

# Cairn's Merger With Vedanta

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'Fair' or 'Socializing The Debt  
of Vendanta'?

January 2016



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## Contact

For any help or assistance please email us on [conciierge@nishithdesai.com](mailto:conciierge@nishithdesai.com) or visit us at [www.nishithdesai.com](http://www.nishithdesai.com)



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# 1. Prologue

A few years ago in India, it was rare for proxy advisory firms to comment on M&A transactions. It was even rarer for proxy advisory firms to form a different view on the same deal. However in recent times, with the sophistication in the deal making environment coupled with changes in the regulatory framework proxy advisory firms have wielded significant power and influence over M&A transactions. Therefore it comes as no surprise that debt ridden Vedanta Ltd's ("Vedanta") announcement of merger with its debt-free and cash rich subsidiary Cairn Ltd ("Cairn" and the merger shall be hereinafter referred to as the "Transaction"), has provided a great opportunity for proxy advisory firms to demonstrate and wield their influence.

The interesting part however, is that not all proxy advisory firms have the same advice on the Transaction. One proxy advisor labeled the deal "fair"<sup>1</sup> with a tone of caution whereas another proxy advisory firm castigated Vedanta for "socializing" its heavy debt.<sup>2</sup>

While the markets, shareholders, proxy advisory firms and all stakeholders may have their own view on the merits or demerits of the Transaction, one aspect that cannot be denied is that the Transaction comes as no surprise

to anyone. The gloomy macro-economic environment for the commodities market as a result of a sharp decline in commodity prices has had a negative impact on the net profits of the metals and mining conglomerate Vedanta. In fact, for the second quarter of FY 2016 the company has seen more than a 40% drop in its consolidated net profits from the second quarter of the previous financial year.<sup>3</sup> Vedanta has attributed this decrease to the fall in crude oil and metal prices, as well as the depreciation of the rupee.<sup>4</sup> This gloomy business prospect accompanied with the high debt outstanding on the books of Vedanta almost forced it to get direct access to its "cash cow" Cairn.

While, no one in-principle can question Vedanta's decision to merge its subsidiary Cairn as *per se* it is a legitimate business decision, the debate on whether the deal terms are fair or not is a reasonable one and must be welcomed as it creates a robust and vibrant deal environment in India wherein such deals are closely scrutinized. This M&A Lab, while providing the necessary background to the deal and the parties, analyzes dynamics of the Transaction and the lessons that it holds for future M&A transaction in India.

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1. Institutional Investor Advisory Services, "Vedanta-Cairn Merger Fair, but deal dynamics could change" dated June 15, 2015, available at: <http://iiias.in/ArticleBlog.aspx?title=Vedanta%E2%80%93Cairn-Merger-Fair-but-deal-dynamics-could-change.aspx>.

2. InGovern Research Services, InGovern report on Vedanta-Cairn India Merger dated June, 2015, available at <http://www.ingovern.com/wp-content/uploads/2015/06/Report-on-Vedanta-Cairn-India-Merger.pdf>.

3. "Vedanta may discuss on sweetening Cairn India deal next week" available at: <http://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/vedanta-may-discuss-on-sweetening-cairn-india-deal-next-week/articleshow/49510627.cms>.

4. Ibid.

## 2. Glossary of Terms

ADRs	American Depositary Receipts
BALCO	Bharat Aluminium Company Ltd.
BSE	Bombay Stock Exchange
CA 2013	Companies Act, 2013
CA 1956	Companies Act, 1956
Cairn	Cairn Limited
Cairn Plc	Cairn Plc, UK-based erstwhile promoter of Cairn, and currently is largest minority shareholder
Competition Act	Competition Act, 2002
CCI	Competition Commission of India
CIHL	Cairn India Holdings Ltd., Indian subsidiary of Cairn
CUHL	Cairn UK Holdings Ltd., erstwhile holding company for Cairn and subsidiary of Cairn Plc
Effective Date	The date on which the court approves the Transaction
ESOP	Employee Stock Option Plan
FY	Financial Year
INR	Indian Rupees
ITA	Income Tax Act, 1961
LIC	Life Insurance Cooperation of India
Ltd.	Limited
MALCO	Madras Aluminium Company
NYSE	New York Stock Exchange
NSE	National Stock Exchange
Party(ies)	Cairn and Vedanta
Pvt.	Private
RBI	Reserve Bank of India
Scheme of Arrangement	Scheme of arrangement entered into between Cairn and Vedanta in relation to this Transaction
SoA Circular	Circulars dated February 4, 2013 and May 21, 2013 issued by SEBI in relation to scheme of arrangements undertaken by listed companies
SEBI	Securities and Exchange Board of India
Sesa Goa	Sesa Goa Ltd., former Indian subsidiary of Vedanta Plc
Sesa Sterlite	Sesa Sterlite Ltd., renamed Vedanta
SPV	Special Purpose Vehicle
Sterlite Industries	Sterlite Industries (India) Ltd., former Indian subsidiary of Vedanta Plc
Takeover Code	SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

TISPRO	Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000.
Transaction	Merger of Cairn into Vedanta
TSMHL	Twin Star Mauritius Holdings Limited, wholly-owned subsidiary of Vedanta
USD	United States Dollar
Vedanta Plc	Vedanta Resources Plc, UK parent of Vedanta

