

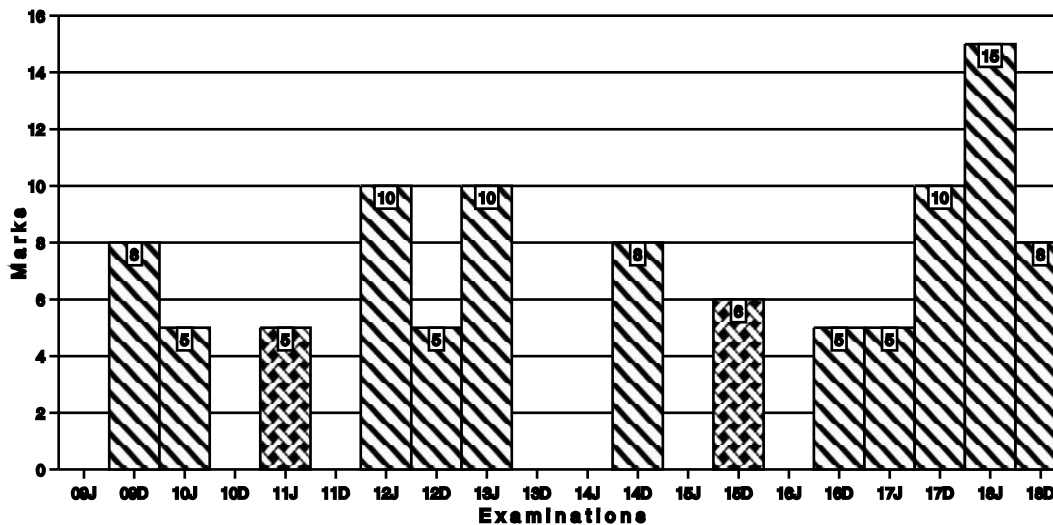
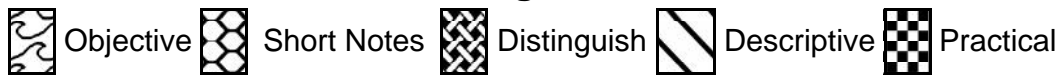
1 CORPORATE RESTRUCTURING - INTRODUCTION AND CONCEPTS

THIS CHAPTER INCLUDES

- Meaning of Corporate Restructuring
- Need and Scope of Corporate Restructuring
- Various Modes of Restructuring
- Historical Background
- Emerging Trends
- Planning formulation execution of various restructuring strategies
- Role of professionals in restructuring process

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend



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CHAPTER AT A GLANCE

Topic	Important Highlight
1. Corporate Restructuring	It is the process of significantly changing a business model, management team and financial structure to address challenges and increase shareholders value. It implies rearranging the business for increased efficiency and profitability. It can also be understood as a comprehensive process by which a company can consolidate its business operations and strengthen its position for achieving corporate objectives viz synergies and continuing as competitive and successful entity.
2. Need of Corporate Restructuring	The various needs for undertaking a Corporate Restructuring exercise are as follows: <ol style="list-style-type: none"> (i) to focus on core strengths, operational synergy and efficient allocation of managerial capabilities and infrastructure. (ii) consolidation and economies of scale by expansion and diversion to exploit extended domestic and global markets. (iii) revival and rehabilitation of a sick unit by adjusting losses of the sick unit with profits of a healthy company. (iv) acquiring constant supply of raw materials and access to scientific research and technological developments. (v) capital restructuring by appropriate mix of loan and equity funds to reduce the cost of servicing and improve return on capital employed. (vi) improve corporate performance to bring it at par with competitors by adopting the radical changes brought out by information technology.

