

The image shows a group of five business professionals in a modern office setting. They are silhouetted against a bright blue background that features a large, dotted world map. The professionals are gathered around a long table, with some sitting in office chairs and one standing. They appear to be in a meeting, with laptops open on the table. The overall atmosphere is professional and global.

**“Mergers, Acquisitions, Demergers & Business Structuring – Stamp Duty Implications”**

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# Overview

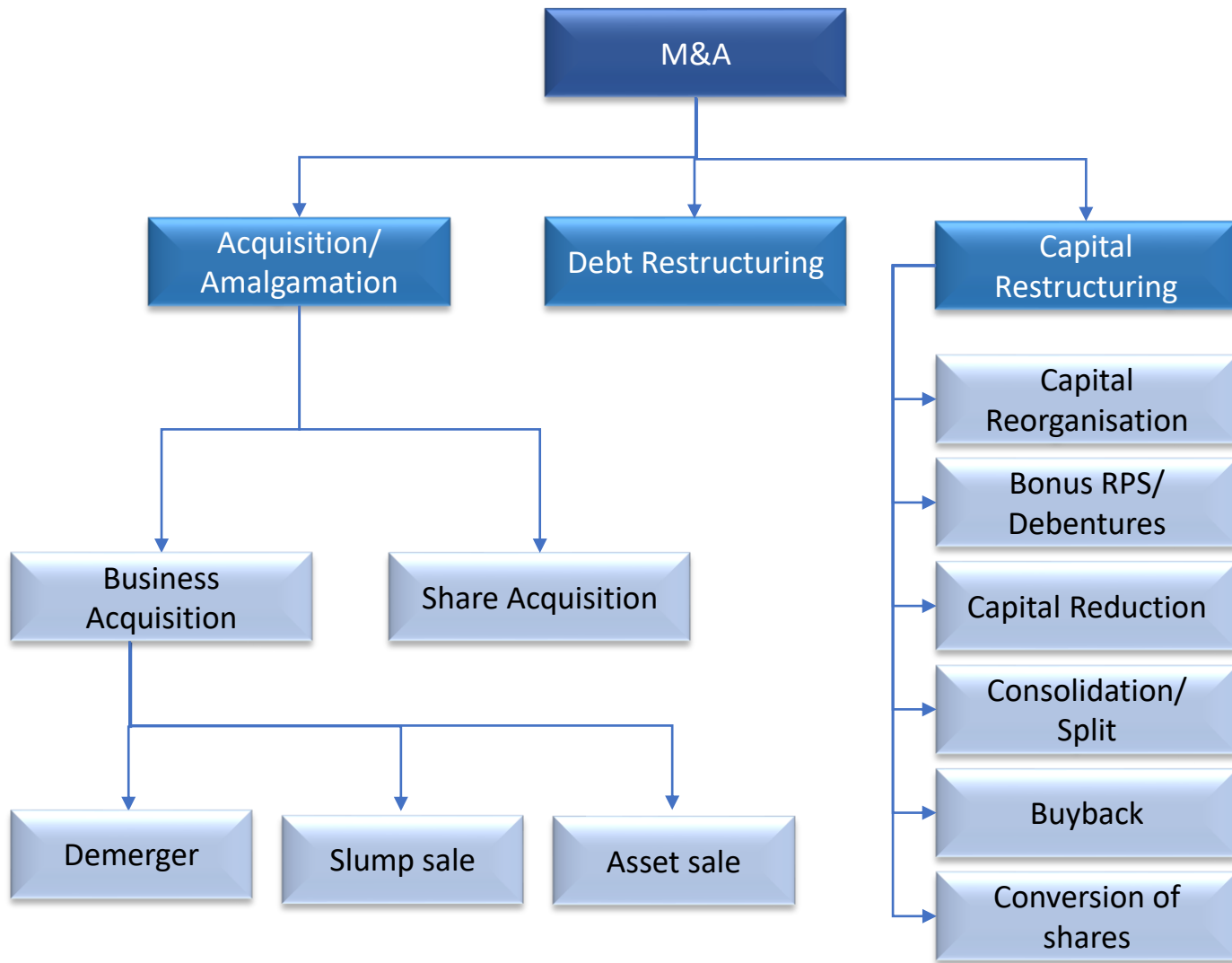
#	Topic
1.	Governing legislature
2.	Typical M&A activities/ transactions
3.	Basic principles of stamp duty
4.	Instruments liable to stamp duty
5.	Important judicial precedents
6.	Sample case studies
7.	Q&A
8.	Disclaimer
9.	Thank You