## 3. Deal Dynamics

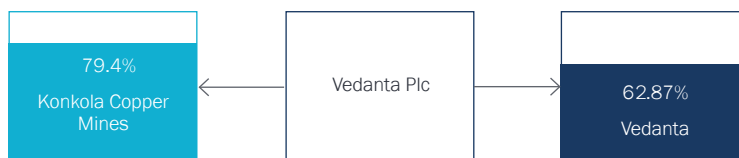
### I. Parties Involved

#### A. Vedanta Plc

Vedanta Plc is a diversified natural resources company specializing in the production and mining of Zinc, Lead, Silver, Copper, Iron Ore,

Aluminium, Power and Oil & Gas.<sup>5</sup> Through its subsidiaries, Vedanta Plc has operations across India, Zambia, Namibia, South Africa, Liberia, Ireland and Australia.<sup>6</sup> It was listed on the London Stock Exchange in 2003, and will be the parent of the merged entity i.e. Vedanta (post-merger with Cairn) if the Transaction is completed.

#### i. Group Structure (relevant for this Transaction):



#### ii. Key Financials

The key financial overview of Vedanta Plc is captured in the table below:

Particulars	As Per Audited Financial Statements of FY 2014-2015 (consolidated financials) (USD Million)
<b>Total Revenue</b>	12,878.7
<b>Total Assets</b>	36,988.9
<b>Total Debt</b>	16,668
<b>Profit/Loss After Tax</b>	3,788

#### B. Vedanta

Vedanta is a subsidiary of Vedanta Plc which holds 62.9% of its voting capital.<sup>7</sup> Vedanta was formed as a part of Vedanta Plc's group strategy to consolidate and simplify its corporate

structure.<sup>8</sup> Vedanta, formerly known as Sesa Sterilite Ltd, was a product of the merger of Sesa Goa Ltd and Sterlite Industries (India) Ltd.<sup>9</sup> Vedanta is listed on the BSE and the NSE<sup>10</sup>, and has ADRs listed on the NYSE.<sup>11</sup>

5. Vedanta "Who we are" available at: <http://www.vedantaresources.com/about-us/our-story/who-we-are.aspx>.

6. Vedanta "Our Operations" available at: <http://www.vedantaresources.com/our-operations.aspx>.

7. Vedanta "Key Facts" available at: <http://www.vedantalimited.com/know-us/key-facts.aspx>.

8. Ibid.

9. Ibid.

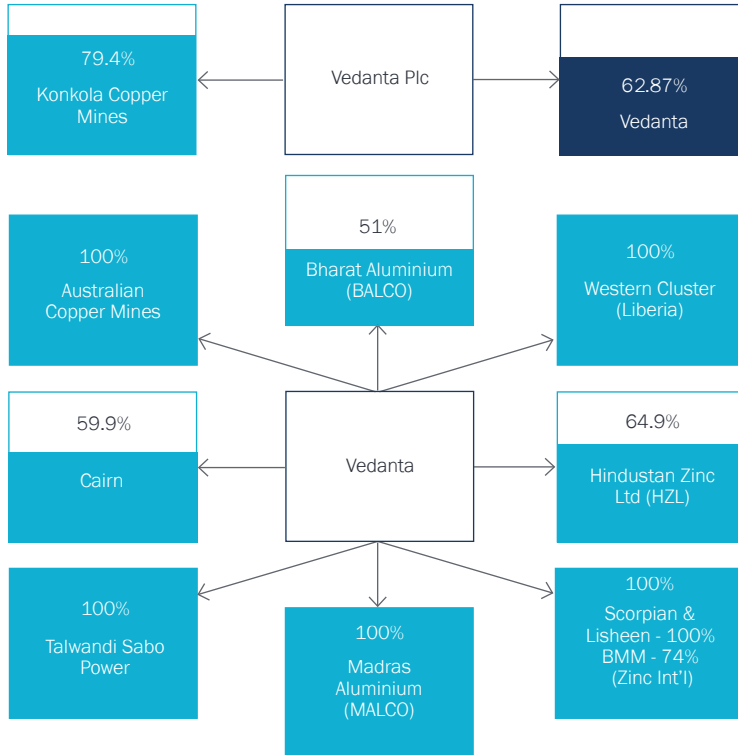
10. Ibid.

11. Ibid.

Vedanta's subsidiaries include Cairn, Hindustan Zinc Ltd, Bharat Aluminium

Company Ltd, Talwandi Sabo Power Ltd and Madras Aluminium Company Ltd.

### i. Group Structure



### ii. Key Financials

The key financial overview of Vedanta is captured in the table below:

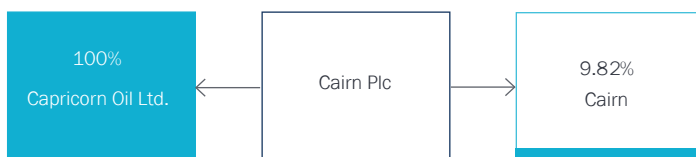
Particulars	As Per Audited Financial Statements of FY2014-2015 (standalone) (in INR crores)
<b>Total Revenue</b>	73,364
<b>Total Assets</b>	78,534.40
<b>Total Debt</b>	77,752
<b>Profit/Loss After Tax</b>	1,927.20