3. Types of Corporate Restructuring Strategies	Various types of corporate restructuring strategies include: <ol style="list-style-type: none">1. Merger2. Demerger3. Reverse Merger4. Disinvestment5. Takeover6. Joint venture7. Strategic alliance8. Slump Sale9. Franchising
4. Merger	It is a combination of two or more companies that can be merged together either by the way of amalgamation or absorption or by a formation of a new company. It is generally done by offering the stockholders of one company securities in the acquiring company in exchange for the surrender of their stock. It may be horizontal, vertical, conglomerate and co-generic.
5. Demerger	In this type of corporate restructuring the entity's business operations are segregated into one or more components. It is often done to assist in the smoother operations of the segments, as one can focus more on a specific task after demerger.
6. Reverse Merger	It is the opportunity for the unlisted companies to become public listed company, without opting for initial public offer. In this process, the private company acquires majority shares of public company with its own name.
7. Disinvestment	Disinvestment means the action of an organization or government selling or liquidating an asset or subsidiary. It is also known as "divestiture".

8. Takeover/ Acquisition	Takeover means an acquirer takes over the control of the target company. It is also known as acquisition. Takeover can be Friendly Takeover or Hostile Takeover.
9. Joint Venture (JV)	It may be of two types viz. Project based joint venture and functional based joint venture.
10. Strategic Alliance	Alliance means an agreement between two or more organisation to cooperate with each other to accomplish their common goals and to strive for the benefits of both of them. It is understanding between firms whereby resources, capabilities & core competencies are combined to pursue mutual interests.
11. Franchising	Franchising may be defined as an arrangement wherein one party (franchiser) grants another party (franchisee) the right to use trade name as well as certain business systems and processes, to produce and market goods or services according to certain specifications.
12. Slump sale	Slump sale means the transfer of one or more undertakings as a result of the sale for a lumpsum consideration without values being assigned to the individual assets and liabilities in such sales.
13. Role of professionals in corporate restructuring process	<p>a. Role of professionals in corporate restructuring is increasing day by day.</p> <p>b. Corporate restructuring involves decision on various technical and legal aspects such as valuation of organizations involved in restructuring process, swap ratio of shares if any, legal and procedural aspects with regulators such as Registrar of Companies, Tribunal etc., optimum tax benefits after merger, human and cultural integration, stamp duty cost involved etc.</p>

c. All this requires team of professionals including business experts, Company Secretaries, Chartered Accountants, HR professionals, etc., who have a role to play in various stages of restructuring process.

DISTINGUISH BETWEEN

2011 - June [2] (a) What is the difference between 'compromise' and 'arrangement'? **(5 marks)**

Answer:

Compromise and Arrangement

The word arrangement means reorganization of share capital of the company by consolidation of shares of different classes or division into different classes of shares or both.

On the other hand compromise presupposes the existence of a dispute which it seeks to settle.

The word arrangement has a wider meaning when compared to compromise.

Arrangement may include reorganization of the share capital, takeover of shares of one company by another.

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2015 - Dec [3] (b) Distinguish between 'demerger' and 'slump sale'.

(6 marks)

Answer:

Demerger: As per the Rules made under the Companies Act, 'demerger' in relation to companies means transfer, pursuant to scheme of arrangement by a 'demerged company' of its one or more undertakings to any 'resulting company' in such a manner as provided in Section 2(19AA) of the Income Tax Act, 1961, subject to the shares being allotted by the 'resulting company'

to the shareholders of the 'demerged company' against the transfer of assets and liabilities. Section 232 deals with mergers and amalgamation including demergers.

Slump Sale: Slump sale means the transfer of one or more undertaking as a result of the sale for a *lump sum* consideration without value being assigned to the individual assets and liabilities in such sales.

Both demerger and slump sale results in having of a division or undertaking, but there are various differences which are as follows:

1. In case of slump sale, values are not assigned to individual assets and liabilities and the sale, of undertaking is for a *lump sum* consideration. Whereas in demerger, valuation of individual assets and liabilities are mandatory.
2. In case of demerger, the resulting company have to continue the business of transferred undertaking of demerged company, while it is not so in the case of slump sale.
3. Demerger unlike slump sale results into reorganization of capital.
4. In case of demerger, the shareholders of demerged company have to be issued shares of resulting company whereas in case of slump sale, the issue of shares does not take place.
5. In slump sale through amalgamation and merger, Ind AS 103 will be applicable.

