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INSPIRE AND ACHIEVE

CENTRE FOR RESEARCH AND
GOVERNANCE OF CORPORATE LAW

NEWSLETTER

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GLOBALISATION AND EVOLUTION OF CORPORATE LAW

ABOUT CCLG, SESSIONS BY CCLG AND THE THEME

About ACCLG

ACCLG offers deep insights into corporate law through workshops, seminars, conferences, panel discussions, and guest lectures by eminent legal scholars. Focuses on balancing and understanding corporate law and related issues holistically. Promotes comprehensive research and development of analytical skills in corporate law and governance. Encourages an integrated study of corporate law within its economic, business, and legal contexts. Explores how corporate law and governance mechanisms affect economic activity. Aims to provide innovative solutions for growing challenges in corporate law. ACCLG newsletter offers insights into both traditional and contemporary corporate issues.

SESSION

INTRODUCTORY SESSION

The session was conducted to provide participants with an understanding of the centre's purpose, its objectives, and how it aligns with contemporary issues in corporate law and governance.

LEGAL PICTIONARY

Conducted on 21st September 2024 with the purpose of engaging participants to learning legal concepts , improve communication skills, promote teamwork, and reinforce legal knowledge in a fun and interactive way.

WORD SCRAMBLE

Conducted on 22 October 2024, with the purpose to test the knowledge of vocabulary about corporate law .

About the Theme

The AIL Centre for Corporate Law and Governance (ACCLG) is pleased to present Volume VI Issue II of its e-newsletter, focusing on the dynamic and evolving field of " Globalization and evolution of corporate law".

The Centre for Corporate Law and Governance revolves around the interdisciplinary study and promotion of corporate governance principles, laws, and their application in the ever-evolving global business environment. As businesses grow and globalize, the need for transparent, accountable, and efficient corporate governance becomes crucial. This ensures that organizations operate responsibly, balancing the interests of various stakeholders such as shareholders, employees, customers, and society at large.

Globalization has fundamentally transformed corporate law, necessitating a continuous evolution of legal frameworks to address the complexities of international business operations. Corporate law has had to adapt to accommodate cross-border transactions, international governance standards, technological advancements, and social responsibilities. As globalization continues to evolve, so too will corporate law, ensuring that businesses operate ethically, transparently, and efficiently across diverse legal landscapes

"FROM PATENTS TO PROFITS: UNITING IPR TO CORPORATE LAW"

ASHISH SINGH (2315)

With the advent of technological innovation and its intervention in the functioning of companies and financial institutions in the past few decades, IPR which stands for Intellectual Property Rights has emerged as an inalienable component of a firm's business. In the current globalized, multifaceted, and interconnected world, the intellectual property of a company or a firm is of utmost importance be it patents, trademarks, copyrights or trade secrets. It sometimes emerges as the deciding factor for determining the financial expansion and success of a firm. Firms all over the world lay special emphasis on the protection of their Intellectual Property Rights and they spend much capital to ensure that no stone is left unturned in pursuit of safeguarding their IP rights.

Corporate Law which is also sometimes referred to as "company law" deals with the formation, operation, and dissolution of corporations not just in India but all over the world. Commercial law is concerned with the regulation of business transactions and commercial relationships. Corporate and commercial law provides the basic but much-needed legal framework that is required to have hassle-free operations of corporations which range from start-ups to multi-billion dollar corporations without any legal hindrance.Both IP rights and corporate laws hold special eminence in the functioning of a corporation no matter how big or small, they are both interdependent and work in harmony with each other. Together, these areas of law provide a framework for corporations to protect their IP and the right to enforce such IP rights.

SIGNIFICANCE OF IP RIGHTS IN STARTUPS AND THE ROLE OF CORPORATE LAW SUPPORT

In today's modern world where corporations and especially startups all over the world are making major breakthroughs in the pursuit of technological advancement, the role of IP rights has reached a whole new level. It becomes very important for growing startups to ensure that their inventions, trademarks, trade secrets and so on are protected from getting infringed. These provide the competitive advantage that startups need to survive and grow in this fast-paced yet competitive world.

