

# INVESTMENT ISSUES SURROUNDING EUROPE AND INDIA

**Ajay Sethi**  
Director

Corporate Catalyst India [www.cci.in](http://www.cci.in)



# Contents

- ❑ India Evolving
- ❑ Investment Strategy
- ❑ The M&A Story
- ❑ Indian Regulatory Environment
- ❑ About Corporate Catalyst India

# INDIA EVOLVING

# India Evolving ~ The Change Catalyst

## **Change from the days before the 1991 reforms**

- ❑ PLENTY OF CAPITAL. Financial markets have diversified, now cater to corporate needs. All well managed
- ❑ Companies can attract PORTFOLIO MANAGEMENT. At least the bigger companies can raise capital abroad
- ❑ AVAILABILITY OF LATEST EQUIPMENT. It is now easily available from imports and domestic production
- ❑ Cos can import TECHNICIANS: Technologists can be easily brought in from abroad
- ❑ PURSUING MARKETS ACROSS THE WORLD : They are setting up subsidiaries in potential markets



*Building Business  
Partnerships*

# India Evolving ~ Corporate Outlook

## **Easy availability of funds has changed corporate behaviour in a number of ways**

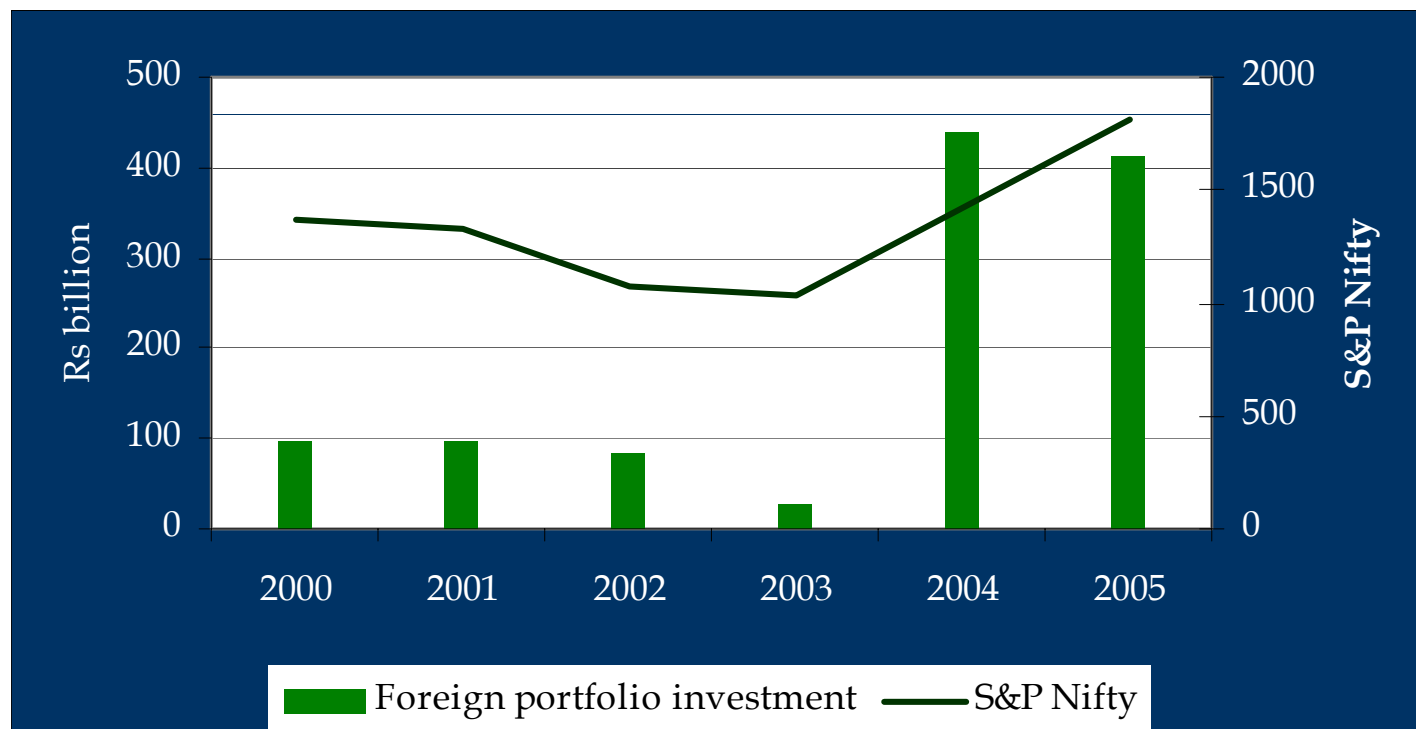
- ❑ A boom in the stock market
- ❑ Influx of foreign portfolio investment
- ❑ A rise in mergers and acquisitions
- ❑ A rise in acquisitions abroad
- ❑ A decline in joint ventures