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DESCRIPTIVE QUESTIONS

2009 - Dec [2] (a) "Section 230 is a boon to the corporate restructuring". Critically examine the statement and discuss the relevant provisions relating to corporate restructuring. **(8 marks)**

Answer :

Section 230 of the Companies Act is surely a boon for corporate restructuring. It acts a single window clearance system as it is a complete code in itself. It vests the power to sanction a scheme for compromise and arrangement in the hands of the Central Government.

It deals with the right of a company to enter into a compromise and arrangement between itself and its creditors or any class of them; and (ii) between itself and its members or any class of them.

This arrangement can also take a company out of winding up as it applies to compromise or arrangement entered into by companies under winding up. It includes the re-organisation of the share capital of a company by consolidation of its shares of different classes or by sub division of its shares into shares of different classes or by both these methods.

Following are the provisions of section 230:

Section 230(1): Where a company or a creditor or a member of the company proposes a compromise or arrangement between it and its creditors or between it and its members or with any class of the creditors/members, the company or the creditor or member, or where the company is being wound up, the liquidator may take an application to the Tribunal (to the Central Government in case of government company). The tribunal (Central Government in case of government company) may then order a meeting of the creditors, members or class of them to be held and conducted for the same.

Section 230(2): Company or any other person who makes the application has to disclose the material facts including the latest financial position of the company, latest audited report, any pending proceedings, reduction of share capital, if any and any scheme of corporate debt restructuring, consent made by 3/4th majority of the secured creditors.

Section 230(3): Notice of the meeting is to be sent to all creditors, members or class of them and the debenture holders of the company at their registered address.

Section 230(4): Notice to provide for voting by themselves or through proxy or postal ballot.

Section 230(5): Notice to the regulators seeking their representations

Section 230(6): Approval and sanction of scheme.

Section 230(7): Order of the tribunal (Central Government in case of government company) sanctioning the scheme.

- Section 230(8):** Order of the tribunal (Central Government in case of government company) to be filed to the registrar within 30 days of its receipt.
- Section 230(9):** The tribunal (Central Government in case of Government Company) may dispense with the calling of meeting of creditors.
- Section 230(10):** No compromise or arrangement in respect of the buyback of securities shall be sanctioned by the tribunal (Central Government in case of government company) until the same is in accordance with the regulations of section 68.
- Section 230(11):** Compromise and arrangement includes takeover that must be as per the regulations of SEBI.

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2010 - June [2] (b) Define 'corporate restructuring'. What are the various kinds of restructuring? **(5 marks)**

Answer :

Corporate Restructuring

- ⇒ The term 'restructuring' means to rebuild or rearrange.
- ⇒ Restructuring is a means whereby the organisational structure is changed so that the organisation accomplishes its objectives.
- ⇒ 'Corporate Restructuring' is a term of wider importance and covers in its ambit restructuring or reorganizing or financial restructuring of any organisation done in order to operate more effectively and efficiently.

Different kinds of restructuring are as follows :

- ⇒ **Financial Restructuring** : It takes into account restructuring using the capital base and deals with the acquisitions & takeovers, mergers and amalgamation & like strategies.
- ⇒ **Organisational Restructuring** : It deals with reforming procedures and changing the organisational structure so as to adopt the organisation to cater to the changing environment.
- ⇒ **Market Restructuring** : The purview of market restructuring is with regards to restructuring of the product market segments.

⇒ **Technological Restructuring** : As the very name suggest, technological restructuring is the one to gain technological expertise by entering into alliance with other organisations.

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2012 - June [1] {C} (b) What is meant by 'strategic alliance' and what are its features?

(c) "A conglomerate merger is neither a type of horizontal merger nor a vertical merger." Discuss. **(5 marks each)**

Answer :

(b) Strategic alliance is a relationship between two or more parties to pursue a set of agreed upon goals or to meet a critical businesses need while continuing to remain independent organisation.