# Governing legislature

Indian Stamp Act (ISA)	<ul style="list-style-type: none"><li>• Schedule I</li></ul>
State Specific Stamp Act	<ul style="list-style-type: none"><li>• Certain states have made changes in the Articles of Schedule I of ISA itself</li><li>• Certain states have adopted separate Schedule added to the ISA by State amendments</li></ul>

Rate and incidence of Stamp duty varies from State to State

# Typical M&A activities/ transactions



Is stamp duty payable on transactions



# Basic principles of stamp duty

Stamp duty is levied on the instrument, covered under the provisions of the respective state Stamp Acts or under the ISA and not on the transaction

## Some of the relevant definitions

**'instrument'** *“includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt”*

*Explanation. – The term "document" also includes any electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000*

**'Conveyance'** *“Includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I”*

# Basic principles of stamp duty

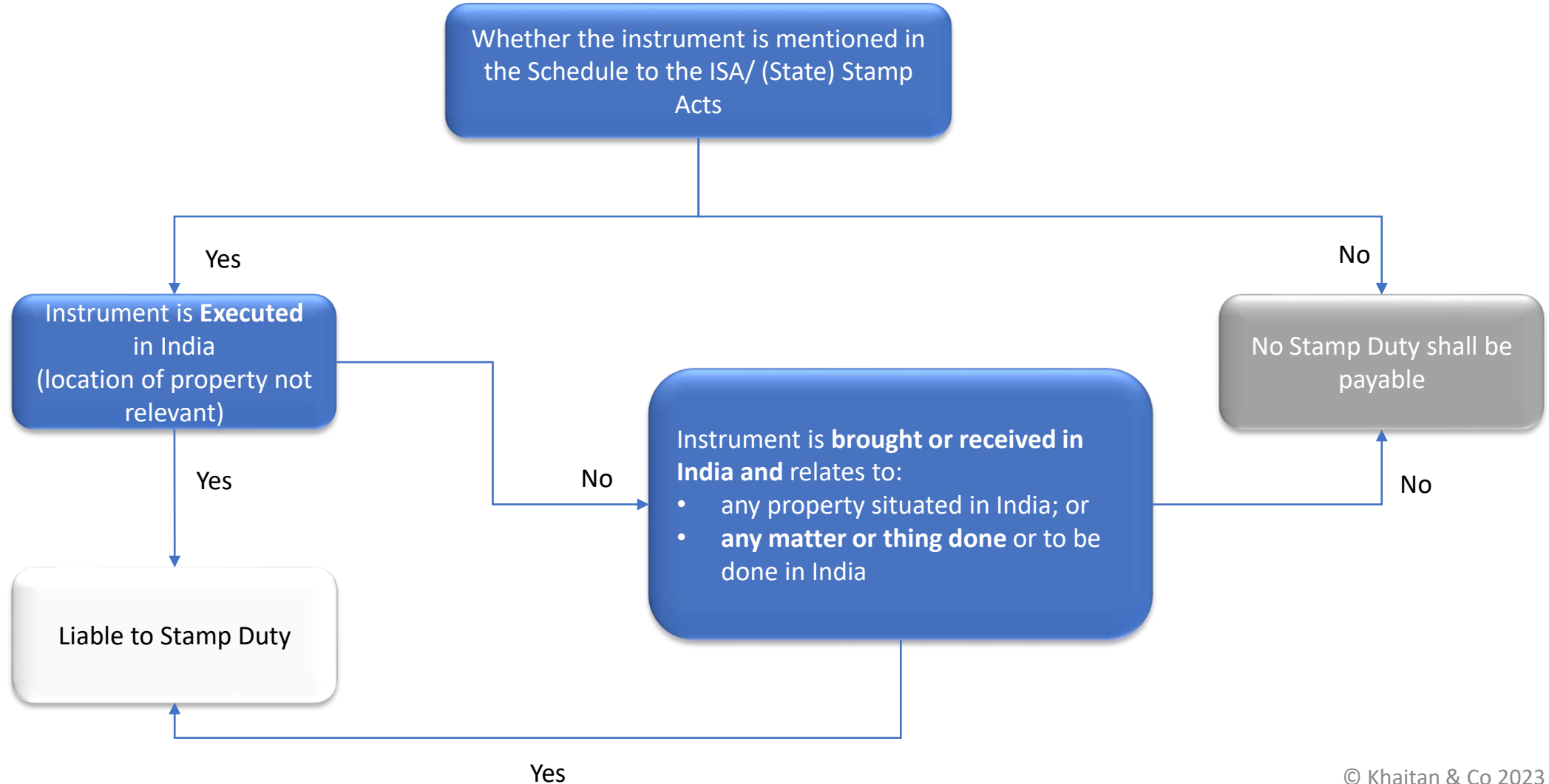
## Some of the relevant definitions

**'Executed'** and **'Execution'** *“used with reference to instruments, mean “signed” and “signature””*

**"Marketable security"** *“means a security of such a description as to be capable of being sold in any stock market in India or in the United Kingdom”*