Building Business  
Partnerships

# India Evolving ~ Portfolio Investment

**Liquidity has caused a stock market boom, and attracted portfolio investment from abroad**

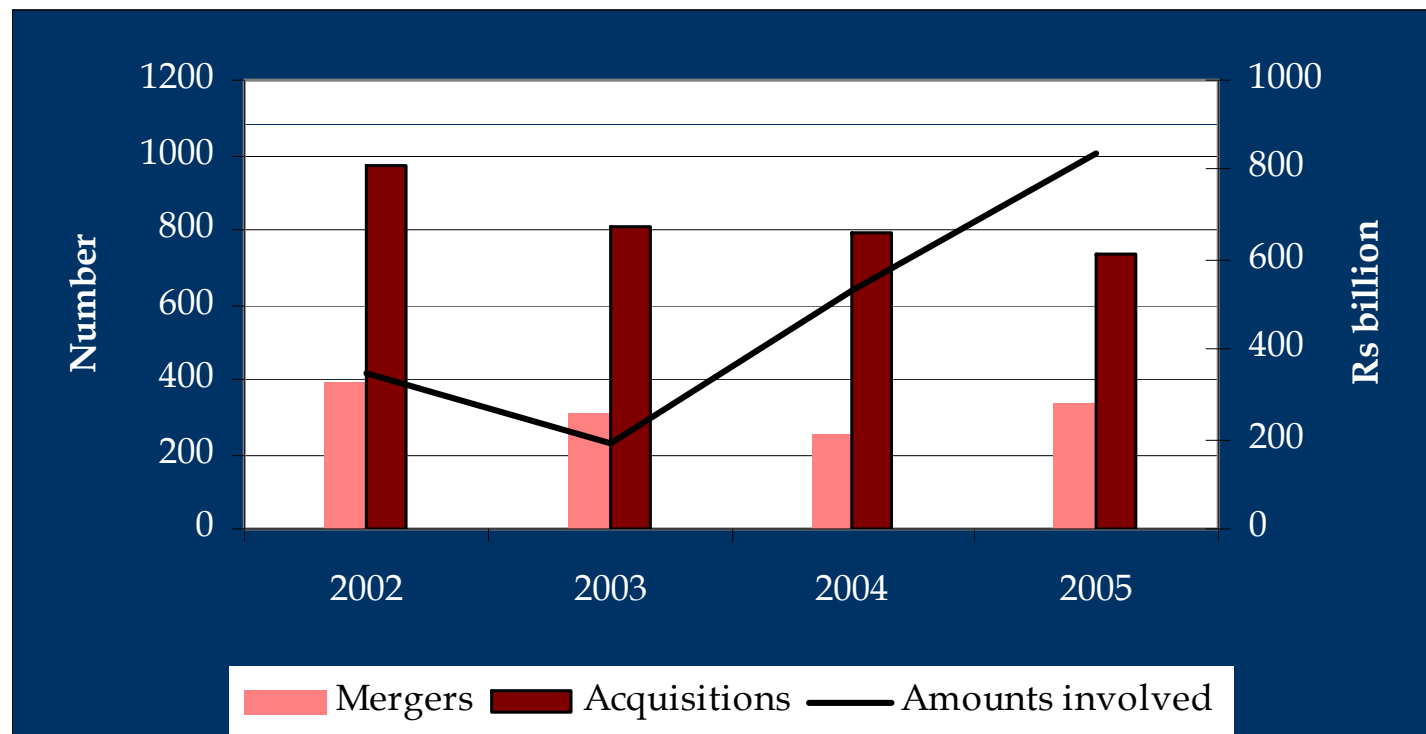




Building Business  
Partnerships

# India Evolving ~ Mergers & Acquisitions

The sums involved in mergers and acquisitions have skyrocketed

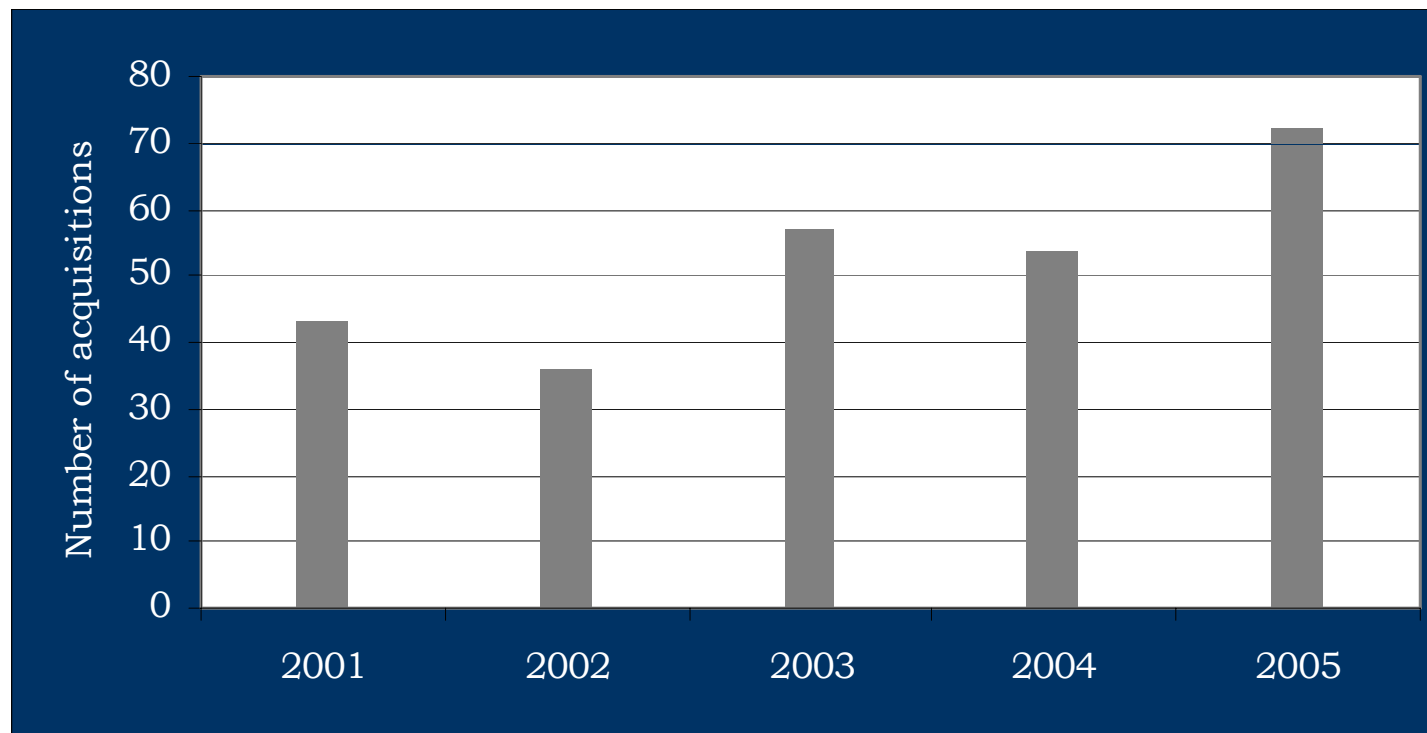




*Building Business  
Partnerships*

## India Evolving ~ Outbound Investments

**Indian companies have been buying businesses abroad**





*Building Business  
Partnerships*

# India Evolving ~ Outbound Investments

## **The largest number of acquisitions are in**

- ❑ Information technology: Firms invest their huge profits in market acquisitions
- ❑ Drugs: Indian firms are particularly cheap producers of pharmaceuticals
- ❑ Auto ancillaries: Companies access technology through acquisitions
- ❑ Steel: Indian companies are integrating vertically across borders
- ❑ Auto and engineering: Firms are looking for markets

# India Evolving ~ Outbound Investments (Europe)

- ❑ Ranbaxy bought RPG Aventis in December 2003
- ❑ Sona Koyo Steering Systems bought Fuji Autotech in October 2004
- ❑ Subex Systems bought Fraud Management Group from Alcatel in July 2004
- ❑ Videocon bought Thomson's colour picture tube business in January 2005
