

● ● ● | *Advani & Co.*

Advani & Co. | Mergers and Acquisitions

With lawyers at **the** offices at Mumbai, Delhi and Pune, Advani and Co. is a new age law firm with advisory and dispute resolution practices in multiple practice areas. At Advani, through our practise goals, we have been able to **create and preserve value** in providing legal services. Towards this we recognize that businesses and individuals require substantive and procedural advisory work to commence their operations and subsequent enforcement to safeguard these rights.

Advani aims to provide these services promptly with particular emphasis on quality. We have a specialized focus towards commercial and business laws and regularly represent large Indian and Multinational Corporations.



Getting the Deal Done

Term Sheets | Due Diligence | Negotiation | Closing | Merger Schemes

issues involved with mergers and acquisitions. Using our extensive familiarity with the relevant authorities and processes, we help deliver speedy resolution for a multitude of legal procedures faced by our clients.

Many of our clients are overseas parties and as a result we are at ease dealing with substantially complex transactions. This has also contributed to our experience in large transactions with cross-border dimensions. We often collaborate with large international law firms to bring such large transactions to fruition.

It is not without reason that, Advani & Co. finds mention in the Legal 500 which states that, we have a “strong expertise in advising on transactions and infrastructure projects, and has a substantial base among public sector clients...Advani & Co advises on various projects, but is most prominent in the energy sector.” RSG Advisory in providing an overview of Law Firms states that we, “rank in the M&A deals tables for the past 3 years. ”

Lawyers in Advani & Co. have a unique understanding of all the complex legal and economic



“ranks in the M&A deals tables for the past 3 years.”
RSG Advisory on Advani & Co.



Diverse Deals, One Firm

The corporate law practice is one of the most challenging practices following the economic boom. Every acquisition, merger, deal, public listing or de-listing requires thorough knowledge and a deep insight of the law with an eye for detail.

Mergers and acquisitions are used as instruments for momentous growth and are increasingly getting accepted by Indian businesses as a critical tool of business strategy. They are widely used in a wide array of fields such as information technology, telecommunications and business process outsourcing as well as in traditional businesses to

gain strength, expand the customer base, cut competition or enter into a new market or product segment.

Mergers and acquisitions may be undertaken for various purposes:

- To access the market through an established brand
- To get a market share
- To eliminate competition
- To reduce tax liabilities or to acquire competence
- To set-off accumulated losses of one entity against the profits of other entity

Advani & Co. is well equipped with a focused and experienced corporate commercial team which has distinctive understanding and commercial pragmatism of all multifaceted issues involved with mergers and acquisitions.

We are also aware that Several issues that arise from mergers and acquisitions can be deal breaking. Our aim has been to keep a transaction alive which in itself is very well recognized. We have successfully kept together agreements involving amounts ranging from thousands of dollars to billions of dollars.

Step 1 : Structuring the Deal

Reflecting the unique business needs which necessitates a merger or an acquisition, the term ‘merger’ is not defined under the Companies Act, 1956 or under or any other provision of law in India.

Sections 391 to 394 of India’s Companies Act, 1956 also referred to as the “merger provisions”, contain the legal provisions for companies to enter into a “compromise” or “arrangement” either (i) between itself and its creditors or any class of them or (ii) between itself and its members or any class of them.

The term “arrangement” by its nature suggests a wide interpretation going beyond merely reorganization of share capital but also a modification of the rights of the shareholders.

It includes within its ambit the reorganization of the capital by consolidating different classes of shares or division of shares into shares of different classes or by both methods.

Essentially, these provisions cover restructuring of any kind, mergers, demergers, and hiving off of a unit by a company.

Here depending on the

unique needs of the deal, our firm advises and structures the SPV. This includes determining the type, jurisdiction of the SPV.

We are sensitive to the long term effects of the structuring which brings into play issues of foreign exchange control laws, regulatory approvals and tax obligations.

