in **management**, both companies **retain their separate legal identity** and remain **independent and distinct**—only **control changes**. A **'forced' or 'unwilling' acquisition** is termed as **takeover**.

Examples:

- **Snapdeal and Freecharge (\$400 million)**
- **Flipkart and Myntra (\$300 to 330 million)**
- **Ola and Taxi ForSure (\$200 million)**

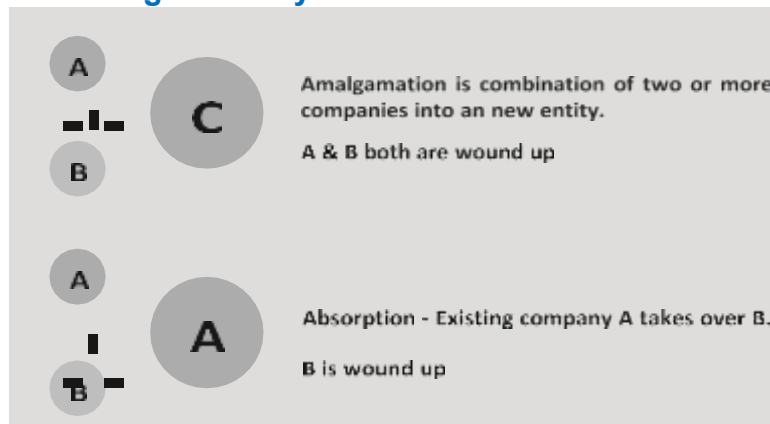
Difference between a Merger and an Acquisition:

Merger	Acquisition
A merger occurs when two separate entities, usually of comparable size, combine forces to create a new, joint organization in which both are equal partners	An acquisition refers to the purchase of one entity by another (usually, a smaller firm by a larger one)
Old company cease to exist and a new company emerges	A new company does not emerge
It requires two companies to consolidate into a new entity with a new ownership and management structure	It occurs when one company takes over all of the operational management decisions of another
If the takeover is friendly, it is called merger	If the takeover is hostile, it is called as an acquisition

3. AMALGAMATION

Amalgamation is defined as **the combination of one or more companies into a new entity**. It includes:

- (i) **Two or more companies join to form a new company.**
- (ii) **Absorption or blending of one by the other.**



Amalgamation is a **legal process** through which **two or more companies** are either **combined to form a new entity** or **absorbed into an existing company**, resulting in the **loss of existence** of the amalgamating company. Its **shareholders become shareholders** of the new or amalgamated company.

In essence, amalgamation unites the **undertakings, assets, and liabilities** of the merging companies under the **control of a single company**, which may or may not be one of the original entities involved.

The word “**amalgamation**” is not defined under the Companies Act 2013 whereas **section 2(1B) of Income Tax Act, 1961 defines Amalgamation as: (Definition has to be learnt)**

“**amalgamation**”, in relation to companies, **means the merger of one or more companies with another company or the merger of two or more companies to form one company**

(the company or companies which so merge being referred to as the amalgamating company or companies and **the company with which they merge or which is formed as a result of the merger, as the amalgamated company**) in such a manner that –

- (i) **all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company** by virtue of the amalgamation;
- (ii) **all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company** by virtue of the amalgamation;
- (iii) **shareholders holding NOT LESS THAN 3/4th in value of the shares in the amalgamating company or companies** (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) **become shareholders of the amalgamated company** by virtue of the amalgamation.

Amalgamation **does not include** cases where one company acquires another's property through a **purchase** or through **distribution of assets after winding up** of the first company.

Amalgamation includes absorption. The Institute of Chartered Accountants of India has issued Accounting Standard (AS) 14 on Accounting for Amalgamations.

Illustration (For Understanding Purpose)

Process	Result
Existing companies A and B are wound-up and a new company C is formed to take over the businesses of A and B	Amalgamation
Existing company A takes over the business of another existing company B which is wound-up	Absorption
A new Company X is formed to take over the business of an existing company Y which is wound-up.	External reconstruction

4. CONSOLIDATION

A consolidation **creates a new company**. **Stockholders of both companies approve the consolidation**, and subsequent to the approval, **receive common equity shares in the new firm**.

Example: In 1998 **Citicorp and Traveler's Insurance Group** announced a consolidation, which **resulted in Citigroup**. **Facebook's acquisition of Instagram & Disney's acquisition of Fox**.

5. TENDER OFFER

One company offers to purchase the outstanding stock of the other firm at a specific price. The acquiring company communicates the offer directly to the other company's shareholders.

Example: ABC Ltd is a **publicly listed company** whose share price is trading at \$15 per share. **Michael is a venture capitalist who wants to take over the company and offers \$18 per share** provided **his firm secures at least 51% of ABC Ltd.**

6. ACQUISITION OF ASSETS

In a **purchase of assets**, one company acquires the **assets of another company**. The company whose assets are being acquired, **obtain approval from its shareholders**. The purchase of assets is **typical during bankruptcy proceedings**, where other companies bid for various assets of the bankrupt company, which is liquidated upon the final transfer of assets to the acquiring firm(s).

7. MANAGEMENT BUYOUT

A **Management Buyout (MBO)** is a transaction where a **company's management team purchases the business** they manage, including its assets and operations. **MBOs are attractive to managers** as they transition from **employees to owners**, gaining greater rewards and control.

According to **Grant Thornton**, total deal activity—including M&A and private equity—reached **\$59 billion** during January–November 2017, a **9% increase** from 2016.

When exiting, business owners may choose to sell to the **existing management team** rather than external buyers, often due to **limited trade buyers, concerns over sharing sensitive data**, or a desire to leave the company in **trusted hands**.

Typically, the management team pools resources

Factors that makes a successful MBO:

- A company with a **good track record of profitability**;
- Good future prospects for the company **without high risk factors**;
- A **strong committed management** team with a mixture of skills;
- A **vendor who is willing to explore** a sale to the management team **and who will accept a realistic price**;
- A **deal structure that can be funded**, and supported **by the future cashflows of the company**.

8. PURCHASE OF COMPANY AS RESOLUTION APPLICANT UNDER IBC LAW

The primary objective of the **Insolvency and Bankruptcy Code, 2016** is the **revival of insolvent companies** through the approval of an **effective resolution plan** and **maximization of the corporate debtor's assets**. Under the Code, a **resolution applicant** can **purchase the insolvent company** by submitting the best resolution plan during the **bidding process**, enabling revival by another **company, group, or individual**.

Example: Tata Steel has taken over the bankrupt Bhushan Steel for ` 35,200 crore

EXAMPLE-MERGERS AND ACQUISITIONS IN INDIA

(Few of the below Examples shall be learnt to use in any answer)

Tata Group / Air India

In 2022, **Tata Group** acquired the struggling national carrier **Air India**, and announced its **merger with Vistara** (a Tata– Singapore Airlines JV). Tata aims to revive Air India's former prominence in aviation.

Adani Group / Ambuja Cement

Adani Group acquired a **majority stake** in **Ambuja Cements** and its subsidiary **ACC Ltd.**, making Adani the **second- largest cement producer** in India after UltraTech.

Zomato – Blinkit Merger

Zomato merged with **Blinkit** (formerly Grofers) in an **all-stock deal** worth \$700–750 million, shifting Blinkit's focus to **instant grocery delivery**.

Zomato Acquisition of Uber Eats

In 2020, **Zomato acquired Uber Eats** India in an **all-stock deal**, boosting Zomato's dominance in food delivery, especially during the **COVID-19 pandemic**, while Uber redirected its investments elsewhere.

Vodafone India and Idea Cellular

In one of the **biggest M&A deals of 2017–18**, **Vodafone India and Idea Cellular** merged to form **India's largest telecom operator** with a **35% market share**. The merged entity gained **408 million subscribers**, **42% CMS**, and **33% RMS**, better positioned to compete with **Jio** and **Airtel**. The deal received all major regulatory approvals and was completed in August 2018.

Flipkart and eBay

In 2017, **Flipkart acquired eBay India**. The deal involved a **\$500 million investment** by eBay and a **cross-border trade agreement**, expanding **product reach** for both Flipkart and eBay customers through shared global and Indian inventory.

DEMERGER

Demerger is a **business strategy** where a single company is **split into separate components**—to operate independently, be sold, or dissolved. It enables large firms, like

conglomerates, to **separate non-core operations**, **raise capital**, or **prepare for/acquire protection from takeovers**.

It involves the **transfer of part/undertaking** from one company (demerged company) to another **entirely separate entity** (resulting company). **Shareholders** of the original company usually receive an **equivalent ownership stake** in the new entity.

Contracts tied to the demerged undertaking typically transfer to the resulting company, unless restricted otherwise. It is essentially a **corporate restructuring process**, where the capital stock of a division or subsidiary is transferred to the **stakeholders** of the existing company.

Demerger under **Section 2(19AA)** of the **Income tax Act, 1961** means **the transfer, pursuant to a scheme of arrangement under section 230 to 232 of the Act, by a demerged company of its ONE OR MORE UNDERTAKINGS to THE RESULTING COMPANY in such a manner that:-** *(Definition has to be learnt)*

- (i) **All the property of the undertaking**, being transferred by the demerged company, **immediately before the demerger**, becomes the property of the resulting company by virtue of demerger;
- (ii) **All the liabilities relatable to the undertaking**, being transferred by the demerged company, **immediately before the demerger**, become the liabilities of the resulting company by virtue of the demerger;
- (iii) **The property and the liabilities of the undertaking or undertakings**, being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;
- (iv) **The resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company** on a **PROPORTIONATE BASIS EXCEPT** where the resulting company itself is a shareholder of the demerged company;
- (v) **The shareholders holding NOT LESS THAN 3/4TH in value of shares in the demerged company** (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) **become shareholders of the resulting company or companies** by virtue of the demerger; otherwise than as a result of the acquisition of the property or assets of the demerged or any undertaking thereof by the resulting company;
- (vi) the **transfer of the undertaking** is **on a going concern basis**;
- (vii) Demerger in accordance with the conditions notified under Section 72A(5) of Income Tax Act, 1961.

