M&A SALE PROCESS IN INDIA

AN ENTREPRENEUR'S GUIDE TO THE M&A SALE PROCESS IN INDIA AND COMMONLY USED DEAL TERMS

This compilation attempts to provide entrepreneurs considering a potential M&A sale transaction in India for their privately-held companies with a birds-eye overview of the M&A sale transaction process in India and insights into some of the noteworthy deal points typically negotiated by the parties. While not a comprehensive review of all the aspects and issues involved in doing a M&A sale transaction, it attempts to provide entrepreneurs with a reasonable idea of what to expect from the process and such deal points. An attempt has been made to capture the Indian context in transactions and the regulatory nuances associated with the M&A sale transaction in India.

This compilation also lucidly explains the various jargons and commonly used deal terms with an aim to bring familiarity with the process and its terms.

M&A SALE TRANSACTION. Transactions in which a company or businesses are sold, in part or full, are referred to as "mergers and acquisitions" or "M&A" transactions because such transactions typically involve either the *merger* of the company being sold (the "Target") into the Buyer or the *acquisition* by the Buyer, in full or part, either of shares in the Target, or all or substantially all the assets of the Target. None of the major acts or regulations in India, define the term M&A. The closest definition is available under the Income Tax Act, 1961 which defines "amalgamation" in the context of being tax neutral from the direct tax perspective. The reference to company in this document would also typically include other forms of entities viz. limited liability partnerships, general partnerships, etc.

As generally understood, M&A transactions are different from equity or debt "financing" transactions, in which a company raises money by selling new shares of its equity securities to investors, even though equity financing transactions also involve the sale of share in the company and can sometimes result in a change in control of the company. In this compilation, we focus on the M&A sale transaction and more so in the Indian context.

The Indian economy is at a cusp of exponential inorganic business activity. The nuances of M&A transactions are relatively atypical and require understanding of such a process. This guide aims to enable business owners and entrepreneurs' to understand M&A sale transaction process in India and provide a walkthrough to the customary deal-making process in such transactions.

BATHIYA

THE M&A SALE PROCESS.

1. **Pre-M&A structuring.** It is well understood that well began is half done. Once the management of the entity decides to explore a potential transaction, it would generally commence a process of pre-M&A readiness and structuring. This process is commenced with a view to understand the potential implications of the transaction from a finance, legal, accounting and taxation ('FLAT') and evaluating the various different alternative methods to achieve the transaction objective. It is very well possible that a sale transaction can be achieved through various different methods and each of the methods can have a different outcome for the company as well as the shareholders. Under the Pre-M&A stage, companies would also want to realign, combine or restructure their operations with a view to get 'transaction-ready' and realise the fullest potential of the outgoing business.

2. **Engaging a Transaction Advisor.** Once the Target's board has decided to proceed with a possible M&A sale transaction, the next step is often engaging a transaction advisor to assist with the sale process. Of course, a Target may proceed without a transaction advisor, particularly if it receives a "preclusive" offer at a price that the 'those charged with governance' think is unlikely to be matched in the marketplace or in some instances where the Target has very close working relationship and comfort with the offeror. Usually the Target will contact a number of transaction advisor candidates, some of which will usually be known to the Target's management or controlling shareholders from prior deals. Transaction advisors specialize in industry sectors and would usually have a detailed understanding of the nuances affecting the Target industry. Each candidate transaction advisor will present an engagement letter with its proposed terms and conditions, which will be negotiated with the Target or its controlling shareholders. The negotiated terms of the engagement typically include: (1) whether appointment of the transaction advisor will be on a exclusive basis or the Target is free to work with other transaction advisors; (2) whether all leads need to be routed through the transaction advisor or only those that are referred independently by the transaction advisor (3) whether the transaction advisor will be paid a cash retainer, how much, and whether it is paid over time during the engagement or in a lump sum upon signing; (2) the amount and structure of the "success fee" payable to the transaction advisor upon closing of an M&A sale transaction (often calculated using a graduated scale consisting of fees consisting of different percentages of the total purchase price amount apply to different purchase price amounts), (3) the cap on the transaction advisor's expenses that will be reimbursed by the Target, (4) whether the transaction advisor will also receive a fee if one of the potential Buyers it contacts decides to make a minority investment in the Target, rather than buying the Target, and the terms of such fee, and (5) the term of the agreement, including the length of the "tail period" after the end of the engagement during which the transaction advisor receives a fee if the Target does an M&A sale transaction from an investor brought to the Target by the transaction advisor.

3. Teaser/Information memorandum. Once a transaction advisor is engaged by the Target, it will work with the Target to prepare a brief, 2-3 page "teaser" summary of the Target's background, industry and business (which won't include any confidential or sensitive information about the Target) and a comprehensive 15-20 page "information memorandum" (which will include confidential information about the Target). The transaction advisor will then discuss potential Buyers, that it feels, could be interested in a potential transaction involving the Target. On finalizing the potentials, the transaction advisor will supply the teaser summary to a group of potential Buyers, that it has determined, may be interested in the Target, to enable them to do a preliminary evaluation without being required to sign a non-disclosure agreement. The potential Buyers will include both "strategic" Buyers (i.e., other operating companies which could also be competitors) and "financial" Buyers (i.e., private equity firms and hedge funds). If a potential Buyer is interested, it will sign a non-disclosure agreement supplied by the transaction advisor and receive the information memorandum.

What is a Blind Teaser?

A Blind Teaser is a 2-3 pager document which provides a high-level summary of the Target, Transaction and the Business without naming the Target nor any resemblance that associates with the Target.

4. Management Round. If a potential Buyer continues to be interested after reviewing the information memorandum, it will usually arrange through the transaction advisor to receive an in-person or telephonic presentation concerning the Target's business from its management (typically with accompanying Power-point slides). A few rounds of basic query solving could also happen in these sessions.

5. Making an Offer. Sometimes the transaction advisor assisting the Target with its M&A sale process will send out a "bid procedures" document specifying the manner in which potential Buyers should submit their bids. The bid procedures document is sometimes accompanied by a "form" purchase agreement (usually with extraordinarily Target-favorable terms), which each potential Buyer is required to mark-up and submit along with a letter summarizing the terms of its bid.

Otherwise, the Buyer will typically make its offer by presenting to the transaction advisor a "heads of agreement", "term sheet" or "letter of intent" with the terms of its offer, which is not legally binding but will be heavily relied upon by the Target and its controlling shareholders in deciding on a winner.