Step 2 : Undertaking Due Diligence

Once the structuring of the Deal has been finalized between the parties, the next important step is the undertaking a legal due diligence. Depending on the size of the deal, the nature of the business and the unique requirements of a client our attorneys conduct a due diligence.

Here our objectives are minimizing client risk and maximizing shareholder value. Our attorneys chase the “red flags”, reviewing study a gamut of documents including:

1. Corporate Documents

and Organizational Structure of the Company

2. Secretarial Records, including Balance Sheets, PLR statements

3. Liabilities of the Company and Charges against properties

4. Intellectual Property of the Company

5. Stockholder Information and Securities Issues of the Company

6. Material Contracts Concerning the Company

7. Facilities, Property and Equipment of the Company

8. Litigation

9. Governmental and Regulatory Matters

10. Environmental Matters Involving the Company



Step 3 : Documentation and Negotiation

After conducting the due diligence dependent on the type of the need and the need of the parties our lawyers draw up various agreements and legal forms including

- Joint Venture Agreements (agreements which lead to incorporated and unincorporated joint ventures)
- Shareholders Agreements which define the

rights between the different classes of shareholders and the Share Subscription Agreement which contemplates the various events for the completion and closing.

- Share Transfer and Share Purchase Agreements
- Asset and Business Transfer Agreements
- Definitive agreements.

- Escrow agreements
- Non-compete agreements
- Non-disclosure agreements
- Employment agreements
- Licensing of Intellectual Property owned by the Target Company or the Selling Shareholder

Having appeared before various international arbitral institutions we understand the nuances of international arbitration and their procedural formalities.

Stage 4 : Regulatory Filings

Our attorneys assist our clients with various regulatory filings including:

1. With the enforcement of the Competition Act, 2002 and the merger regulations, companies have to file notice of combinations with the Competition Commission in cases of acquisition of control in the

sense of a merger and amalgamation, provided it crosses the threshold limits indicated in Section 5 of the Competition Act.

2. The process of mergers and acquisitions in India is court driven. The process may be initiated through common agreements between parties,

but that is not sufficient to provide a legal cover to it. The sanction of the High Court is required for bringing it into effect.



Advani & Co.

Delhi | Mumbai | Pune



Advani & Co. finds mention in the Legal 500 which states that, we have a “*strong expertise in advising on transactions and infrastructure projects, and has a substantial base among public sector clients...Advani & Co advises on various projects, but is most prominent in the energy sector.*”

RSG Advisory in providing an overview of Law Firms states that we, “*rank in the M&A deals tables for the past 3 years.*”

Delhi Office

268, GF, Masjid Moth,
Udai Park,
New Delhi 110049

Tel: 011-40582732 | Fax: 011-40582745

Contact

Shweta Saxena

Shweta.Saxena@advaniandco.com

Mumbai Office

10, Thakur Nivas, 173, Level 2,
Jamshedji Tata Road, Churchgate,
Mumbai-400020.

Tel: 91-22-2281 8380/81/82

| Fax: 91-22-2286 5040

Email: mumbai@advaniandco.com

Contact

Hiroo Advani

Hiroo.Advani@advaniandco.com

Pune Office

Office No. 410-AB, City Towers, 4th
Floor, 17 Boat Club Road, Pune—
411001

Tel: 020-2616 2940 | Fax: 020-26162948

Email: pune@advaniandco.com

Contact

Aradhana Prabhakar

Ara-

dhana.Prabhakar@advaniandco.com

.com

We take great care in preparation of material which is presented here, however we cannot guarantee the accuracy of the contents due to the changing legal environment as well as the individualized nature of most legal queries and disputes. The present publication is form of discussion of current and recent legal developments in India. Here we would like to caution the reader that the contents here though informative do not constitute legal advice. Hence readers are requested to seek legal counsel for their queries and desist from relying on the information presented herein. Finally we would like to thank you for reading the our publications and in case of any questions, queries or comments kindly mail us at mumbai@advaniandco.com