Examples:

1. Haldiram Group Demerger (April 2023):

The **Competition Commission of India** approved the demerger of the **FMCG businesses of Haldiram Snacks (HSPL)** and **Haldiram Foods (HFIPL)** into a newly formed entity, **Haldiram Snacks Food (HSFPL)**.

- HSPL (Delhi-based) and HFIPL (Nagpur-based) are both engaged in manufacturing and distributing packaged foods like snacks, namkeen, sweets, etc.

- HSFPL, which had no prior business operations, will now house the **combined FMCG operations**.
- Under the **NCLT-approved Scheme**, shareholders of HSPL and HFIPL will receive **56% and 44% stake**, respectively, in HSFPL.

2. **Reliance Industries Demerger:**

Reliance Industries was demerged into multiple entities including **Reliance Communications Ventures Ltd, Reliance Energy Ventures Ltd, Reliance Capital Ventures Ltd**, and **Reliance Natural Resources Ltd**.

3. **Costa Coffee Demerger (April 2018):**

Whitbread plc announced the **demerger of Costa Coffee**, separating it from its portfolio of businesses.

4. **Pfizer–Nestlé Deal:**

Pfizer sold its infant nutrition business to **Nestlé**, signifying a divestment from its non-core business line.

Types of Demerger (*Direct Ques can be asked*)

1. **Divestiture**

Divestiture means selling or disposal of assets of the company or any of its business undertakings/ divisions, **usually for cash** (or for a combination of cash and debt).

2. **Spin-offs**

A **spinoff** is a corporate strategy where a **new entity is created** from a division of the parent company. The **shares of the new entity are distributed pro-rata** to existing shareholders, while the **parent company may retain partial ownership**. There are **two main approaches**:

1. **Distribution Approach:** All shares of the spun-off entity are distributed to existing shareholders, resulting in two independent companies with the same ownership structure.
2. **Floatation Approach:** A new entity is floated with its equity held by the parent, which may later **sell its assets** to another company.

Reasons for a Spinoff:

- Focus resources on a **high-growth division**.
- Streamline operations by separating **less productive or unrelated units**.
- Unlock value when a division's strategy diverges from that of the parent.
- **Alternative to sale** if attractive buyers aren't found.

Methods:

- Distribute 100% ownership via **stock dividends**.
- Offer **discounted exchanges**, e.g., \$100 of parent stock for \$110 of spinoff stock.

Benefits:

- Sharper business focus,
- Potential for **higher shareholder returns**.
- **Risks:**
- **Volatile stock performance**,
- **Short-term selloffs** by shareholders due to misalignment with their portfolios.

Key Takeaways

- A **spinoff** refers to the **creation of an independent company** by selling or distributing new shares of an existing division or business of a parent company.
- **Spun-off companies** are generally believed to hold **greater value independently** than as part of a larger corporation.
- The **spun-off unit** typically has its **own management** and operates under a **renamed, separate business entity**.

3. Splits/divisions

Splits involve **dividing a company into two or more parts to maximize profitability** by **removing non-performing units from core operations**. There are two primary types:

- **Split-ups:** The parent company is **liquidated**, and its capital stock and assets are exchanged for shares **in two or more newly created companies**.
- **Split-offs:** A part of the company is **spun out**, and shareholders are offered shares in the new entity **in exchange for their shares** in the parent company. Not all shareholders may participate, and it is **not a pro-rata distribution**.

Key Takeaways:

- **Split-offs** are a form of **corporate divestiture**.
- **Shareholders choose whether to exchange their shares**.
- These strategies aim to **enhance shareholder value** by streamlining the business and creating focused, separate entities.

Comparison Between Spin-off and Split-off (Direct Ques can be asked)

Basis for comparison	Spin-Off	Split-Off
Meaning	Spin-off implies a business action, wherein a company disjoins a division and creates new business entity, which is separately listed in the stock exchange and has independent board of directors.	Split-off refers to a corporate divestiture process in which a company's subsidiary turnout as a separate entity, with independent listing of its capital stocks.

Shares	Shares of the subsidiary company are distributed to all the shareholders.	Holding company's shareholders are required to exchange their shares, to get shares in the subsidiary.
Reason	To create a separate identity of the new firm.	To create a distinction between the core business and the new one.

1. **Equity Carve-Outs**

Equity carve-outs involve a parent company issuing a **percentage of shares of its subsidiary to the public**, thereby **separating the assets** of the parent and subsidiary. This results in the **subsidiary becoming a publicly traded entity**, while the parent may retain a controlling stake.

Examples:

1. **Indiabulls** carved out commercial office business into a separate firm under the name **of Indiabulls Commercial Assets Limited**.
2. **Larsen and Toubro Ltd (L&T)**, India's largest engineering and construction firm, **adopted an asset-light strategy by creating independent subsidiaries and divesting stakes in its businesses to raise capital for new projects**.
3. In a similar move, **the Government of India divested 10% stake in Coal India Limited via the Offer-for- Sale (OFS)** route in January 2017 at ₹358 per share, reducing its holding to 79.65%..

SLUMP SALE

A **Slump Sale** is a method of **corporate restructuring** where an undertaking is transferred as a **going concern** for a **lump sum without assigning values to individual assets and liabilities**. It is recognized under **Section 2(42C)** of the Income Tax Act, 1961.

Key reasons for slump sales include:

- **Improving poor business performance**
- **Strengthening financial position**
- **Eliminating negative synergy**
- **Gaining tax/regulatory benefits**

An **undertaking** refers to a business activity taken as a whole and does **not** include isolated assets or liabilities. The term "sale" under the **Sales of Goods Act, 1930** refers to transfer for a price, and **not bartered assets**. In *CIT v. R.R. Ramkrishna Pillai*, the Supreme Court clarified that asset transfer for **shares is considered an exchange**, not a sale.

As per **Companies Act provisions**, a slump sale involves the **sale/lease/disposal** of the whole or substantially the whole of an undertaking (defined as 20% of net worth or income), requiring **shareholder approval** under **Section 180(1)**.

“**Substantially the whole of the undertaking**” in any financial year shall mean **20 % or more** of the value of the undertaking as per the audited balance sheet of the preceding financial year.

BUSINESS SALE/DIVESTITURE

Divestiture refers to the **sale or disposal of a company's assets or business divisions**—typically for **cash or a mix of cash and debt, not equity**—with the **aim of improving liquidity or reducing debt**. It helps a company focus on core businesses by monetizing non-core assets.

Example: If XYZ Ltd. owns food, car, and clothing businesses and wants to exit the car segment, **it may sell, exchange, or shut down the car division**.

Reasons for Divestitures

- **Huge divisional losses**
- **Continuous negative cash flows from a particular division**
- **Difficulty in integrating the business within the company**
- **Unable to meet the competition**
- **Better alternatives of investment**
- **Lack of technological upgradations due to non-affordability**
- **Lack of integration between the divisions**
- **Legal pressures**

E.g. Nestle is selling its **U.S. chocolate business**—including brands like **Baby Ruth, Butterfinger**, and **Crunch**—to **Ferrero** for **\$2.8 billion**. This move aligns with Nestle's strategy to divest **underperforming brands** and focus on **healthier products** and **fast-growing markets**.

JOINT VENTURE

A **Joint Venture (JV)** is a **business or contractual arrangement** between two or more parties that pool resources for a specific task or business activity. Each party shares **profits, losses, and costs**. JVs are often formed when a company lacks the **technology, expertise, manpower, or market access** to succeed alone.

Example: Company A with production capability and Company B with market needs collaborate to mutually benefit without bearing full project costs.

Types of Joint Ventures

- (a) **Equity-based joint ventures** This involves two or more parties forming a **separate legal entity** to execute a project. The new company, typically based in one of the partner's countries, pursues shared objectives like **marketing, R&D, or manufacturing**, benefiting both **private and public interests** through capital investment.
- (b) **Non-equity joint ventures** also called **cooperative agreements**, these do not create a new legal entity but involve partnerships through **franchise, licensing, technical services, or management contracts**. Ideal for companies needing **expertise over capital**, such as for modernizing or launching operations.

Example:

1. **Vistara airlines** is an **Indian Joint Venture with a foreign company**. Vistara is the brand name of Tata SIA Airlines Ltd, a **JV between India's corporate giant Tata Sons and Singapore Airlines (SIA)**.
2. **Tata Starbucks Pvt. Ltd** is a **joint venture of Tata with Starbucks Corporation, USA** which runs a chain of Starbucks brand coffee shops across India.

STRATEGIC ALLIANCE

Nike and **Boeing** exemplify companies that rely on **strategic alliances**, outsourcing significant production to partners. A **strategic alliance** is a cooperative arrangement where two companies share resources for a **mutually beneficial project**. These alliances allow organizations to **leverage unique strengths, expand customer reach**, and **optimize surplus capacity**.

E.g. **Etihad Airways formed a strategic alliance with Jet Airways**, gaining access to 23 Indian cities and expanding Jet's connectivity to global destinations.