- ❑ Mahindra & Mahindra acquired 90% stake in Schoneweiss & Co. GmbH, a German forgings company
- ❑ Ranbaxy acquired Terapia generic, a Cluj-Napoca based pharmaceutical producer for 324 million USD (267 million Euro)

# India Evolving ~ Inbound Investments

## An Overview

Inflows			
S.No	Country	USD Million	%
1	Mauritius	17,987.25	41.45
2	U.S.A.	5,746.64	12.62
3	U.K.	3,835.37	8.75
4	Netherlands	2,623.23	5.99
5	Japan	2,191.06	4.88
<b>6</b>	<b>Germany</b>	<b>1,667.51</b>	<b>3.65</b>
7	Singapore	1,594.67	3.65
8	France	864.18	1.94
9	South Korea	822.67	1.71
10	Switzerland	687.67	1.51

*Amount of Inflows since August 1991 to February 2007*

# India Evolving ~ Inbound Investments – Where directed

**At the same time, India is emerging as a market in which international companies have to have a presence**

- ❑ Most obvious for information technology: all major international companies have set up operations in India
- ❑ Increasingly true of mass markets: cement, steel, cars, two-wheelers etc
- ❑ It will become true of more goods and services as the Indian market grows
- ❑ Meanwhile, India remains the world's largest source of cheap, educated manpower

# India Evolving ~ Inbound Investments – Industries out of bounds

- ❑ Lotteries, gambling and betting
- ❑ Atomic energy  
*(but India likely to buy half a dozen nuclear plants in the near future)*
- ❑ Retail shops  
*(but foreign companies can open single-brand shops)*
- ❑ Real Estate
- ❑ Agriculture



Building Business  
Partnerships

# India Evolving ~ Inbound Investments – Permission from existing Joint Venture Partner

If you had a joint venture or technology agreement before,  
and if the joint venture company is still alive

- before you can set up a business to compete with that  
company in India, you would need the consent of your old  
partner or of the Government

*[Press Note 1 of 2005 series]*



*Building Business  
Partnerships*

# India Evolving ~ Inbound Investments – Government Permission

## **In some industries you need government permission**

- ❑ Finance and insurance
- ❑ Media
- ❑ Communications
- ❑ Energy
- ❑ Mining
- ❑ Transport
- ❑ Arms and military supplied
- ❑ Explosives and hazardous chemicals

# India Evolving ~ Inbound Investments - Few industries reserved for small firms



If you want to take an equity stake over 24% you will need government permission

**The rest of the field is open**

# INVESTMENT STRATEGY

# Investment Strategy Why India ?

It has become easier now

- ❑ There is a growing market in companies
- ❑ There are thousands of firms in many industries
- ❑ Family-owned enterprises often run into management crises, look for saviors
- ❑ The market for skilled personnel is at last getting organized
- ❑ State governments compete to attract enterprises