6. Selecting the Winner. The Target and its controlling shareholders will evaluate the bids received with the advice of the transaction advisor. The hope of the Target and its shareholders will be that a "bidding war" will start and, if there is more than one offer (or even if there isn't), the transaction advisor will try to get each of the bidders to improve its offer, and a "winner" will then be selected by the Target or its controlling shareholders. "Head line" purchase price amount is obviously a very significant factor, but other deal terms (discussed below) will also be important factors in deciding the winning bidder, as they can significantly affect the amount of proceeds that the Target shareholders ultimately receive in connection with the deal.

7. Term Sheet. Once a potential acquirer has been shortlisted, the Target and the winning bidder would move on to prepare a non-binding short heads-of-agreement also commonly referred to as a non-binding term sheet. This term sheet is prepared with a view to bring alignment and negotiate on high-level points and avoid any ambiguity in understanding before parties move on to the subsequent stages. The term sheet also forms a basis for drafting of the definitive documents and parties have an intention to stick to the terms that have been agreed in the term sheet.

8. **Due Diligence & Structuring.** The next step is for the Buyer to do legal, accounting/financial and business due diligence on the Target.

Financial & Tax – Buyers often hire an outside accounting firm like Bathiya to assist with due diligence of the Target's historical financial results and financial projections. Sometimes financial diligence is also performed to evaluate the recurring nature of the income performance.

Legal & Secretarial – Buyers will engage specialist legal firms for performing a legal diligence on the Target. Targets with significant patents, trademarks and other intellectual property, will also warrant engaging a specialist consultant to help with analysis of such intellectual property. It is also in trend to appoint a single professional services firm to perform an Integrated Due Diligence on the Target. Integrated Due Diligence has various advantages as compared to traditionally separate legal and financial due diligence.

Business – Business due diligence will typically include calls and possibly meetings between the Buyer and the Target's key customers and suppliers, which will usually be arranged by the Target or its transaction advisor. It is common for Targets to strategize and provide data to the Buyer in a phase-wise manner, especially if the Buyer is a strategic buyer.

Phased-wise approach – In terms of sequencing, to help control costs, Buyers will sometimes delay the environmental and other legal due diligence to last in the process, to avoid incurring those expenses in case the accounting/financial due diligence reveals issues that cause the Buyer to terminate the proposed acquisition. Sellers will sometimes request that the Buyer defer the key customer/supplier meetings to last in the process to minimize potential damage to those relationships if the Buyer elects to not proceed with the proposed acquisition. The more certainty to the transactions, the more would be the level of data sharing from the Target.

Process – The legal and accounting/financial due diligence processes are usually administered by the Buyer's attorneys and accountants providing "due diligence request lists", to which the Target will respond either by supplying copies of documents, inviting the Buyer's attorneys and accountants to visit the Target's offices to review the documents on-site, or posting the documents on an online "virtual data room". Follow-up requests, either by way of calls or written "supplemental due diligence request lists" are common. It is a common practice at Bathiya to customize the due diligence request lists for the relevant transaction. The Buyer's due diligence process will typically continue after submission of its bid and preparation of the transaction documents, right up to the moment of closing.

What is meant by Vendor Diligence?

Vendor Diligence is a process under which the Target will proactively conduct a due diligence exercise on itself and such a report will aid the potential Buyers in gathering initial background information as well as evaluating the compliance levels. Vendor Diligence is commonly resorted to when a bidding process is embarked upon by the Target.

9. **Definitive Deal Documents.** Once the winning bidder is selected, the Buyer and the Target will work with their respective lawyers to prepare the purchase agreement and other definitive transaction documents and proceed to closing the transaction. If a form purchase agreement was used as part of the bid process (as described above), that document will be used by the parties, sometimes with further revisions. Otherwise, the Buyer's counsel will typically prepare the initial draft

purchase agreement based on the deal terms in the offer letter/term sheet/LOI, which will then be commented upon by the Target's counsel. The Bathiya approach usually prefers multiple sit-down drafting sessions before the commented draft can be shared across. Those comments will typically be conveyed in an "issues list" memo and/or a "redline" of the draft purchase agreement, which will then be negotiated in a series of calls and/or meetings between the parties and their counsel. A similar process will typically be followed for the other transaction documents (e.g., escrow agreement, employment agreements (if applicable) and Buyer equity documents (for deals with Buyer share as part or all of the purchase consideration). Post this stage certain acquirers would also conduct confirmatory due diligence after which the documents would be executed. The transaction closure and consummations would be subject to regulatory consents, if any.

10. Timeline. Although all deals are different, the M&A sale process for a privately-held company will typically take from three to six months from beginning to end, assuming no significant delays due to, for example, contractual consents, a "phase-II" investigation under the competition law filing (discussed below) or other governmental or regulatory approvals.

THE TERMS OF THE DEAL.

- **Deal Structure.** M&A deals are usually structured as an "asset purchase," a "share purchase" or a "merger." In a half-baked transaction process, the parties will sometimes "punt" on deal structure for purposes of the offer letter/term sheet/LOI, but deal structure is very important as it can significantly affect the after tax transaction proceeds that the Target's shareholders will receive in the deal, the Target's value to the Buyer, and the process for the transaction. There are various commercial, legal, tax, accounting and regulatory reasons because of which a particular structure may be preferred over the other. Buyer concerns about assuming historical liabilities of the Target (which mitigate in favor of an asset purchase structure) and the tax impact of the deal structure on the parties are usually the main drivers for choosing a particular deal structure. Tax impact in M&A transactions is often a "zero sum game", where a deal structure that will be tax-beneficial to the Buyer will be tax-adverse to the Target's shareholders, and vice versa, but there are some exceptions, most notably doing a "tax-free" merger as discussed below. Attention to detail is required in tailoring a tax-free merger in accordance with the provisions of Income Tax Act, 1961.

Asset Purchase Structure – Either the Buyer itself or a wholly-owned subsidiary of the Buyer purchases specified assets of the Target's business (usually comprising all or substantially all of those assets), resulting in the Target business being housed in the buyer or its subsidiary and the Target entity becoming a "shell company" whose only assets are cash (which is used to pay creditors and the remainder distributed to shareholders) and any "excluded assets" that weren't purchased by the Buyer. The asset purchase structure offers some ability for the Buyer to leave behind with the Target shell company the pre-closing liabilities of the Target's business, which can be useful when buying Targets with outstanding litigation, environmental issues or other known or suspected liabilities. However, the asset purchase structure will trigger "No assignment" clauses in the Target's customer and supplier contracts and governmental permits/licenses, which can delay closing and make it more difficult to preserve the Target's business intact. Also, the "protection" for Buyers against the Target's historical liabilities from using an asset purchase structure can prove to be illusory where the Buyer will carry on the same business as the Target, using the same corporate name and operated out of the same facilities, due to application of "successor liability" theories. Finally, the asset purchase structure is often the least tax advantageous of the three deal structures to the Target's shareholders, although often the most tax-advantageous to the Buyer. Indirect taxes and Stamp Duty costs also play a decisive factor in deciding on the structure. Quite often an asset transfer along with transfer of business of the Target is structured as a Business Transfer and documented by way of a Business Transfer Agreement.

