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**Cross border Reorganizations
Bucharest, October 20-21, 2017**

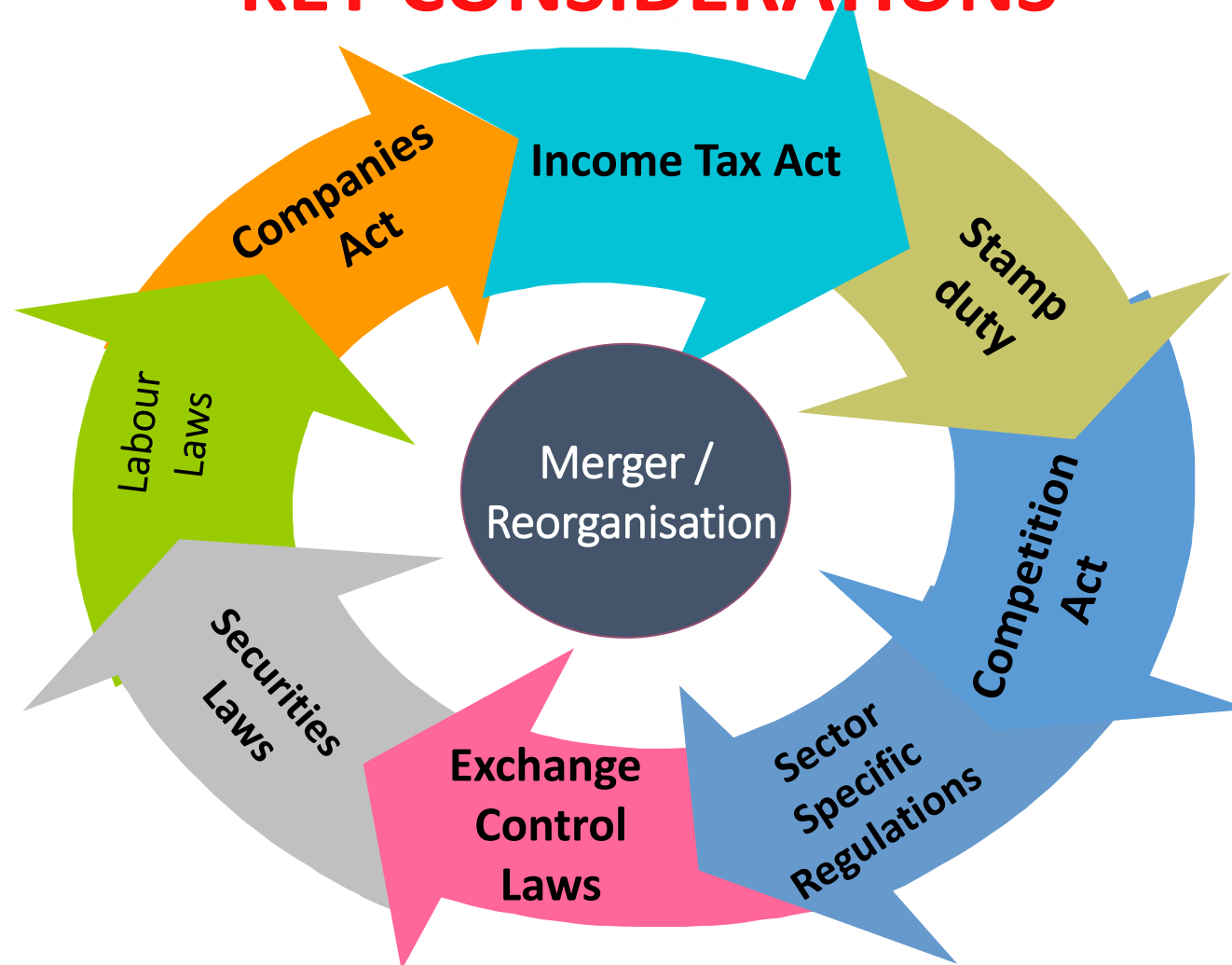


CROSS-BORDER MERGERS & REORGANIZATIONS OUTSIDE THE EU – INDIA

Ruchi Biyani,
Nishith Desai Associates



KEY CONSIDERATIONS

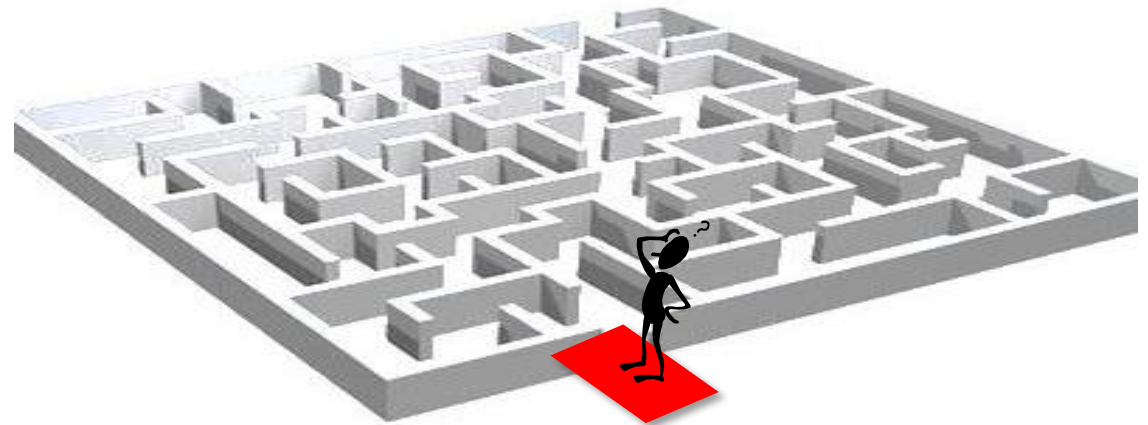


Top 5 considérations for undertaking a merger and reorganisation in India are:

- 1. Tribunal Approved Process:** Scheme for arrangements require approval from National Company Law Tribunal (NCLT).
- 2. Exchange Control Regulations:** Inbound deals: Compliance with sectoral caps, pricing guidelines and disclosure requirements. Outbound deals are subject to restriction on quantum and manner of execution.
- 3. Tax:** Direct and Indirect tax implication on the depending on the structure + analysis of General Anti Avoidance Rules
- 4. Anti-trust Regulations:** Prior approval of the Competition Commision of India is required for mergers and acquisitions meeting specified financial thresholds.
- 5. Securities Regulations:** Any merger or demerger involving a listed company would require prior approval of the stock exchanges and SEBI before approaching NCLT.

CROSS BORDER MERGERS

- Deal process in India can seem long and painful
- Lengthy time period involved from signing to closing and obtaining regulatory approvals
