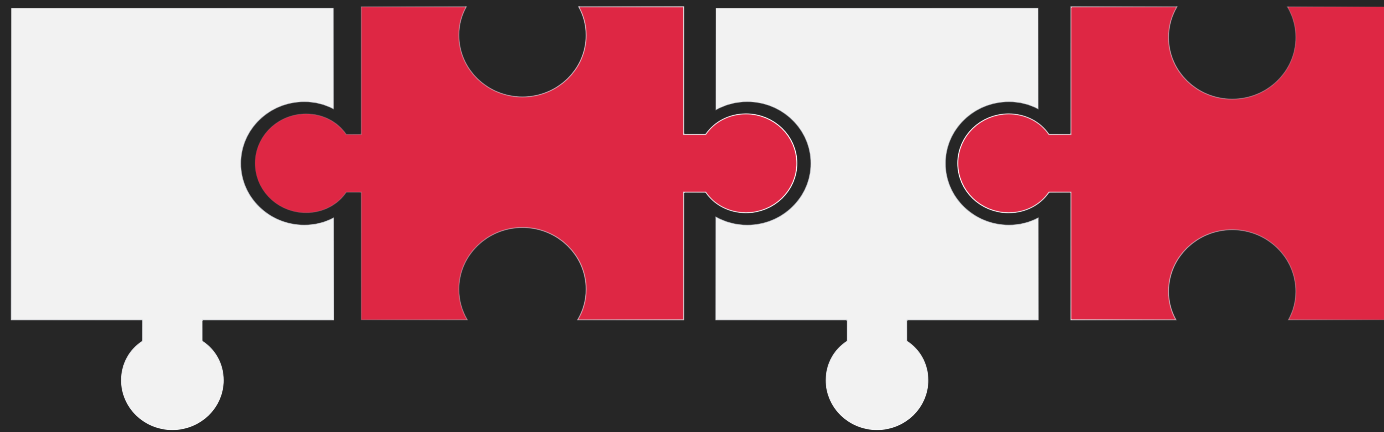


# MERGER & AMALGAMATION OF GOVERNMENT COMPANIES



Presented by:  
**Mr. Pavan Kumar Vijay**  
Founder, Corporate Professionals Group  
Past President of ICSI

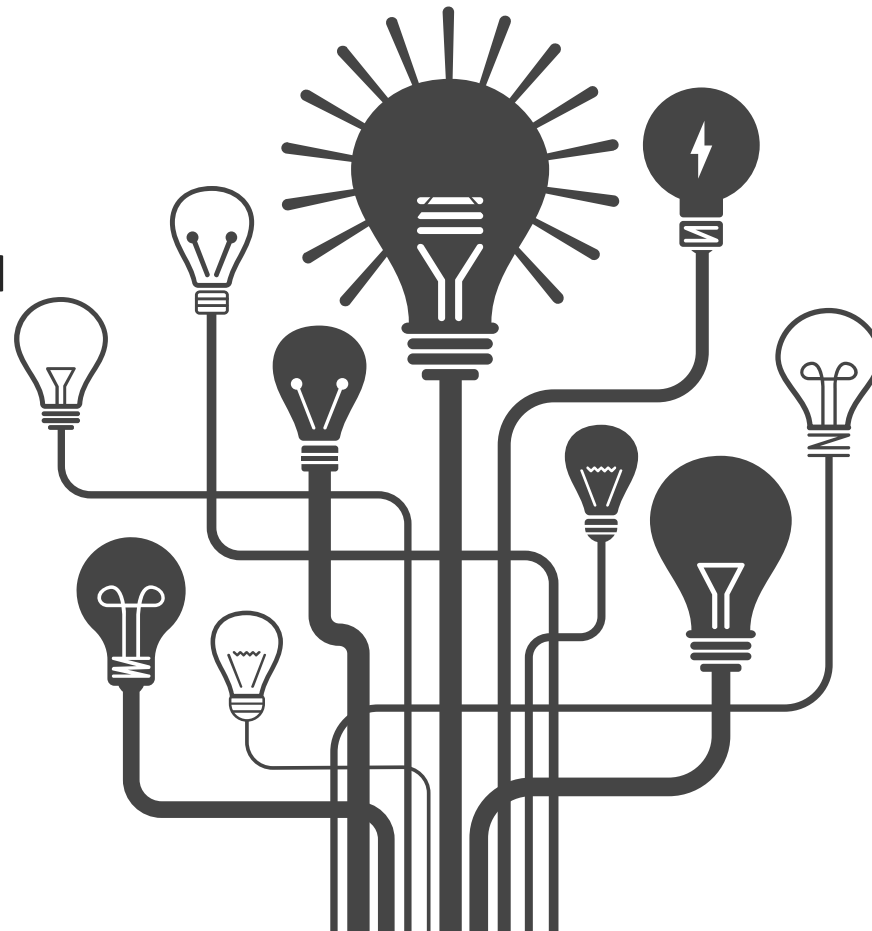
# SELF RELIANT SCHEME BY GOVERNMENT OF INDIA

On May 17th 2020, the Hon'ble Finance Minister announced self – reliant scheme for Public Sector Enterprise (PSEs) thereby opening all sectors of PSEs for private sector.