What is a Slump Sale?

The Slump Sale is a concept relevant from the Income Tax Act perspective. Sale transactions under which businesses are transferred as a 'going-concern' for a lumpsum consideration without assigning values to individual assets are referred to as Slump Sale. Slump Sale can sometimes have a beneficial tax treatment for Target.

Share Purchase Structure – The Buyer purchases from the Target's shareholders all of, or a controlling interest in, the outstanding shares of the Target's capital, resulting in the Target becoming a subsidiary of the Buyer. Unlike an asset purchase, the share purchase structure leaves the existing Target and its assets in place, so it's considered to be a "change of control" rather than an "assignment" and hence fewer consents will be required under the Target's customer and supplier contracts and governmental permits/licenses. However, the Buyer essentially "becomes" the Target, assuming all of the Target's historical liabilities, with the only protection being indemnification from the Target's shareholders under the purchase agreement. Also, if the Buyer wants to own 100% of the

Target, all of the Target shareholders will need to sign the purchase agreement, which can be difficult where there are a significant number of minority shareholders, some of whom may not be getting much (if anything) in the way of proceeds out of the transaction and, as a result, may not see the benefit in signing the purchase agreement. Sometimes a combination of share purchase and share subscription are resorted to achieve the desired objective.

Merger Structure – Either the Target is merged into the Buyer or the Buyer sets up a new wholly-owned subsidiary with which the Target is merged. If a subsidiary is used, either the Buyer subsidiary or the Target can be the surviving entity of the merger (this is referred to as a "forward" or "reverse" merger, respectively). The merger process is a lengthier process with parties requiring to file "schemes of merger" with the National Company Law Tribunal ("NCLT") of the states in which the Target and the Buyer (or its subsidiary) are registered. The merger structure is like a share purchase structure, in that it's usually (but not always) considered to be a "change of control" rather than an "assignment", resulting in fewer consents being required under Target customer and supplier contracts and governmental permits/licenses

What is a Demerger?

A demerger is generally resorted to when a part of specific undertaking of the Target is proposed to be hived off to the Buyer. The Target is split into two separate undertakings with one entity directly being merged into the Buyer entity. The Target will continue to operate and survive with the non-demerged undertaking.

- **Purchase Consideration.** The purchase consideration paid by the Buyer to the Target's shareholders can consist of cash, Buyer shares, seller debentures, earnouts and other deferred or contingent payments. As in most circumstances, "cash is king" in M&A transactions and, when evaluating acquisition offers, Target shareholders typically rank "all cash" offers ahead of those involving other forms of purchase consideration. However, Buyers will sometimes seek to "bridge the gap" between what they're willing or able to pay and the valuation being sought by the Target's shareholders by using non-cash consideration, particularly now that debt financing is much less readily available to fund acquisitions.

Buyer Shares – Buyer shares can be attractive as it can enable the parties to use the "tax-free" merger structure as discussed above, especially where the Buyer is publicly-traded. Accepting Buyer share requires the Target's shareholders to analyse the Buyer's business and capitalization and evaluate the likelihood that such Buyer share will have value in the future. This analysis often includes: (1) the seniority of the Buyer share upon a liquidation or sale of the Buyer (e.g., equity share vs. preference share), (2) voting rights of the Buyer share (e.g., the ability to appoint directors or have "veto" rights on future equity financings and other actions), (3) restrictions on transfer of the Buyer share (e.g., a "right of first refusal" requiring that the share be offered back to the Buyer and/or its majority shareholders before it is transferred to a third party and "drag along" provisions requiring the minority Buyer shareholders to go along with a "sale of the company" transaction as long as they receive the same per-share consideration as the majority shareholders). Buyers will sometimes request that Target shareholders who are also members of Target management and will be continuing with the Buyer after the acquisition "keep some skin in the game" by "rolling over" some of their purchase consideration into shares of Buyer.

Seller Debentures – "Seller Debentures" are like instruments issued by the Buyer to the Target shareholders, under which the Target shareholders are assured the payment obligation of the Buyer on redemption of the debentures. The debentures can be secured or unsecured obligations of the Buyer. The interest loss on deferred payment of consideration is usually the coupon-rate of the debentures.

Earnouts and Other Contingent Consideration – Earnouts give Target shareholders the right to receive additional purchase consideration if the "legacy" Target business meets specified financial performance or other criteria over defined periods of time after the acquisition closes. Since the Buyer will control the legacy Target business after the closing, a key negotiated point for Target shareholders, in addition to whether the earnout criteria is realistic, is whether the Buyer is required to provide funding, personnel and/or other operational support to enable the legacy Target business to achieve the earnout goals. Another negotiated point is often whether credit is given for "near misses" of earnout goals, either through "catch-up" provisions in subsequent periods or by breaking the goals into multiple segments that reward partial performance, rather than being "all or nothing" tests. Finally, Target shareholders will often seek "acceleration" of earnout benefits upon a sale of the Buyer, arguing, like in the seller debentures scenario described above, that it is not reasonable to expect the Target shareholders to assume credit risk for an unknown-to-them purchaser of the Buyer's business. In addition to earnouts, sometimes deals are structured to give the Target shareholders the right to receive additional purchase consideration if specified events occur post-closing (e.g., recovery of proceeds in a lawsuit being brought by the Target), usually in situations where the Buyer and the Target shareholders disagree as to the likelihood of the event occurring, the Target shareholders insist that the event will create additional value for the Buyer, and the Buyer isn't willing to assume the risk of it not occurring.