- Wide gap attitude towards compliance and governance and expectations
- Approvals from various authorities
- Series of reforms in the pipeline
- Reputation and Media Risk





OUTBOUND MERGERS ALLOWED

- Under the erstwhile (Indian) Companies Act, 1956 outbound mergers were not permissible;
- In April, 2017, Indian Ministry of Corporate Affairs notified relevant provisions for enabling outbound cross-border mergers;
- Outbound mergers are permitted subject to the following conditions:
 - Prior approval of Reserve Bank of India for undertaking any cross-border merger;
 - Valuation certificate required to be submitted;
 - Procedure of merger under (Indian) Companies Act, 2013 to be followed;
 - Foreign entity to be involved in permitted jurisdiction.

RECENT TRENDS

- Mergers and acquisitions in India in the FY 2016-2017 almost doubled from the previous financial year;
- Companies entering into arrangements for sale of debt laden assets (especially in infrastructure and shipping industries);
- E-commerce, Telecom, Insurance sectors on consolidation mode;
- Outbound deals worth USD 7 billion in making;
- Challenges for compliance with 'General Anti Avoidance Rules';
- Regulatory reforms around acquisition of stressed assets such as new insolvency regime paving way for increased deal activity;
- Disinvestment by Government of its holding in 'Government Companies'.