## C. Cairn Plc

Cairn Plc is one of the leading independent oil and gas exploration and development companies in Europe having its headquarters in Edinburgh, Scotland and its operations office in London, England. Prior to the acquisition of Cairn by Vedanta in 2011, Cairn Plc controlled Cairn and held approximately 69% of its voting capital.<sup>12</sup> However, Vedanta Plc indirectly acquired 59% stake in Cairn

from CUHL for USD 8.67 billion through its group subsidiaries, that is, 18.45% of the stake in Cairn was acquired by Vedanta, 1.72% of the stake by Sesa Resources and the remaining 38.83% was acquired by TSMHL.<sup>13</sup> Hence, Cairn Plc currently holds 9.82% of the voting capital of Cairn. As the largest minority shareholders of the merging entity, Cairn Plc will have a significant say in the final outcome of the Transaction.<sup>14</sup>

### i. Group Structure



## D. LIC

LIC is an Indian state-owned insurance group and investment company. LIC holds 9.06% of the voting capital of the merging entity, Cairn and therefore will have a significant say in the eventual outcome of the Transaction.

## E. Cairn

Cairn, a subsidiary of Vedanta, is one of the largest independent oil and gas exploration and production companies in India.<sup>15</sup> Around 1/4th (one fourth) of the domestic crude oil production in India has been contributed by Cairn especially in FY 2015.<sup>16</sup> The equity shares of Cairn are listed on BSE and NSE.<sup>17</sup> In FY

2015, Cairn had a cash flow of INR 8,765 crores from its operations. As per the annual report of FY 2014-2015 of Cairn, there has been a 22% reduction in the revenue of Cairn due to a drop in oil prices. There are various risks that have been identified to have a potential impact on the business of the company. However, the significant risk to its operations is the volatility of gas and oil prices considering the fact that the majority of the Cairn's revenue is derived from the sale of crude oil and natural gas in India.<sup>18</sup> Therefore, the near term focus for Cairn in terms of their operation lies in optimizing project economics and driving operational efficiencies for core fields.<sup>19</sup>

12. Cairn India "Operations" available at: <http://www.cairnenergy.com/index.asp?pageid=71>.

13. Shareholding pattern as of December 2011, available at: [http://www.bseindia.com/shareholding/shareholdingPattern\\_60.asp?scripcd=532792&qtrid=72.00](http://www.bseindia.com/shareholding/shareholdingPattern_60.asp?scripcd=532792&qtrid=72.00).

14. For a detailed analysis of Vedanta's acquisition of Cairn from Cairn Plc, please refer to our M&A Lab "Cairn-Vedanta: Deal Dissection" available at: [http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Ma%20Lab/M%26A%20Lab\\_Cairn%20Vedanta\\_Marcho112.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Ma%20Lab/M%26A%20Lab_Cairn%20Vedanta_Marcho112.pdf)

15. Price Waterhouse & Co LLP and Walker Chandok & Co LLP Joint Valuation Report dated June 14, 2015 available at: [https://www.cairnindia.com/sites/default/files/scheme\\_of\\_arrangement/Valuation-Report-Joint.pdf](https://www.cairnindia.com/sites/default/files/scheme_of_arrangement/Valuation-Report-Joint.pdf).

16. Ibid.

17. Ibid.

18. Cairn India Annual Report 2014-2015, available at: [https://www.cairnindia.com/sites/default/files/annual\\_reports/Annual-Report-2014-15.pdf](https://www.cairnindia.com/sites/default/files/annual_reports/Annual-Report-2014-15.pdf).

19. Ibid.

i. Shareholding Pattern <sup>20</sup>

Category	Shareholding (%)
<b>Promoters &amp; Group Promoter</b>	<b>59.88</b>
Twin Star Mauritius Holdings Ltd	34.43
Vedanta	23.71
Sesa Resources Ltd.	1.74
<b>Public Shareholding (&gt;1%)</b>	<b>40.12</b>
Cairn UK Holdings Ltd.	9.82
LIC	9.06
<b>Total</b>	<b>100</b>

## ii. Key Financials

The key financial overview of Cairn is captured in the table below:

Particulars	As Per Last Audited Financial Statements (standalone) (INR in crores)
<b>Total Revenue</b>	14,646
<b>Total Assets</b>	66,834
<b>Total Debt</b>	Nil
<b>Profit/Loss After Tax</b>	6,541

## II. Transaction Documents

The Parties have entered into a Scheme of Arrangement in connection with the Transaction.

## III. Chronology of Events

Date	Particulars
December 8, 2011	Vedanta Plc indirectly acquires 59% stake in Cairn India from CUHL (a holding subsidiary of Cairn Plc) for USD 8.67 billion. <sup>21</sup> 18.45% is acquired by erstwhile Sesa Goa (now Vedanta), 1.72% by Sesa Resources (a wholly-owned subsidiary of erstwhile Sesa Goa), while the remaining 38.83% is acquired by TSMHL, an SPV and wholly-owned subsidiary of Vedanta Plc. <sup>22</sup>

20. Shareholding pattern as on September 30, 2015, available at: [http://www.nseindia.com/corporates/corporateHome.html?id=spatterns&radio\\_btn=company&param=CAIRN](http://www.nseindia.com/corporates/corporateHome.html?id=spatterns&radio_btn=company&param=CAIRN)

21. Vedanta Plc, "Completion of Acquisition in a Controlling Stake in Cairn India Ltd." dated December 8, 2011, available at: [http://www.vedantar-resources.com/media/9599/vedantaresourcesplc\\_cairndealcompletion\\_presentation\\_final.pdf](http://www.vedantar-resources.com/media/9599/vedantaresourcesplc_cairndealcompletion_presentation_final.pdf).

