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

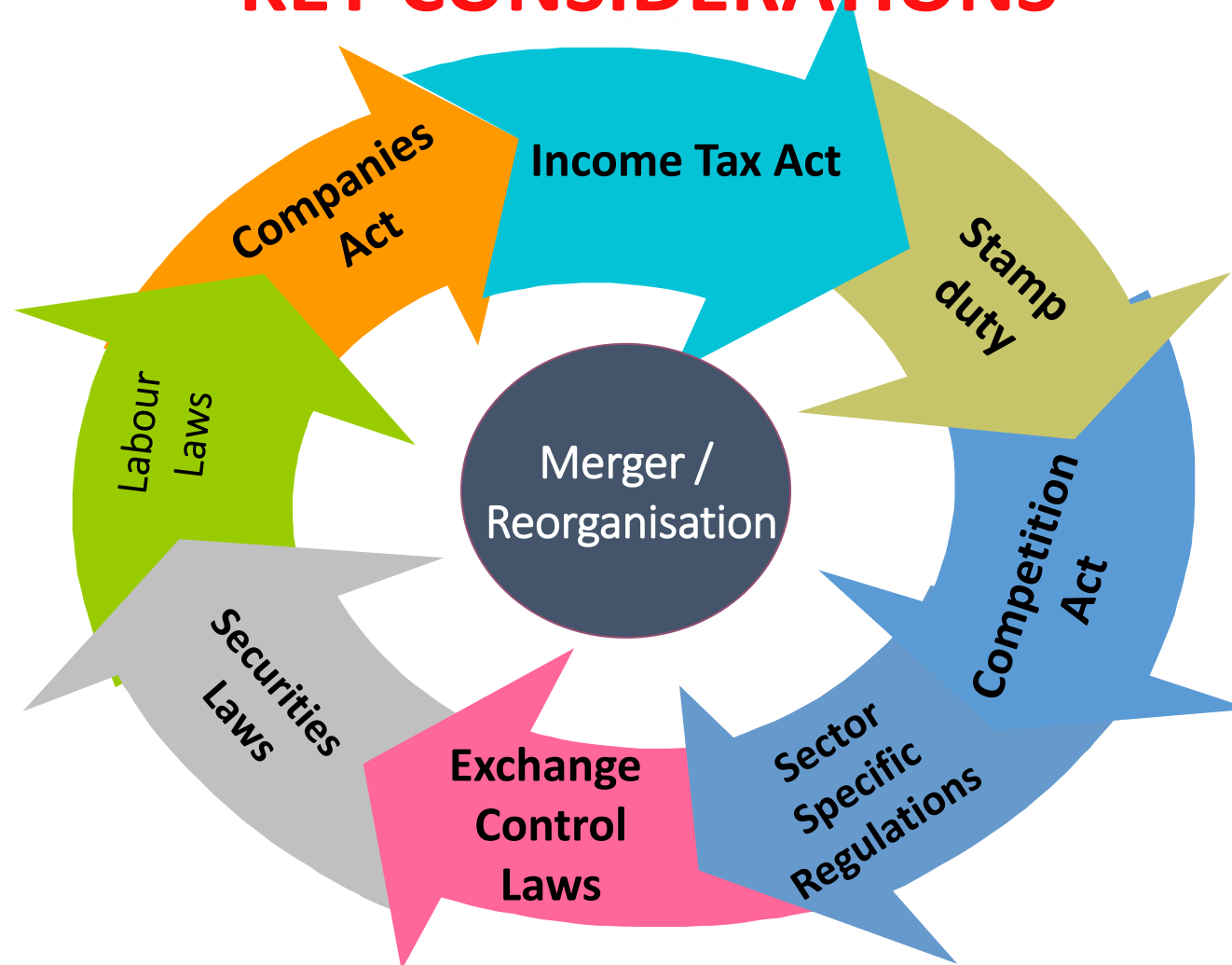


# CROSS-BORDER MERGERS & REORGANIZATIONS OUTSIDE THE EU – INDIA

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# 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