RECENT ISSUES IN CROSS-BORDER MERGERS INVOLVING EU

- Indian investments in EU have been on rise especially in advanced technology and high value brands;
- However few challenges are yet to be resolved:
 - New Investment Barrier at EU level;
 - Non-existence of India - EU trade treaty and heterogeneous market;
 - Financing an acquisition through an EU bank;
 - Lack of information network for screening of M&A activities.



PUBLIC v. PRIVATE CROSS BORDER MERGERS/REORGANISATIONS

- Cross Border Mergers/Reorganisation of public companies require additional compliances such as:
 - SEBI Regulations including Takeover Code, Insider Trading Regulations etc;
 - Compliances with respect to intimation to stock exchanges (pre and post);
 - Compliances for change/reclassification of promoters
- Cross Border Merger/Reorganisation of private companies are not required to comply with additional conditions.



CROSS-BORDER MERGERS & REORGANIZATIONS OUTSIDE THE EU – CANADA

Jennifer Maxwell



1. Structuring Cross-Border Private Deals

Most common structural alternatives

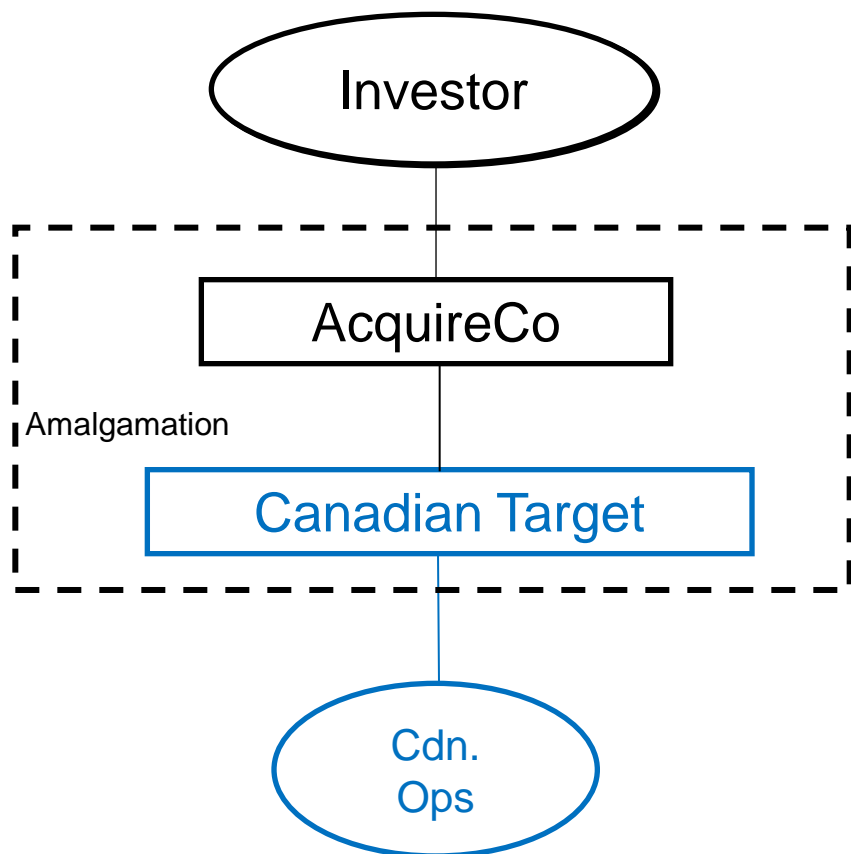


Share Purchase

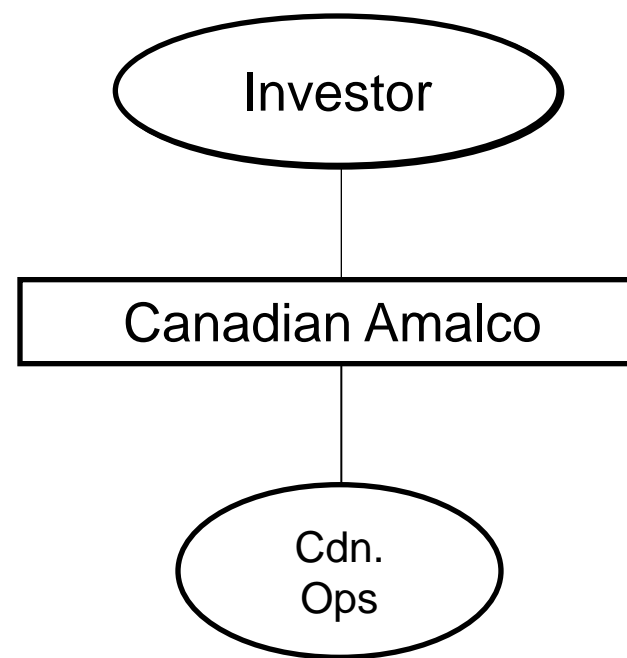
Asset Purchase

2. Typical Acquisition Structure

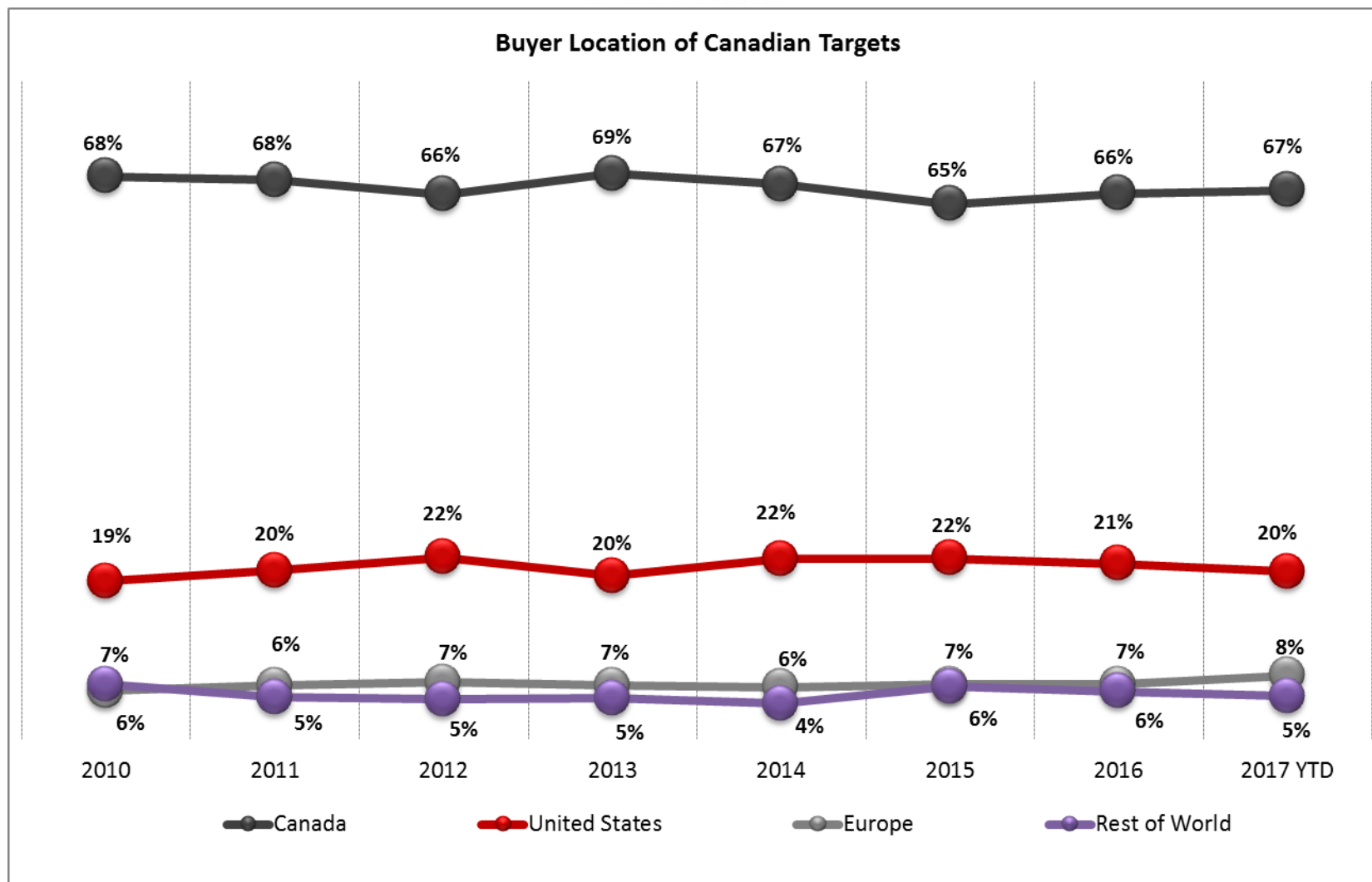
