Corpsec Hotline

October 14, 2005

CROSS-BORDER MERGERS TO BECOME PERMISSIBLE IN INDIA

With the increase in global M&A activity, the Ministry of Company Affairs (**the Ministry**) has now recognized the need to permit cross-border mergers under the domestic company law. Mergers and amalgamations in India are currently governed by Sections 390 to 394 of the Indian Companies Act, 1956 (**the Act**) that proscribes mergers by Indian companies into foreign companies. The Government is now set to allow mergers of Indian companies with foreign companies.

Accordingly in the revised concept paper for the new company law (**the Concept Paper**), the Ministry has suggested that mergers of Indian companies with foreign companies be permitted.

The Concept Paper also suggests that in such cross-border mergers, the Indian shareholders be allowed to receive Indian Depository Receipts (**IDR**) in lieu of Indian shares or foreign securities in lieu of Indian shares so that they become members of the foreign company or holders of security with a trading right in India (especially in listed companies).

The Concept Paper also provides for the mandatory valuation of the shares and assets of the merging and the transferee companies by an independent valuer such cross-border mergers mandatory. Pursuant to such valuation, the board of the transferor and transferee companies would ratify the "formal valuation" and the merger negotiations would be based on the value fixed by the valuers. Further, the Concept Paper also provides for set-off of the stamp duty on registration of the merged entity against the duty paid by the two companies when they had independent registrations. It is suggested that the stamp duty be paid as a percentage of the authorized capital of the company.

-Mini Raman & Reuben Chacko
You can direct your queries or comments to the authors

Source: Financial Express dated 14th October 2005

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