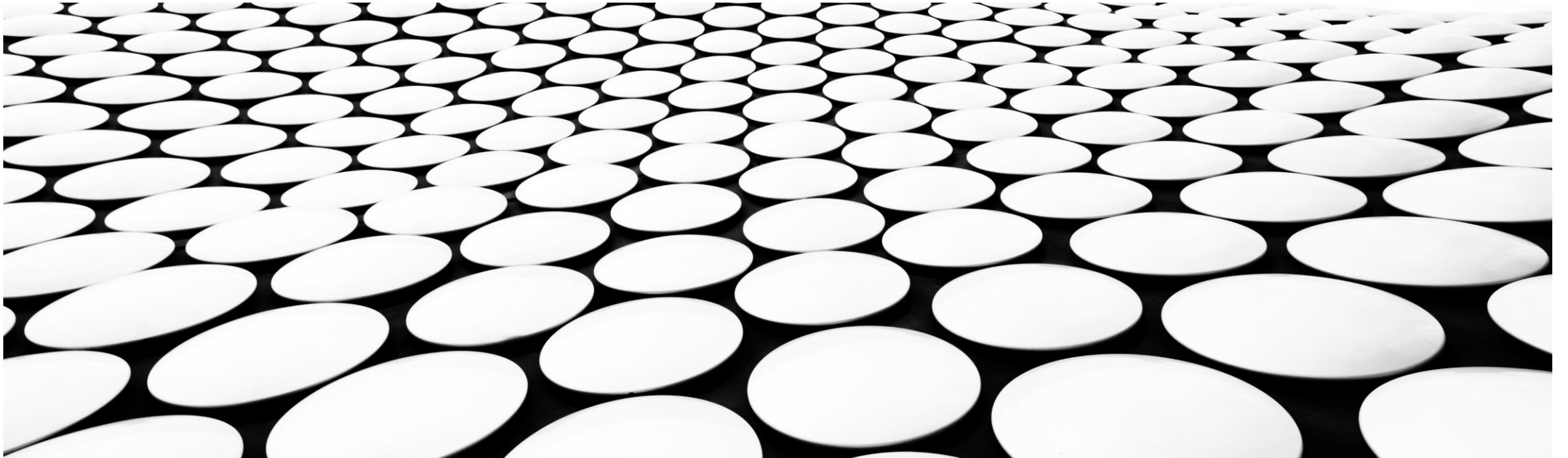


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# **CORPORATE RESTRUCTURING – AN OVERVIEW**