Some of the features of strategic alliance are as follows:-

- (i) It aims for a synergy where each partner hopes that the benefits from the alliance will be greater than those from individual efforts.
 - (ii) Alliance often involves technology transfer, economic specialisation, shared expenses, reduction in cost, etc.
 - (iii) It is gaining importance in infrastructure sectors.
 - (iv) Strategic alliance aims at pooling the resources and facilitating innovative ideas and techniques while implementing large projects.
 - (v) It could help company to develop a more effective process, expand into a new market or develop an advantage over a competitor, among other possibilities.
- (c) • Conglomerate merger is a merger between firms that are involved in totally unrelated business activities.
- The companies, which are merged are neither competitors nor complimentaries.
 - The business of these companies are neither horizontally nor vertically related to each other.
 - Merging companies operate in unrelated markets.

- Conglomerate mergers are merger of different kinds of businesses under one flagship company.
- Thus conglomerate merger is neither a type of horizontal merger nor a vertical merger.

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2012 - Dec [1] {C} (c) As per the provisions of the Companies Act, 2013 and the Income-tax Act, 1961 there is no difference between de-merger and slump sale; though it results in separation of a division or unit of an existing company to a potential buyer. But in common parlance, it means rightward and leftward, *i.e.*, totally different approach from one to another. The first requires no payment but second requires down payment. But the ultimate objective is to hive off some business which is not compatible with the core business competency of the main company.

Discuss the eventuality in conjunction with the provisions of the Income-tax Act, 1961. **(5 marks)**

Answer:

Demerger:

Section 2(19AA) prescribes certain conditions to be fulfilled , for demerger, which are as below :

- (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 the demerger;
- (ii) all the liabilities relating 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 three-fourths in value of the 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 share-holders 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 company or any undertaking thereof by the resulting company;
- (vi) the transfer of the undertaking is on a going concern basis;
- (vii) the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

Slump Sale:

Slump sale means the transfer of one or more undertaking as a result of the sale for a *lump sum* consideration without values being assigned to the individual assets and liabilities in such sales.

Both demerger and slump sale results in hiving off a division or undertaking, but there are various differences which are as follows:

1. In case of slump sale, values are not assigned to individual assets and liabilities and the sale, of undertaking is for a *lump sum* consideration. Whereas in demerger, valuation of individual assets and liabilities are mandatory.
2. In case of demerger, the resulting company have to continue the business of transferred undertaking of demerged company, while it is not so in the case of slump sale.
3. Demerger unlike slump sale results into reorganization of capital.
4. In case of demerger, the shareholders of demerged company has to be issued shares of resulting company and in case of slump sale, the issue of shares does not take place.

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2013 - June [1] {C} (a) “Corporate restructuring aims to achieve certain predetermined objectives at corporate level.” Comment and explain how corporate restructuring would help bringing an edge over competitors.

(b) “In the modern business world, the strategic alliance and joint venture both have the same objective and end result, i.e., pooling of resources, technologies and expertise, etc. to increase the market share, to enter into a new business and so on.” Comment on this statement highlighting the basic differences between the two. **(5 marks each)**

Answer :

(a) • ‘Corporate Restructuring’ is a term of wider importance and covers, in its ambit, the restructuring or reorganizing or financial restructuring of any organisation done in order to operate more effectively and efficiently.

• **Objective of corporate restructuring:**

- Re - direction of the company and activities.
- Risk reduction.
- Deploying surplus cash from one business to another business.
- Development of core-competencies.

• Corporate restructuring helps in bringing an edge over competitor. It aims at exploiting the strategic assets accumulated by a business i.e. natural monopolies, goodwill, etc.

• In order to drive a competitive force, corporate restructuring strategies such as merger and acquisitions exercise could be taken up that would bring an edge over competitors.

(b) **Strategic Alliance:**

- Alliance means an agreement between two or more organisation to cooperate with each other to accomplish their common goals and to strive for the benefits of both of them.
- It is an understanding between firms whereby resources capabilities and core competencies are combined to pursue mutual interests.

Joint Venture:

- Joint venture is a venture in which an enterprise is formed with participation in the ownership, control and management of minimum of two parties.

- In joint venture, a business enterprise is formed for profit in which parties of joint venture share responsibilities in an agreed manner, by providing risk capital, technology, trade mark & access to market, etc.

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2014 - Dec [2A] (Or) (iii) Explain the concept of 'vertical merger' and differentiate between 'forward integration' and 'backward integration'.