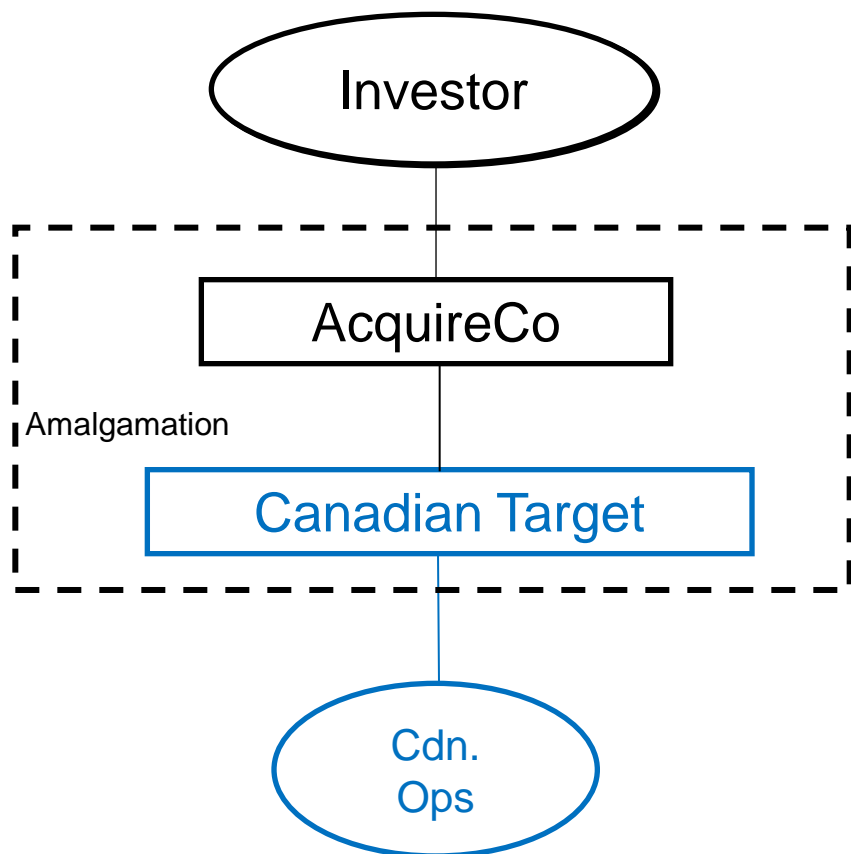


**Share Purchase**

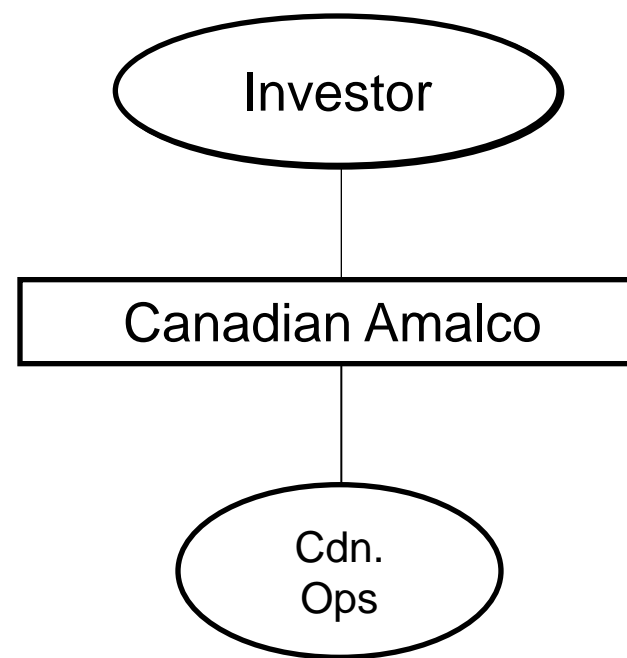
**Asset Purchase**

## 2. Typical Acquisition