ICICI Bank and Vodafone India partnered to launch '**m-pesa**', a mobile money transfer and payment service, showcasing the value of strategic alliances in expanding services and market reach.

REVERSE MERGER

A **reverse merger is a merger** in which a **private company becomes a public company by acquiring it**. It **saves a private company from the complicated process and expensive compliance of becoming a public company**. Instead, it acquires a public company as an investment and converts itself into a public company.

Another aspect of a **reverse merger** is when a **weaker or smaller company acquires a larger one**, or when a **parent company merges into its subsidiary**, or a **loss-making company acquires a profit-making company**—each being considered a reverse merger scenario.

The reason for reverse merger are:

- **To carry forward tax losses of the smaller firm**, this allows the combined entity to pay lower taxes. Tax savings under Income Tax Act, 1961
- **Economies of scale of production**
- **Marketing network**
- **To protect the trademark rights, licence agreements, assets of small/loss making company.**

Examples:

1. In 2023, **HDFC merged into its subsidiary HDFC Bank**, creating a combined entity valued at over ₹41 lakh crore—an example of reverse merger.
2. **Cairn India merged with its parent Vedanta India**, consolidating oil exploration operations.
3. In 2002, **ICICI merged with its subsidiary ICICI Bank**—despite the parent being thrice the size—to form a universal bank catering to both industry and retail.
4. **Godrej Soaps (profitable) merged with the loss-making Gujarat Godrej Innovative Chemicals**, and the new entity retained the name Godrej Soaps.

FINANCIAL RESTRUCTURING

Corporate financial restructuring involves significant changes in a company's financial structure, ownership, control, or business portfolio to enhance its value. This includes **debt and equity restructuring**. The simplest form is **internal reconstruction**, where liabilities are reduced through negotiations with stakeholders like banks, creditors, debenture holders, and shareholders. It focuses on **capital base restructuring** and **raising funds for new projects**.

Debt Restructuring

Debt restructuring **involves reorganizing a company's debt by negotiating with bankers, creditors, and vendors to reduce debt, extend payment terms, or revise conditions**—typically to **improve liquidity and reduce capital costs**. It reshuffles balance sheet items related to:

- **Secured long-term borrowings:** Restructured to enhance cash flow or lower capital costs.
- **Unsecured long-term borrowings:** Includes public deposits, private loans, and privately placed bonds/debentures.
- **Short-term borrowings:** Usually not restructured but renegotiated (e.g., inter-corporate deposits, clean bills, overdrafts).

A key method is the **debt-equity swap**, where bonds or debt are exchanged for equity in the company.

CASE STUDY

Gammon India Ltd. underwent **Strategic Debt Restructuring (SDR)** in 2015–2016, led by ICICI Bank and 15 other lenders who converted part of their loans into **63.07% equity**. SDR, a stronger alternative to CDR, gives lenders authority to replace company managements when assets turn bad.

However, with no single buyer found for Gammon India, the business was split into three segments:

- **Power T&D** (stake acquired by Ajanma Holdings)
- **EPC** (acquired by Thailand's GP Group)
- **Residual business**

Gammon India joined over two dozen SDR-invoked companies, including **Alok Industries, Jaiprakash Power, and IVRCL**

Equity Restructuring

It is a process of **reorganizing the equity capital**, involving a reshuffling of shareholders' capital and reserves on the balance sheet. Equity restructuring changes the way **residual cash flows** are allocated among shareholders, aiming to **increase the market value** of the company's common stock.

Restructuring of **equity and preference capital** is a **complex and highly regulated legal process**. The following comes under equity restructuring:

- **Alteration of share capital**
- **Reduction of share capital**
- **Buy-back of shares**

ALTERATION OF SHARE CAPITAL *(Direct/ Case Based Ques can be asked)*

The capital of a company is divided into fixed units called **shares**, which represent a portion of the share capital and include stock, as per **Section 2(84)** of the Companies Act, 2013. **Alteration of share capital** refers to the **increase, decrease, or rearrangement** of share capital as allowed by the **Articles of Association**. Such changes may be made as and when required by the company.

According to **section 61** of the Companies Act, 2013 a limited company having a share capital derives its power to alter its share capital through its articles of association. As per the section the company may, if so **authorised by its articles, alter its MEMORANDUM in its GENERAL MEETING to –**

1. **increase its authorised share capital** by such amount as it thinks expedient;
2. **consolidate and divide all OR any of its share capital into shares of a larger amount than its existing shares;**

The proviso to **Section 61(1)(b)** clarifies that **No consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application** made in the prescribed manner;

3. **convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;**
4. **sub-divide its shares**, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
5. **cancel shares** which, **at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled;**
6. **The cancellation of shares shall not be deemed to be a reduction of share capital.**

If a company increases its capital beyond its authorised capital, it must increase the **authorised capital** accordingly. As per **Section 2(8)** of the Companies Act, 2013, “*Authorised capital*” or “*nominal capital*” refers to the maximum share capital a company is permitted to issue as stated in its **memorandum**.

If **consolidation and division** of share capital result in a **change in voting percentage** of shareholders, such alteration must be **approved by the Tribunal**.

Legal Provisions

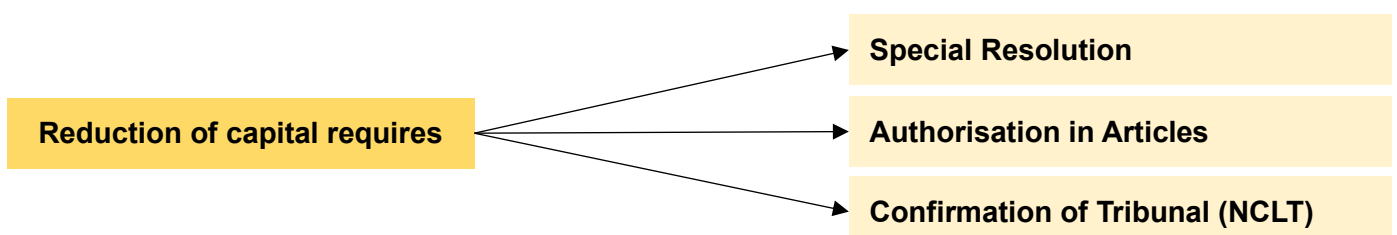
Section 61 to 64 read with Section 13 and 14 of the Companies Act, 2013 The Companies (Share Capital and Debentures) Rules, 2014 National Company Law Tribunal Rules, 2016.

REDUCTION OF SHARE CAPITAL

Capital Reduction is the process of decreasing a company's shareholders' equity through **share cancellations** and **share repurchases**. It involves the reduction of **issued, subscribed, and paid-up share capital** of the company. Simply put, it refers to the **cancellation of uncalled capital**, which is a part of subscribed share capital. Capital reduction is undertaken in response to a **permanent decline in operations** or **irrecoverable revenue losses**.

The **NEED** of **REDUCING SHARE CAPITAL** arise in following situations: **(Direct Ques can be asked)**

- **Returning of surplus to shareholders;**
- **Eliminating losses**, which may be preventing the payment of dividends;
- **As part of scheme of compromise or arrangements.**



Legal Provisions

- ✓ **Section 66** of the **Companies Act, 2013**; Reduction by way of cancellation of shares
- ✓ **Rule 2 to 6** of the **National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016**
- ✓ **SEBI (LODR) Regulations, 2015.**

Example:

- ✓ A share of face value INR 125 with INR 100 paid-up may be **reduced to INR 100 fully paid-up**, thereby **relieving shareholders of the INR 25 uncalled liability**.
- ✓ If a fully paid-up share of INR 100 is backed by only INR 75 worth of assets, **INR 25 per share may be cancelled** to reflect the true asset value.
- ✓ Fully paid-up shares of INR 100 may be **reduced to INR 75 face value** by **returning INR 25 per share to shareholders**.

Modes of Reduction of Capital *(Direct Ques can be asked)*

A company limited by shares or a company limited by guarantee and having a share capital MAY, if AUTHORISED BY ITS ARTICLES, BY SPECIAL RESOLUTION, AND SUBJECT TO ITS CONFIRMATION BY THE TRIBUNAL ON PETITION, reduce its share capital in any way and in particular:

- (a) **extinguish or reduce the liability** on any of its shares in respect of the share capital not paid-up; or
- (b) **either with or without extinguishing or reducing liability** on any of its shares;
- (c) **cancel any paid-up share capital** which is lost or is unrepresented by available assets; or
- (d) **pay off any paid-up share capital** which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

Reduction of capital without sanction of the Tribunal

The following are cases which amount to reduction of share capital but where no confirmation by the Tribunal is necessary:

- a) **Surrender of shares** – Surrender **refers to the voluntary return of issued shares by the registered shareholder to the company**. It has the **same effect as a transfer to the company and constitutes a reduction of capital**. However, **if shares are transferred to a nominee of the company, it does not result in capital reduction** [*Collector of Moradabad v. Equity Insurance Co. Ltd. (1948)*].

Surrender is valid only when the **Articles of Association provide for it**, and **EITHER**:

- (i) **forfeiture of such shares is justified**, or
- (ii) **shares are surrendered in exchange for new shares of equal nominal value**.

Surrender releases the shareholder from **further liability** and, like forfeiture, **results in termination of membership**—though **forfeiture is company-initiated**, while **surrender is shareholder-initiated**.