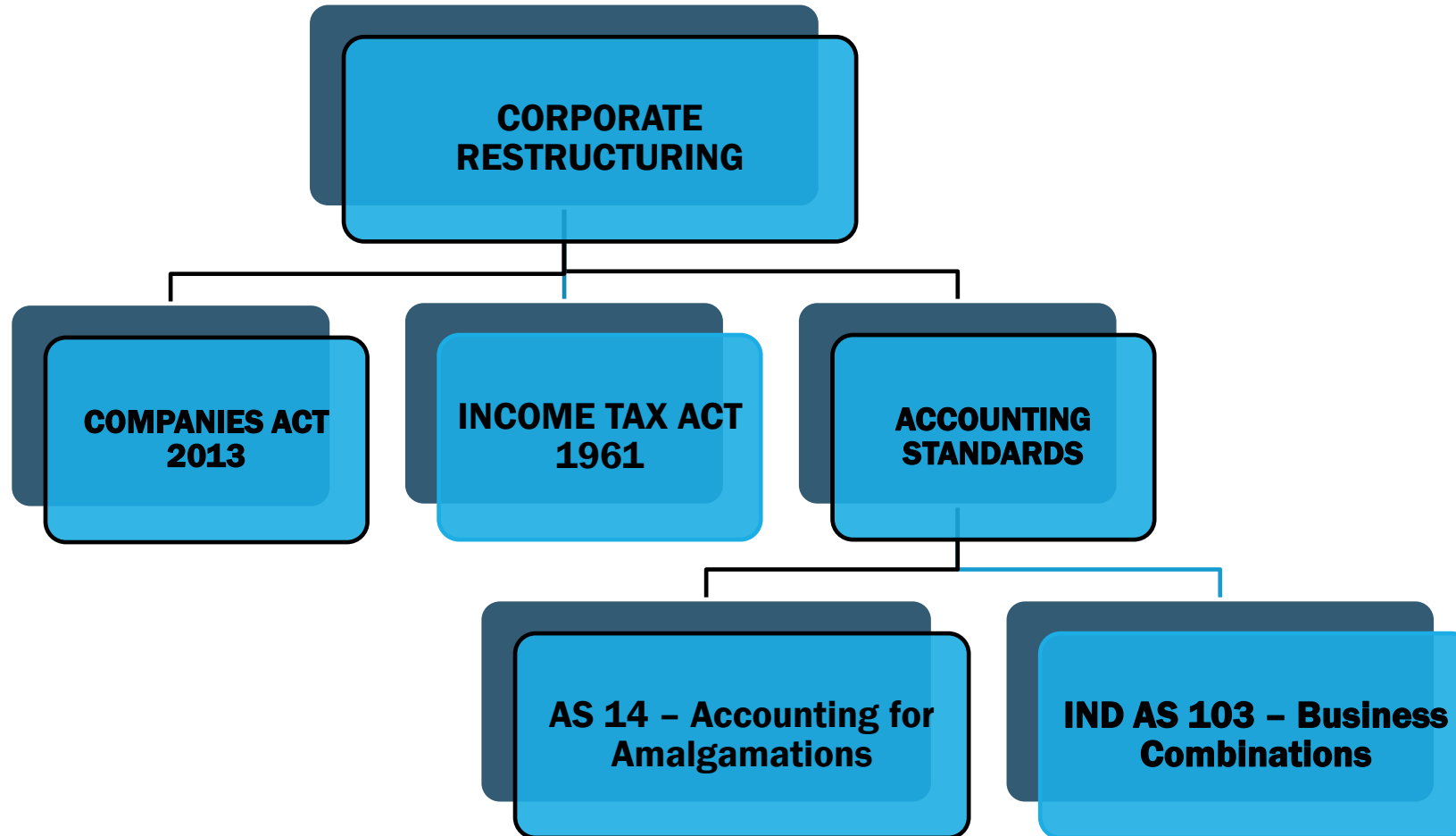
**B D CHATTERJEE FCA, ACMA, ACS, DIP IFR (ACCA) – UNITED KINGDOM**





# **COPORATE RESTRUCTURING AN OVERVIEW**

# COPORATE RESTRUCTURING



# COPORATE RESTRUCTURING

## **Forces that drive Corporate Restructuring**

- Rapid pace of technological change.**
- Low costs of communication and transportation.**
- Globalization and global markets.**
- Nature of competition in terms of forms, sources, and intensity.**
- Emergence of new types of industries.**
- Regulation in some industries and sectors.**
- Liberalization in some industries and sectors.**
- Growing inequalities in incomes and wealth.**

# COPORATE RESTRUCTURING

## Forms of Corporate Restructuring

### Expansion

#### **Amalgamation**

This involves fusion of one or more companies where the companies lose their individual identity and a new company comes into existence to take over the business of companies being liquidated.

#### **Absorption**

This involves fusion of a small company with a large company where the smaller company ceases to exist after the merger.

#### **Tender offer**

This involves making a public offer for acquiring the shares of a target company with a view to acquire management control in that company

#### **Asset acquisition**

This involves buying assets of another company. The assets may be tangible assets like manufacturing units or intangible like brands

#### **Joint venture**

This involves two companies coming whose ownership is changed

# CORPORATE RESTRUCTURING

## Forms of Corporate Restructuring

### Contraction

#### **Demerger-spin off**

This type of demerger involves division of company into wholly owned subsidiary of parent company by distribution of all its shares of subsidiary company on Pro-rata basis. By this way, both the companies i.e. holding as well as subsidiary company exist and carry on business.