IP rights provide startups exclusive rights over their innovations for which they have put a lot of effort into developing, both in terms of human labour and also in terms of capital expenditure required to develop it. For instance, a startup has invented a particular article which has a great market potential and the startup has got the same patented on their name. So, now they will have the sole and exclusive right to produce that particular article and provide it to the consumers demanding it. It will potentially give rise to a situation of monopoly in the market where the startup will enjoy a profitable position.

IP rights also play a decisive role in placing startups in a favorable position when it comes to the question of getting investment from potential investors. Investment plays a very crucial role in the expansion of a startup into a fully functional corporation. Investment acts as a bridge between the startup and the resources which are required in order to grow in this competitive corporate world. It has been observed since the last few decades that if a startup has a well-protected IP portfolio then it enjoys a major competitive edge over other startups and it is more likely to get investments from the potential investors of the market. This is so because well-protected IP enhances the valuation of the startup and it also gives confidence to the investors that the core ideas and the innovations of the startup are legally protected. Especially, in sectors like biotechnology and pharmaceuticals, where innovation plays a decisive role a legally secure IP portfolio can play a crucial role in getting the much-needed investments.

IP rights and especially Trademarks play a very important role in the formation of trust and brand name for the startup in the market. Trademarks ensure that new startups which enter the market have a distinct name through which they are recognised in the market and is also exclusive to them. Many a time, it is seen that corporations and even small startups lay special emphasis on getting their brand name legally protected by getting their trademark registered with the National Intellectual Property Office (NIPO). A registered trademark ensures that the brand name of the startup is not misused by anyone else, especially its competitors, who can use it to defame the startup and snatch away its potential as well as its existing market.

Corporate Law plays a very decisive role in the overall functioning as well as growth of the startup not just in the beginning but all throughout its existing cycle. It provides a suitable and necessary legal framework which is required not just by big corporations but also by startups in order to grow and expand financially in the market. It is very crucial for a startup to get investment from potential investors in order to grow but this investment has to be given to the startup using a regulated legal framework, which includes mechanisms for equity financing, debt financing and convertible notes.
Agreements are also an inalienable component of a growing corporation or a startup. There are some basic but important parameters and guidelines which are required to be fulfilled while drafting the agreements between the parties.

Here, the role and importance of corporate law comes into action, it is responsible for creating as well as enforcing key contracts such as founder's agreements, shareholder agreements, and employment contracts.

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CROSS BORDER M&A IN THE GLOBALISED ECONOMY

UDITA SAMYAL (2217)

M&As have gained importance due to globalization, competition and national and international integration of markets, driving companies to conduct M&As for more profits and increase shareholder wealth, among other reasons. "
-Long

The term "mergers and acquisitions" (M&A) describes the consolidation or combination of firms or their assets. When one company takes over another and establishes itself as the new owner, the purchase is called an acquisition. A merger describes two firms that join forces to move forward as a single new entity, rather than remaining separately owned and operated.

India, with its robust economic growth, vast consumer base, and skilled labour pool, has emerged as a prime destination for foreign investors seeking opportunities for cross-border mergers and acquisitions (M&A). The rise of cross-border M&A in India is driven by globalization, deregulation, and corporate restructuring.

The corporate sector all over the world is restructuring its operations through different types of consolidation strategies like mergers and acquisitions in order to face challenges posed by the new pattern of globalisation, which has led to the greater integration of national and international markets. The Indian corporate sector too experienced such a boom in mergers and acquisitions that led to restructuring strategies especially after liberalization in 1990s. This is due to the increasing presence of subsidiaries of big Multinational Corporations (MNC) here as well as due to the pressure exerted by such strategies on the domestic firms.

'Cross border merger' has been defined in the FEMA Regulations as "any merger, amalgamation or arrangement among Indian corporation and overseas agency in accordance with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 notified under the Companies Act, 2013". Mostly companies engage in cross border mergers to enter new geographical markets which enable companies to reach new customer bases and boost their global presence. There are two types of cross border mergers. Inbound Merger is when overseas employer merges with or acquires an Indian organisation. Example, Acquisition of 77% stake in Flipkart by Walmart.

The rise in inbound M&A was driven by strong interest in FinTech, e-commerce, and auto components, supported by healthy local demand and favourable government policies. Another is Outbound Merger where an Indian company merges with or acquires a foreign agency. Example, acquisition of Hamleys by Reliance Group.