22. For a detailed analysis of this acquisition, please refer to our M&A Lab "Cairn-Vedanta: Deal Dissection" available at: [http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Ma%20Lab/M%26A%20Lab\\_Cairn%20Vedanta\\_March0112.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Ma%20Lab/M%26A%20Lab_Cairn%20Vedanta_March0112.pdf)

	Vedanta Plc secured a USD 6 billion acquisition facility on behalf of TSMHL to fund the acquisition. <sup>23</sup>
August, 2013	The Vedanta Group restructures: i. Vedanta Plc merges its various subsidiaries including Sesa Goa, Sterlite Industries, MALCO, Sterlite Energy, and Vedanta Aluminium into one entity – Sesa Sterlite. <sup>24</sup> ii. Vedanta, indirectly acquires TSMHL along with its 38.83% stake in Cairn and the associated acquisition debt of USD 6 billion. <sup>25</sup>
July, 2014	Cairn extends loan to the tune of USD 1.25 billion to parent company Vedanta (then, Sesa Sterlite)
April 21, 2015	Sesa Sterlite is renamed Vedanta to achieve better alignment with the Vedanta group. <sup>26</sup>
June, 2015	Vedanta acquires 4.98% of Cairn from TSMHL for USD 315 million resulting in its current direct shareholding of 23.71%. <sup>27</sup>
June 14, 2015	The board of directors of Vedanta and Cairn approve the merger, and a joint press release is issued. <sup>28</sup> Simultaneously, Price Waterhouse & Co LLP and Walker Chandiook & Co LLP, Independent Chartered Accountants issue a joint share exchange ratio report. <sup>29</sup> Based on this report, Lazard India Pvt. Ltd., an independent Category I-Merchant Banker, issues a fairness opinion stating that the share exchange ratio is fair. <sup>30</sup>
June 14, 2015	Pursuant to the share exchange ratio report and fairness opinion, audit committees of both Vedanta <sup>31</sup> and Cairn <sup>32</sup> recommend the Scheme of Arrangement between Vedanta and Cairn.
June 22, 2015	Vedanta files application under s. 24(f) of the listing agreement for approval/no objection letter for the proposed Scheme of Arrangement. <sup>33</sup>
Sept. 10, 2015	BSE <sup>34</sup> and NSE <sup>35</sup> provide “No adverse observation” letters for submitting the Scheme of Arrangement with the High Court by March 10, 2016.
November 16, 2015	Cairn files application under sections 391-394 of the CA 1956 for approval of the Scheme of Arrangement before the Bombay High Court <sup>36</sup> Application is currently in pre-admission stage.

23. Vedanta Plc Annual Report 2011, available at: [http://ar2011.vedantaresources.com/assets/15362\\_Vedanta%20AR11%20FINAL.pdf](http://ar2011.vedantaresources.com/assets/15362_Vedanta%20AR11%20FINAL.pdf)

24. “Sesa Goa, Sterlite merger becomes effective,” available at: <http://timesofindia.indiatimes.com/business/india-business/Sesa-Goa-Sterlite-merger-becomes-effective/articleshow/21884322.cms>.

25. [http://www.vedantalimited.com/media/72861/sesa\\_sterlite\\_ar\\_13-14\\_pdf\\_for\\_email.pdf](http://www.vedantalimited.com/media/72861/sesa_sterlite_ar_13-14_pdf_for_email.pdf).

26. Vedanta “Key Facts” available at: <http://www.vedantalimited.com/know-us/key-facts.aspx>.

27. “Vedanta buys Twinstar Mauritius’s stake in Cairn India,” available at: <http://www.livemint.com/Companies/30jJT7iaHzO9oCk73VHilI/Vedanta-buys-Twinstar-Mauritiuss-stake-in-Cairn-India.html>

28. “Cairn India Vedanta boards go ahead to merger,” available at: [http://www.business-standard.com/article/companies/cairn-india-vedanta-boards-go-ahead-to-merger-115061400408\\_1.html](http://www.business-standard.com/article/companies/cairn-india-vedanta-boards-go-ahead-to-merger-115061400408_1.html).

29. Price Waterhouse & Co LLP and Walker Chandiook & Co LLP, Joint Share Ratio Report dated June 14, 2015, available at: [http://www.vedanta-limited.com/media/83697/audit\\_committee\\_report.pdf](http://www.vedanta-limited.com/media/83697/audit_committee_report.pdf).

30. Lazard India Pvt. Ltd, Fairness Opinion dated June 14, 2015, available at: [http://www.vedantalimited.com/media/83700/fairness\\_report.pdf](http://www.vedantalimited.com/media/83700/fairness_report.pdf).

31. “Report of the Audit Committee of Vedanta Ltd (‘Vedanta’ or ‘the Company’) for Amalgamation of Cairn India (Cairn) with Vedanta Ltd.” dated June 14, 2015, available at: [http://www.vedantalimited.com/media/83697/audit\\_committee\\_report.pdf](http://www.vedantalimited.com/media/83697/audit_committee_report.pdf)

32. Report of the Audit Committee of Cairn India Limited (‘Cairn’ or ‘the Company’) for Merger of Cairn with Vedanta Limited (‘Vedanta’) dated June 14, 2015, available at: [https://www.cairnindia.com/sites/default/files/scheme\\_of\\_arrangement/Audit-Committee-Report.pdf](https://www.cairnindia.com/sites/default/files/scheme_of_arrangement/Audit-Committee-Report.pdf).