The Government will announce a new policy whereby

List of strategic sectors requiring presence of PSEs in public interest will be notified

In other sectors, PSEs will be privatized



In strategic sectors, at least one enterprise will remain in the public sector but private sector will also be allowed

To minimize wasteful administrative costs, number of enterprises in strategic sectors will ordinarily be only one to four; others will be privatized/merged/ brought under holding companies.

# KEY DRIVERS



**Consolidation**



**Simplification of Group Structure by removing unwanted companies in the group**



**Minimize administrative costs**

# VISION 2022

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In April 2018, the Department of Public Enterprises presented a Vision 2022 plan to Prime Minister Narendra Modi, which finds reflection in the FM's announcements

The government has vision 2022 for CPSE's. The merger of similar CPSE's have many benefits such as:-

- ✓ Increase global competitiveness;
- ✓ Access to Cheaper international funding;
- ✓ Benefits from economies of scale.

# **PUBLIC SECTOR ENTERPRISES**

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As of 23<sup>rd</sup> October, 2019

**348**

**Central Public Sector  
Enterprises**

**10**

**Maharatnas**

**14**

**Navratnas**

**74**

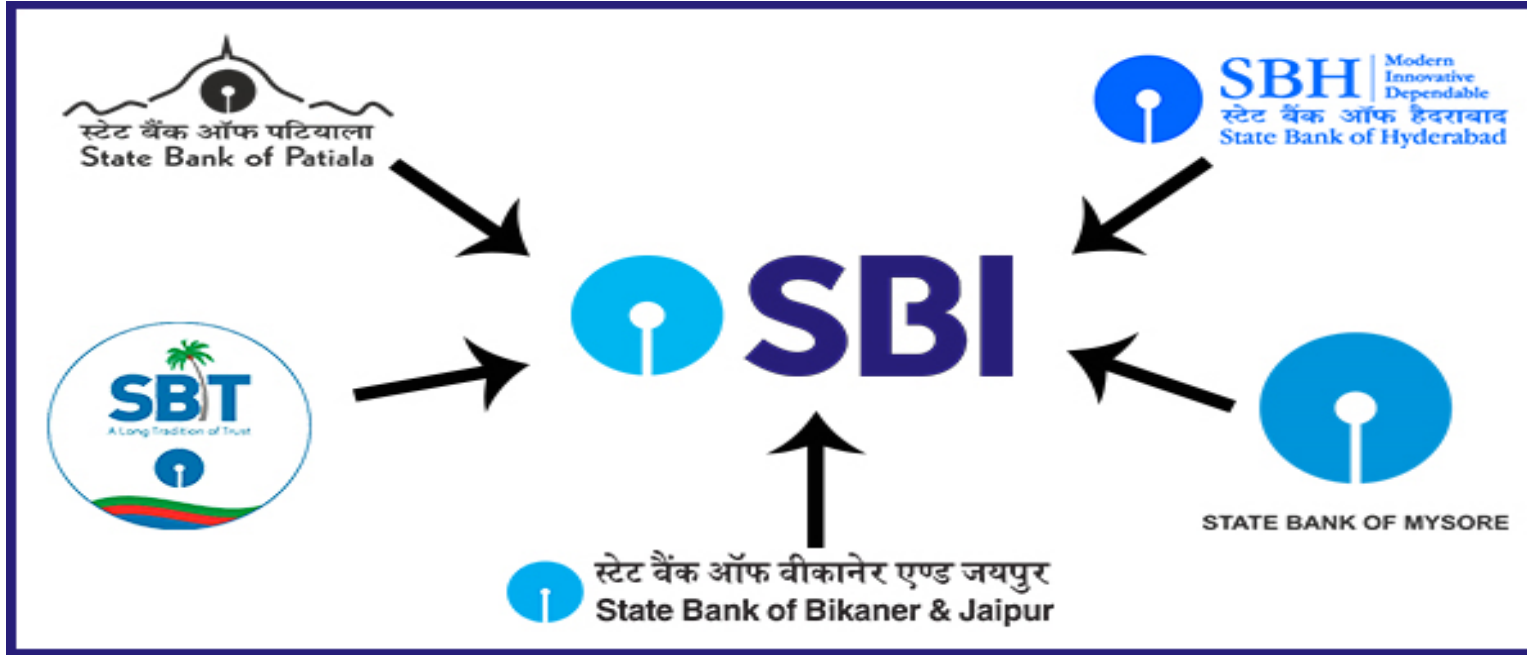
**Miniratnas**

There are many sectors in which single holding company is engaged in similar business activities through many subsidiaries CPSE's. Such sectors are Railway, Steel, Power, Petroleum and fertilizers.

# RECENT RESTRUCTURING AMONG PSU<sub>s</sub>



# PSU BANKS: FROM 27 TO 12



2017

2018



+



+



=



Anchor Bank

2020



+



+



=



Anchor Bank



+



केनरा बैंक  
Canara Bank

=



Anchor Bank



+



+



=



Anchor Bank



+



=



Anchor Bank



# POST MERGER RANKING OF THE PSU BANKS

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1st



4th



2nd



5th



3rd



7th

# ACQUISITION WITHIN SAME INDUSTRY

In 2018, ONGC acquired the entire 51.11% stake in HPCL.



In 2019, PFC acquired 52.63% stake in REC Limited from the Government.

# INTERNAL CONSOLIDATION

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In 2019, PFC-GEL, a wholly owned subsidiary of PFC, got merged with PFC through a Scheme of Amalgamation thereby minimizing cost and streamlining the group structure.



**PFC Green Energy Limited**



**Power Finance Corporation Limited**

# REGULATORY FRAMEWORK OF M&A

## APPLICABLE TO ALL COMPANIES INCLUDING LISTED COMPANIES



## APPLICABLE ONLY TO LISTED COMPANIES

SEBI (LODR) Regulations, 2015

SEBI Circular dated 10<sup>th</sup> March, 2017 read along with 03<sup>rd</sup> January, 2018 and 03<sup>rd</sup> November, 2020