## Going alone makes more sense now

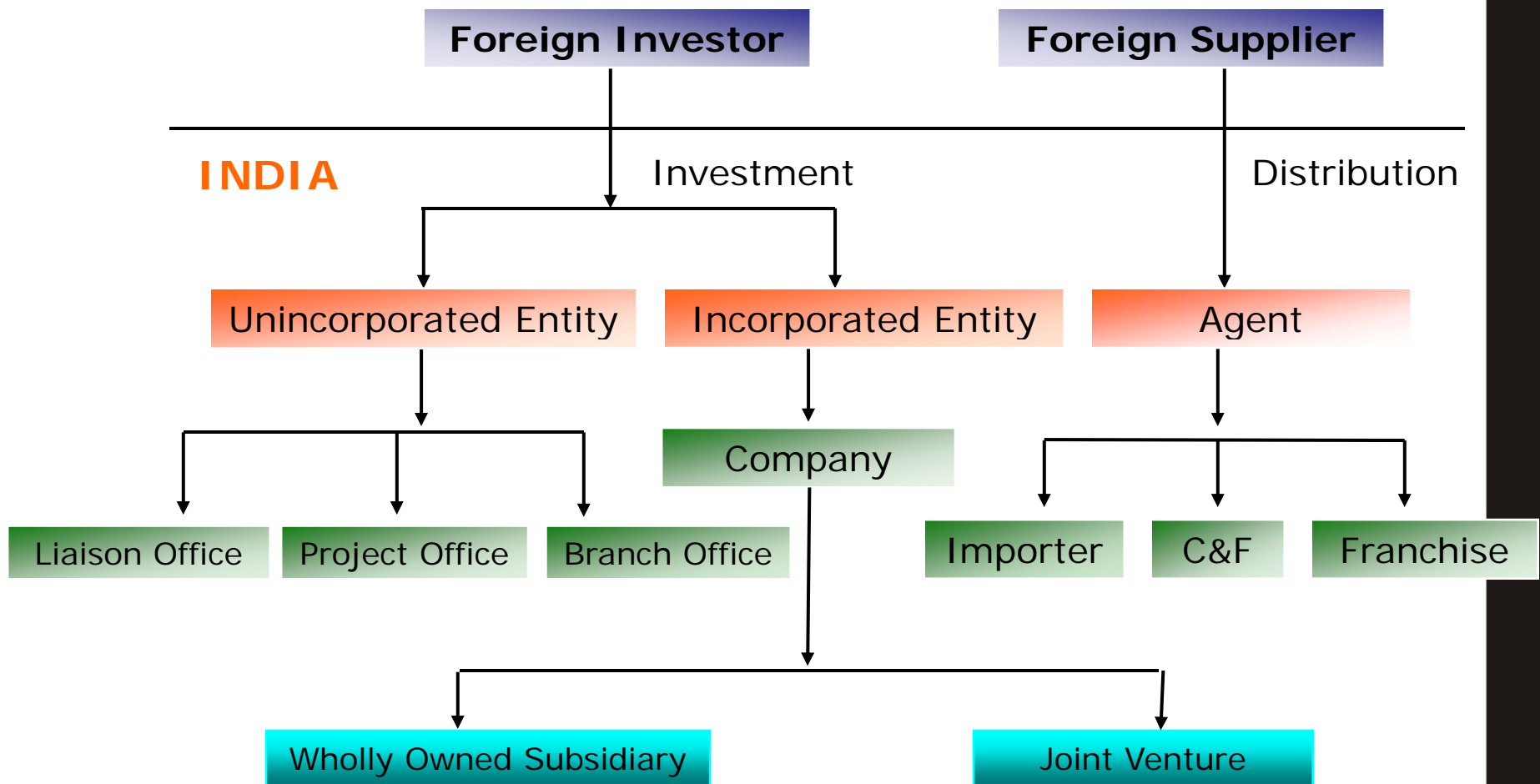
- ❑ Government interference in industry has declined, so a partner is not necessary as intermediary
- ❑ The market for skilled personnel has become organized, so it is possible to recruit management
- ❑ It is also now possible to buy running companies

