

Strategic alliances and mergers in consolidating sectors

By Corporate and M&A Law Committee

From start-up to IPO conference of the International Bar Association (Paris – 17 –19 October 2021)

The Panel



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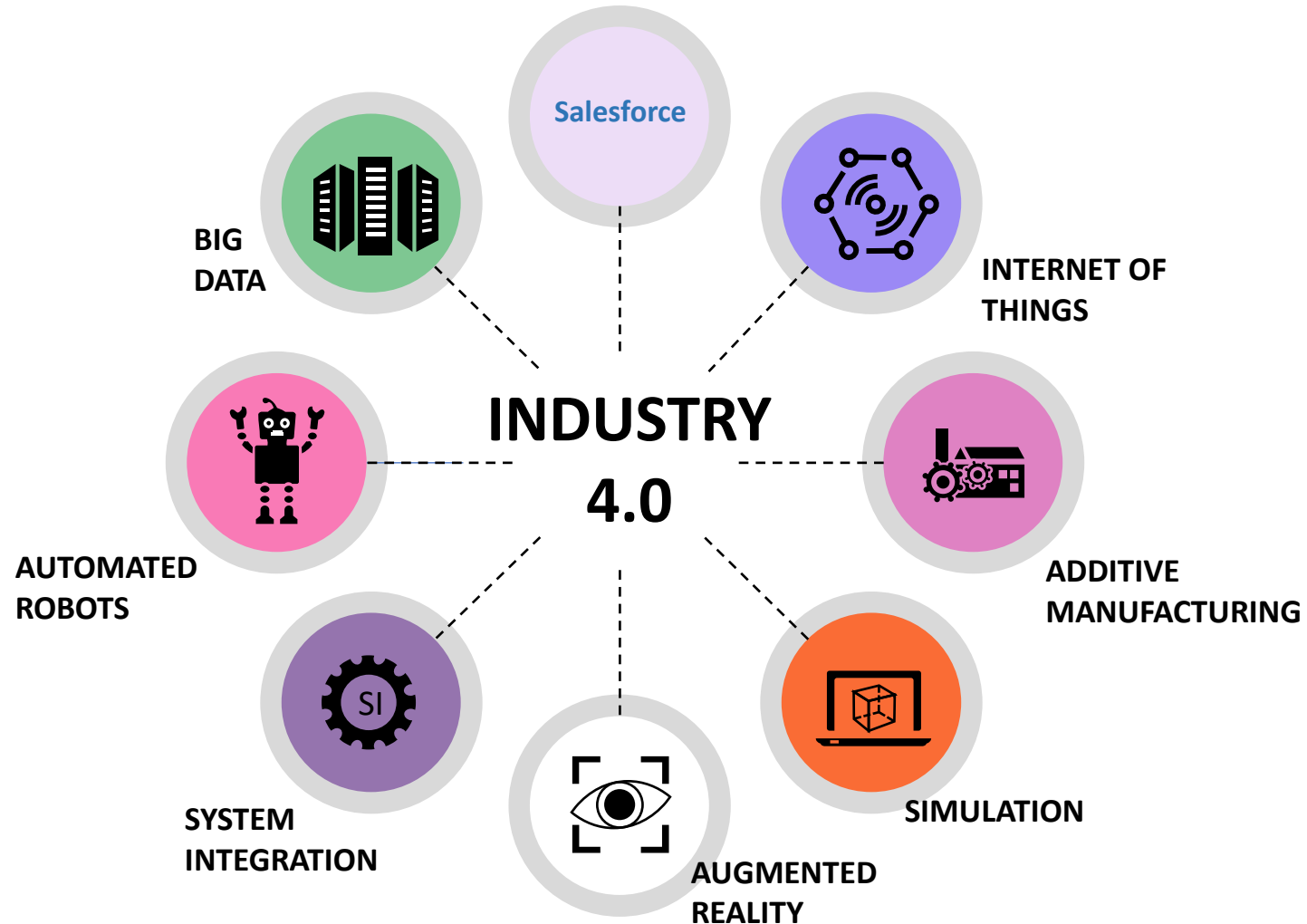


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Trends and Developments: Industry 4.0.



Trends and Developments

- Industrial Revolution 4.0 which focusses on latest technologies to enhance productivity is the need of the hour
 - Industry 4.0 focusses on AI, IoT, Cloud computing, AR, Additive Manufacturing (3D printing etc).
 - Germany has naturally been leading the Industry 4.0 from the forefront. While countries like Japan, Canada, Germany, Austria, Switzerland and Australia are considered leaders for this revolution, and even countries like South Africa, Korea, Indonesia and Uganda have seen massive projects focused on fostering the IR 4.0
 - The European Commission also introduced the Horizon 2020 to give focused impetus to this Industry 4.0. Some studies have indicated that Denmark, Finland and Belgium are amongst the top performers in the Industry 4.0
- All countries are now pivoting towards e-manufacturing and e-production as e-business has already become a way of life for all major countries across the world. The main challenges to this of course continue to be possible obsolescence of labor and loss of jobs.
- The India Story: Market is flush with capital. IPO Market is booming.
- Distressed Assets Landscape
- Conducive Regulatory Changes
 - The World Economic Forum in collaboration with McKinsey has the Global Lighthouse Network to help companies navigate the Industry 4.0. This which has identified 44 factories around the world which are applying advanced manufacturing technologies. However, it also showed that almost 70% of the companies are still not fully exploiting the advantages of tech-based manufacturing
 - Government of India has focused on encouraging use the technology in manufacturing but introducing incentives under PPP models, cash subsidies, Production Linked Incentive (PLI) Scheme and others. The National Manufacturing Policy has also been designed with a special focus on increasing the share of manufacturing in the GDP of the country to 25%