Structure

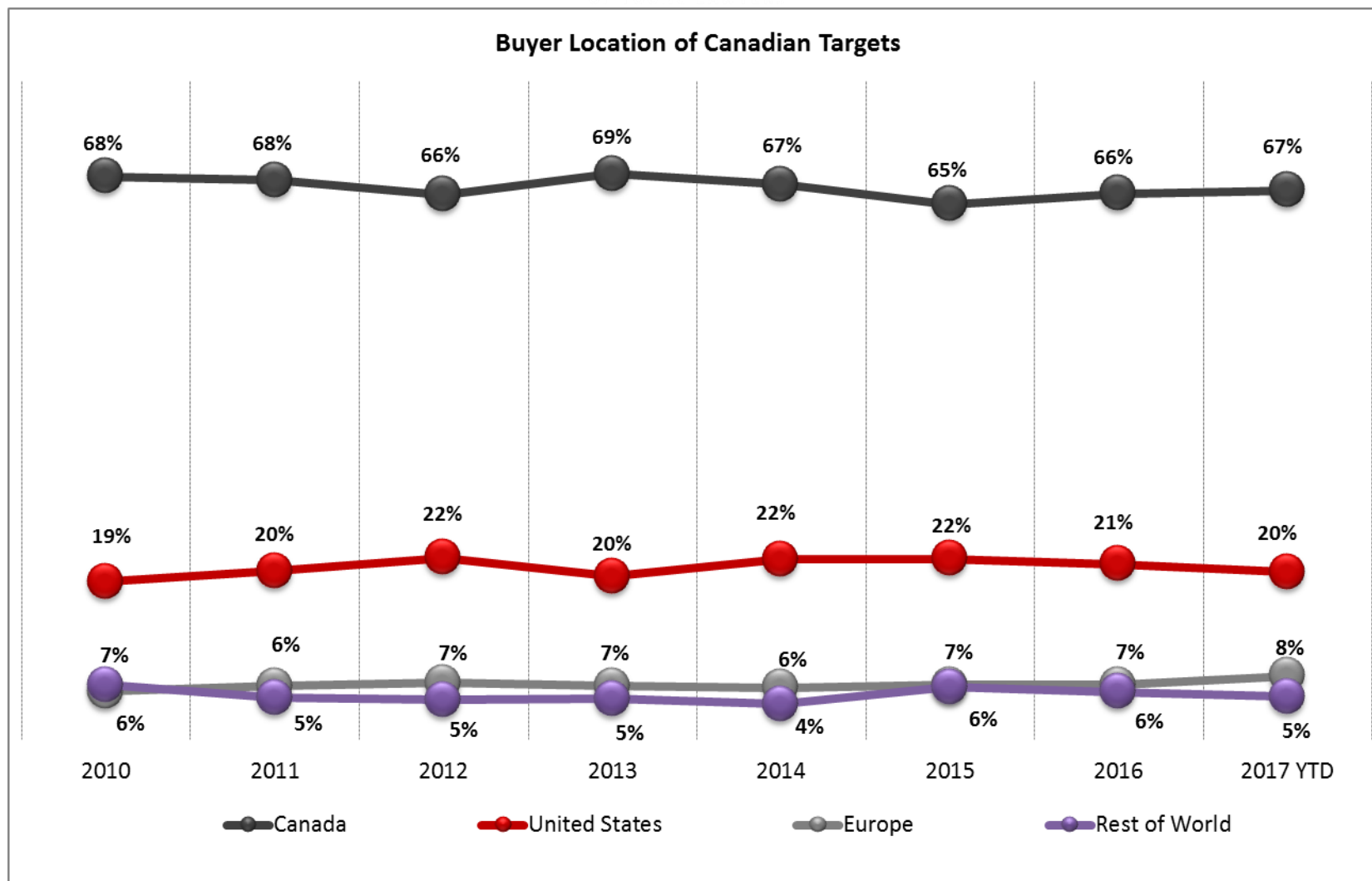
Structure at Closing



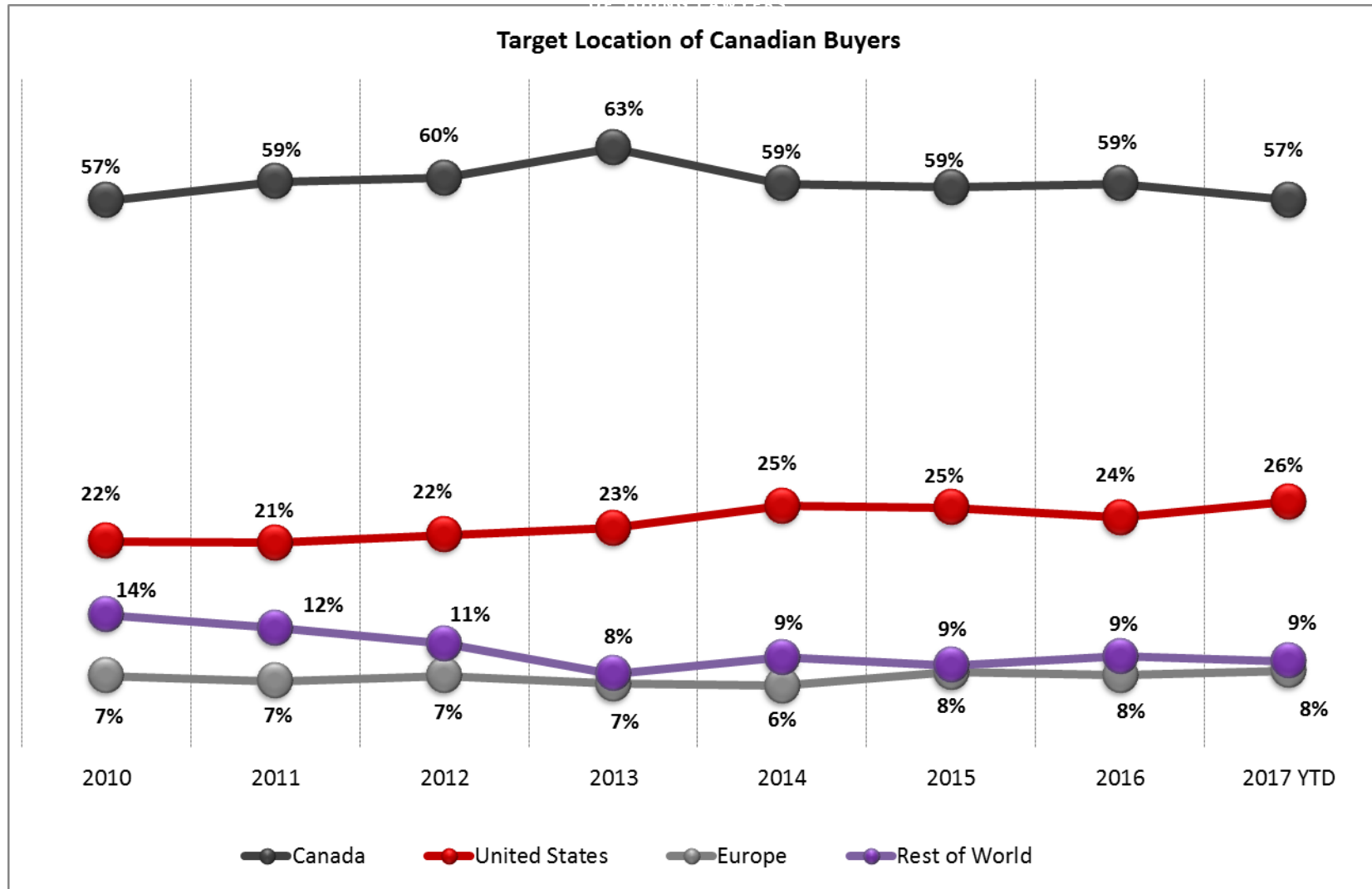
Post-Closing Structure



