A Primer on Transaction Structuring

Modern-day business complexities require entities to adopt a fit-for-purpose corporate structures that works best for them given their individuality and circumstances.

It is typical for businesses contemplating an inorganic initiative especially a sale, joint-venture or fund-raising to rejig their corporate structure to enable the prospect of the inorganic initiative.

The process of designing the apt corporate and business architecture to enable a transaction, fund-raising or reorganization thereupon.

When businesses seek to expand their business, sell their business, or buy a new business, or form a joint venture, there is an anxiety on the best approach to execute a transaction with the lowest possible legal, tax or financial risk, or with minimal risk of future litigation. The different methods to achieve the same outcome further clutters the mix.

An efficient Transaction Structuring exercise will offer a solution that enables achievement of most transaction objectives at the least possible overall transaction costs.

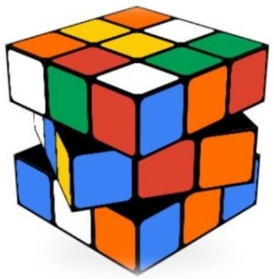
Transaction Structuring is bespoke to the entity and factors its objectives, costs and risk-appetite. However, more generally, the following elements of FACTOR approach are importation considerations in Transaction Structuring:

Structuring Considerations:

a. ***Finance:*** Perhaps the most important consideration in Transaction Structuring exercise is the consideration of Finance. An ideal structuring exercise will aim to better the financial profile of the business including abilities to fund raising, better financial ratios, easy cash flow management, reduced locked-in cash, fungibility of financial resources, etc.

b. ***Accounting:*** Accounting considerations have the potential to make-or-break the success of a transaction. Modern day accounting in complex given the consideration surrounding business combinations, purchase price allocations, contingent liabilities, reverse mergers, earn-outs, fair valuation, etc. The taxation and financial benefits of a potential structure also depend on the effective accounting outcome.

c. ***Cost:*** Transaction Structuring is an effort to better the status-quo. Accordingly, any transaction costs in relation to the proposed structure affects the viability of the process. Costs generally include duties, premiums, retrenchment costs, closure costs, professional fees, etc. The cost consideration is also impacted by time taken to implement the proposed structuring alternative. The time to implement the structure is a critical consideration in any Transaction Structuring exercise.



d. ***Taxation:*** A decisive consideration in any Transaction Structuring exercise is the taxation implication on account of the proposed structure. These taxes could be direct taxes, indirect taxes, cross-border international taxes, etc. Apart from these the implications of withholding taxes and cost-step-up considerations are also important tax drivers.

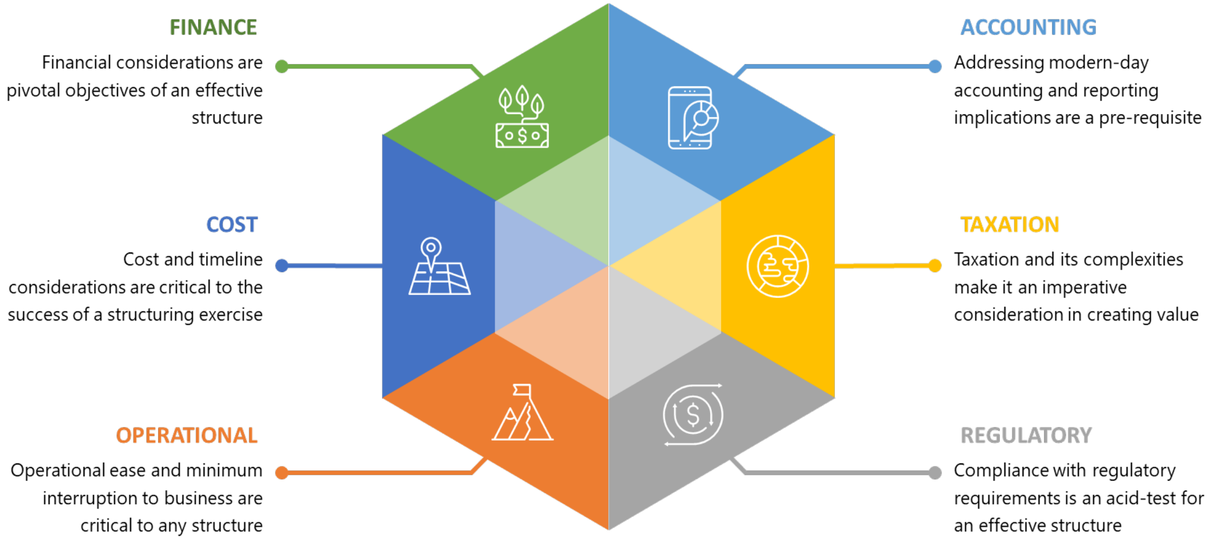
e. *Operational:* An ideal structure should involve least amount of friction and uncertainty to the business operations of the entity. Generally, structuring options involve change of contracts, change of regulatory records, impact on licenses, people movement, etc. Business disruptions are a drag on the structure and hence operational considerations remain of paramount importance.

f. *Regulatory:* Each country, including India has detailed legal and regulatory requirements to effectuate a Transaction. Whilst most of the provisions enable a business structuring exercise, the process of passing through these can sometime be cumbersome. The regulatory impact on account of competition commission, securities laws compliance, etc. require a careful consideration in any Transaction Structuring exercise.

Transaction Structuring can make or break a transaction. Done correctly, transaction structuring can give rise to real and tangible synergies through a transaction. Very often it is extremely difficult and costly, if not impossible to undo a transaction structure and hence it is of prime importance to think through the alternatives before jumping into the transaction.

'FACTOR' APPROACH

TRANSACTION STRUCTURING



FACTOR approach acts a clinical guidepost in evaluating and deciding on the most efficient transaction structure.

<u>Structuring Process:</u>

The process of Transaction Structuring is a systematic process usually flowing through the following drill:

1. Understanding the entity, business and transaction objectives.
2. Evaluating of strawman alternatives.
3. Modelling deal structures.
4. Finalizing the deal architecture.
5. Step Plan towards execution.

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