Cross-border M&A deals are growing in India as companies pursue strategies to expand into new markets, acquire advanced technologies, diversify their portfolios, and streamline global operations. Cross-border M&A activity in the Indian market has particularly surged across the IT, pharmaceuticals, automotive, healthcare, industrial sectors, and consumer goods sectors.

In India, mergers and amalgamations between an Indian company and a foreign company located in a permitted jurisdiction are governed by the provisions of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Companies Rules) and the Foreign Exchange Management (Cross-Border Merger) Regulations, 2018 (Merger Regulations). Section 234 of the Companies Act 2013 (Companies Act) and Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Companies Merger Rules) permit mergers and amalgamations between Indian companies and companies incorporated in certain jurisdictions outside India. The Companies Merger Rules also mandate that prior approval should be obtained from the Reserve Bank of India (RBI) for any such cross-border mergers. The move is also aimed at offsetting the delays caused by the overburdened National Company Law Tribunals (NCLT) and providing an impetus to Indian startups that had opted for overseas domicile but later returned to India, such as PhonePe, Razorpay and Flipkart.

The most notable is the Reliance-Disney merger, valued at US$8.5 billion and poised to reshape the media and entertainment industry. Another significant transaction was Bharti Airtel's US$4.08 billion acquisition of a stake in BT Group, one of the first major cross-border M&A deals of the year.
Key sectors driving large-scale M&A deals in India:

1. **Technology, Media, and Telecommunications (TMT):** Contributing 40% of total deal value in early 2024, with notable deals like Viacom 18 Media's $3.1 billion merger with Star India.
2. **Healthcare:** There has been a sustained M&A activity in domestic markets, highlighted by Mankind Pharma's $1.6 billion acquisition of Bharat Serums & Vaccines, bolstering its position in women's health and fertility.

Cross-border M&As have surged in recent years, driving global industrial integration and reshaping international structures. Policies like investment liberalization, privatization, and regulatory reforms are expanding opportunities for acquisitions across manufacturing and services sectors.

However, cross-border mergers and acquisitions might have considerable difficulties due to local regulations, taxation, and cultural differences and thus, might not be sustainable. Enterprises increasingly seek to exploit intangible assets – technology, human resources, brand names – through geographical diversification and acquisition of complementary assets in other countries. As the global economic landscape evolves, cross-border M&A in India is expected to rise, supported by regulatory reforms and the country's growing focus on foreign investment. This trend will bring both opportunities and challenges as companies navigate India's complex regulatory environment.

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EXPLORING THE INTERSECTION BETWEEN ANTITRUST LAW AND GLOBALIZATION OF CORPORATE LAW

PRIYADARSHANI TRIPATHI (2318)

The phenomenon of globalization has transformed economies and industries across the globe, leading to the emergence of multinational corporations (MNCs) that operate across borders. This evolution has substantial implications for corporate law and antitrust regulations, which are designed to promote fair competition and protect consumers. As businesses expand internationally, antitrust laws are increasingly challenged by the complexities of global markets.

What is Antitrust Law?

Antitrust law[i], also known as competition law, refers to legislation enacted to prevent anti-competitive practices, promote fair competition, and protect consumers from monopolistic behaviours. The primary aim to prohibit agreements that restrict competition, prevent abuse of dominant market positions, and oversee mergers and acquisitions that could diminish competition. The roots of antitrust law can be traced back to the late 19th century in the United States with the Sherman Antitrust Act of 1890[ii], which aimed to combat the monopolistic practices of large corporations. Subsequently, the Clayton Antitrust Act of 1914[iii] and the Federal Trade Commission Act[iv] of the same year strengthened the enforcement of antitrust laws. Other jurisdictions, such as the European Union (EU), developed their competition laws, notably the Treaty on the Functioning of the European Union (TFEU), which governs antitrust enforcement in Europe.

What is Globalisation of Corporate Law?