Type of JV determines the parties' agreement

Contractual vs Corporate

By numbers: contractual JV
(consortia in the real estate)

By value (and importance): corporate
JV

By composition

50/50 partnership / merger (strategic)

Majority founder / minority financial
investor JV (growth capital)

Majority financial investor / minority
founder JV (two-step exit)

Multiple shareholders JV without
clear majority and ESOP (startups)

By goals

Access to knowledge / innovation

Developing common market
infrastructure / leverage resource

New geographic or products markets

Access to capital

Sharing risks / costs

Governance

Governed by
contract or
corporate
documents

Board
composition /
management /
representation
rights

Reserved matters
/ veto rights

- Avoiding joint-control to avoid merger-control as new normal?
- new Swiss digital marketplace group TX Group/Ringier/La Mobilière/ General Atlantic

New shares /
investors / ESOP

Further financial
assistance / anti-
dilution

Non-compete

Deadlock

Avoiding it (“neutral” casting vote)

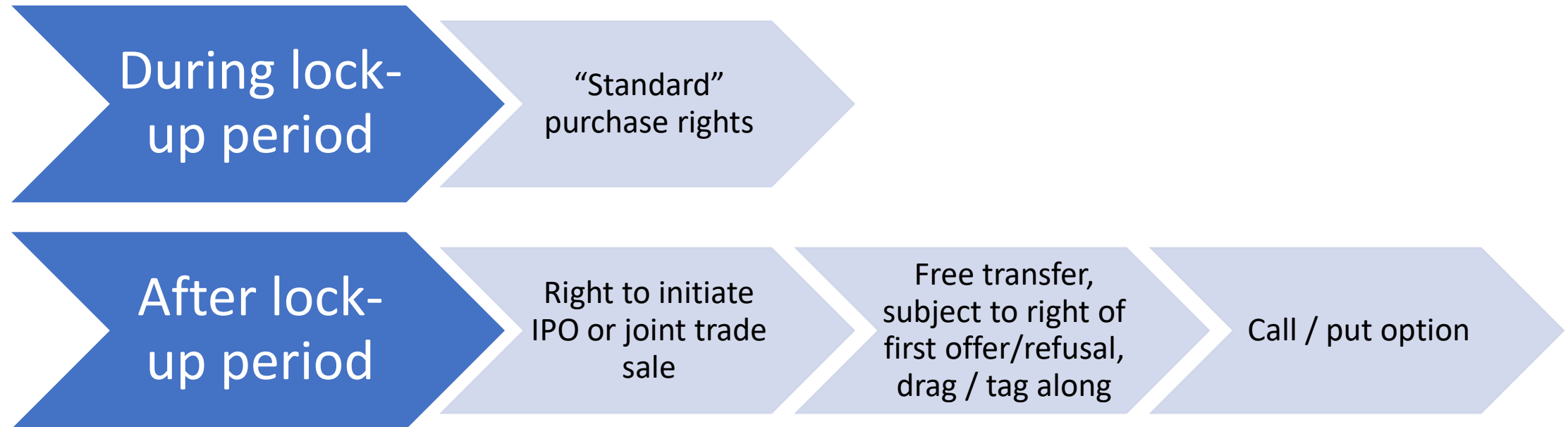
Escalation of decisions

Forced exit

- Casino-style transactions, such as Russian-roulette, blind bids, Texas-shoot-out etc.
- Call / put option
- Accelerated joint exit

Other

Exit



IP and Tech Issues

- Legislations unable to cope up with the fast paced emergence of Technology (AI, Blockchain, cryptocurrency, ecommerce OTT platforms)
 - Tech and IP laws are unique in that they not only evolve with legislation but also evolve with tech developments
 - Accounting for ransomware, data protection and third-party risks
 - India has seen ban of cryptocurrencies which was set aside by the Supreme Court.
- Emerging issues in substantive tech laws
 - Identification of Authors
 - How do you integrate smart contracts with earlier contract legislations?
 - Dealing with IP infringements on OTT platforms
 - Liabilities for AI enabled devices
- Pharma IP and need of the hour
 - Covid Vaccines – greater good vs protection of individual IP rights
 - Incentives for innovation from public funding v isolating rights of vaccine developers
- Tackling abuse of dominance position
 - EU orders on google, facebook and other large tech companies
 - EU proposal to mandate type-c charging for all devices
 - Indian CCI fined Google In 2018 for abuse of dominant position
- Adaption of tech by law firms
 - Develop expertise in tech contracts
 - Using AI to draft contracts to bring efficiencies. Also resonates with Tech Clients who see the lawyers as personally invested in tech development.
 - Policy advocacy to regulators – becoming a SPOC between regulators and tech aggregators

The Panel



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THANK YOU

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