- b) **Forfeiture of shares** – If allowed by Articles, shares may be forfeited for non-payment of calls without Tribunal approval.
- c) **Diminution of capital** – Cancellation of shares not taken or agreed to be taken by any person.
- d) **Redemption of redeemable preference shares** – No Tribunal approval required.
- e) **Buy-back of shares** – Permissible within statutory limits and does not need Tribunal confirmation.

Creditors' right to object to reduction

After passing the special resolution for the reduction of capital, the company is required to apply to the Tribunal by way of petition for the confirmation of the resolution under Section 66 of the Companies Act, 2013.

The creditors having a debt or claim admissible in winding-up are entitled to object. To enable them to do so, the Tribunal will settle a list of creditors entitled to object. **If any creditor objects, then:**

- a. either his consent to the proposed reduction should be obtained or**
- b. he should be paid off OR his payment be secured.**

The Tribunal, in deciding whether or not to confirm the reduction will take into consideration the minority shareholders and creditors.

Under Section 66(1), the Tribunal must notify the Central Government, Registrar, SEBI (for listed companies), and the company's creditors of every application for capital reduction. It must consider any representations made by them within **3 months** of receiving the notice.

Provided that if no representation is received within the stipulated time, it will be presumed that **there is no objection** to the proposed reduction.

There is no limitation on the power of the Court to confirm the reduction except that it must first be satisfied that all the creditors entitled to object to the reduction have either consented or been paid or secured [*British and American Trustee and Finance Corp'n. v. Couper, (1894)*].

When exercising its discretion, the Tribunal must ensure that the reduction is fair and equitable. In short, the Court shall consider the following, while sanctioning the reduction:

- (i) **The interests of creditors are safeguarded;**
- (ii) The **interests of shareholders are considered;** and
- (iii) Lastly, **the public interest is taken care of.**

Confirmation and Registration

Section 66(3) of the Companies Act, 2013 states that **if the Tribunal is satisfied that either the creditors entitled to**

object have consented to the reduction, or that their debts have been determined, discharged, paid or secured, it may confirm the reduction of share capital on such terms and conditions as it deems fit.

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

Section 66(4) of the Companies Act, 2013 states that **the order of confirmation of the reduction of share capital by the Tribunal** under sub-section (3) **shall be published by the company in such manner as the Tribunal may direct.**

Section 66(5) of the Companies Act, 2013 states that **the Company shall deliver a certified copy of Tribunal order confirming the reduction together with the minutes giving the details of the company's**

- (a) **amount of share capital;**
- (b) **number of shares into which it is to be divided;**
- (c) **amount of each share; and**
- (d) **amount, if any,** at the date of registration deemed to be paid-up on each share,

to the Registrar within 30 days of receipt of the order of Tribunal who will register them.

The reduction takes effect only on registration of the order and minutes, and not before. The Registrar will then issue a certificate of registration which will be a conclusive evidence that the requirements of the Act have been complied with and that the share capital is now as set out in the minutes. The Memorandum has to be altered accordingly.

Conclusiveness of certificate for reduction of capital *(Just Read)*

Once the Registrar issues a certificate confirming the capital reduction, it is deemed conclusive—even if it is later found that the company lacked authority under its Articles [Re Walkar & Smith Ltd.]. Similarly, even an invalid special resolution, if acted upon, may not undo the reduction [Ladies's Dress Assn. v. Pulbrook].

Liability of Members:

On reduction, members (past or present) are only liable up to the difference between the paid-up amount (or deemed paid) and the reduced share value as per the Tribunal's order.

In **Reckitt Benckiser (India) Ltd. (2005)**, objections were raised against capital reduction for being unnecessary and discriminatory. The company resolved this by offering to retain

objecting shareholders, and the Delhi High Court approved the reduction.

Creditors' Protection:

If a creditor entitled to object is excluded due to ignorance and the company defaults under the IBC, 2016:

- (a) Members at the time of registration of the reduction order are liable to contribute up to the amount they would in a winding-up scenario.
- (b) If the company is wound up, the Tribunal may, upon creditor's application and proof of ignorance, list such contributories and enforce payment like in a normal winding-up.

Penalties (Just Read)

If any officer of the company

- (a) Knowingly conceals the name of any creditor entitled to object to the reduction;
- (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447

BUY-BACK

According to **Section 68(1)** of the Companies Act, 2013, **a company whether public or private, may purchase its own shares or other specified securities (hereinafter referred to as "buy-back") out of:**

- (i) **its free reserves; or**
- (ii) **the securities premium account; or**
- (iii) **the proceeds of any shares or other specified securities.**

However, **No buy-back of shares or specified securities can be made using proceeds from an earlier issue of the same kind.** At the time of buy-back, the company must have sufficient balance in one or more eligible accounts to cover the total value of the buy-back.

The term *buy-back* has two meanings:

1. When a person sells shares or specified securities and buys them again under a fixed agreement, often referring to a company repurchasing shares from an investor, such as a venture capitalist.
2. When a company buys its own shares from the open market to reduce the number of outstanding shares. This is a key method of capital restructuring, typically involving repurchases at a price above market value. It results in fewer shares in circulation, thereby increasing the proportion of ownership held by the company.

Modes of Buy-Back

1. Tender Offer

In tender offer, **the company makes an offer to buy a certain number of shares/securities at a specific price directly from security holders on PROPORTIONATE BASIS**. Share buyback ensures all shareholders are treated equally, however small they are.

2. Open Market Purchase

In open market purchase, **the company acquires a certain number of shares. Fixes a price cap and buy for any price up to the upper limit**. Most companies prefer the open market route. **The biggest difference between the two - tender offer and open market purchase- is that the price in the tender route is fixed.**

Buy-back from open market can be made through:

- **Book Building Process**
- **Stock exchange.**

Advantages of buy-back

- It is an alternative mode of reduction in capital without requiring approval of the National Company Law Tribunal
- To improve the earnings per share
- To improve return on capital, return on net worth and to enhance the long-term shareholders value
- To provide an additional exit route to shareholders when shares are undervalued or thinly traded
- To enhance consolidation of stake in the company
- To prevent unwelcome takeover bids
- To return surplus cash to shareholders
- To achieve optimum capital structure
- To support share price during periods of sluggish market condition
- To serve the equity more efficiently.

Legal Framework for Buy-back

- Companies Act, 2013.
- The Companies (Share Capital and Debentures) Rules, 2014.
- Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018.

Examples

In June 2023, **WIPRO Limited** came out with a public announcement of buy back of its equity shares through tender offer upto 26,96,62,921 fully paid up equity shares.

In the year 2017, **Infosys** decided to utilize cash reserves of USD 6 billion either through share buy-back or generous dividend. Cognizant and TCS announced mega buy-back offers worth USD 3.4 billion and ` 16,000 crore, respectively, to return surplus cash to shareholders. HCL Technologies also approved a buy-back of up to 3.50 crore shares worth ` 3,500 crore.

Authorisation

The **primary requirement** is that the **ARTICLES OF ASSOCIATION** of the company **should authorise buy-back**. In case, such a provision is not available, it would be necessary to alter the articles of association to authorise buy-back. **Buy- back can be made with the approval of the Board of directors at a meeting and/or by a special resolution passed by shareholders in a general meeting, depending on the quantum of buy-back. In case of a listed company, approval of shareholders shall be obtained only by POSTAL BALLOT.**

Quantum of Buy-back

- (a) **Board of directors can approve buy-back up to 10%** of the **total paid-up equity capital and free reserves** of the company and such buyback has to be authorized by the board by **means of a RESOLUTION passed at the meeting**.
- (b) **Shareholders by a SPECIAL RESOLUTION can approve buy-back up to 25% of the total paid-up capital and free reserves of the company**. In respect of any financial year, the shareholders can approve by special resolution up to 25% of total equity capital in that year.

Post buy-back debt-equity ratio

The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back should not be more than twice the paid-up capital and its free reserves i.e. **THE RATIO SHALL NOT EXCEED 2:1**. However, the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies;

All the shares or other specified securities for buy-back are to be fully paid-up.

Buy-back by listed/unlisted companies

The buy-back of the shares or other specified securities listed on any recognized stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and

The buy-back in respect of shares or other specified securities other than listed securities is in

accordance with such rules made under Chapter IV of the Companies Act, 2013.

Time gap

No offer of buy-back under this sub-section **shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back**, if any.

Buy-back Procedure for Private & Unlisted Public Companies *(Case based/Direct Ques can be asked on any of the below points)*

Authorization for Buy-back [Rule 17(2)]	Company must be authorized by special resolution and file a letter of offer in Form SH-8 with the Registrar of Companies, signed by at least two directors (one being the managing director, if any) , along with the prescribed fee.
Filing Declaration of Solvency [Rule 17(3)]	Before buy-back , company must file a declaration of solvency in Form SH-9 with the Registrar and SEBI (for listed companies), signed by at least two directors (one being the managing director, if any) , and verified by affidavit .
Dispatch of Letter of Offer [Rule 17(4)]	Letter of offer must be dispatched to shareholders/security holders immediately after filing with Registrar, but not later than 21 days from such filing .
Content of Letter of Offer [Rule 17(10)(a)]	Letter of offer must contain true, factual, and material information , not be misleading , and must state that directors accept responsibility for its contents .
Validity of Offer [Rule 17(5)]	Offer for buy-back must remain open for at least 15 days and not more than 30 days from dispatch date . If all members agree, it may remain open for less than 15 days.
Acceptance on Proportional Basis [Rule 17(6)]	If shares/securities offered exceed those to be bought back, acceptance per shareholder is on a proportionate basis.
Time Limit for Verification [Rule 17(7)]	Company must verify offers within 15 days from closure of offer; securities are deemed accepted unless rejection is communicated within 21 days from closure .
Payment/Return of Certificates	Within 7 days of verification : (a) pay consideration in cash to accepted holders; (b) return share certificates to unaccepted holders or balance in case of part acceptance.
Separate Account [Rule 17(8), 17(10)(c)]	Immediately after closure , company must open a separate bank account , deposit the full consideration amount, and confirm in the offer that payment will be made only by cash from this account.