33. BSE, “NOC under clause 24,” available at <http://www.bseindia.com/corporates/NOCUnder.aspx?expandable=1>

34. BSE, Observation Letter regarding the Draft Scheme of Arrangement involving Amalgamation of Cairn India Limited with Company” available at: [https://www.cairnindia.com/sites/default/files/scheme\\_of\\_arrangement/Observation-Letter-BSE.pdf](https://www.cairnindia.com/sites/default/files/scheme_of_arrangement/Observation-Letter-BSE.pdf).

35. NSE, Observation Letter regarding the Draft Scheme of Arrangement involving Amalgamation of Cairn India Limited with Company” available at: [https://www.cairnindia.com/sites/default/files/scheme\\_of\\_arrangement/Observation-Letter-NSE.pdf](https://www.cairnindia.com/sites/default/files/scheme_of_arrangement/Observation-Letter-NSE.pdf).

36. *Cairn India Ltd.* Case no. CSDL/825/2015, available at: <http://bombayhighcourt.nic.in/index.html>



December 1, 2015	Vedanta files application under sections 391-394 of the CA 1956 for approval of the merger before the Bombay High Court at Goa. <sup>37</sup>
December 1, 2015	Mr. Rajotavo Dasgupta, one of Cairn's minority shareholders, files a civil suit before the Bombay High Court alleging that the USD 1.25 loan granted by Cairn to Vedanta is in violation of the CA 2013. <sup>38</sup>
December 18, 2015	Bombay High Court at Goa issues order in relation to Vedanta's petition under sections 391-394. The order requires Vedanta to hold equity shareholders, and secured and unsecured creditors meetings for approval of the Scheme of Arrangement on February 24, 2016. <sup>39</sup>
June, 2016	As per the statements made by Vedanta, we understand that the Vedanta management expects to consummate the Transaction. <sup>40</sup>

## IV. Deal Snapshot

<b>Merging Company</b>	Cairn
<b>Surviving Company</b>	Vedanta
<b>Share Swap Ratio</b>	Each holder of Cairn shares (other than Vedanta and its subsidiaries) will receive for each share of Cairn, one equity share in Vedanta and one redeemable preference share.
<b>Terms of the redeemable preference shares</b>	<b>Par Value:</b> INR 10 (Rupees Ten) <b>Dividend/Coupon:</b> 7.5% per annum payable at the end of each financial year <b>Maturity:</b> 18 months from the date of issuance
<b>Implied value per share</b>	INR 10 (Rupees Ten) for each share.

37. *Vedanta Limited*, Company Application (Main) No. 168 of 2015, available at <http://www.hcbombayatgoa.nic.in/>

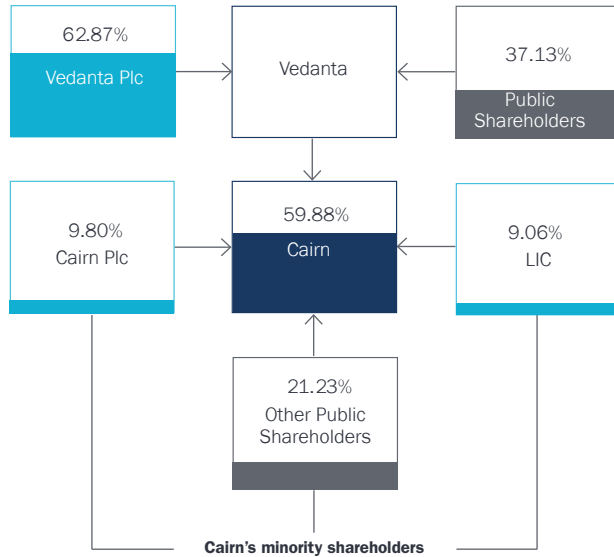
38. "Minority shareholder sues Cairn India" available at: [http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-115121001098\\_1.html](http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-115121001098_1.html)

39. *Vedanta Limited*, Company Application (Main) No. 168 of 2015, available at <http://www.hcbombayatgoa.nic.in/>

40. "Cairn Vedanta merger now by June 2016, says group firm" available at: [http://articles.economictimes.indiatimes.com/2015-11-04/news/68017107\\_1\\_vedanta-ltd-bank-debt-vedanta-resources](http://articles.economictimes.indiatimes.com/2015-11-04/news/68017107_1_vedanta-ltd-bank-debt-vedanta-resources)