- **Purchase Price Adjustments.** M&A transactions involving privately-held Targets often adjust the purchase price based on the difference (if any) between the amount of a specified financial measure of the Target as of the closing, as compared to a "goal" amount of that financial measure. These provisions are intended to compensate the parties based on changes to the Target's business that occur between the time at which the purchase price is negotiated (often based on a multiple of revenue or earnings) and closing of the transaction. "Net working capital" (i.e., current asset minus current liabilities) is the most frequently used financial measure but other measures are sometimes used such as "net worth" (i.e., assets minus liabilities) and "cash at closing". Adjustments based on "cash at closing" are intended to ensure that the Buyer won't need to inject cash into the Target immediately after the closing to pay ordinary course operating expenses. However, a fair number of M&A deals are done on a "cash-free, debt-free" basis, which entails the Target shareholders delivering the Target to the Buyer at closing with no cash or borrowed money debt, and consequently the Target's cash at closing isn't included in the purchase price adjustment calculation.

Downward Only or Both Ways – Purchase price adjustments are either "downward only" (i.e., the purchase price is reduced if the financial measure is less than the goal amount) or "two way" (i.e., the purchase price is either reduced or increased, based on whether the financial measure is less or more than the goal amount), with the latter approach being more favorable to the Target's shareholders. Sometimes purchase price adjustments include a "buffer" around the goal amount, within which no adjustment is made.

Two Stage Process – Purchase price adjustments based on financial measures are often done in two stages: an initial adjustment is done at closing based on the Target's estimate of the financial measure and a post-closing adjustment is done based on the Buyer's calculation of the financial measure, with a dispute resolution mechanism in which the parties appoint an independent accounting firm to resolve any disputes that the Buyer and the Target's shareholders cannot resolve through negotiation.

Accounts Receivable Purchase Price Adjustments – M&A deals in which the Target's accounts receivable are a significant part of its value sometimes include a purchase price adjustment in which the Target shareholders compensate the Buyer for any amounts that it doesn't collect on those accounts receivable over a specified period after closing, despite it having used reasonable collection efforts, taking into account the "bad accounts" reserve included in the Target financial statements.

Sometimes the Buyer is required to assign over to the Target shareholders any uncollected accounts receivable for which the Target shareholders compensate the Buyer. Buyers sometimes resist doing so based on the concern that the Target shareholders will use collection methods that will damage the Buyer/Target's relations with its customers.

Satisfaction of Downward Purchase Price Adjustments – Sometimes, to secure the Target shareholders' obligation to repay the Buyer for any downward purchase price adjustment amounts, part of the purchase price is placed into a third-party escrow until the post-closing purchase price adjustments occur. Alternatively, sometimes the Buyer is entitled to deduct any such downward purchase price adjustment from the escrow established for indemnification claims (discussed below) or to offset the downward purchase price adjustment against its obligations under any seller debentures, earnout payments and/or other deferred or contingent purchase consideration.

Buyer may sometimes structure the payment through an escrow mechanism to hold-back some amount for an adjustment towards liabilities and indemnity obligations of the Target.

- **Standstill provisions between execution and closing.**

Sometimes the time taken between execution of definitive documentation and completion of conditions precedent is long, owing to which the buyer is exposed to uncertainties during this period. To protect the potential value of the Target, it is common for the Buyer to propose various stand-still 'business and usual' provisions for the period between signing and closing. Target entity should negotiate retaining flexibility to operate in the 'ordinary course of business'.

What is meant by Gun-Jumping?

"Gun-jumping" is the term used in context of competition law, which refers to a variety of actions that merging parties might enter into prior to closing to facilitate the merger and expedite the integration of the companies. The clearest example of gun-jumping is coordination between merging parties on prices or terms to be offered to customers for sales prior to closing the merger, or allocating customers for sales to be made prior to closing.

- **Representations and Warranties.** The purchase agreement will usually include ten to twenty pages of detailed statements about the Target's business, corporate structure, ownership, ability, etc. that are intended to cover all of the areas that could potentially create liability for the Buyer or otherwise reduce the value of Target's business. These statements, which are called "representations and warranties", are usually phrased to require the Target to describe on "disclosure schedules" that it prepares and supplies to the Buyer, any instances in which the Target's business deviates from a "perfect world" in which, for example, the Target doesn't have any issues with its financial statements, any environmental problems, any disputes with contract counterparties, or any labor issues. In addition, there are usually "list" representations and warranties, which require the Target to include in its disclosure schedule lists of, for example, all of its material contracts, all of its governmental permits, and all of its employee

benefit plans. Though used interchangeably, the words Representations and Warranties have different legal connotations. Representations and warranties serve the following important functions:

Due Diligence – First, because the representations and warranties (along with the disclosure schedules that accompany them) highlight all of the ways that the Target's business deviates from the "perfect world" and provide lists of important business items, they are an important part of the Buyer's due diligence process and sometimes reveal issues that give the Buyer grounds to renegotiate the purchase price or other deal terms, or cause the Buyer to rethink its desire to do the deal at all.

Certainty of Closing – Second, there is typically a "bring down" closing condition that entitles the Buyer to walk away from the deal (rather than close) if the Target's business changes between signing and closing and, as a result, the representations and warranties (which are made as of signing of the purchase agreement), don't continue to be true and correct as of the closing. As a result, the representations and warranties affect certainty of closing the acquisition.

De Facto Purchase Price Adjustment – Third, in M&A transactions involving privately-held Targets, there is usually an indemnification provision that requires the Target's shareholders to compensate the Buyer for any losses incurred by the Buyer if the Target misrepresents its business and the representations and warranties aren't true, for example by not disclosing a breached contract, a tax problem, an IP infringement lawsuit or an environmental law violation, which effectively reduces the purchase price by the amount of any such losses (this is discussed in more detail below).

Qualifiers and Carve-Outs – A negotiated point in most M&A transactions is the extent to which the representations and warranties include "knowledge", "materiality" and "Material Adverse Effect" qualifiers or carve-outs. "Knowledge" qualifiers or carve-outs only hold the Target shareholders responsible for misrepresentations that the Buyer can prove the Target (through its management) "knew" about as of the time that the purchase agreement was signed or the transaction closed. Whether the standard is actual knowledge or "constructive knowledge" (i.e., knew or should have known), as well as which of the Target employees' "knowledge" counts for this purpose, will be negotiated points. "Materiality" and "Material Adverse Effect" qualifiers or carve-outs excuse the Target shareholders from responsibility for not disclosing items that are not "material" to the Target or would not result in a "Material Adverse Effect" on the Target. In certain instances, these types of qualifiers or carve-outs are appropriate but the Target's counsel will often try to include as many of them as possible in the representations and warranties, in order to minimize the Target's burden in preparing its disclosure schedules, enhance certainty of closing, and limit the Target shareholders' potential indemnification exposure. As a result, those qualifiers and carve-outs will typically be a negotiated point.