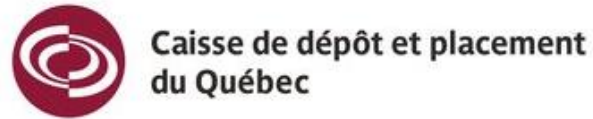
# 3. Blakes Deal Study



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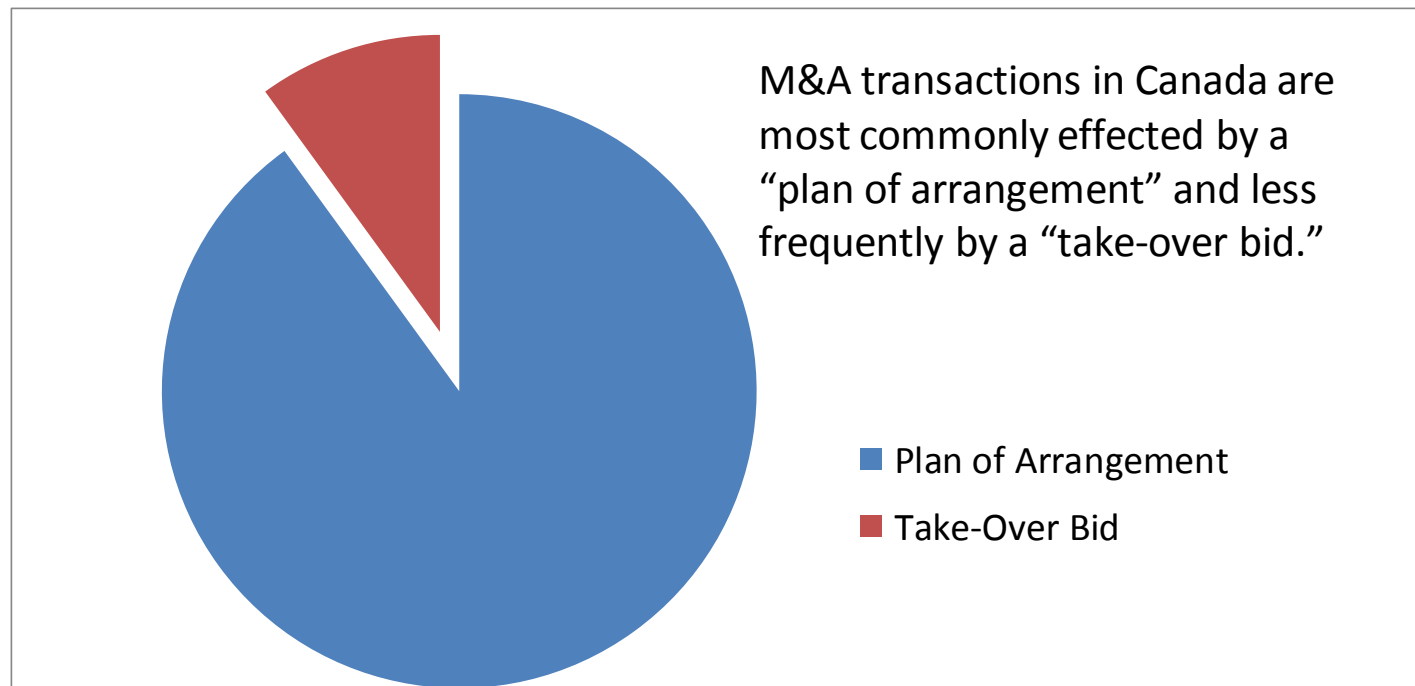