# **MERGER & AMALGAMATION OF GOVERNMENT COMPANIES**

**Presented by:**

**Mr. Manoj Kumar**

**Partner & Head – M&A, Transactions and Insolvency**

# KEY IMPLICATIONS OF RESTRUCTURING



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# DEFINITION OF GOVERNMENT COMPANY

## SECTION 2 (45) OF THE COMPANIES ACT, 2013

**“Government Company”** means any company in which not less than fifty one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;



# NOTIFICATION OF MINISTRY OF CORPORATE AFFAIRS ("MCA")

- MCA vide notification no. G.S.R. 582 (E), Dated 13th June, 2017 amended certain provisions of Companies Act, 2013
- In Section 230-232 of the Companies Act, 2013, for the word "**Tribunal**", wherever it occurs, the words "**Central Government**" shall be substituted
- The MCA Notification provides that in case of merger between government companies the adjudicating authority will be "**Ministry of Corporate Affairs**" (MCA) and National Company Law Tribunal have no jurisdiction in such types of amalgamation.



# COMPANIES ACT, 2013 (“THE ACT”)

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- Compliance with Section 230-232 of the Companies Act, 2013 read along with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- Approval of Ministry of Corporate Affairs.
- Service of notice to Regulatory authorities for their approval.



# INCOME TAX ACT, 1961 ("ITA")

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- Amalgamation as defined under Section 2 (1B) of ITA.
- **Section 47** of the ITA specifically exempts from capital gain tax.
- **Section 72A** of the ITA provides for the accumulated losses and the unabsorbed depreciation of the Amalgamating Company



# SEBI LAW

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- Obtain No-Objection from the Stock Exchange (s) and SEBI before filing the Scheme with NCLT.
- SEBI Circular dated 10th March, 2017 read along with 03rd January, 2018 and 03<sup>rd</sup> November, 2020 needs to be complied.
- In case of Merger between wholly owned subsidiary company with Parent company, Schemes shall be filed with the Stock Exchanges for disclosure purposes





# **ACCOUNTING STANDARD**

- IND AS 103 defines Business Combination.
- In Purchase Method, the Assets and Liabilities are transferred on fair value basis.
- Business Combination of entities under common control is accounted by pooling of interest method

# VALUATION

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- In order to compute the share exchange ratio, Valuation is undertaken
- Valuation Report for the Scheme is issued by the Registered Valuer
- Valuation Methodologies are used by the Valuer to compute the exchange ratio