- **Closing Conditions.** Most M&A transactions involve a sequence of events in which the parties negotiate and sign the purchase agreement, there is a pre-closing time period in which the parties gather all of the third-party consents and other items necessary to close and, once those items have been obtained, the "money changes hands" and the transaction closes. Other M&A transactions are "simultaneous sign and close" deals, in which the parties negotiate the purchase agreement and other transaction documents, gather all of the third-party consents and other items necessary to close, and then sign the purchase agreement and other transaction documents and close the transaction. In some cases (deals requiring filing and other regulatory approvals are prominent examples), doing a "simultaneous sign and close" deal isn't possible because a signed purchase agreement must be in place before the third-party approvals necessary for closing can be solicited by the parties.

What Target Shareholders Want – Because M&A deals that are signed but fail to close can stigmatize the Target as being "damaged goods" and otherwise harm its business prospects, Target shareholders usually highly value certainty of closing. This means that Target shareholders usually

want as few closing conditions as possible and want any such closing conditions to be relatively easy to satisfy.

What Buyers Want – Buyers, by contrast, often want to "lock in" the Target on the stated deal terms but preserve as much flexibility as possible in case circumstances change and they want (or need) to get out of the deal. Buyer also know that their leverage to get the Target to clean-up issues with its business discovered during the Buyer's due diligence process will evaporate once the deal closes, and so will often condition closing on the Target cleaning up those issues.

Types of Closing Conditions – There are two types of closing conditions in M&A transactions: those that are included in virtually all M&A transactions and, as a result, are relatively uncontroversial, and those that are the subject of negotiation by the parties.

Competition Act Closing Condition – If the transaction meets the applicable criteria laid down by the Competition Commission of India ("CCI") (which includes a minimum purchase price amount, among other factors), the Buyer will file a reference with the commission in the prescribed form. Bathiya would like to stress the importance of selecting the right form as it is crucial from the process timing perspective.

Other Non-Controversial Closing Conditions – In addition to CCI, no governmental orders or injunctions having been issued prohibiting consummation of the deal and repayment of the Target's bank debt and release of any associated liens on Target assets are usually among the non-controversial closing conditions.

Negotiated Closing Conditions – As noted above, the Buyer's obligation to close will usually be conditioned on the representations and warranties made by the Target's shareholders upon signing of the purchase agreement continuing to be true and correct as of the closing, with it being a negotiated point whether the standard for this "bring down" closing condition is "true and correct in all material respects" (a relatively tight, pro-Buyer standard) or "true and correct, except as would not constitute a Material Adverse Effect" (which is a looser, pro-seller standard). Additional closing conditions subject to negotiation by the parties sometimes include: (1) the occurrence of a "Material Adverse Effect" to the Target business, (2) the Buyer having received the financing necessary to be able to pay the purchase price (a "financing contingency"), (3) the Target having received all consents triggered by the deal under its contracts with customers, suppliers and other third parties, and (4) receipt by the parties of all governmental approvals triggered by the deal. Financing contingencies are often vigorously resisted by Target shareholders but, with the recent significant reduction in availability of acquisition debt financing, have become more common. There is sometimes a "middle ground" on the "third party consents and approvals" closing condition in which the Target is only required to obtain the "material" contractual consents and governmental approvals listed on an agreed-upon schedule to the purchase agreement. It is sometimes a closing condition for members of the Target's management team to sign new employment agreements on terms acceptable to the Buyer, but doing so can have the unintended consequence of giving the individual management members undue leverage to request personal benefits under their new employment agreements at the expense of the overall transaction

"Clean-up" Closing Conditions – In addition to the "ordinary course" closing conditions listed above, Buyers will sometimes require that the closing conditions include clean-up of issues discovered in their due diligence of the Target. This sometimes includes "out of the money" Target share options that don't automatically terminate in connection with the acquisition, as discussed above.

- **Non-Compete, Non-Solicit and Other Post-Closing Covenants.** In addition to covenants that govern the parties' conduct between signing and closing of the deal (most of which

usually aren't very controversial), the purchase agreement will also typically include covenants that restrict the Target shareholders' conduct after the closing, which are frequently the subject of negotiation. These post-closing covenants typically restrict the Target shareholders' ability to disclose to third parties the Target's confidential information, as well as restrict their ability to enter into business in competition with the Target, to solicit the Target's employees and customers, or to make disparaging statements to third parties about the Target's business. The length of the non-competition and non-solicitation covenants are usually negotiated by the parties and state law imposes some bounds on the length of covenants that will be enforced by courts, but time periods of as short as one year after closing or as long as five years after closing are not unusual. These covenants are premised on the idea that the Buyer is entitled to some protection of the business that it purchased from the Target's shareholders in exchange for the purchase price that it paid. "Sale of the company" non-competition and non-solicitation covenants will sometimes be in addition to non-competition and non-solicitation covenants to which Target management members will become subject under employment agreements they enter into in connection with the deal. While superficially similar, the two sets of restrictive covenants are different because the "sale of the company" restrictive covenants in the purchase agreement are supported by the purchase price consideration paid by the Buyer and are, as a result, less likely than restrictive covenants in employment agreements to be struck down by a court as not supported by adequate consideration and therefore unenforceable. Institutional investors such as venture capital and private equity funds will sometimes vigorously resist being subject to non-competition and, less frequently, non-solicitation covenants, arguing that they are in the business of making investments and the reward from sale of a particular portfolio company will not adequately compensate them for being prohibited from entering into an entire area of business (either directly or through their other portfolio companies).

Is non-compete unconstitutional?

Though the Constitution of India provides freedom of trade and profession, courts in India have held that a reasonable time for non-compete is not unconstitutional. More so, when the Target and Seller have received value in exchange of the restriction. It is common to see a two to three year non-compete restriction on exiting Sellers.

- **Indemnification.** As mentioned above, M&A transactions involving privately-held Targets typically include "indemnification" provisions requiring the Target's shareholders to compensate the Buyer and its affiliates for liabilities that they incur in connection with specified matters relating to the Target and its shareholders. Because such indemnification payments effectively reduce the purchase price paid by Buyer to the Target's shareholders and, as a result, inject a degree of uncertainty into the amount of proceeds that the Target's shareholders will ultimately receive in connection with the deal, indemnification provisions are usually one of the key negotiated points in M&A transactions involving privately-held Targets. Indemnification provisions are very complex and include many points that are negotiated by the parties, but some of the most significant negotiated points are as follows.