Globalization[v] refers to the process of increased interconnectedness and interdependence among countries, characterized by the flow of goods, services, capital, and information across borders. This phenomenon has led to the rise of MNCs, which leverage global supply chains and markets to enhance their competitiveness and efficiency. The globalization of business necessitates the evolution of corporate law to address the legal complexities aiming towards corporate governance, compliance, and regulatory frameworks that arise from cross-border operations to accommodate and adapt to the diverse legal landscapes in which MNCs operate.

Intersection of Antitrust Law and globalisation of corporate law

The evolution of corporate law in the context of globalization has increased regulation of governments as they have enacted more stringent regulations to address the risks associated with global corporate operations, such as tax avoidance, labour rights, and environmental sustainability. Also, corporate governance as globalization has spurred the development of international institutions corporate governance standards, emphasizing transparency, accountability, and stakeholder engagement.

Globalization challenges for antitrust enforcement

1.Jurisdictional Issues: MNCs often operate in multiple jurisdictions, making it difficult for regulators to enforce antitrust laws consistently.

2.**Harmonization of Laws:** Differences in antitrust laws across countries can create confusion and complicate compliance for businesses operating globally.

3.**Digital Economy:** The rise of digital platforms and technology companies has introduced new market dynamics, requiring antitrust authorities to adapt their approaches.

To address these challenges, international cooperation among antitrust authorities has become essential. Organizations such as the International Competition Network (ICN) and the Organisation for Economic Co-operation and Development (OECD) promote dialogue and collaboration among competition authorities to facilitate effective antitrust enforcement across borders.

The Google Antitrust Case

The case of United States v. Google[vi] is a series of antitrust lawsuits filed by the U.S. Department of Justice (DOJ) against Google. In 2020, the DOJ filed a lawsuit over Google's search engine practices. The DOJ and 50 state attorneys general alleged that Google used anticompetitive tactics to maintain its monopoly in search services. In 2023, the DOJ filed a lawsuit over Google's advertising technology practices. The DOJ accused Google of abusing its control of ad technology and violating antitrust law. In August 2023, Judge Amit Mehta ruled that Google is a monopolist that violated the Sherman Act. The ruling ended the biggest tech antitrust trial since the 1990s.

On September 9, 2024[vii] started the antitrust trial of United States v. Google. This follows the landmark antitrust case in which Judge Amit Mehta ruled that Google “is a monopolist and it has acted as one to maintain its monopoly.”

The Interplay Between Antitrust Law and Corporate Law

Mergers and acquisitions (M&A) are significant corporate strategies in the globalized economy. Antitrust authorities closely scrutinize M&A activities to prevent the formation of monopolies and ensure market competition.

- The Boeing and McDonnell Douglas Merger

The merger between Boeing and McDonnell Douglas[viii] in 1997 serves as a notable example of antitrust scrutiny in corporate M&A. The U.S. DOJ challenged the merger, raising concerns about reduced competition in the aerospace industry. Eventually, the merger was approved, but it underscored the importance of antitrust assessments in corporate transactions.

Regulatory Compliance and Corporate Responsibility

Corporate law increasingly emphasizes the need for compliance with antitrust regulations. Companies are adopting compliance programs to mitigate the risk of antitrust violations, which can result in severe penalties and reputational damage.

- European Union vs. Microsoft

In the case[ix], The European Commission's case against Microsoft in the early 2000s illustrates the EU's proactive approach to antitrust enforcement. Microsoft was found to have abused its dominant position in the software market, leading to a landmark ruling that imposed significant fines and mandated changes to its business practices. As the illegal behaviour was still ongoing, the Commission has ordered Microsoft to disclose to competitors, within 120 days, the interfaces required for their products to be able to 'talk' with the ubiquitous Windows OS. Microsoft was also required, within 90 days, to offer a version of its Windows OS without Windows Media Player to PC manufacturers (or when selling directly to end users). In addition, Microsoft was fined € 497 million for abusing its market power in EU.

The Antitrust Scrutiny of Big Tech

In recent years, major technology companies such as Facebook, Amazon, and Apple have faced increased antitrust scrutiny globally. Regulatory bodies in the U.S., EU, and other jurisdictions are investigating potential anti-competitive practices, reflecting the growing concern over the power of Big Tech in the global economy.As globalization continues to evolve, antitrust laws must adapt to address emerging challenges, particularly in the digital economy[x]. Regulatory frameworks must be flexible enough to respond to the dynamic nature of global markets while ensuring effective competition. Advancements in technology, such as data analytics and artificial intelligence, can enhance the capabilities of antitrust authorities in monitoring and enforcing competition laws. Embracing technology will enable regulators to keep pace with rapidly changing market dynamics.