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Some of the states in India have enacted their own Stamp Acts, for example: Maharashtra, Karnataka, Kerala, Gujarat and Rajasthan, whereas others have adopted the Indian Stamp Act, 1899 with their respective state amendments. Thus, there are no Uniform Stamp Laws across the nation – may vary from state to state;





# SECTORAL REGULATORS

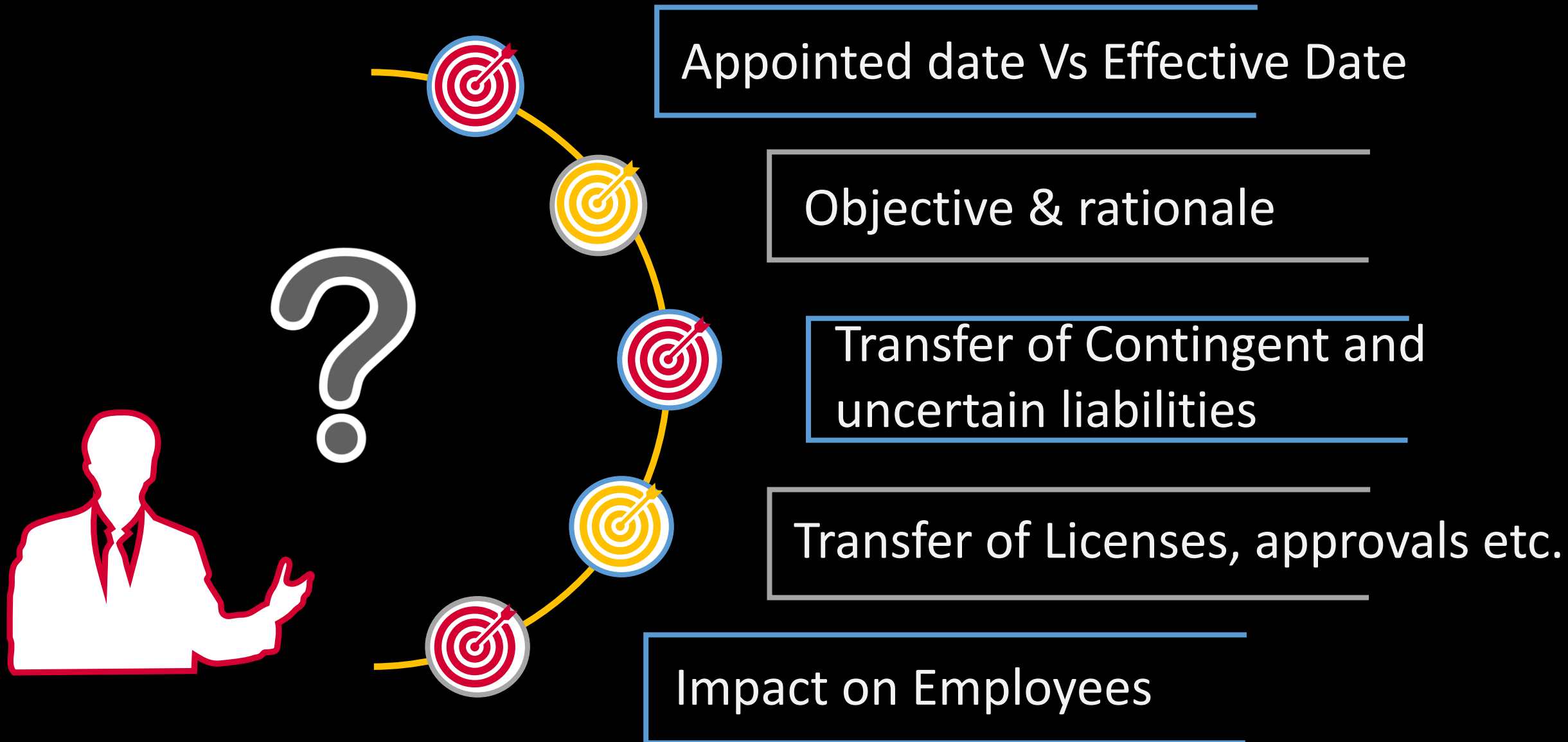
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The Scheme shall be approved by the sectoral regulators, if required. For eg:

- Ministry of Power in case the Company belongs to Power Sector
- Reserve Bank of India in case of an NBFC
- Insurance Regulatory and Development Authority (IRDA)
- Ministry of Petroleum and Natural Gas
- Competition Commission of India
- Department of Telecom



# Key considerations while drafting a Scheme





# THANK YOU

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