DOUBLE INDEMNITY

Scope of Indemnification – The Buyer is typically indemnified for losses incurred after the closing resulting from breaches of the representations and warranties and covenants of the Target and its shareholders contained in the purchase agreement. Sometimes the Target shareholders also provide a "flat" indemnity to the Buyer for losses relating to the Target's pre-closing tax and environmental

liabilities, which is in addition to indemnification for losses relating to misrepresentations in the tax and environmental representations and warranties in the purchase agreement (which essentially make a share purchase or merger deal somewhat equivalent to an asset purchase deal with respect to these liabilities). In asset purchase deals, the Target (or its shareholders) is also usually required to indemnify the Buyer for any losses associated with "Excluded Liabilities", which is typically defined as any liabilities associated with the pre-closing operations of the Target. In addition, potential issues are sometimes discovered during the Buyer's due diligence process that may or may not ultimately result in actual liability and, rather than reduce the purchase price or put additional purchase consideration into escrow, the Target's shareholders will agree to provide a special indemnity to the Buyer for any liability that results from the issue.

Who is "On the Hook" – In share purchase and merger transactions, the Target's shareholders will typically be responsible for providing indemnity to the Buyer. In asset purchase transactions, sometimes the Target shareholders will provide the indemnity directly and sometimes the Target entity itself will provide the indemnity (with its obligation to do so guaranteed or otherwise backed by the Target's shareholders). Each Target shareholder is usually responsible for its *pro rata* portion of liability resulting from breaches of representations and warranties concerning the Target and the Target's covenants in the purchase agreement (which are sometimes referred to as the "company" representations, warranties and covenants), determined based on each Target shareholder's percentage ownership of the Target. Each Target shareholder is usually solely responsible for liability resulting from breaches of its own representations and warranties and covenants. However, sometimes Buyers are able to negotiate making the Target's majority shareholders "jointly and severally liable" for all such liabilities (i.e., the Buyer can collect the full amount from any Target majority shareholder), with each majority Target shareholder entitled to seek "contribution" from the other Target shareholders for any payments it makes to the Buyer in excess of its *pro rata* share of the liability. This is often the case where there are a few significant majority shareholders (such as venture capital firms and significant founding shareholders) and many minority shareholders with relatively small percentage interests (such as non-management shareholders and "angel round" investors who have since been diluted), based on the Buyer's argument that the majority shareholders are receiving the vast majority of the transaction proceeds and it shouldn't be required to "chase around" the minority shareholders.

Duration of Indemnification Obligations – The Target shareholders' indemnification obligations for breaches of "fundamental" representations and warranties such as the ability of the Target and its shareholders to enter into the deal, the Target having clear title to its assets, and the Target shareholders having clear title to their shares of Target share, as well as for "Excluded Liabilities" in asset purchase deals and breaches of the covenants of the Target and its shareholders contained in the purchase agreement, typically extend indefinitely after closing. The Target shareholders' indemnification obligations for breaches of representations and warranties concerning tax, environmental, and employee benefit plans matters typically extend until expiration of the statute of limitations of the matters described in the representations and warranties. The duration of the Target shareholders' indemnification obligations for breaches of other representations and warranties is subject to negotiation by the parties, with periods of 2-5 years after closing being typical.

Thresholds, Deductibles and Caps – The indemnification obligations of the Target shareholders are usually subject to either a "threshold" (i.e., the Buyer must wait to make an indemnification claim until it has indemnifiable losses at least equal to the threshold amount, but then receives full compensation for all losses "back to the first rupee") or a "deductible" (i.e., the Buyer is forced to absorb the first "X rupees" in otherwise indemnifiable losses and is only compensated for indemnifiable losses in excess of that amount). Deductibles are more favorable to Target shareholders than thresholds and the decision as to whether a threshold or deductible will apply in a given transaction will be the subject of negotiation by the parties. Threshold and deductible amounts can

vary significantly based on the size of the transaction but amounts of 0.5%-2% of the purchase price amount are not unusual. The Target shareholders' total possible indemnification liability is typically subject to a "cap", the amount of which will be negotiated by the parties but can be as low as 10-20% of the purchase price amount or as high as the full purchase price amount. Sometimes, there is also an indemnity cap for each individual Target shareholder in which that shareholder cannot be subject to indemnification obligations is excess of the amount of transaction proceeds received by it in connection with the deal. There is a somewhat recent trend towards making the indemnification escrow fund (discussed below) the "sole remedy" of the Buyer for indemnification, which effectively acts as a cap on the potential indemnification liability of the Target shareholders. This is particularly the case for M&A transactions in which the Target shareholders are venture capital and private equity funds that would like to be able to draw definite bounds around their potential indemnification liability and distribute the remainder of their transaction proceeds to their limited partners. Both the indemnity threshold/deductible and the indemnity cap are usually subject to "carve-outs" for losses relating to breaches of "fundamental" representations and warranties, covenant breaches, fraud and willful misconduct by the Target and its shareholders and "Excluded Liabilities" in asset purchase deals, although the matters carved-out from the indemnity threshold/deductible and cap are often heavily negotiated by the parties.

Indemnification Escrows and Other Indemnification Payment Methods – In order to secure the Target shareholders' indemnification obligations, part of the purchase consideration is sometimes placed into a third-party escrow account (typically with a bank) for a specified time period after closing, which usually corresponds to the negotiated date on which the Target shareholders' indemnification obligation concerning "general" representations and warranties ends, as discussed above. A more Buyer-favorable approach is for the Buyer to simply "hold back" in its possession part of the purchase consideration for such time period. The percentage of the total purchase consideration that is placed into escrow or held back by the Buyer will be a negotiated point but 10-20% is typical. As noted above, a somewhat recent trend is for the indemnification escrow fund to be the Buyer's sole remedy for indemnification losses but more often that escrow fund is merely the Buyer's initial remedy, which the Buyer must exhaust before going against the Target shareholders individually for any additional amounts owed. If the purchase consideration includes non-cash consideration (i.e., Buyer share, seller notes, earnout payments and other deferred or contingent consideration), which types of consideration (cash vs. non-cash) are placed into escrow or held back by the Buyer, the order in which such consideration is forfeited to satisfy Buyer indemnification claims (e.g., first Buyer share, then seller notes, then earnout), and whether or not all of such non-cash consideration must be forfeited before the Buyer can go against the Target shareholders individually will be negotiated points. The valuation of Buyer share for purposes of forfeiture to satisfy indemnification claims will also be a negotiated point – the alternatives consist of "pegging"- the valuation at the price at which the Buyer share was issued in the M&A transaction or allowing it to "float"- by valuing the Buyer share for such purpose at its fair market value at the time of the claim.

How common is it to obtain M&A indemnity insurance cover?