Other Conditions [Rule 17(10)]	The rules further provide that the company shall ensure that— (a) the company shall not issue any new shares including by way of bonus shares from the date of passing of special resolution authorizing the buy-back till the date of the closure of the offer under these rules, except those arising out of any outstanding convertible instruments; (b) the company shall not withdraw the offer once it has announced the offer to the shareholders; (c) the company shall not utilize any money borrowed from banks or financial institutions for the purpose of buying back its shares; and the company shall not utilize the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back.
Time Limit for Completion [Section 68(4)]	Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board.
Methods of Buy-back [Section 68(5)]	Buy-back may be: (a) from existing holders on proportionate basis; (b) from open market; (c) by purchasing securities issued to employees under stock option/sweat equity schemes.
Extinguishment of Securities [Section 68(7)]	Securities bought back must be extinguished and physically destroyed within 7 days of last date of completion of buy-back.
Prohibition of Further Issue [Section 68(8)]	No further issue of same kind of shares/securities within six months of buy-back completion, except by bonus issue or discharge of subsisting obligations (e.g., conversion of warrants, stock options, sweat equity, or preference shares/debentures).
Register of Buy-back [Section 68(9), Rule 17(12)]	Company must maintain a register (Form SH-10) at registered office, recording details of bought-back shares/securities, consideration paid,
	cancellation/extinguishment dates, etc. Entries must be authenticated by company secretary or authorized person.
Return of Buy-back [Section 68(10), Rule 17(13), 17(14)]	After completion, company must file a return (Form SH-11) with Registrar (and SEBI for listed companies) within 30 days, annexed with a certificate (Form SH- 15) signed by two directors (including managing director, if any) certifying compliance.

Penal Provisions [Section 68(11)]	If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, in case of listed companies, the company shall be punishable with fine which <u>SHALL NOT BE LESS THAN</u> 1 lakh rupees but which may <u>EXTEND</u> to 3 lakh rupees and every officer of the company who is in default shall be punishable with fine which <u>SHALL NOT BE LESS THAN</u> 1 lakh rupees but which may <u>EXTEND</u> to 3 lakh rupees.
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Transfer to and application of Capital Redemption Reserve Account (Section 69)

When a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet. The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Circumstances prohibiting buy back (Section 70) (Direct Question can be asked)

No company shall directly or indirectly purchase its own shares or other specified securities

- (i) **through any subsidiary company including its own subsidiary companies;**
- (ii) **through any investment company or group of investment companies;** or
- (iii) if a **default**, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company:

However, **the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.**

No company shall, directly or indirectly, purchase its own shares or other specified securities in case **such company has not complied with the provisions of sections 92 (Annual Return), 123 (Declaration of Dividend), 127 (punishment for failure to distribute dividend) and section 129 (Financial Statement)** of the Companies Act, 2013.

BUY-BACK FOR LISTED SECURITIES

All the listed companies are required to comply with SEBI (Buy Back of Securities) Regulations, 2018, in addition to the provisions of the Companies Act, 2013. These regulations broadly cover the following aspects:

1. **Special resolution** and its additional disclosure requirements.

2. **Methods of buy back including buy back through reverse book building**, from existing shareholders through tender offer, etc.
3. **Filing of offer documents, public announcement requirements.**
4. **Offer procedure/opening of escrow account**, etc.
5. **General obligations of company**, merchant banker, etc.

Special Resolution and its additional disclosure requirements (Regulation 5)

Sub-regulation (iv) of Regulation 5 of the Regulations, **lays down that for the purposes of passing a special resolution the explanatory statement to be annexed to the notice for the general meeting** shall contain disclosures as specified in Schedule I to the Regulations.

Sub-regulation (v) provides that a **copy of the above resolution passed at the general meeting shall be filed with SEBI** and the stock exchanges where the shares or other specified securities of the company are listed, within seven days from the date of passing of the resolution.

In case of Board approval

Regulation 5(vii) of the Regulations, provides that a company, **authorized by a resolution passed by the Board of Directors** at its meeting to buy back its shares or other specified securities, **shall file a copy of the resolution, with the SEBI and the stock exchanges**, where the shares or other specified securities of the company are listed, within two working days of the date of the passing of the resolution.

Disclosures under Schedule I (Contents of Explanatory Statement)

An explanatory statement containing full and complete disclosure of all the material facts and the following disclosures prescribed in Schedule I of the Regulations should be annexed to the notice where the buy-back is pursuant to shareholders' approval:

- (i) Date of the Board meeting at which the proposal for buy back was approved by the Board of Directors of the company;
- (ii) Necessity for the buy back;
- (iii) Maximum amount required under the buy back and its percentage of the total paid up capital and free reserves;
- (iv) Maximum price at which the shares or other specified securities are proposed be bought back and the basis of arriving at the buy back price;
- (v) Maximum number of securities that the company proposes to buy back;
- (vi) Method to be adopted for buy back as referred in sub-regulation (iv) of regulation 4;
- (vii)

- a) the aggregate shareholding of the promoter and of the directors of the promoters, where the promoter is a company and of persons who are in control of the company as on the date of the notice convening the General Meeting or the Meeting of the Board of Directors;
 - b) aggregate number of shares or other specified securities purchased or sold by persons including persons mentioned in (a) above from a period of six months preceding the date of the Board Meeting at which the buy back was approved till the date of notice convening the general meeting;
 - c) the maximum and minimum price at which purchases and sales referred to in (b) above were made along with the relevant dates.
- (viii) Intention of the promoters and persons in control of the company to tender shares or other specified securities for buy-back indicating the number of shares or other specified securities, details of acquisition with dates and price;
- (ix) A confirmation that there are no defaults subsisting in repayment of deposits, redemption of debentures or preference shares or repayment of term loans to any financial institutions or banks;
- (x) A confirmation that the Board of Directors has made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-
- (a) that immediately following the date on which the General Meeting or the meeting of the Board of Directors is convened there will be no grounds on which the company could be found unable to pay its debts;
 - (b) as regards its prospects for the year immediately following that date that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to meet its liabilities as and when they fall due and will not be rendered insolvent within a period of one year from that date; and
 - (c) in forming their opinion for the above purposes, the directors shall take into account the liabilities as if the company were being wound up under the provisions of the Companies Act, 1956 or Companies Act or the Insolvency and Bankruptcy Code, 2016 (including prospective and contingent liabilities).
- (xi) A report addressed to the Board of Directors by the company's auditors stating that-
- a) they have inquired into the company's state of affairs;
 - b) the amount of the permissible capital payment for the securities in question is in their view properly determined; and
 - c) the Board of Directors have formed the opinion as specified in clause(x) on reasonable grounds and that the company will not, having regard to its state of affairs, will not be rendered insolvent within a period of one year from that date.
- (xii) Prior approval obtained from the unders of the company in case of a breach of any covenant with such unders.

Methods of Buy-Back (Regulation 4)

According to **Regulation 4** of the Regulations, **a company may buy back its own shares or other specified securities by any one of the following methods:**

- (a) **from the existing shareholders** or other specified securities holders on proportionate basis through the tender offer;
- (b) from the **open market through:**
 - (i) **book-building process**
 - (ii) **stock exchange.**

It may be noted that **NO OFFER OF BUY BACK FOR 15% or more of paid up capital and free reserves, shall be made from the open market.**

In terms of Regulation 4(vii), **a company shall not make any offer of buy-back within a PERIOD OF ONE YEAR reckoned from the date of expiry of buy-back period of the preceding offer of buy-back, if any.**

Regulation 4(vi) **does not permit buy-back through negotiated deals** (of and on stock exchange), **private arrangement, spot transactions.**

Regulation 4(v) **prohibits a company to buy-back its shares or other specified securities so as to delist its shares or other specified securities from the stock exchange.**

Buy-back from existing security-holders through tender offer (Regulation 6)

According to Regulation 6 of the Regulations, **a company may buy-back its securities from its existing securityholders on a PROPORTIONATE BASIS** in accordance with the provisions of the Regulations. It may be noted that **15% of the number of securities which the company proposes to buy back OR number of securities entitled as per their shareholding, WHICHEVER IS HIGHER, shall be reserved for small shareholders.**

Additional Disclosures (Regulation 5(iv)(c))

In addition to disclosure required under Schedule I, where **the buy-back is through tender offer from existing securities holders, following additional disclosures are required to be made to the explanatory statement:**

- a) The resolution must state the **maximum price** at which the buy-back of shares or other specified securities shall be made and whether the **Board of Directors** is authorized in the general meeting to **determine the specific buy-back price** at a later appropriate time.
- b) If **promoters intend to offer** their shares or other specified securities, the resolution should disclose the **quantity proposed to be tendered**, along with **details of their holdings and transactions** during the **six months preceding** the special resolution, including **the number of shares acquired**, their **price**, and **dates of acquisition.**

Public Announcement and Filing of Offer Documents (Regulation 7 & 8)

The company which has been authorized by a special resolution or a resolution passed by the Board of Directors at its meeting shall make a public announcement **within two working days from the date of declaration of results of the postal ballot for special resolution/board of directors resolution** in at least one English National Daily, one Hindi National Daily and a Regional language daily all with wide circulation at the place where the Registered office of the company is situated and shall contain all the material information as specified in Schedule II.