## 4. Maple Revolutionaries



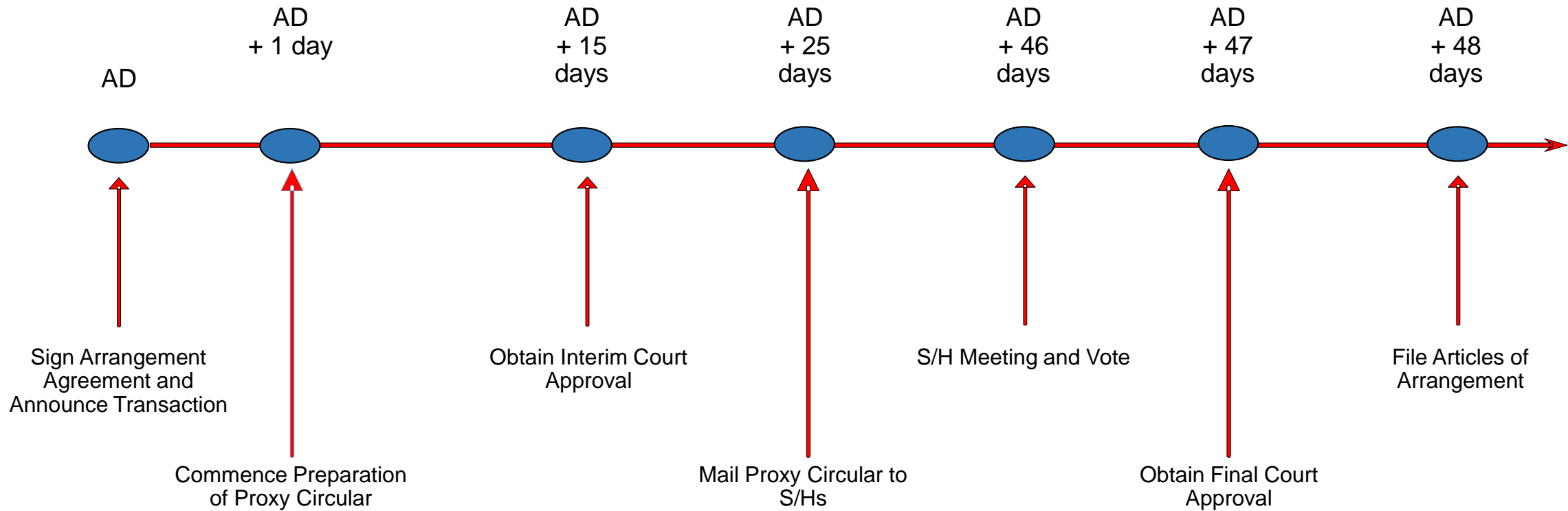
# 5. Plan of Arrangement vs. Take Over Bid

## Canadian M&A Deal Structure





# 5. Plan of Arrangement Timeline





# Thank you !

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# Thank you!

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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.

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# Thank you!

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