Certain general insurance companies have started offering insurance products to protect against transaction indemnity related risks. However, the usage and scope of such insurance remains narrow in India.

M&A Glossary

A Glossary of Terms

Acquisition

The purchase of the controlling interest or ownership of another company. This can be effected by:

- Agreement with the persons having majority stake
- Purchase of shares in the open market
- Offer to the general body of shareholders
- Purchase of new shares by private agreement
- Acquisition of new share capital

Amalgamation

It is blending of two or more companies. The shareholders of each company become the shareholders of the company which is undertaking the activity. It is similar to a merger.

Accelerated vesting

A form of vesting that takes place at a faster rate than the initial vesting schedule in a company's stock option plan. This allows the option holder to receive the monetary benefit from the option much sooner.

Acquiree or **Target Company**

The company which is being merged or taken over by the other company.

Acquisition of assets

Acquirer may purchase only assets or some specific assets and not all the assets and liabilities of the company.

Acquirer, Predator, Offeror

The company which is making a bid for the merger or takeover of another company.

Affirmative Rights

A veto right available with the investor \ group of shareholders which would enable them to block a resolution on which they have such an affirmative right.

Break Fees

A penalty set in takeover agreements, to be paid if the target backs out of a deal (usually because it has decided instead to accept a more attractive offer).

Bottom Line

The net income "line" of the income, i.e. Profit after Tax.

Call Option

Such options in shareholder agreements give the investor an option to buy additional shares at a future date, on the happening of a specified event.

Capitalization

Term used to describe a company's permanent capital, long-term debt and equity.

Change of Control contractual restriction

Contracts having restrict or requiring consent of the counter-party to enable change of controlling shareholding.

Creeping Takeover

Gradual accumulation of shares with the intent of acquiring a controlling stake. One can buy up to a 5% stake in a company without any prior permission. After 5%, they should inform the share exchange.

Competition Commission of India

A statutory body of the Government of India responsible for enforcing The Competition Act, 2002 throughout India and to prevent activities that have an appreciable adverse effect on competition in India.

Conditions Precedent

A term used to define all the significant points that need to be dealt with prior to closing a transaction.

Conditions Subsequent

A term used to define all the points that need to be dealt with after the completion date.

Consolidation

The fusion of two companies in which both the companies lose their identity and form a new company. Shareholders get the shares of the new company.

Continuing Operations

Term used in an income statement to denote recurring income as opposed to income generated by sales of assets or discontinued operations.

Conversion Price

The price paid for a common share that is obtained by converting either convertible bonds or preferred convertible share

Covenants

Provisions in the legal agreements on loans, bonds, or lines of credit. Usually written by the lender to protect its position as a creditor of the borrowers

Crown Jewels

These precious assets attract the raider to bid for the company's control. The company sometimes sells these assets at its own initiative leaving the rest of the company intact.

Competitive Bid

A competing offer for a company. This can be made by any person within a certain number of days of public announcement of the offer made by the acquirer. This can be made by public announcement and should be for the equal number of shares or more for which the first offer was made.

Conglomerate merger

An amalgamation of companies in two or more different industries.

Defensive merger

The directors of a threatened company may acquire another company for shares as a defensive measure to forestall the unwelcome takeover bid. For this purpose, they may sell a large block of shares of their own company in the hands of shareholders of a "friendly" company to make their own company least attractive for takeover bid.

Demerger or corporate split or division

This takes place when part of a company's undertaking is transferred to a newly formed or an existing company. Some or that part of the shares of the first company are also transferred to the new company. The remainder of the first company's undertaking continues to be vested in it and the share holding of the main company gets reduced by that extent.

Demerger through Slump Sale \ Business Transfer Agreement

In this, the demerger takes place by an agreement with the company. All or some the assets of the old company would be transferred to the new company and henceforth the new company would pay all the creditors.

Drag-Along Rights

A right that enables a majority shareholder to force a minority shareholder to join in the sale of a company. The majority owner doing the dragging must give the minority shareholder the same price, terms and conditions as any other seller.

Dilution

The reduction of earnings, or the value of a share, that can occur in a merger when more shares are issued; or with conversion of convertible securities into common share.

Divestiture

The sale, for cash or for securities, of a segment of a company to a third party which is an outsider.

Events of Default

An action or circumstance that causes a lender to demand full repayment of an outstanding balance sooner than it was originally due. In many agreements, the lender will include a contract provision covering events of default to protect itself in case it appears that the borrower will not be able to or does not intend to continue repaying the loan in the future.

Exclusivity

An exclusivity agreement in the context of a business acquisition stipulates that the seller cannot pursue an offer from another potential buyer for a period of time subsequent to the signing of the letter of intent (LOI).

Exercise Price

The price at which an option may be exercised. This is also known as the strike price.

Exit Waterfall

The order in which a private equity fund pays out distributions after investments have been liquidated.

Fiduciary Responsibility

The responsibilities that the directors of the company have to ensure their responsibilities to various stakeholders.

Foreign Investment Promotion Board (FIPB)

A national agency of Government of India, with the remit to consider and recommend foreign direct investment (FDI) which does not come under the automatic route.

Friendly mergers

Mergers and acquisitions resulting from negotiations, with the willing consent of the acquiree company.

Golden Parachutes

This envisages a generous termination package for senior executives and is used as a protection tool against a takeover.

Governing Law

Such a provision in a contract allows the parties to agree that a particular state's laws will be used to interpret the agreement, even if they live in (or the agreement is signed in) a different state.

Grey Knight

A party friendly to the target company who seeks to take over the predator.

Holding company

The holding company would have more than 50% of the total voting power and has the control on the other company.

Horizontal merger

It is a merger of two competing firms, which are at same stage of industrial process.

Hostile takeovers

An acquirer may not offer the proposal to acquire the target company's undertaking, but may silently and unilaterally pursue efforts to gain controlling interest in it against the wishes of the management. They are also called raids or takeover raids.

Intangibles

All intangible assets like goodwill, patents, trademarks, unamortized debt discounts and deferred charges

Interlocking shareholdings or Cross Shareholdings

Two or more group companies acquire shares of each other in large quantity or one company may distribute shares to the share holders of its group company to avoid threats of takeover bids. (If the interlocking of shareholdings is accompanied by joint voting agreement then the joint system of defence is termed "Pyramiding".)

Joint Venture

This is an agreement between two or more companies to create a jointly owned company, where there will be an agreed contribution and participation of the respective companies.