Structure at Closing



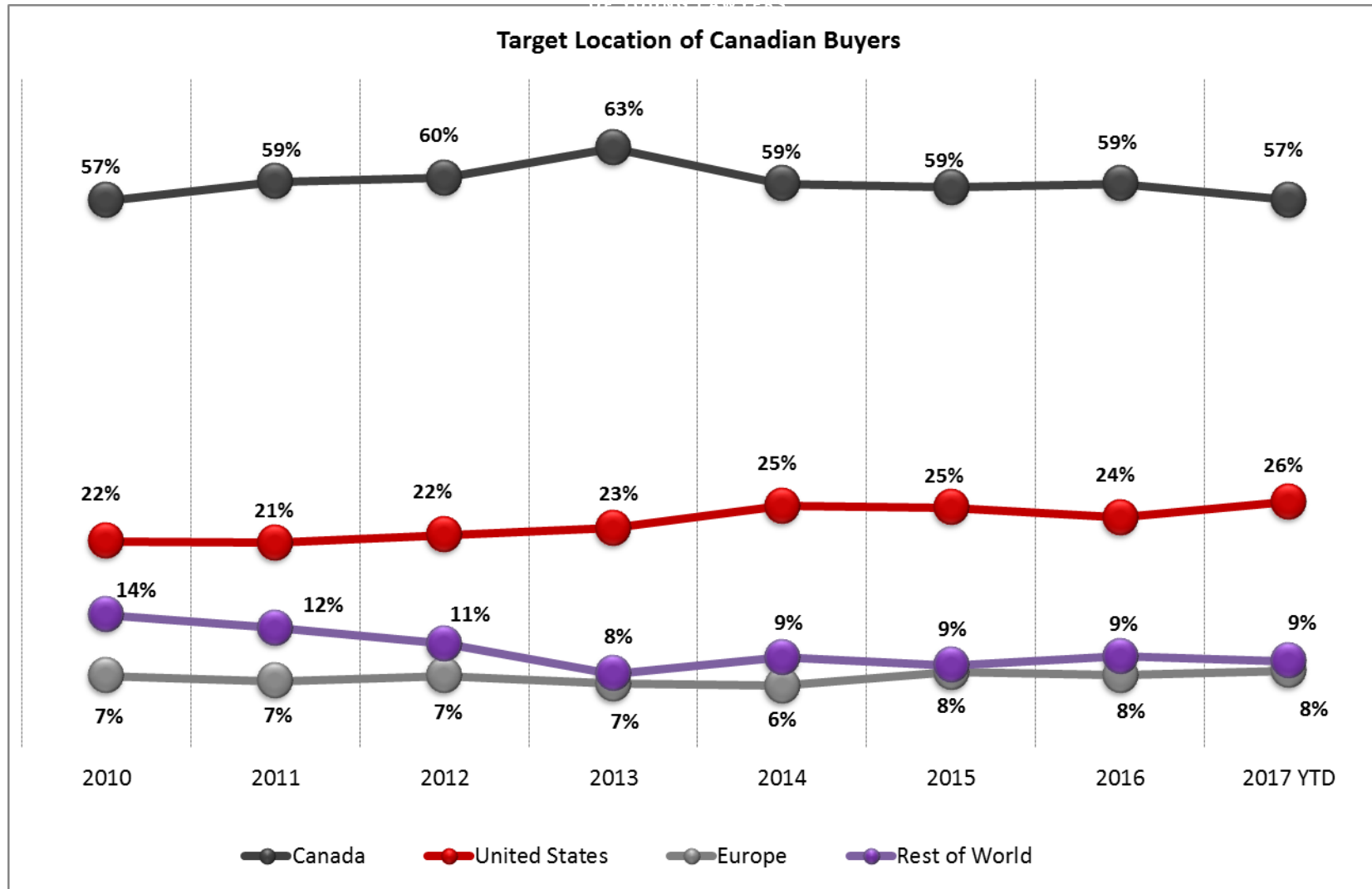
Post-Closing Structure



3. Blakes Deal Study



3. Blakes Deal Study



4. Maple Revolutionaries



CPP
INVESTMENT
BOARD



Caisse de dépôt et placement
du Québec



ONTARIO
TEACHERS'
PENSION PLAN



OMERS



HOOPP
Healthcare of Ontario
Pension Plan



OPB

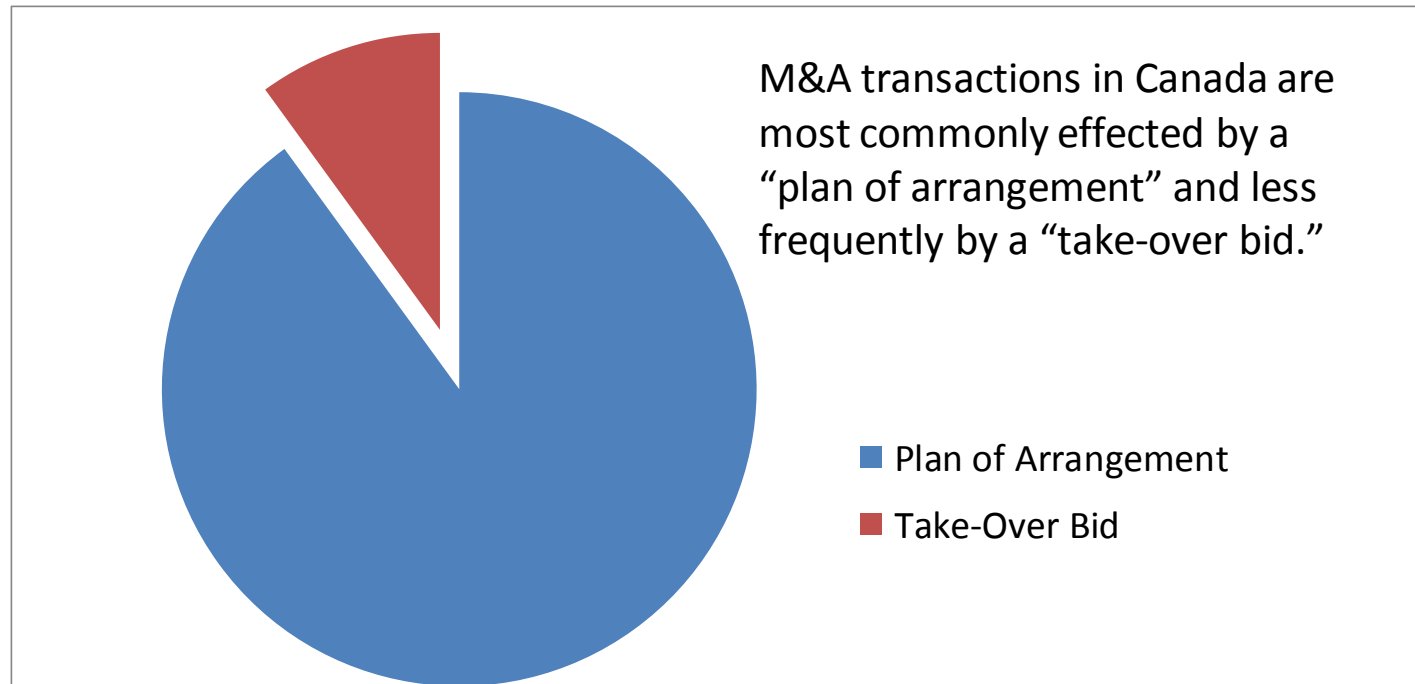
Your Pension. Our Promise.