**'Market Value'** *“in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument whichever is higher”*

# Basic principles of stamp duty



# Basic principles of stamp duty

## Why to pay stamp duty

- Revenue to the Government
- Evidentiary value
- Clear title

## When to pay stamp duty

- Upon execution
- Upon receipt of executed instrument in India/ State

## Who should pay stamp duty

- Stamp duty can be paid by any party (as agreed)
- If not provided; stamp duty shall be paid by the purchaser or executor
- Otherwise, can be paid by the parties equally

## How to pay stamp duty

- Stamp Duty can be paid by purchase of stamp papers / adhesive stamps
- By franking
- E-stamping/ online



# Basic principles of stamp duty

## Indian Stamp Act

**Section 4:** Several instruments in used single transaction of sale, mortgage or settlement

- Where several instruments are employed to complete a transaction

**Section 5:** Instruments relating to several distinct matters or transactions

- Where the instrument comprises more than one transaction and it is immaterial whether those transactions are of the same category or not

**Section 6:** Instrument within several descriptions in Schedule I

- Subject to the provisions of Section 5, where an instrument comes within two or more of the descriptions in Schedule I, such instrument shall be chargeable to highest of the duties mentioned in any description

# Instruments liable to stamp duty

Issue and transfer of securities

Increase in authorised share capital of company

Gift

Conversion of entity

Itemised sale

Slump sale through business transfer agreement

Stamp duty on Tribunal order approving a scheme

# Issue and transfer of shares

## Issue of shares

### **Option A – Issue of shares in dematerialised form**

### **Option B – Issue of shares in physical form**

- Stamp Duty as per the rates provided in the respective State Acts / schedules
  - Some states provide for *ad valorem* payment of stamp duty
  - Some states provide for stamp duty on the basis of share certificate

## Transfer of shares

### **Option A – Transfer of shares in dematerialised form**

### **Option B – Transfer of shares in physical form**

- Transfer of shares in physical form of a company

# Increase in authorised share capital

- Amount of duty varies from State to State, depending on the place of registered office of the company
- No stamp duty payable in case authorized share capital is above the threshold limit
- In case of merger, appropriate clauses can be drafted for combination of the authorized share capital
- Section 232 of the Companies Act 2013 provides that fees, if any, paid by transferor company on its authorized capital shall be allowed to be set-off against fees, if any, payable by the transferee company on its authorized capital subsequent to the amalgamation

# Gift

- Amount of duty is the same duty as a conveyance for a consideration equal to the property as set forth in such instrument
- Stamp duty on gift of undertaking from one company to another, under a scheme of arrangement, will be levied as per the Article providing for stamping of Court/ Tribunal order
- Certain States provide for exemption to stamp duty for Gift of property amongst family members

# Conversion of entity

- Conversion of a partnership firm into a company
  - Possible to take a view that no stamp duty payable on conversion as there is no transfer of assets, based on judicial precedents
- Any other conversion
  - Similar view can be taken for conversion of partnership firm into a LLP / LLP into a company

# Itemised sale

- Sale of individual assets – ‘cherry picking’ approach
- Duty chargeable at rates applicable to movable and immovable property on value of assets

# Slump Sale through Business Transfer Agreement

- Stamp duty payable on the business transfer agreement on the value of consideration
- Business transfer agreement as an 'agreement to agree' and not a conveying instrument itself
- Separate conveyance deed may be executed for transfer of immovable properties
  - wherein consideration for transfer of such immovable property may be noted; and
  - stamp duty shall be payable on that amount only
- No benefit, if any, under Article for Tribunal order, shall be available for slump sale through business transfer agreement



# Stamp Duty on Tribunal Order approving a scheme

Incidence of stamp duty on order of the Tribunal depends on the place of registered office address of the companies, involved in the Scheme and where the properties are situated

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## **Registered Office**

Location of the registered office of Companies

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## **Immovable property**

Location of immovable property of the Transferor Company/ Demerged Undertaking

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# Important Judicial Precedents

## Li Taka Pharmaceuticals v State of Maharashtra (1997)

- Held that an order under Section 394 of the Companies Act 1956 is founded upon a compromise between the two companies and that the order is an 'instrument' which transfers the assets and liabilities on which stamp duty is payable
- **This judgment was challenged by Hindustan Lever in the Supreme Court**