#### **Demerger - Equity carve out**

This is similar to spin offs, except that same part of shareholding of this subsidiary company is offered to public through a public issue and the parent company continues to enjoy control over the subsidiary company by holding controlling interest in it.

#### **Demerger – Split-up**

This type of demerger involves the division of parent company into two or more separate companies where parent company ceases to exist after the demerger.

#### **Asset sale**

This involves sale of tangible or intangible assets of a company to generate cash. A partial sell off, also called slump sale, involves the sale of a business unit or plant of one firm to another. It is the mirror image of a purchase of a business unit or plant. From the seller's perspective, it is a form of contraction and from the buyer's point of view it is a form of expansion

#### **Divestiture**

These are sale of segment of a company for cash or for securities to an outside party. Divestitures, involve contraction.

# COPORATE RESTRUCTURING

## Forms of Corporate Restructuring

### Corporate control

#### **Going private**

This involves converting a listed company into a private company by buying back all the outstanding shares from the markets

#### **Equity buy back**

This involves the company buying its own shares back from the market. This results in reduction in the equity capital of the company. This strengthens the promoter's position by increasing his stake in the equity of the company

#### **Leveraged buy-outs**

This involves raising of capital from the market or institutions by the management to acquire a company on the strength of its assets.

#### **Anti – takeover defences**

With the incidence of high value of hostile takeover activity in recent years, takeover defences both premature and reactive have been restored by the companies.

# **COPORATE RESTRUCTURING**

## **Important Legislations related to Corporate Restructuring**

- Companies Act, 2013.**
- Income Tax Act, 1961.**
- Accounting Standards.**



# COPORATE RESTRUCTURING

## Companies Act 2013

Provisions under Companies Act, 2013	Description
Sec 230	Provides for power to Tribunal to make order on the application of the company or any creditor or member or in the case of company being wound up, of liquidator for the proposed compromise or make arrangements with creditors and members.
Sec 231	Provides for power of NCLT to supervise the implementation of the compromise or arrangement and enforce the same. The section also provides that if the Tribunal is satisfied that such compromise or arrangement cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up of the company
Sec 232	Provide powers to NCLT to order for holding meeting of the creditors or the members and to make orders on the proposed reconstruction, merger, or amalgamation of companies.
Sec 233	Seeks to provide for merger or amalgamation between two small companies or between a holding company and its wholly owned subsidiary company by giving notice of the proposed scheme inviting objections or suggestions by both the transferor and the transferee company from Registrar, Official liquidator or persons affected by the scheme. The scheme is to be approved by the respective members at a general meeting holding ninety per cent of total number of shares and also by nine tenth in value of creditors of respective companies. Both the transferor and transferee company has to file declaration of solvency. Transferee company shall file a copy of the approved scheme with the Central Government. On registration of the scheme, the transferor company shall be deemed to be dissolved. The Central Government may make rules for merger and amalgamation of companies.

# COPORATE RESTRUCTURING

## Companies Act 2013

Provisions under Companies Act, 2013	Description
<b>Sec 234</b>	Provides for Merger & Amalgamation of companies registered under the Act of 2013 with foreign company. The Central Government may in consultation with Reserve Bank of India make rules for the purpose of merger or amalgamation provided under this section.
<b>Sec 235</b>	Provides the manner in which the transferee company shall acquire shares of the shareholders dissenting from the scheme or contract as approved by the majority shareholders holding not less than nine-tenths in value of the shares whose transfer is involved.
<b>Sec 236</b>	Provides for the procedure and manner in which the registered holder of at least 90 percent shares of a company shall notify the company of their intention to purchase remaining equity share of minority shareholders by virtue of an amalgamation, share exchange, conversion of securities etc, provision for valuation of shares having been provided by a registered valuer. This section provides for the procedure to be followed for acquisition of shares held by minority shareholders.