Joint Holding or Joint voting agreement

Two or more major shareholders may enter into agreement to block voting or to block sale of shares or may sell the shares together. This agreement is entered into with the cooperation of Offeree Company's management.

Leveraged Buyout

This is the acquisition of a company by its management personnel. It is also known as management buyout. Management may raise capital from the market or institutions to acquire the company on the strength of its assets.

Liquidation Value

The amount which is available if the assets of the business are sold off and converted to cash

Lock-in Period

A predetermined amount of time following an initial public offering where large shareholders, such as company executives and investors representing considerable ownership, are restricted from selling their shares.

Long-Stop Date

The last day by which something must be done; in the case of a transaction, it will not go ahead if certain conditions are not fulfilled by the stated long-stop date

Merger

Merger is the fusion of two or more companies (or) Merger is a combination of two or more companies into a single company where, it survives and others lose their corporate identity. The survivor acquires the assets and liabilities of the rest.

Mandatory Bid

Once the acquirer has accumulated a certain percentage of shares, share exchange regulations may require that the bidder make an offer for the remainder of the shares.

Non-Compete

A contractual limitation on the target which prevents it from competing with a business after completion of a business sale under specific circumstances.

Non-Solicit

A contractual limitation on either the target or the acquirer that prevents them from trying to lure/ hire away each other's customers or employees.

Pac-Man Strategy

The target company attempts to take over the hostile raider.

Poison Put

A covenant allowing the bond holder to demand repayment in the event of a hostile takeover.

Pooling of voting arrangement

An agreement between a group of shareholders to vote in a specific manner as mentioned in the pooling of voting agreement.

Partial Bid

When a bid is made for acquiring part of the shares of a class of capital where the offeror intends to obtain effective control. This is made for the equity shares.

Par Value

The face value of a share.

Put Option

Such options in shareholder agreements give the investor an option to sell the shares at a future date, on the happening of a specified event.

Right of First Offer

A right of first offer is a contractual obligation by the owner of an asset to a rights holder to negotiate the sale of an asset with the rights holder before offering the asset for sale to third parties.

Right of Last Refusal

After counteroffers and negotiations with a third party, but before contract execution, the party to which Right of Last Refusal is granted is given an opportunity to make an offer.

Reconstruction

In this, a company transfers its undertaking and its assets to a new company in consideration of the issue of the new company's shares to the first company's members. And if the first company members debentures are not paid off, the new company should give the debentures to the respective holders and thus the first company would lose its identity.

Sandbagging

A "sandbagging" in a M&A agreement states that a buyer's remedies against the seller under the agreement will not be impacted by whether or not the buyer had knowledge, prior to closing the deal, of the facts or circumstances giving rise to the claim.

Shark Repellent

The companies amend their By-Laws and regulations to be less attractive for the raider company. For example, the company may require that 80-95% of the shareholders should approve for the takeover and 75% of the Board of Directors consent.

Split Off

This occurs when equity shares of a subsidiary company are distributed to some of the parent company's shareholders in exchange for their holdings in parent company.

Split Up

It is s diversion of a company into two or more parts through transfer of share and parent company ceases to exist.

Spin Off

It is a kind of a demerger where an existing parent company distributes on a pro-rata basis all the shares it owns in a controlled subsidiary to its own shareholders by which it gains effect to make two of the one company or corporation. There is no money transaction, subsidiary's assets are not valued, transaction is not treated as share dividend and tax free exchange. Both the companies exist and carry on business. It does not alter ownership proportion in any company.

Squeeze Out

The compulsory sale of the shares of minority shareholders of a joint-stock company for which they receive a fair cash compensation.

Stalking Horse

A stalking-horse bid is an initial bid on a bankrupt company's assets from an interested buyer chosen by the bankrupt company. From a pool of bidders, the bankrupt company chooses the stalking horse to make the first bid.

Swap ratio

This is an exchange rate of the shares of the companies that would undergo a merger. This is calculated by the valuation of various assets and liabilities of the merging companies.

Poison Pill strategy

The target company might issue convertible securities which are converted into equity to deter the efforts of offeror; such conversion dilutes the bidder's shares and discourages acquisition. Or the target company might raise borrowings distorting normal debt: equity ratio.

Tag Along Rights

The right assures that if the majority shareholder sells their stake, minority holders have the right to join the deal and sell their stake at the same terms and conditions as would apply to the majority shareholder.

Takeover bid

It is the intention of the acquirer reflected in the action of acquiring the shares of the Target company.

Tender offer \ Open Offer

The acquirer pursues takeover (without consent of the acquiree) by making a tender offer directly to shareholders of the target company to sell their shares. This offer is often made for cash.

Takeover

This is similar to acquisition. Takeover differs with merger in approach to business combinations ie, the process of takeover, transaction involved, determination of share exchange. for ex: process of takeover is unilateral and the offeror company decides about the maximum price. Time taken in completion of the takeover is less than that in the merger.

Vertical merger

This would give backward integration to the company to assimilate the sources of supply and forward integration towards the market. ie, the merging undertaking would be a buyer or a supplier using its product as intermediary material for final production.

Voluntary winding up

The original company which has split into several companies after division, could be wound up voluntarily.

White Knight

A white knight is an alternative buyer who enters the fray when the target company is raided by a hostile suitor.

BATHIYA
& ASSOCIATES LLP **CHARTERED ACCOUNTANTS**

Mumbai | Ahmedabad | **Bengaluru** | Hyderabad | **Thane** | Vadodara

www.bathiya.com

Disclaimer: The document provides general information and guidance as on date of preparation and does not express views or expert opinions of Bathiya & Associates LLP as a Firm. The research paper is meant for general guidance and no responsibility for loss arising to any person acting or refraining from acting as a result of any material contained in this paper will be accepted by Bathiya & Associates LLP. It is recommended that professional advice be sought based on the specific facts and circumstances. This research paper does not substitute the need to refer to the original pronouncements. Further, this document may contain material that is confidential, privileged and product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies. If you have received this communication in error, or if you or your employers do not consent to email messages of this kind, please notify us immediately by responding to our email and then delete it from your system. No liability is accepted for any harm that may be caused to your systems or data by this message. This paper is for the in-house firm members, Clients and request-recipients of Bathiya & Associates LLP only. In case this mail doesn't concern you, please unsubscribe from mailing list. Errors and omissions expected. The views and compilations does not necessarily translate into views of the Firm. Errors and omissions expected. This compilation may have excerpts from various other sources that are available for public use.

The source of this research is inclusive of various publicly available information, data and statistics from various sources including the internet. Reliability of these sources of information and their copyright protections has not been independently verified by us.