## **If you still prefer joint ventures**

- ❑ The top 100 Indian firms have more choice today and are more difficult to attract
- ❑ But there are thousands of smaller companies, mostly family-managed, which are still available
- ❑ But put in place a management structure which gives you an effective voice

# Investment Strategy

## Inbound Investments – Entry Options



# Investment Strategy

## Inbound Investments – Entry Options (Unincorporated Entity)



### **Liaison Office**

Companies exploring business opportunities in India

### **Branch Office**

Research & development Companies

### **Project Office**

Companies involved in one time turnkey or installation projects

# Investment Strategy

## Inbound Investments – Entry Options (*Corporate*)



### Forms of Corporate

	Public	Private
Minimum Capital (approx.)	EURO 8,600	EURO 1,700
Members– Minimum Maximum	7	2
	NA	50
Minimum Directors	3	2
Listing on stock exchange	Permissible	Not permissible
Reporting requirements	High	Low



*Building Business  
Partnerships*

# Investment Strategy Key Policy Issues

- ❑ Analysis of **Sectoral Caps** - Investment Allowed Under Automatic or Approval Route
- ❑ **Negative List** - Gambling & Betting, Lottery business, Atomic Energy, Retail trading (except 'Single Brand' product retailing)
- ❑ **Press Note 1 of 2005** - Special Approval on Investment when existing collaboration with an Indian partner