## Hindustan Lever v State of Maharashtra (2004)

- Supreme Court held that a order of the Court would be an 'instrument' and the state legislature has the competence to impose stamp duty on the order of amalgamation passed by the Court
- Further, held that:
  - an order of amalgamation is agreement between two or more companies
  - Scheme has its genesis in an agreement between the prescribed majority of shareholders and creditors of the transferor company with the prescribed majority of shareholders and creditors of the transferee company
  - The transfer is effected by an order of the Court

# Important Judicial Precedents

## Chief Controlling Revenue Authority v Reliance Industries Limited

- If the registered offices of two companies are situated in two different states, then the order of the High Court which sanctions the scheme passed under Section 394 of the Companies Act, 1956 will be the instrument chargeable to stamp duty and a set off cannot be claimed against stamp duty paid pursuant to the order of the High Court in another state
- Orders of two different High Courts may be pertaining to same scheme but they are independently different instruments and cannot be said to be same document especially when the two orders of different High Courts are upon two different petitions by two different companies

## Duncans Industries Ltd. v State of UP

- The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such conveyance was intended to be temporary or permanent

# Important Judicial Precedents

## Coastal Gujarat Power Ltd

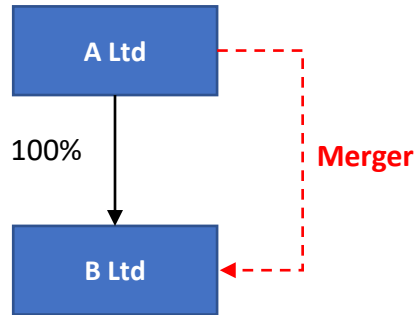
- Company took assistance of a consortium of 13 financial institutions, who formed a consortium trust and executed a security trustee agreement, appointing one banker as a lead trustee
- Supreme Court has held that the mortgage deed shall be regarded as 13 distinct transactions falling under Section 5 of the Gujarat Stamp Act, such that the borrower entered into separate loan agreements with 13 financial institutions
- Thus, Supreme Court set aside the order of Gujarat High court order and held that the Company is liable to pay deficit stamp duty together with interest as directed by the Revenue authorities

## Ambuja Cements Limited v Chief Controlling Revenue Authority

- Gujarat High Court held that a Tribunal order sanctioning a Composite Scheme of Arrangement involving mergers, demergers, etc, shall be treated as a single instrument and such instrument cannot be treated as covering separate transactions
- In case of unlisted companies, market value of shares shall be deemed to be its face value, irrespective of whether the shares are issued as premium, for purposes of ascertaining stamp duty liability as per Gujarat Stamp Act
- Stamp duty shall be applicable as on the Appointed Date of the Scheme is payable and not on the date of Tribunal order
- Stamp duty paid on the same instrument in another state, allowed to be set off against the stamp duty payable in Gujarat
- 'Capital work in progress' cannot be considered as immovable property and shall not be subject to stamp duty levy

# Case studies

## Case study 1

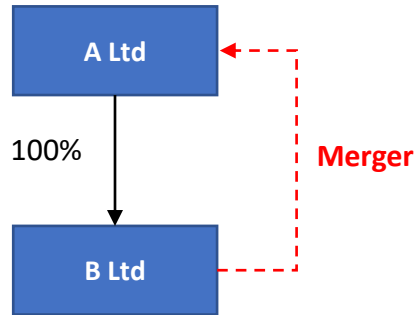


- Registered office
  - A Ltd : Maharashtra
  - B Ltd : Maharashtra
- Immovable properties of B Ltd
  - None

What would be the stamp duty payable on court order for merger ?

# Case studies

## Case study 2



- Registered office
  - A Ltd : Maharashtra
  - B Ltd : Maharashtra
- Immovable properties of B Ltd
  - None

What would be the stamp duty payable on court orders for merger ?

# Case studies

## Case study 3



- Registered office
  - A Ltd : Maharashtra
  - B Ltd : West Bengal

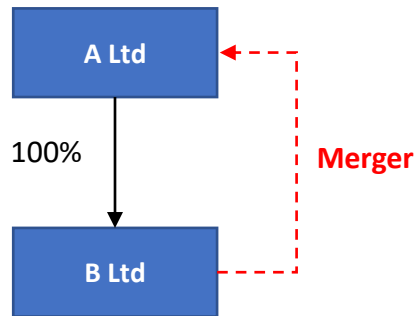
- Immovable properties of A Ltd
  - Maharashtra
  - Delhi

In which all states is stamp duty payable?

Will set-off be available?

# Case studies

## Case study 4



- Registered office
  - A Ltd : Maharashtra
  - B Ltd : Gujarat
- Immovable properties of B Ltd
  - None

What would be the stamp duty payable on court orders for merger ?

Will set-off be available?





Q & A

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