(5 marks)

Answer:

Vertical Merger:

- Vertical Merger is one of the types of Merger.
- It is a merger which takes place upon the combination of two companies which are operating in the same industry but at different stages of production or distribution system.
- Vertical merger provides a way for total integration to those firms which are striving for owning of all phases of the production schedule together with the marketing network.

Forward Integration:

Forward integration may result if a company decides to take over the retailer or Customer Company.

Backward Integration:

If a company takes over its supplier/producers of raw material, then it may result in backward integration of its activities.

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2014 - Dec [3] (d) Good Earth Pvt. Ltd. wants to become a public listed company without opting for initial public offer (IPO). What is the best strategy available for the company? Distinguish the same from 'strategic alliance'.

(3 marks)

Answer:

Reverse merger is the opportunity for the unlisted companies to become public listed company, without opting for Initial Public offer (IPO). In this process the private company acquires the majority shares of public company, with its own name.

Strategic Alliance: Any agreement between two or more parties to collaborate with each other, in order to achieve certain objectives while continuing to remain independent organizations is called strategic alliance.

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2016 - Dec [1] (a) “Corporate restructuring aims at different things at different times for different companies but the single common objective in every restructuring exercise is to eliminate the disadvantages and combine the advantages.” Comment on the statement highlighting various needs for undertaking corporate restructuring. **(5 marks)**

Answer:

The various needs for undertaking a Corporate Restructuring exercise are as follows:

- (i) To focus on core strengths, operational synergy and efficient allocation of managerial capabilities and infrastructure.
- (ii) Consolidation and economies of scale by expansion and diversion to exploit extended domestic and global markets.
- (iii) Revival and rehabilitation of a sick unit by adjusting losses of the sick unit with profits of a healthy company.
- (iv) Acquiring constant supply of raw materials and access to scientific research and technological developments.
- (v) Capital restructuring by appropriate mix of loan and equity funds to reduce the cost of servicing and improve return on capital employed.
- (vi) Improve corporate performance to bring it at par with competitors by adopting the radical changes brought out by information technology.

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2017 - June [1] (c) Discuss “Strategic Alliance” and “Joint Venture” as corporate restructuring strategies. **(5 marks)**

Answer:

Please refer 2013 - June [1] {C} (b) on page no. 28

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2017 - Dec [1] (a) “Corporate Restructuring aims at significant change in a Company’s business model, management team or financial structure to address challenges and increase shareholders’ value.” Elucidate the statement with relevance to business strategy. **(5 marks)**

(b) “Restructuring is resorted to in various forms with objectives such as profitability improvement, augmenting more resources, relief from competition and methods take the forms like acquisition, merger, takeover, leveraged buy outs, slump sale, overseas acquisitions etc.” Illustrate certain instances that have happened in India setting examples of benefits in Corporate Restructuring. **(5 marks)**

Answer:

- (a) • 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.
- Restructuring may involve major layoffs or bankruptcy, though restructuring is usually designed to minimize the impact on employees, if possible.
 - Restructuring may involve the company's sale or a merger with another company.
 - Companies use restructuring as a business strategy to ensure their long-term viability.
 - Shareholders or creditors might force a restructuring if they observe the company's current business strategies as insufficient to prevent a loss on their investments.
 - The nature of these threats can vary, but common catalysts for restructuring involve a loss of market share, the reduction of profit margins or declines in the power of their corporate brand.
- (b) Corporate restructuring is a process in which a company changes the organizational structure and processes of the business. The most common form of corporate restructuring are mergers/amalgamations, acquisitions/takeovers, financial restructuring, divestitures/ demergers and buyouts. Corporate Restructuring can also be resorted in any of the forms like slump sale, leveraged buy-out or even circumventing the restriction imposed under statutes or by regulators.