# THE M&A STORY

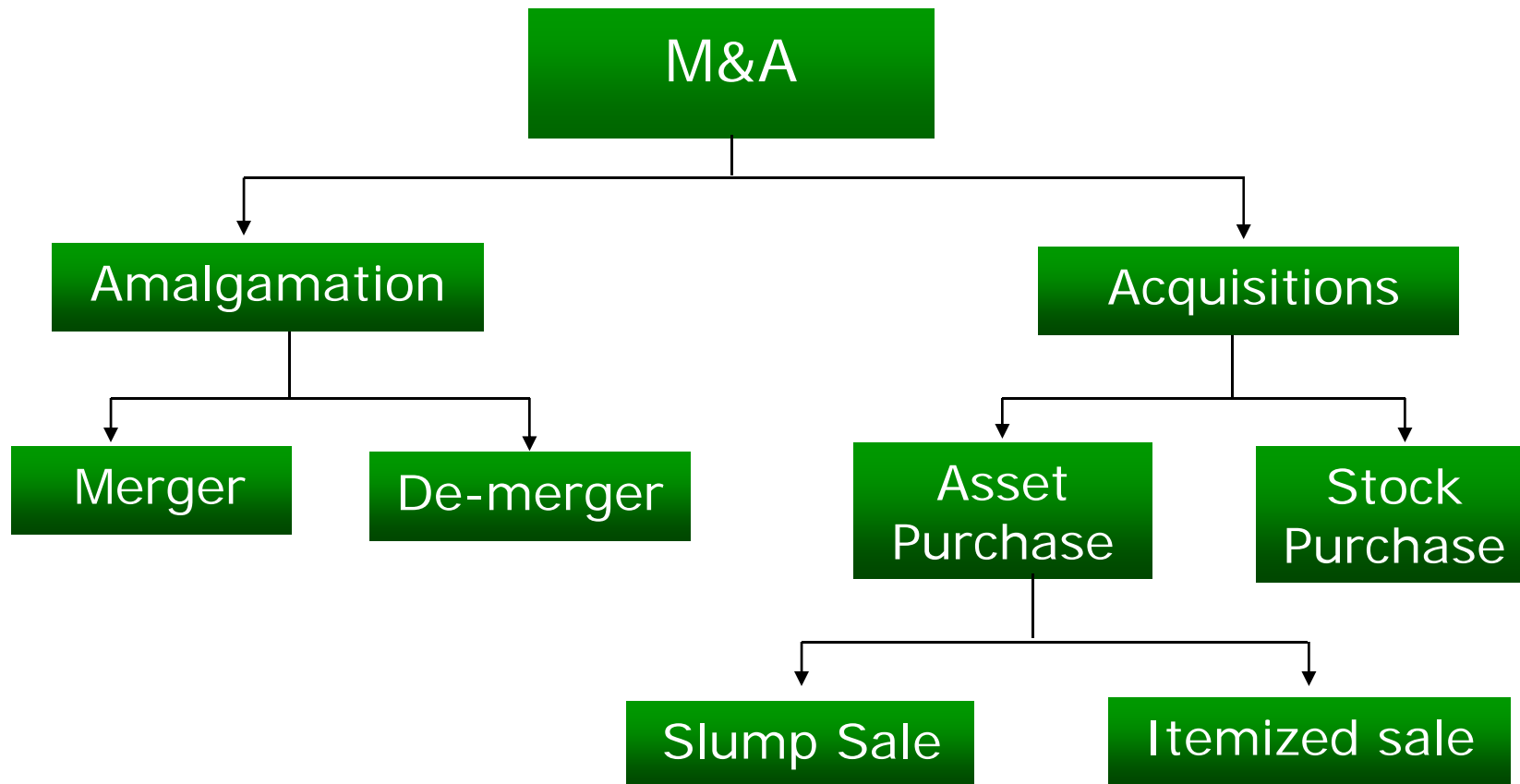
# The M&A Story

## Mergers & Acquisitions – Why the rush?

Key indicators for increase in mergers and acquisitions in India

- ❑ Indian growth story: Indian GDP at 9%
- ❑ Availability of low cost funds to finance acquisitions
- ❑ Tax benefits available
- ❑ Sound exit strategies available in light of big market capitalization
- ❑ Mindset transformation: Indian corporates reaping the benefits of globalization.
- ❑ Relaxed FDI norms

# The M&A Story ~ Modes





*Building Business  
Partnerships*

# The M&A Story ~ Key Issues

- ❑ Investment by foreign investor subject to sectoral caps
- ❑ Applicability of Press Note 1
- ❑ Compliance with regulations issued by Securities & Exchange Board of India ('SEBI') in case of listed company
- ❑ Transaction by way of de-merger / slump sale / acquisition of shares or assets
- ❑ Transfer price as per guidelines issued by Reserve Bank of India



*Building Business  
Partnerships*

## The M&A Story ~ Takeover Codes

To acquire substantial shareholding in a listed Indian company, guidelines issued by Securities & Exchange Board of India

- When acquiring **more than 5%** to disclose his shareholding or voting rights to the company & the stock exchange.
  
- When acquiring **15% or more** to make public announcement
  
- Acquirers, holding **55% percent but less than 75%** shares or voting rights, can acquire **additional shares or voting rights** only by making a public offer.

# The M&A Story ~

## Understanding your Indian partner

- ❑ Indian partner looks at a business horizon of 3-5 years to measure the returns on investment
- ❑ The Indian partner will aim for faster turnaround in negotiations, basically, a 'top-down' management approach
- ❑ You should discuss in detail management control issues viz. appointment to the board of directors and chairman of board, appointment of CEO, MD and CFO, issues arising from future change of control, non-compete, etc.