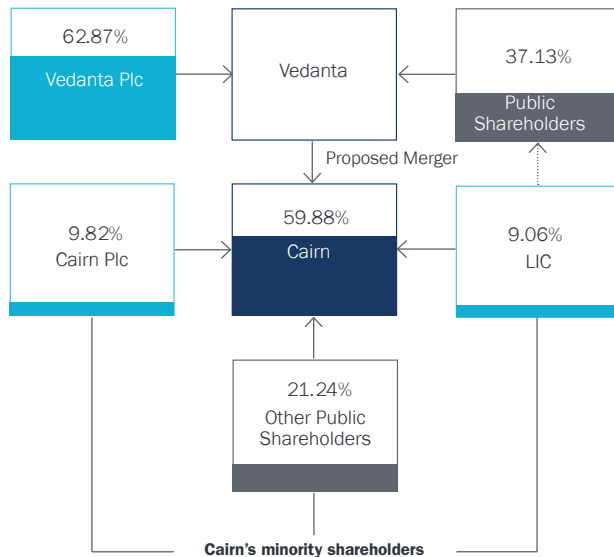
## V. Deal Structure<sup>41</sup>

### STRUCTURE PRE-TRANSACTION



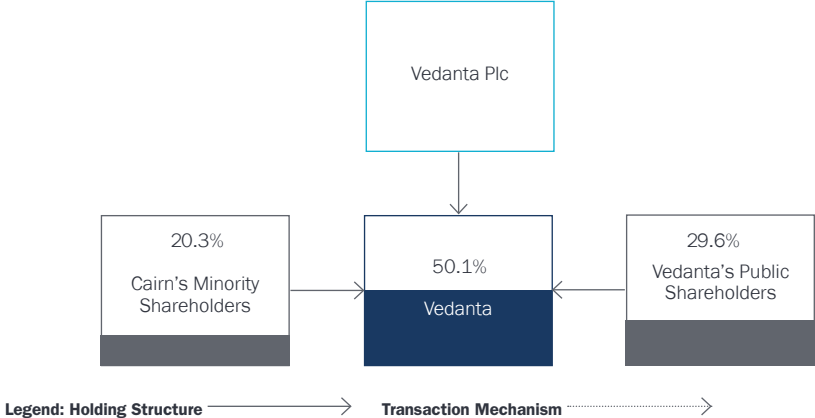
### TRANSACTION

Under the scheme, Cairn shareholders will receive 1 equity share and 1 redeemable preference share (face value INR 10, at 7.5% premium) of Vedanta for 1 equity share of Cairn.



41. Post-merger shareholding sourced from InGovern Research Services, InGovern report on Vedanta-Cairn India Merger dated June, 2015, available at <http://www.ingovern.com/wp-content/uploads/2015/06/Report-on-Vedanta-Cairn-India-Merger.pdf>.

**STRUCTURE POST-TRANSACTION**



## 3. Commercial Considerations

### I. What is the rationale behind the merger?

#### A. Vedanta's Story

*Mr. Anil Agarwal, Chairman of Vedanta Plc said at the companies' joint press release that "The merger of Cairn and Vedanta Ltd consolidates our position as India's leading diversified natural resources champion, uniquely positioned to support India's economic growth."<sup>42</sup>*

As per Vedanta Plc's stated corporate strategy to simplify its group structure,<sup>43</sup> the decision to merge its two subsidiaries comes as no surprise. Vedanta claims that the merger has multiple advantages for both Vedanta and Cairn.

#### i. Advantages for Vedanta

Firstly, post-merger, Vedanta will gain access to the oil and gas assets of Cairn at attractive valuations as the share price of Cairn has fallen sharply over the last one year.<sup>44</sup> Secondly, infusion of Cairn's cash reserves of nearly USD 1.2 billion would help improve Vedanta's financial flexibility to allocate capital to the highest return projects and reduce overall costs which would in turn help sustain strong dividends for all shareholders.<sup>45</sup> Thirdly, a strong balance sheet will also improve the credit rating of the combined entity, thus,

providing an opportunity for refinancing.<sup>46</sup>

#### ii. Advantages for Cairn

Cairn's merger with Vedanta would mean generating additional value by providing the company access to Vedanta's portfolio of diversified metals and mining assets that would assist in combatting the cyclical downturn of oil prices and in turn, ensure stable cash flows.<sup>47</sup> Cairn would also benefit from access to capital which it would then be able to invest in further oil and gas research and development. The Transaction would provide an opportunity for Cairn to benefit from economies of scale and participate in the upside potential of Vedanta, while still retaining its core management team and decision making framework.<sup>48</sup>

#### B. The Other Version

Analysts are skeptical whether the Transaction will result in any real benefits for Cairn's shareholders. Despite the companies' repeated efforts to highlight the mutually beneficial aspects of the merger, the reality remains that both Vedanta Plc and Vedanta are substantially debt laden, while Cairn is profitable with significant cash reserves. Specifically, as of March 2015 Vedanta Plc had a net debt of USD 7.7 billion,<sup>49</sup> while Vedanta had stand-alone debt of approximately USD 5.7 billion.<sup>50</sup> In contrast, Cairn had cash reserves

42. Press Release, "India's Leading Diversified Natural Resources Company Merger of Vedanta Limited and Cairn India Limited", dated June 14, 2015, available at: <https://www.cairnindia.com/investors/scheme-arrangement>.

43. *Ibid.*

44. Institutional Investor Advisory Services, "Vedanta-Cairn Merger Fair, but deal dynamics could change" dated June 15, 2015.

45. Press Release, "India's Leading Diversified Natural Resources Company Merger of Vedanta Limited and Cairn India Limited", dated June 14, 2015, available at: <https://www.cairnindia.com/investors/scheme-arrangement>.

46. Institutional Investor Advisory Services, "Vedanta-Cairn Merger Fair, but deal dynamics could change" dated June 15, 2015.