The intersection of antitrust law, globalization, and the evolution of corporate law presents a complex landscape for businesses and regulators. As MNCs navigate to operating in an interconnected world, the need for effective antitrust enforcement and responsive corporate governance becomes increasingly critical. By fostering international cooperation and adapting regulatory frameworks, stakeholders can ensure that competition remains fair and beneficial for consumers in the global marketplace.

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APPROVAL FOR REVERSE FLIP MERGERS: IS A NEW ERA OF START-UP IPOAS UNDERWAY?

JAYA KRISHNA(2129) & NIDHI YADAV(2174)

The ministry of corporate affairs on 9th September 2024 proposed amendment to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 vide notification G.S.R. 555(E)[i]. This amendment has been made keeping in mind the companies desiring reverse flipping. Flipping is a process wherein an entity merges as a subsidiary to a holding entity in a foreign jurisdiction. Such flipped entities were still operating in India, but with its ownership and certain rights transferred to foreign jurisdiction. It was done due to varied reason such as, better business conducive environment, tax subsidies, regulatory approvals etc. It was widely practiced by Indian startups over a decade until now. However, in recent days, the entities that earlier flipped to other jurisdictions are showing interests in coming back to India. This phenomenon is called reverse flipping. According to a Deloitte report[ii], about 41% of the mergers that took place in India in 2023 were inbound mergers.

IPO as a Surging Factor

In the past few years, India has become a global hub for business development. The stock market system of India has grown rapidly and shows a convincing signs of stable growth. This has attracted the flipped entities to mark their re-entry in India since there is a flurry of IPO in Indian market, and it is perceived as a fancy exit strategy for investors. The reason for this is, that the promoters often seek to go public due to varied reasons such as increased capitalization, higher returns at a higher valuation of the company etc. Besides, public offer is the most lucrative method of increasing the capital of the business, if utilized properly. Startups provide for exit opportunities to its investors through secondary sale of their stakes at a higher value. Investors generally prefer to exit a company in 3 to 5 years of their investment in it, and it is followed by a waterfall mechanism. It goes from IPO strategy to buyback, third party sale, and strategic sale. IPO method of selling the stakes is commonly seen among all the investment transactions. Not so surprisingly this year, many startups are reluctant to private stake sale and M&A transactions, as they desire to opt for public listing rather than going with these traditional methods ofdisinvestment. The driving factor of this phenomena is a hysteria among promoters, and that is somehow the truth. Three of the 10 best performing mainboard IPO this year belongs to startups.

Overview of the Amendment

Such companies reverse flipping to India are governed by Section 233 and Section 234 of the Companies Act, 2013 [iii] ("Act") read with The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("Rules").

The proposed amendment inserted sub rule (5) to rule 25A of the Rules[iv]. Accordingly, the foreign holding company and Indian subsidiary company that desire to merge or amalgamate, have to follow the following provisions mandatorily.

a) Both the entities shall obtain approval from the Reserve Bank of India,

b) The Indian subsidiary entity, i.e. transferee company, shall comply with provision of Section 233 of the Act which deals with the requirements of the entities to be fulfilled in order to go ahead with such arrangements.

c) The subsidiary entity shall make an application to the central government under Section 233 of the Act, accompanied by documents such as notice inviting objections to the proposed scheme, declaration of solvency and approval of scheme by creditors or class of creditors.

d) Form no. CAA.16 shall be submitted along with the declaration under Section 233 to the central government in case of application of Press Note 3.[v]

This amendment has been made to ease the process involved in reverse flipping. It has effectively reduced the time period to about three to four months which would otherwise take at least a year.[vi]

Do All IPOs Thrive Post-Flip?