As a case of demerger the Cement division of L&T Ltd. resulted to Ultratech Cement Co. Ltd. that resulted in economies of scale and overall competitiveness, multifunctional synergies, combined resource pool, cross leverage financial strengths and increased capacity. Tata Steel Ltd. acquired overseas Corus Group Plc. that improved the synergies to Tata Steel Ltd. that marshalled the resources for both, utilization of wide retail and distribution network, technology transfer and enhanced R&D capabilities. Transfer of undertaking for a lump sum consideration by Piramal Healthcare Ltd. to Abbott Healthcare Pvt. Ltd. with a non-compete clause is slump sale in terms of the **Income-tax Act, 1961**. Capital gains arising therefrom is taxed as long term if held for more than 3 years prior to transfer or as short term if held for less than 3 years. Bharti Airtel Ltd. explored the strategy of leveraged buyout in acquiring Zain Africa International BV majorly financed through borrowed funds. For this purpose, special purpose vehicles are formed. Bharti Airtel structured acquisition through special purpose vehicles thus keeping its financials intact. However, as a guarantor for special purpose vehicles, Bharti Airtel assumes full responsibility.

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2018 - June [1] (a) “Global competition drives enterprises to become globally fit to face global challenges prompting them for corporate restructuring”. Elucidate. **(5 marks)**

(b) “Inorganic growth provides an organisation with an avenue for attaining accelerated growth as compared to the organic growth in general”. Comment on the statement. **(5 marks)**

(d) “Inability to pay debts was generally a ground for moving an application for winding up of a Company under the Companies Act, 1956. But such a ground no longer exists under the Companies Act, 2013”. State the circumstances which compel a company to be wound up under the Companies Act, 2013. **(5 marks)**

Answer:

- (a)**
- Corporate restructuring activities such as merger, acquisitions, takeovers, demergers, hive off etc. enables an enterprise to achieve economies of scale, global competitiveness, right size, and a host of other benefit including reduction of cost of operations and administration.
 - A merger or amalgamation is capable of offering various financial synergies and benefits such as eliminating financial constraints, deployment of surplus cash, enhancing debt capacity and lowering the cost of financing.
 - Thus, global competition drives enterprises to become globally fit to face global challenges prompting them for corporate restructuring.
- (b)**
- Inorganic growth provides an organization with an avenue for attaining accelerated growth enabling it to skip few steps on the growth ladder. Restructuring through mergers, amalgamations etc., constitute one of the most important methods for securing inorganic growth.
 - Inorganic growth is the rate of growth of business by increasing output and business reach by acquiring new businesses by way of mergers, acquisitions and take-overs and other corporate restructuring strategies that may create a change in the corporate entity.
 - Inorganic growth strategies like mergers, acquisitions, takeovers and spinoffs are regarded as important engines that help companies to enter new markets, expand customer base, cut competition, consolidate and grow in size quickly, employ new technology with respect to products, people and processes. Thus, the inorganic growth strategies are regarded as fast track corporate restructuring strategies for growth.
- (d) Under the Companies Act, 2013, the company may be wound up in any of the following modes:**
- By the Tribunal
 - Voluntary winding up

A company under Section 271(1) may be wound up by the tribunal if:

- (a) if the company is unable to pay its debts;
- (b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- (c) if the company has acted against the interests of the sovereignty and integrity of India;
- (d) if the Tribunal has ordered the winding up of the company under Chapter XIX (i.e. Revival and Rehabilitation of Sick Companies);
- (e) if the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the management have been guilty of fraud or misconduct;
- (f) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years;
- (g) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

As per Section 304(1), a company may be wound up voluntarily:

- (a) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or
- (b) if the company passes a special resolution that the company be wound up voluntarily.

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2018 - Dec [1] (a) “Corporate Restructuring is an inorganic growth strategy that significantly changes a company’s business model, management team or financial structure to address challenges and increase shareholders’ value”. Elucidate the statement with different options of Corporate Restructuring. **(5 marks)**

2018 - Dec [3] (c) Enumerate certain circumstances that necessitates financial restructuring, being part of Internal Corporate Restructuring.

(3 marks)

Repeatedly Asked Questions		
No.	Question	Frequency
1	Discuss "Strategic Alliance" and "Joint Venture" as corporate restructuring strategies. 13 - June [1] {C} (b), 17 - June [1] (c)	2 Times