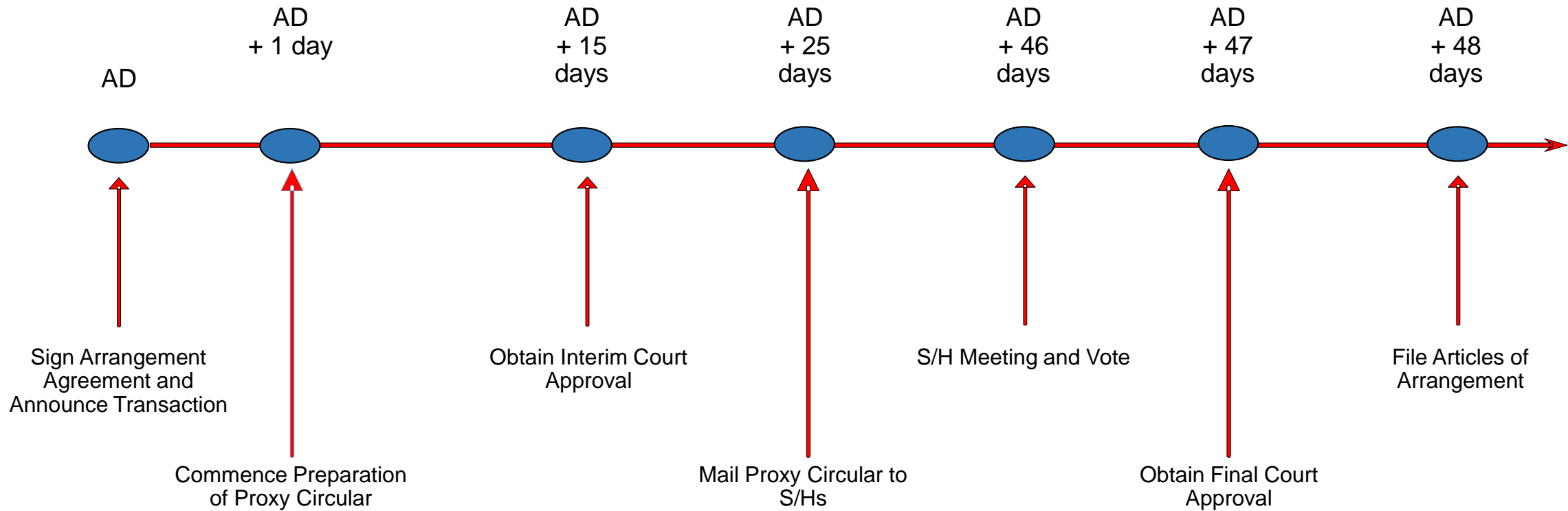
OPTrust

5. Plan of Arrangement vs. Take Over Bid

Canadian M&A Deal Structure



5. Plan of Arrangement Timeline





Thank you !

Ruchi Biyani

Nishith Desai Associates

India/ Germany

ruchi.biyani@nishithdesai.com and +49 15901096799



Ruchi Biyani





Thank you!

Jennifer Maxwell

Blake, Cassels & Graydon LLP

Canada The logo for the law firm Blakes is positioned to the right of the word "Canada". It consists of the word "Blakes" written in a large, elegant, black cursive script. Below the script, the words "CANADIAN LAWYERS" are written in a smaller, black, uppercase sans-serif font.

Jennifer.maxwell@blakes.com +44 20 7429 3558



Thank you!

Moritz Maurer

Niederer Kraft Frey AG

Switzerland

moritz.maurer@nkf.ch +41 58 800 8224

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