47. *Ibid.*

48. Press Release, "India's Leading Diversified Natural Resources Company Merger of Vedanta Limited and Cairn India Limited" dated June 14, 2015, available at: [https://www.cairnindia.com/sites/default/files/scheme\\_of\\_arrangement/Merger-of-Vedanta-Limited-and-Cairn-India-Limited.pdf](https://www.cairnindia.com/sites/default/files/scheme_of_arrangement/Merger-of-Vedanta-Limited-and-Cairn-India-Limited.pdf).

49. Cairn India's merger with Vedanta may fall through," available at: [http://www.business-standard.com/article/companies/cairn-india-s-merger-with-vedanta-may-fall-through-115072300336\\_1.html](http://www.business-standard.com/article/companies/cairn-india-s-merger-with-vedanta-may-fall-through-115072300336_1.html).

50. "Cairn India, Vedanta boards approve merger at 1:1 ratio," available at: [http://www.business-standard.com/article/companies/cairn-india-vedanta-boards-approve-merger-at-1-1-ratio-115061400470\\_1.html](http://www.business-standard.com/article/companies/cairn-india-vedanta-boards-approve-merger-at-1-1-ratio-115061400470_1.html).

of approximately USD 2.7 billion.<sup>51</sup> Based on these figures, analysts believe that one of the driving factors behind the merger is Vedanta's attempt to socialize its debt across the minority shareholders of both Vedanta and Cairn.<sup>52</sup>

## II. Have such similar arrangements been undertaken before and what were the premiums paid?

globally it has been undertaken in a few instances. BHP Billiton is the largest integrated natural resources player in the world and generates 22% of its revenues from its petroleum business.<sup>53</sup> It entered into the shale gas business in 2011 by acquiring Petrohawk.<sup>54</sup> Similarly, Freeport-McMoRan is one of the largest copper producers in the world which previously had an oil business that was hived off into a separate unit in 1994.<sup>55</sup> However, in December 2012, it merged its oil business and acquired another oil exploration company to replicate the BHP Billiton model.<sup>56</sup> The following table provides further details in relation to the same:

### A. Precedents

Although a similar merger i.e. one to create an integrated natural resource player is rare,

#### ARRANGEMENTS SIMILAR TO THE CAIRN-VEDANTA MERGER <sup>57</sup>

Acquirer	Target	Year	Acquisition Price (USD billion)	Premium (%)	Mode of Payment
BHP Billiton	Petrohawk	2011	12.1	61	Cash
Vedanta	Cairn India	2010	8.7	21	Cash
Freeport-McMoRan	Plains Exploration & Production Co	2012	6.9	39	Cash+Stock

### ii. Premium

The merger between Cairn and Vedanta indicates a swap ratio of 1:1 along with redeemable preference shares with a premium of 7.3% which, in comparison, can be considered to be lower than the above

similar arrangements in the same industry in the past.<sup>58</sup> However, it can be argued that the valuation may still seem fair to the Cairn shareholders as, *firstly*, it takes into account an improvement in oil prices going forwards and *secondly*, in comparison to the abovementioned arrangements wherein

51. Ibid.

52. InGovern Research Services, InGovern report on Vedanta-Cairn India Merger dated June, 2015, available at <http://www.ingovern.com/wp-content/uploads/2015/06/Report-on-Vedanta-Cairn-India-Merger.pdf>.

53. Institutional Investor Advisory Services, "Vedanta-Cairn Merger Fair, but deal dynamics could change", dated June 15, 2015.

54. Ibid.

55. Ibid.

56. Ibid.

57. Ibid.

58. Ibid.

premium was decided after taking into account a change in control of the company, Vedanta is already the controlling shareholder, hence, the premium does not account for the same.<sup>59</sup>

### III. Why would Cairn's minority shareholders not approve?

Although the Transaction would seem to be a win-win deal for both Cairn and Vedanta, it has been severely criticized by analysts and minority shareholders led by their mercenaries (proxy advisory firms) for the following reasons:

#### A. Unfair Share Swap Ratio

Analysts and shareholders both believe that the share swap ratio of Cairn's 1 equity share for Vedanta's 1 equity plus 1 preferential share at 7.5% is too low. Even though the ratio was determined by independent valuers and considered to be fair by Cairn's own representatives,<sup>60</sup> some minority shareholders do not consider the USD 135 million (i.e. Rs.11/share for minority shareholder) is sufficient to offset Cairn's USD 2.7 billion cash contribution.<sup>61</sup>

#### B. Opportunistic Timing

The announcement of this merger comes at a

time when Cairn's shares are trading at some of their lowest prices over the last five years. In fact, Cairn's share prices have reduced by nearly half over the past year.<sup>62</sup>

Aviva Investors, which has a 4.3% shareholding in Cairn plc and also a stake in Cairn, has publically stated that *"As long-term investors, we believe that the timing of this deal is opportunistic and materially undervalues Cairn, its current reserves and future prospects. The combination of a depressed global oil price, ongoing tax litigation and uncertainty over the long-term ownership structure of Cairn have all contributed to the low value currently ascribed to its assets by the equity market."*<sup>63</sup>

Based on the timing of the merger, analysts argue that public shareholders may need to suffer a significant write-off on their investment.