A copy of the public announcement in electronic mode file with the Board and stock exchanges on which its shares/securities are listed.

The company shall within two working days of the public announcement file with the Board a letter of offer, containing disclosures as specified in Schedule III through a merchant banker who is not associated with the company, a declaration of solvency in the prescribed form and in a manner provided in section 68(6) of the Companies Act, 2013.

Offer Procedure (Regulation 9)

1. A company making a buyback offer **shall announce a record date in the public announcement** for the purpose of determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buy- back offer.
2. **The letter of offer along with the tender form shall be dispatched to the security holders** who are eligible to participate in the buy-back offer.
3. **The date of the opening of the offer shall be not later than FOUR WORKING DAYS** from the date of dispatch of letter of offer.
4. **The offer for buy back shall remain open** for a period of **FIVE WORKING DAYS**.
5. The company shall accept shares or other specified securities from the security holders on the basis of their entitlement as on record date.
6. The shares proposed to be bought back **shall be divided in to two categories;**
 - (a) **reserved category for small shareholders** and
 - (b) **the general category for other shareholders**, and the entitlement of a shareholder in each category shall be calculated accordingly.
7. After accepting the shares or other specified securities tendered on the basis of entitlement, shares or other specified securities left to be bought back, if any in one category shall first be accepted, in proportion to the shares or other specified securities tendered over and above their entitlement in the offer by security holders in that category and thereafter from security holders who have tendered over and above their entitlement in other category. **(This means that after accepting the shares each shareholder is entitled to sell in the buy- back, any remaining shares to be bought will be taken first from those shareholders in the same category who offered to sell more than their entitlement, in proportion to the extra they offered. Then, if any shares still remain, they will be accepted from shareholders in other categories who also offered extra shares, again in proportion.)**

Payment to the Security holders (Regulation 10)

Regulation lays down that—

1. The company shall immediately after the date of closure of the offer, **open a special account with a SEBI registered banker to an issue and deposit therein, such sum as would, together with 90% of the amount lying in the escrow account make up the entire sum due and payable as consideration** for the buy-back and for this purpose, may transfer the funds from the escrow account. **(This means that after the buy-back offer period ends, the company must open a special bank account and deposit enough money so that, when added to 90% of the money already kept aside in the escrow account, the full amount required to pay shareholders for their shares is available. This ensures the company has sufficient funds ready to complete the buy-back payments promptly.)**
2. The company shall complete the verifications of offers received and make payment of consideration to those security holders whose offer has been accepted and return the remaining shares or other specified securities to the security holders **WITHIN FIVE WORKING DAYS** of the closure of the offer.

Extinguishing of bought-back securities (Regulation 11)

- The company shall extinguish and physically destroy the security certificates so bought back in **the presence of a Registrar to issue or the Merchant Banker and the Secretarial Auditor within fifteen days of the date of acceptance of the shares or other specified securities.**
- The company shall also ensure that all the **securities bought-back are extinguished within SEVEN WORKING DAYS of expiry of buy-back period.** The aforesaid period of fifteen days shall in no case extend beyond seven days of expiry of buy-back period.
- The shares or other specified securities offered for buy-back if already dematerialised shall be extinguished and destroyed in the manner specified under the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, and the bye-laws, the circulars and guidelines framed thereunder.
- The company shall, **furnish a certificate to the Board certifying compliance as specified above and duly certified and verified by-**
 - i. **the registrar and whenever there is no registrar by the merchant banker;**
 - ii. **two directors of the company one of whom shall be a managing director where there is one;**
 - iii. **the Secretarial auditor of the company.**
- The certificate shall be furnished to the Board **WITHIN SEVEN DAYS** of extinguishment and destruction of certificates.
- **The company shall furnish, the particulars of the security certificates extinguished and destroyed, to the stock exchanges where the shares of the company are listed WITHIN SEVEN DAYS** in which the securities certificates are extinguished and destroyed. The company shall also maintain a record of security certificates which have been

cancelled and destroyed as prescribed in Section 68(9) of the Companies Act.

CASE STUDIES (Not that Important for exam point of view; Give It A Read From The Module Only)

- **Merger of HDFC & HDFC Bank**
- **Demerger of Reliance Industries Limited 's Financial Arm**
- **Demerger of ITC 's Hotel Business**
- **Amalgamation of IDFC Ltd with IDFC FIRST Bank**
- **Amalgamation of Fincare Small Finance Bank Ltd. – AU Small Finance Bank Ltd**

7 Pager Revision Chart of Chapter 1

INTRODUCTION

Two primary modes of business growth:

Organic growth – via **internal strategies** like capital or business restructuring; focuses on increasing **customer base, sales, and revenue** without changing the corporate entity; unfolds **gradually**.
Inorganic growth – via **external strategies** such as **mergers, acquisitions, takeovers**; involves **rapid expansion, market reach**, and often a change in **corporate structure**.

- **Mergers and acquisitions (M&A)** enable **entry into new markets, risk-sharing, and strategic consolidation**, offering **advantages to both buyers and sellers**.
- In a **dynamic business environment**, companies must go beyond keeping pace—they must **innovate and adopt fast-track strategies** like **inorganic growth to outperform competitors and maximize shareholder value**.

Corporate restructuring involves **redesigning operations or financial structure** to improve **efficiency, competitiveness, and profitability**.

It aims to:

- Achieve **economies of scale**
- **Reduce costs**
- **Enhance value**
- Adapt to **economic challenges** and **strategic shifts**.

NEED AND SCOPE

Corporate Restructuring involves reorganizing business activities to achieve **pre-determined corporate-level objectives**.

Key Objectives of Corporate Restructuring:

- **Enhance shareholders' value.**
- **Deploy surplus cash** from one business to **finance growth** in another.
- **Exploit inter-dependence** among existing or prospective businesses.
- **Reduce risks** through strategic realignment.
- **Develop core competencies** for long-term strength.
- **Obtain tax advantages**, e.g., by merging a **loss-making company** with a **profit-making one**.
- **Adopt technological changes** due to the **revolution in information technology**.
- Become **globally competitive**.
- **Increase market share**.
- **Globalization** (e.g., rupee convertibility) motivates **medium-sized companies** to enter global markets.
- Focus on **core business**, gain **synergy**, **minimize operating costs**, and **maximize efficiency** using best **managerial skills**.
- **Diversify to minimize business risk** and ensure a **minimum targeted return**.
- Integrate sick units with profitable ones for **strategic tax planning**, such as **adjusting unabsorbed depreciation and writing off losses**.

Motives behind Corporate Restructuring:

Motive

Financial

- To reduce risk
- To increase operating efficiency
- To maximise the value of assets
- To improve access to financial markets to obtain tax benefits
- To eliminate competition

Others

- To expand marketing and management capabilities
- To allow new products development
- To provide synergistic benefits
- To revive a sick company
- To resolve the bankrupt/insolvent company

TYPES OF RESTRUCTURING

I. Financial Restructuring (Case based/Direct question may be asked)

- Concerned with **capital base restructuring** and **raising finance** for new projects.
- Aims to help a firm **recover from financial distress** without liquidation.
- **Reasons for financial restructuring include:**
 - ✓ Poor financial performance
 - ✓ External competition
 - ✓ Erosion/loss of market share
 - ✓ Emerging market opportunities

Involves:

- **Equity Restructuring** – buy-back, alteration/reduction of capital
- **Debt Restructuring** – secured long-term, unsecured long-term, and **short-term borrowings**

II. Market and Technological Restructuring

(Case based/Direct question may be asked)

- **Market Restructuring:** Strategic decisions on product-market segments aligned with core competencies.
- **Technological Restructuring:** Triggered by new technologies; may include:
 - ✓ Layoffs
 - ✓ Employee training
 - ✓ Partnerships with third-party experts
- **Objective:** Enhance efficiency and adapt to tech changes.
- **Examples:**
 - ✓ **TCS** focusing on Cloud, Agile, Automation across functional domains
 - ✓ **Disney** reorganizing by eliminating and introducing roles aligned with long-term tech goals
- **Common Strategies:**
 - ✓ Joint Ventures
 - ✓ Strategic Alliances
 - ✓ Franchising

III. Organisational Restructuring

(Case based/Direct question may be asked)

- Establishes **internal structures and procedures** to improve responsiveness of personnel to change.
- **Requires cooperation** at all employee levels.
- May involve:
 - ✓ **Expansion** – creating new departments for growing markets
 - ✓ **Downsizing** – eliminating departments to reduce overheads

MOST COMMONLY APPLIED TOOLS OF CORPORATE RESTRUCTURING

Mergers and Acquisitions (M&A)

- **Definition:** Mergers and Acquisitions (M&A) involve the **transfer or combination** of company ownership.
- **Strategic Role:** They are important tools of **strategic management**.
- **Purpose:** Help companies grow, restructure, and enhance competitive position.
- **Value Creation:** Combine two companies to **achieve wealth maximization** and **market expansion**.
- **Additional Benefits:**
 - ✓ Enhance **brand reach**
 - ✓ Improve **product offerings**
 - ✓ Provide **better technology** and **competitive pricing** to consumers
- **Distinction:**
 - ✓ **Merger** → Forms a **new entity**
 - ✓ **Acquisition** → One company **absorbs another**
- **Overall:** M&A is a form of **corporate restructuring** that boosts **growth, profitability, and market share**.