Sustainability of an IPO post reverse flipping is a dilemma.
Regulation 6 of the SEBI (Issue of Capital and Disclosing Requirements) Regulations, 2018[vii] ("Act"), mandates entities to avail the following requirements:

i. Net tangible assets of 3 crore rupees in each of the preceding 3 years,
ii. Operation profit of 3 crore rupees in each of the 3 preceding years,
iii. Net worth of 1 crore rupees in each of the 3 preceding years.

If any of these conditions are not satisfied, then the companies may still be able to make an IPO by allotting at least 75% of the net offer to the Qualified Institutional Buyers. While this regulatory condition can be easily fulfilled, what decides the success of an IPO is the investor population. According to a study conducted by SEBI, 67.6% of shares are sold by individual investors within the week of listing, if the returns are in excess of 20%[viii]. But this has not stopped the investors from selling their shares completely in case of negative returns. 23.4% of the shares held by individual investors are sold, if the returns are in negative after listing.

Resourceful automobile, a bike dealership company with only two Yamaha showrooms and 8 employees opted for SME IPO with capital size of 11.99 crores got applications for a whopping 4800 crore rupees [ix]. This is nearly 419 times the subscription of against the allotment size. TAC Infosec, a cyber-security startup was nearly 433 times oversubscribed for raising Rs. 30 crores[x]. This shows that, investors are not hesitant to surge the market by investing in companies' despite regulatory deterrents, and that is very much concerning.

Private equity firms which majorly backs the company from its early stage of growth, seek to retrieve their investment along with an exorbitant profit by selling stakes at higher valuation, meanwhile the public who buy the share end up being the ultimate victims of dramatic fall in price. While taking the individual investors into consideration, they often involve in share flipping. Share flipping means buying and selling of shares in a short term with a profit driven motive.

Additional regulatory conditions on in bound mergers

Way forward, the Foreign Holding Companies that wish to merge with an Indian subsidiary, along with compliance of Chapter XV of Act, have to comply with laws of their resident countries as well. For eg, entities from Singapore need to acquire approval from the regulators before going with any outbound mergers. Press note 3 was introduced by an amendment to FEMA (Non debt instruments) Amendment Rules 2020, irrespective of the sectoral caps and entry route, requires prior approval from the central government in any arrangements with a foreign entity which is incorporated in a country that shares its border with India, or the beneficiary of such investment in India is a resident of such country. These regulatory requirements may or may not be beneficial, or in best interest of the entities flipping to India. Thus, it is imperative to keep a check on the regulatory changes from time to time.