# COPORATE RESTRUCTURING

## Companies Act 2013

Provisions under Companies Act, 2013	Description
Sec 237	Provides for power of Central Government to provide for amalgamation of Companies in public interest by passing an order to be notified in the Official Gazette.
Sec 238	This section seeks to provide for registration of offer of schemes or contract involving transfer of shares.
Sec 239	Specifies provisions related to preservation of books and papers of amalgamated companies
Sec 240	This section seeks to provide for liability of officers in respect of offences committed prior to merger, amalgamation etc.

# COPORATE RESTRUCTURING

## Income Tax Act 1961

### Merger

Merger has been defined as amalgamation under Sec 2(1B) and it means that the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that:

- (i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation.
- (ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation.
- (iii) shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation, otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company.

It may be noted that while evaluating the tax implications of restructuring, it is imperative to know the definition of the term 'Amalgamation' as per Income Tax.

# COPORATE RESTRUCTURING

## Income Tax Act 1961

### Demerger

In accordance with section 2(19AA) of the Income Tax Act, 1961, unless the term “demerger”, in relation to companies, means the transfer, pursuant to a scheme of arrangement the Companies Act, 2013, by a demerged company of its one or more undertakings to any resulting company in such a manner that-

- (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.

However according to proviso inserted vide Finance Act 2019, applicable effective 1 April 2020, the provisions of this sub-clause shall not apply where the resulting company records the value of the property and the liabilities of the undertaking or undertakings at a value different from the value appearing in the books of account of the demerged company, immediately before the demerger, in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015.

# COPORATE RESTRUCTURING

## Income Tax Act 1961

### 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 shareholders 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.

Resulting company, according to section 2(41A) of Income Tax Act, 1961 means one or more company, (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger, and the resulting company in consideration of such transfer of undertaking issues shares to the shareholders of the demerged company and include any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.

# COPORATE RESTRUCTURING

## Accounting Standards – A comparative analysis

S/L No	Ind AS 103 Business Combinations	AS 14 Accounting for Amalgamations (as amended)
1	Prescribes only the acquisition method for each business combination.	Prescribes two methods: <ul style="list-style-type: none"> <li>– Pooling of interest method</li> <li>– Purchases method</li> </ul>
2.	<p><b>Purchase method – values on acquisition</b></p> <p>Assets, liabilities, and contingent liabilities of acquired entity are fair valued.</p> <p>If control is obtained in a partial acquisition of a subsidiary the full value of the assets, liabilities and contingent liabilities including portion attributable to the minority (non-controlling) interest is recorded in consolidated business.</p> <p>Goodwill is recognised as the residual between the consideration paid and the percentage of the business acquired.</p> <p>Liabilities for restructuring activities are recognised only when acquiree has an existing liability at acquisition date.</p> <p>Liabilities for future losses or other costs expected to be incurred as a result of the business combination cannot be recognised.</p>	<p>For an entity acquired and held as a subsidiary, the assets acquired, and liabilities assumed are incorporated in their existing carrying amounts for consolidation purposes.</p> <p>On amalgamation they may be incorporated at their existing carrying amounts or alternatively the consideration is allocated to individual identifiable assets and liabilities at their fair values.</p> <p>On business acquisition they may be incorporated at their fair values or values of surrendered assets.</p> <p>No separate restructuring provision is recognised on acquisition.</p>