Reasons for Mergers & Acquisition

1. Becoming bigger
2. Pre-empted competition
3. Domination
4. Tax benefits
5. Economies of scale
6. Acquiring new technology
7. Improved market reach and industry visibility

MERGERS

- **Not defined** in Companies Act, but often used **interchangeably**.
- **Merger:**
 - Fusion of 2+ companies
 - One or more **lose identity**, existing company **continues**
- **Amalgamation:**
 - Blending of 2+ undertakings
 - **All original companies lose identity, new company is formed**
 - **Transferor Company** → **Merging entity**
 - **Transferee Company** → **New entity formed**
- ✓ **Merger Modes:**
 - Amalgamation
 - Absorption
 - Formation of new company
- ✓ **Approval Required:** Board + Shareholders
- ✓ **Post-Merger:** Acquired company **ceases to exist**

Examples: Flipkart acquired eBay India, Vodafone–Idea merger, Axis Bank acquired Freecharge, SBI merged with associate banks.

Types of Merger

1. **Horizontal Merger:** Merger between competitors in the same market to reduce competition and gain market share. **Eg: Vodafone–Idea merger**
2. **Vertical Merger:** Merger between companies at different stages of the same supply chain. **Eg: A car company merging with a parts supplier**
3. **Conglomerate Merger:** Merger between companies in unrelated businesses to diversify risk and grow in size. **Eg: A steel firm acquiring a software company.**

2. ACQUISITION

- **Definition:** Acquisition is when one entity acquires ownership (stock, equity, or assets) of another, usually to gain **controlling interest**.
- **Legal Status:** Both companies remain **separate legal entities**; only control changes.
- **Takeover:** A forced or unwilling acquisition is known as a **takeover**.
- **Examples:**
 - ✓ Snapdeal–Freecharge
 - ✓ Flipkart–Myntra
 - ✓ Ola–TaxiForSure

3. AMALGAMATION

- **Definition:** Amalgamation means **two or more companies combine** to form a **new entity** or one is **absorbed** into another.
- **Legal Impact:**
 - ✓ **Amalgamating company ceases to exist.**
 - ✓ Shareholders of amalgamating co. become shareholders of **amalgamated/new company**.
- **Essence:** Transfer of **assets, liabilities, and undertakings** into a **single control**.
- **Types:** Merger into new company Absorption into existing company
- **Statutory Basis:**
 - ✓ Not defined under **Companies Act 2013**
 - ✓ Defined under **Sec 2(1B), Income Tax Act, 1961**

Key Conditions for Amalgamation under IT Act (Sec 2(1B)):

1. All **assets and liabilities** of amalgamating co. transfer to amalgamated co.
2. **≥ 3/4th shareholders** of amalgamating co. become shareholders of amalgamated co.

4. CONSOLIDATION

- **Definition:** Two companies combine to form a **completely new entity**.
- **Shareholder Approval:** Required from both companies; shareholders receive **equity in the new firm**.
- **Example:** Citicorp + Travelers = Citigroup

5. TENDER OFFER

- **Definition:** Acquiring company offers to **buy shares directly** from shareholders of target company at a **premium price**.
- **Goal:** Gain **controlling interest** (e.g. 51%+).
- **Example:** \$18/share offer for ABC Ltd (trading at \$15).

6. ACQUISITION OF ASSETS

- **Definition:** One company **purchases specific assets** of another (often during bankruptcy).
- **Shareholder Approval:** Required from seller.
- **Outcome:** Target company may be liquidated.
- **Example:** Asset bids during insolvency.

7. MANAGEMENT BUYOUT (MBO)

- **Definition:** **Existing management team** acquires the company they run.
- **Benefits:** Control shifts from ownership to **internal managers**.
- **Success Factors:**
 - ✓ Profitable track record
 - ✓ Strong, skilled team
 - ✓ Supportive vendor and realistic pricing
 - ✓ Financeable structure
- **Why Owners Prefer MBO:**
 - ✓ Trusted transition
 - ✓ Limited external buyers
 - ✓ Confidentiality

- **Stat Insight:** Deal activity in 2017 reached **\$59B** (Grant Thornton).

8. PURCHASE UNDER IBC AS RESOLUTION APPLICANT

- **Definition:** Insolvent company is **revived via bidding** under IBC, 2016.
- **Mechanism:** Resolution plan submitted to **acquire and revive** the distressed entity.
- **Example:** Tata Steel acquired Bhushan Steel for ₹35,200 Cr.

EXAMPLE-MERGERS AND ACQUISITIONS IN INDIA

- Tata Group / Air India
- Tata Group / Vistara (Merger announced)
- Adani Group / Ambuja Cements & ACC Ltd.
- Zomato – Blinkit Merger
- Zomato Acquisition of Uber Eats India
- Vodafone India and Idea Cellular Merger
- Flipkart and eBay India Acquisition

DEMERGERS

- **Definition:** Demerger is a business strategy where one company is split into **separate components** to operate independently, be sold, or dissolved.
- **Purpose:** Used by large firms to separate **non-core operations**, raise capital, or **protect from takeovers**.
- **Structure:** Involves transfer of a part or undertaking from the **demerged company** to a **resulting company**.

- **Shareholders:** Usually receive **equivalent ownership** in the resulting company.
- **Contracts:** Typically transfer to the resulting company **unless contractually restricted**.
- **Corporate Restructuring:** Considered a **corporate restructuring** where capital stock of a division/subsidiary is **transferred to stakeholders**.

Definition under Section 2(19AA), Income Tax Act, 1961

1. **Property Transfer:** All property of the undertaking becomes property of the **resulting company**.
2. **Liability Transfer:** All liabilities relating to the undertaking become liabilities of the **resulting company**.
3. **Book Value Transfer:** Assets & liabilities transferred at **book value**.
4. **Share Allotment:** Resulting company issues shares to demerged company's shareholders **on a proportionate basis** (except when resulting company is already a shareholder).
5. **Shareholder Requirement:** At least **3/4th in value** of shareholders (excluding existing holders) become shareholders of the resulting company.
6. **Going Concern:** Transfer is on a **going concern basis**.
7. **Section 72A(5):** Demerger must comply with conditions under this section.
8. **Examples:**
 - ✓ **Reliance Industries Demerger**
 - ✓ **Costa Coffee Demerger (April 2018)**
 - ✓ **Pfizer–Nestlé Deal**

Types of Demerger:

1. **Divestiture:** Sale/disposal of assets or divisions, usually for cash. Eg: Used to raise capital or exit non-core businesses.
2. **Spin-off:** New independent entity formed from a division of parent; shares distributed pro-rata. Eg: Distribution/Floatation approaches; used to unlock value and sharpen business focus.
3. **Split-up:** Parent company dissolves; assets and shares exchanged for multiple new companies. Eg: Leads to complete division of the parent into new entities.
Split-off: Part of the company spun out; select shareholders exchange parent shares for new entity. Not a pro-rata deal; aims to focus core operations.
4. **Equity Carve-Outs:** A parent company offers a portion of its subsidiary's shares to the public, making the subsidiary a separate, publicly traded entity while the parent retains control.

SLUMP SALE:

Definition: Transfer of an entire undertaking as a going concern for a lump sum, without assigning individual values to assets/liabilities – as per Section 2(42C) of the Income Tax Act, 1961.

Key Reasons:

- Improve business performance
 - Strengthen financial position
 - Eliminate negative synergy
 - Avail tax/regulatory benefits
- An **undertaking** means a whole business activity, not isolated assets.

BUSINESS SALE / DIVESTITURE

Definition: Sale/disposal of assets or business divisions (for cash or debt, not equity) to improve liquidity or reduce debt.

Purpose: Monetize non-core assets, sharpen core business focus.

Example: Nestle sold its U.S. chocolate brands to Ferrero for \$2.8B to focus on healthier segments.

Key Reasons:

- Divisional losses or negative cash flows
- Integration issues or competitive pressure
- Better investment alternatives
- Tech lag, lack of synergy
- Legal pressures

JOINT VENTURE (JV)

- **Definition:** **Collaborative arrangement** between parties pooling resources for a **specific business objective**.
- **Profit/loss/costs** are shared; common when one party lacks **tech/expertise/market access**.
- **Example:** Co. A (manufacturing) + Co. B (market access) → JV to share resources.

Types of JV:

- (a) **Equity-Based JV:**
 - New **legal entity** formed; used for **R&D, marketing, or manufacturing**.
 - Involves **capital investment** and mutual objectives.
- (b) **Non-Equity JV** (*Cooperative Agreements*):
 - No separate legal entity.
 - Based on **licensing, franchising, or service contracts**.
 - Ideal for **expertise-based collaborations**.

Example:

- ✓ **Tata Sons and Singapore Airlines (SIA).**
- ✓ **Tata Starbucks Pvt. Ltd is a joint venture of Tata with Starbucks Corporation**

STRATEGIC ALLIANCE

- **Definition:** A cooperative arrangement where two companies share resources for a mutually beneficial project.
- **Purpose:** Leverage strengths, expand markets, and optimize capacity.
- **Examples:**
 - ✓ **Etihad-Jet Airways:** Access to 23 Indian cities, expanded global reach.
 - ✓ **ICICI Bank-Vodafone:** Launched *m-pesa* for mobile money services.
 - ✓ **Nike & Boeing:** Outsourced production through alliances.