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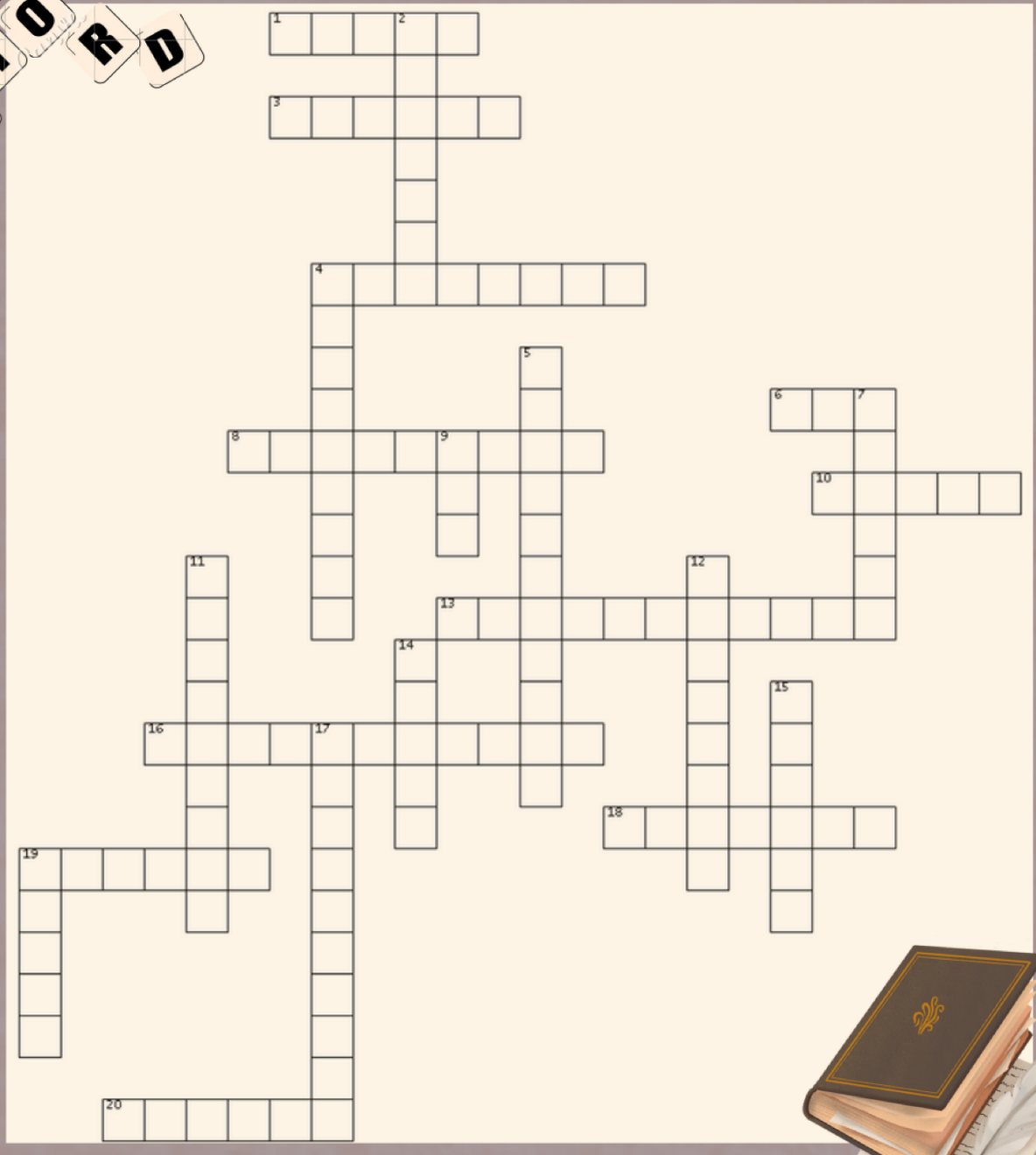
CORPORATE CONUNDRUM



C L U E S

ACROSS

1. A TYPE OF SECURITY REPRESENTING OWNERSHIP IN A CORPORATION.

3. RULES GOVERNING THE INTERNAL MANAGEMENT OF A CORPORATION.

4. A PERSON ELECTED TO THE BOARD TO OVERSEE THE COMPANY'S ACTIVITIES.

6. SHAREHOLDERS' ANNUAL GATHERING.

8. THE PRIMARY DUTY OF A CORPORATE DIRECTOR.

10. A VIOLATION OF LAW PUNISHABLE BY FINES OR IMPRISONMENT.

13. AN INDIVIDUAL OR ENTITY THAT OWNS SHARES IN A COMPANY.

16. LEGAL PROCESS OF CLOSING A COMPANY.

18. FORMAL MEETING MINUTES ARE A PART OF CORPORATE

19. RESOURCES OWNED BY A CORPORATION.

20. OWNERSHIP INTEREST IN A CORPORATION.

DOWN

2. DOCUMENT OUTLINING A COMPANY'S PURPOSE AND REGULATIONS.

4. A COMPANY'S EARNINGS DISTRIBUTED TO SHAREHOLDERS.

5. A LEGAL ENTITY SEPARATE FROM ITS OWNERS.

7. THE COMBINING OF TWO COMPANIES INTO ONE ENTITY.

9. THE FIRST SALE OF STOCK BY A PRIVATE COMPANY TO THE PUBLIC.

11. LEGAL OBLIGATION OF A COMPANY TO SETTLE DEBTS.

12. AGREEMENT BETWEEN TWO PARTIES OUTLINING TERMS.

14. GROUP OF INDIVIDUALS OVERSEEING THE MANAGEMENT OF A CORPORATION.

15. MINIMUM NUMBER OF MEMBERS REQUIRED TO HOLD A MEETING.

17. WHEN A COMPANY CANNOT PAY ITS DEBTS.

19. EXAMINATION OF FINANCIAL STATEMENTS BY AN INDEPENDENT BODY.

MEET THE TEAM

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