*Building Business  
Partnerships*

# INDIAN REGULATORY ENVIRONMENT

# Indian Regulatory Environment ~ Intellectual Property Rights (IPR)



*Building Business  
Partnerships*

- ❑ India – a member of World Trade Organisation (WTO)
- ❑ India – a signatory to Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement
- ❑ Amended the laws to strengthen IP protection
- ❑ Principal IP laws :
  - Patent Law
  - Design Law
  - Trademarks Law
  - Copyright Law
  - Geographical Indications Law
- ❑ Rights and Remedies available for IP protection :
  - Civil remedies
  - Injunctive Relief
  - Criminal remedies

# Indian Regulatory Environment ~

## IPR cases and concrete steps



*Building Business  
Partnerships*

- ❑ Infringement of **trade mark** for using deceptively similar word '**VOLWO**' and '**VOLVO**'
- ❑ Permanent injunction was granted for using the **trademark** "Yahoo" for trading tobacco products
- ❑ Infringement of copyright – **Publishing** of head-notes, short-notes, editorial notes and copy edited judgments from a journal.
- ❑ Re-mixing of music **disallowed** unless permitted by original artist.
- ❑ Counterfeit markets **regularly raided** to identify and destroy pirated software, books, etc
- ❑ Customs Duty **systematically reduced** to make grey market an unviable option

# Indian Regulatory Environment ~

## Labour Law - Key Issues



1	Restriction on hours worked by employees	<b>48 hours per week maximum</b>
2	Number of Indian employees which triggers employer obligation to provide employees state insurance	<b>10</b>
3	Number of Indian employees which triggers employer obligation under provident fund scheme, bonus act	<b>20</b>
4	Number of years of continuous service which makes an employee eligible for gratuity	<b>5 years</b>
5	Minimum bonus to be paid to an employee drawing a basic wage of Rs 3,500 or less	<b>8.33%</b>
6	Prohibited age of employing young children in factories	<b>14 years</b>
7	In case of retrenchment of closure, number of employees which triggers employer obligation to seek prior government approval	<b>100</b>
8	On retrenchment / lay off / closure	<b>Compensation is payable to employee</b>

# Indian Regulatory Environment

## Tax System in India



### ❑ **Federal Taxes**

- ❑ Income Tax
- ❑ Customs Duty
- ❑ Excise Duty
- ❑ Service Tax
- ❑ Wealth Tax

### ❑ **State Level Taxes**

- ❑ Sales Tax, VAT, Lease and Works Contract Tax
- ❑ Profession Tax

### ❑ **District/ Municipality Level Taxes**

- ❑ Entry Tax/ Octroi

# Indian Regulatory Environment

## Income Tax



- ❑ Tax Levied on Basis of Residential Status
- ❑ Indian Incorporated Companies Taxed on Worldwide Income
- ❑ Rates of Tax (%) – Maximum Marginal Rate

Tax Payee	Resident	Non Resident
Corporate	33.99	42.23
Individual	33.99	33.99

- ❑ Tax of 10% on Royalties and Fee for Technical Services

# Indian Regulatory Environment ~ Corporate Tax



*Building Business  
Partnerships*

- ❑ Relief from Double Taxation through Tax Treaties
- ❑ Tax Holiday for New Units in Backward Area
- ❑ Deemed Profit Provisions Available to Foreign Companies (Specific Industries) – To Avoid Maintenance of Detailed Expense Records
- ❑ 5 years Holiday in a Block of first 10 years for units in Special Economic Zone ('SEZ')
- ❑ Advance Rulings on Transactions Possible

# Indian Regulatory Environment ~

## Other Significant Taxes



### ❑ **Excise Duty**

- ▶ On manufacture of goods. Peak rate at 16%
- ▶ Basic duty + additional excise duty + special excise duty
- ▶ Credit allowed of duty paid to limit the cascading effect of duty

### ❑ **Customs Duty**

- ▶ On the import of goods into India. Peak rate at 10%
- ▶ Basic duty + Additional custom duty
- ▶ Duty drawback on goods re-exported. Significant concessions

❑ **Sales Tax** - On sale of movable goods. Rates vary for different states. Substituted by Value Added Tax ('VAT') effective April 2005

❑ **Service Tax** - Levied at 12% on identified taxable services

❑ **Research & Development Cess**- On import of technology into India at 5% on payments

**THANK YOU**