REVERSE MERGER

- **Definition:** A private company becomes public by acquiring a listed company, bypassing IPO compliance.
- **Also includes:**
 - ✓ **Smaller/weaker** company acquiring a larger one
 - ✓ **Parent merging** into subsidiary
 - ✓ **Loss-making** firm acquiring a profitable company
- **Reasons:**
 - ✓ **Tax loss carry-forward** (IT Act, 1961)
 - ✓ **Achieve economies of scale**
 - ✓ **Access marketing networks**
 - ✓ **Protect IP, trademarks, licences, and assets**

FINANCIAL RESTRUCTURING**FINANCIAL RESTRUCTURING**

Significant change in financial structure, ownership, or business portfolio to enhance value. Includes debt and equity restructuring.

- **Focus:** Revival, capital base adjustment, raising funds, internal reconstruction.

DEBT RESTRUCTURING

Reorganization of company's secured, unsecured, and short-term borrowings to improve liquidity and reduce capital cost.

Methods:

- Debt-equity swap
- Extension of terms, interest reduction

Covers:

- Secured loans
- Unsecured debts (e.g., public deposits)
- Short-term borrowings (e.g., overdrafts)

Case: *Gammon India SDR* – Banks converted part of loans to 63.07% equity; assets divided among buyers (e.g., GP Group, Ajanma Holdings).

EQUITY RESTRUCTURING

Reorganization of equity capital and reserves to increase market value of shares.

Includes:

- **Alteration of Share Capital (Section 61)**
- **Reduction of Share Capital (Section 66)**
- **Buy-back of Shares**

ALTERATION OF SHARE CAPITAL (Sec. 61, CA 2013)**Types:**

1. Increase authorised share capital
2. Consolidate/divide shares
3. Convert fully paid-up shares into stock & vice versa
4. Sub-divide shares
5. Cancel unissued shares

Change in voting % requires NCLT approval.

Ref: Sections 61–64, 13 & 14, CA 2013 + Rules 2014 & NCLT Rules 2016.

REDUCTION OF SHARE CAPITAL (Sec. 66, CA 2013)

It involves cancelling issued, subscribed, paid-up capital to:

- Return surplus to shareholders
- Eliminate losses
- Restructure under scheme of compromise/arrangement

Ref:

- **Sec. 66**, CA 2013
- NCLT Rules, 2016
- SEBI (LODR) Regs, 2015

MODES OF REDUCTION OF CAPITAL:

As per **Section 66** of the Companies Act, 2013 – A company *limited by shares* or *limited by guarantee with share capital* may **reduce share capital** if:

- ✓ Authorized by **Articles of Association**
- ✓ Passed by **Special Resolution**
- ✓ **Confirmed by Tribunal**

Permissible Methods

- (a) **Extinguish/reduce unpaid liability** on shares
- (b) **Cancel paid-up capital** lost/unrepresented by assets
- (c) **Pay off excess capital** not needed
- (d) **Alter MoA** to reflect reduction in capital/shares.

CASES WHERE TRIBUNAL**APPROVAL NOT REQUIRED:**

1. Surrender of Shares
2. Forfeiture of Shares
3. Diminution of Capital
4. Redemption of Redeemable Preference Shares
5. Buy-back of Shares

CREDITORS' RIGHT TO OBJECT (Section 66 Procedure)

After special resolution:

Petition to Tribunal required
Creditors entitled to object (those admissible in winding-up).

Tribunal may:

- ✓ **Settle creditor list**
- ✓ **Require creditor to:**
 - (a) Consent to reduction
 - (b) Be paid off
 - (c) Be secured

Confirmation and Registration
Conclusiveness of certificate for
reduction of capital Liability of
Members Creditors' Protection
Penalties

BUYBACK

- **Buy-Back:** Company repurchases its own shares or specified securities.

- **Authority:** Section 68(1), Companies Act, 2013.

Permissible Sources of Funds

- ✓ **Free reserves**
- ✓ **Securities premium account**
- ✓ **Proceeds of any shares/other specified securities**
- ✓ Cannot use proceeds from an earlier issue of the **same kind** of shares/securities.

Key Points

1. **Fixed-Agreement Buy-Back:** Company repurchases from investors under pre-agreed terms (e.g., from VCs).
2. **Open-Market Buy-Back:** Company buys its own shares on the exchange—reduces **outstanding shares** and increases **ownership proportion**, typically at a **premium**.

MODES OF BUYBACK:

1. **Tender Offer:** Offer to all shareholders to sell specified securities at a fixed price on a pro rata basis. Equal treatment of all holders
2. **Open Market:** Purchase shares from the market up to a price cap, via book building or stock exchange routes. Price varies up to upper limit

1. Authorization

- **Articles of Association** must **authorize** buy-back; if not, they must be **amended**.
- **Approval needed:**
 - **Board resolution** for buy-back up to 10% of paid-up equity capital + free reserves.
 - **Shareholder special resolution** for buy-back up to **25%** of paid-up equity capital + free reserves (via **postal ballot** if listed).

2. Quantum of Buy-Back

- **Board:** ≤ 10% of **paid-up equity + free reserves**.
- **Shareholders:** ≤ 25% of **paid-up equity + free reserves** per financial year.

3. Post Buy-Back Debt-Equity Ratio

- **Max debt** (secured + unsecured) ≤ **2 : 1** relative to **paid-up capital + free reserves**.
- Central Government may allow a **higher ratio** for specific companies.

4. Additional Conditions

- **All securities** bought back must be **fully paid-up**.
- **Listed shares:** Follow **SEBI buy-back regulations**.
- **Unlisted shares:** Follow **Chapter IV rules of CA 2013**.
- **Time gap:** No new buy-back within **1 year** of previous offer's closure.

Buy-back Procedure for Private & Unlisted Public Companies :

For provision refer the chart given in the notes.

Transfer to and application of Capital Redemption Reserve Account (Section 69) Trigger:

- When buy-back is funded from **free reserves** or **securities premium**.
- **Requirement:** Transfer an amount equal to the **nominal value** of shares bought back to **CRR**.
- **Disclosure:** Show CRR transfer in the **balance sheet**.
- **Utilization:** CRR may fund issue of **fully paid bonus shares** from **unissued share capital**.

Circumstances prohibiting buy back (Section 70)

A company **cannot** buy back its own shares/securities if:

1. **Through Subsidiaries:** Directly/indirectly via any **subsidiary** or **investment company**.
2. **Default:** In repayment of **deposits, interest, debenture/pref share redemption, dividends, or term loans**—unless default is **remedied** and **3 years** have passed.
3. **Non-Compliance:** If the company has not complied with Sections **92** (Annual Return), **123/127** (Dividend rules), or **129** (Financial Statements) of the Companies Act, 2013.

BUY-BACK FOR LISTED SECURITIES

Listed companies must follow **SEBI (Buy Back of Securities) Regulations, 2018** plus **CA 2013**:

1. Special Resolution

- **Explanatory Statement per Schedule I disclosures (Reg 5(iv)).**
- File resolution with **SEBI & Stock Exchanges** within **7 days** (Reg 5(v)).

1. Methods of Buy-Back

- **Reverse Book Building**
- **Tender Offer to existing shareholders**
- Other methods as specified

2. Offer Documentation

- **Draft Offer Letter**
- **Public Announcement requirements**

3. Procedure & Escrow

- **Opening of Escrow Account**
- **Offer Procedure timelines & obligations**

4. General Obligations

- Duties of **Company, Merchant Banker, and Registrar**

Board-Approved Buy-Back

If buy-back is **Board-authorized** (no shareholder vote): File Board resolution with **SEBI & Stock Exchanges** within **2 working days** (Reg 5(vii)).

Disclosures under Schedule I (Contents of Explanatory Statement)

7. Methods of Buy-Back (Reg 4)

- **Tender Offer:** Pro-rata purchase from existing shareholders at a fixed price.
- **Open Market:** Purchases via book-building or stock exchange ($\leq 15\%$ of paid-up equity + free reserves).
No buy-back via negotiated/private deals; 1-year gap between offers.

8. Buy-Back via Tender Offer (Reg 6)

- **Pro-rata** basis; reserve **15%** of buy-back quota for **small shareholders**.
- **Resolution** must set **maximum price**; Board may fix final price later.
- **Promoter offer:** disclose quantity, 6-month holding & transaction details.

3. Public Announcement & Filing

- **Within 2 working days** of resolution result: Publish in 1 English, 1 Hindi, 1 regional paper.
- **File** offer documents with **SEBI & Stock Exchanges**.
- **Letter of Offer** (Schedule III disclosures) filed within 2 working days via merchant banker.

4. Offer Procedure (Reg 9)

1. **Record Date** announced to determine entitlements.
2. **Dispatch** Letter of Offer & Tender Form to eligible holders.
3. **Open Offer** within 4 working days of dispatch.
4. **Offer Period:** 5 working days.
5. **Accept** shares up to entitlement by category:
 - (a) **Small shareholders**
 - (b) **General category**
6. **Pro-rata acceptance** of any excess shares first within a category, then across categories.

5. Payment (Reg 10)

- **Post-offer:** Open special account; deposit funds = 100% of buy-back consideration (90% escrow + transfers).
- **Within 5 working days** of offer closure: Verify offers, **pay** accepted holders, **return** others.

6. Extinguishing Securities (Reg 11)

- **Within 7 working days** of buy-back period end: Destroy certificates in presence of Registrar/merchant banker & secretarial auditor.
- **Within 7 days of extinguishment:**
 - ✓ File **compliance** certificate with **Board** (Registrar, 2 directors, auditor).
 - ✓ Inform **Stock Exchanges**.
 - ✓ Maintain cancellation records per Sec 68(9).