# COPORATE RESTRUCTURING

## Accounting Standards – A comparative analysis

S/L No	Ind AS 103 Business Combinations	AS 14 Accounting for Amalgamations (as amended)
3.	<p><b>Non-controlling interest</b> Stated at minority's share of the fair value of acquired identified assets liabilities and contingent liabilities</p>	<p>Stated at minority's share of pre-acquisition carrying value of net assets</p>
4.	<p><b>Purchase method – goodwill and intangible assets with indefinite useful lives</b> Capitalized but not amortized. Goodwill and indefinite intangible assets are reviewed for impairment at least annually at either the Cash Generating Unit (CGU) levels or groups of CGUs as applicable.</p>	<p>Goodwill on consolidation and business acquisitions; no specific guidance – practice varies, between no amortization versus amortization over a period not exceeding 10 years. Goodwill on amalgamation is amortized over a period not exceeding 5 years unless a longer period is justified. Goodwill is reviewed for impairment whenever an indication of impairment exists at CGU level. Intangible assets are not classified into indefinite useful lives category. All intangible assets are amortized over a period not exceeding 10 years.</p>
5.	<p><b>Purchase method – capital reserve</b> The identification and measurement of acquiree's identifiable assets, liabilities and contingent liabilities are reassessed. Any excess remaining after reassessment is recognised in capital reserve in the form of Bargain Purchase.</p>	<p>Negative goodwill is recorded in equity as capital reserve, which is not amortized to income. However, in case of amalgamation, the fair value of intangible assets with no active market is reduced to the extent of capital reserve, if any, arising on the amalgamation.</p>



# COPORATE RESTRUCTURING

## Accounting Standards – A comparative analysis

S/L No	Ind AS 103 Business Combinations	AS 14 Accounting for Amalgamations (as amended)
6.	<p>Pooling of interest method Prohibited.</p> <p>However, as per Appendix C of Ind AS 103, Business combinations involving entities or businesses under common control shall be accounted for using the pooling of interests method. According to this Appendix, pooling of interest method would involve:</p> <ul style="list-style-type: none"><li>(i) The assets and liabilities of the combining entities are reflected at their carrying amounts.</li><li>(ii) No adjustments are made to reflect fair values, or recognise any new assets or liabilities. The only adjustments that are made are to harmonize accounting policies.</li><li>(iii) The financial information in the financial statements in respect of prior periods should be restated as if the business combination had occurred from the beginning of the preceding period in the financial statements, irrespective of the actual date of the combination. However, if business combination had occurred after that date, the prior period information shall be restated only from that date.</li></ul>	<p>Pooling of interest method</p> <p>Required for certain types of amalgamation when all the conditions are met.</p>

# COPORATE RESTRUCTURING

## Computation of valuation of Goodwill

Particulars	Amount
(a) Aggregate of	
(i) the consideration transferred measured in accordance with this Ind AS, which generally requires acquisition date fair value	X
(ii) the amount of non-controlling interest in the acquiree measured in accordance with this Ind AS and	X
(iii) in case of business combination achieved in stages (Ind AS103, para 41 and 42), the acquisition date fair value of the acquirer's previously held equity interest in the acquiree	X
<b>TOTAL (A)</b>	X
(b) The net of acquisition date amounts of the identifiable assets acquired, and the liabilities assumed measured in terms of this Ind AS	X
<b>TOTAL (B)</b>	X
<b>Goodwill (A- B)</b>	X
<b>Bargain purchase (B – A)</b>	X *

\* Bargain purchase will be recognized as capital reserve under Ind AS

# COPORATE RESTRUCTURING – COMPARATIVE SUMMARY

AS	IFRS	US GAAP	Ind AS
<p><b>Business combinations</b> No particular standard has been issued by ICAI till date. However all business acquisitions are business combinations except pooling of interest method for certain amalgamations</p>	<p>All business combinations are combinations as per IFRS 3 Business combinations</p>	<p>Same as IFRS</p>	<p>All business combinations are combinations as per Ind AS 103 Business combinations</p>
<p><b>Purchase method – values on acquisition</b> For an entity acquired and held as a subsidiary, the assets acquired and liabilities assumed are incorporated in their existing carrying amounts for consolidation purposes. On amalgamation they may be incorporated at their existing carrying amounts or alternatively the consideration is allocated to individual identifiable assets and liabilities at their fair values. On business acquisition they may be incorporated at their fair values or values of surrendered assets. No separate restructuring provision is recognised on acquisition.</p>	<p>Assets, liabilities and contingent liabilities of acquired entity are fair valued. If control is obtained in a partial acquisition of a subsidiary the full value of the assets, liabilities and contingent liabilities including portion attributable to the minority (non-controlling) interest is recorded in consolidated business. Goodwill is recognised as the residual between the consideration paid and the percentage of the business acquired. Liabilities for restructuring activities are recognised only when acquiree has an existing liability at acquisition date. Liabilities for future losses or other costs expected to be incurred as a result of the business combination cannot be recognised.</p>	<p>Similar to IFRS except that minority interest is stated at pre-acquisition carrying value of net assets and contingent liabilities of the acquiree are not recognised at the date of acquisition. Specific rules exist for acquired in process research and development (generally expensed) and contingent liabilities. Some restructuring liabilities relating solely to the acquired entity may be recognised if specific criteria about restructuring plans are met.</p>	<p>Assets, liabilities and contingent liabilities of acquired entity are fair valued. If control is obtained in a partial acquisition of a subsidiary the full value of the assets, liabilities and contingent liabilities including portion attributable to the minority (non-controlling) interest is recorded in consolidated business. Goodwill is recognised as the residual between the consideration paid and the percentage of the business acquired. Liabilities for restructuring activities are recognised only when acquiree has an existing liability at acquisition date. Liabilities for future losses or other costs expected to be incurred as a result of the business combination cannot be recognised.</p>

# COPORATE RESTRUCTURING – COMPARATIVE SUMMARY

AS	IFRS	US GAAP	Ind AS
<p><b>Non-controlling (minority) interest</b> Stated at minority’s share of pre-acquisition carrying value of net assets</p>	<p>Stated at minority’s share of the fair value of acquired identified assets liabilities and contingent liabilities</p>	<p>Similar to Indian Accounting Standards</p>	<p>Stated at minority’s share of the fair value of acquired identified assets liabilities and contingent liabilities</p>
<p><b>Purchase method – goodwill and intangible assets with indefinite useful lives</b> Goodwill on consolidation and business acquisitions; no specific guidance – practice varies, between no amortisation versus amortisation over a period not exceeding 10 years. Goodwill on amalgamation is amortised over a period not exceeding 5 years unless a longer period is justified. Goodwill is reviewed for impairment whenever an indication of impairment exists at CGU level. Intangible assets are not classified into indefinite useful lives category. All intangible assets are amortised over a period not exceeding 10 years.</p>	<p>Capitalised but not amortised. Goodwill and indefinite intangible assets are reviewed for impairment at least annually at either the Cash Generating Unit (CGU) levels or groups of CGUs as applicable.</p>	<p>Similar to IFRS although the level of impairment testing and the impairment test itself are different</p>	<p>Capitalised but not amortised. Goodwill and indefinite intangible assets are reviewed for impairment at least annually at either the Cash Generating Unit (CGU) levels or groups of CGUs as applicable.</p>

# COPORATE RESTRUCTURING – COMPARATIVE SUMMARY

AS	IFRS	US GAAP	Ind AS
<p><b>Purchase method – capital reserve</b>            Negative goodwill is recorded in equity as capital reserve, which is not amortised to income.            However, in case of amalgamation, the fair value of intangible assets with no active market is reduced to the extent of capital reserve, if any, arising on the amalgamation.</p>	<p>The identification and measurement of acquiree’s identifiable assets, liabilities and contingent liabilities are reassessed.            Any excess remaining after reassessment is recognised in income statement immediately in the form of Bargain Purchase</p>	<p>Any remaining excess after reassessment is used to reduce proportionately the fair values assigned to non-current assets (with certain exceptions)            Any excess is recognised in the income statement immediately as an extraordinary gain.</p>	<p>The identification and measurement of acquiree’s identifiable assets, liabilities and contingent liabilities are reassessed.            Any excess remaining after reassessment is recognised in capital reserve in the form of Bargain Purchase.</p>
<p><b>Pooling of interest method</b>            Required for certain types of amalgamation when all the conditions are met.</p>	<p>Prohibited</p>	<p>Prohibited</p>	<p>-</p>



**THANK YOU!**