#### C. Cairn's cash reserves used for repayment of debt

Minority shareholders like Cairn Plc and LIC have also expressed concern over the fact that Vedanta has provided very little guidance as to how it intends to spend Cairn's cash reserves.<sup>64</sup> They fear that the cash will be used to pay off Vedanta's debts, instead of allocated for further oil and gas development.<sup>65</sup>

59. Ibid.

60. Vedanta Ltd has received a fairness opinion from Lazard India Pvt. Ltd, and Cairn has received opinions from DSP Merrill Lynch Ltd and JM Financial Institutional Securities Ltd. Source: Press Release, "India's Leading Diversified Natural Resources Company Merger of Vedanta Limited and Cairn India Limited" dated June 14, 2015, available at: <https://www.cairnindia.com/investors/scheme-arrangement>.

61. "Cairn Vedanta merger will deliver economies of scale" available at: <http://www.livemint.com/Companies/xNRfsvW1aGQ5y2Ku6jXML/CairnVedanta-merger-will-deliver-economies-of-scale-Navin.html>.

62. In Govern Research Services, In Govern report on Vedanta-Cairn India Merger dated June, 2015, available at <http://www.ingovern.com/wp-content/uploads/2015/06/Report-on-Vedanta-Cairn-India-Merger.pdf>.

63. "Aviva opposes Cairn India Vedanta merger" available at: <http://www.thehindubusinessline.com/companies/aviva-opposes-cairn-india-vedanta-merger/article7507260.ece>.

64. "Vedanta may discuss on sweetening Cairn India deal next week" available at: <http://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/vedanta-may-discuss-on-sweetening-cairn-india-deal-next-week/articleshow/49510627.cms>.

65. "Vedanta Cairn merger makes investors glum, company says its a win-win deal" available at: <http://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/vedanta-cairn-merger-makes-investors-glum-company-says-its-a-win-win-deal/articleshow/47682883.cms>

## D. Inheriting Vedanta's problems

Moreover, instead of being able to participate in Vedanta's upside, some shareholders believe that Cairn will inherit the problems of a large mining conglomerate including the ongoing disputes with environmental activists over plans to expand their aluminum refinery, and commence bauxite mining in Orissa.<sup>66</sup> Further, Amnesty International has also highlighted various human rights abuses associated with Vedanta's Lanjigarh refinery.<sup>67</sup>

## E. Government controlled minority shareholder

Another factor that may play a significant role in whether the Transaction gets the minority approval it needs is the fact that the second largest minority shareholder - LIC is government owned.<sup>68</sup> In the past, the government has vetoed the merger of Vedanta group companies like Hindustan Zinc and Bharat Aluminium Company.<sup>69</sup> As such, it will be interesting to see whether the government will support this Transaction.

## F. Cairn's USD 1.25 billion loan to Vedanta to be written off

As part of the Scheme of Arrangement, any

loan between Vedanta and Cairn is to be treated as an intra-company transfer and written off after the two companies merge.<sup>70</sup> This provision is significant for Vedanta as it currently has in its books a loan of USD 1.25 billion obtained from Cairn.<sup>71</sup> Although such a clause is fairly standard in all schemes of amalgamation, it may prove controversial in this Transaction for historical reasons. In fact, one of Cairn's minority shareholders, Mr. Rajotavo Dasgupta, has already filed a civil suit before the Bombay High Court claiming that the USD 1.25 billion loan was granted in violation of the CA 2013, and must be repaid before it can be written off as per the Scheme of Arrangement.<sup>72</sup>

The historical background to this claim is as follows. In 2011, Vedanta Plc indirectly acquired approximately 59% of Cairn from CUHL (a holding subsidiary of Cairn Plc) for USD 8.67 billion.<sup>73</sup> While approximately 20% was directly acquired by erstwhile Sesa Goa (a company which has been merged into Vedanta), the remaining 38.83% was acquired by TSMHL, an SPV and wholly-owned subsidiary of Vedanta Plc.<sup>74</sup> In order to fund the acquisition, Vedanta Plc had secured a USD 6 billion acquisition debt on behalf of TSMHL.<sup>75</sup> In August 2013 Vedanta, indirectly acquired TSMHL along with its 38.83% stake in Cairn, and the associated acquisition debt of USD 6 billion was entered into Vedanta's books.<sup>76</sup>

66. In Govern Research Services, In Govern report on Vedanta-Cairn India Merger dated June, 2015. Available at <http://www.ingovern.com/wp-content/uploads/2015/06/Report-on-Vedanta-Cairn-India-Merger.pdf>.

67. Ibid.

68. "Cairn Vedanta merger faces big challenges" available at: [http://www.business-standard.com/article/companies/cairn-vedanta-merger-faces-big-challenges-115062201124\\_1.html](http://www.business-standard.com/article/companies/cairn-vedanta-merger-faces-big-challenges-115062201124_1.html)

69. Ibid.

70. Scheme of Arrangement between Cairn India Limited and Vedanta Limited and their Respective Shareholders and Creditors", clause 4.4, available at: <https://www.cairnindia.com/investors/scheme-arrangement>.

71. "Minority shareholder sues Cairn India" available at: [http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-1151121001098\\_1.html](http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-1151121001098_1.html)

72. Ibid.

73. Vedanta "Completion of Acquisition of Controlling Stake in Cairn India Ltd." dated December 8, 2011, available at: [http://www.vedantar-sources.com/media/9599/vedantaresourcesplc\\_cairndealcompletion\\_presentation\\_final.pdf](http://www.vedantar-sources.com/media/9599/vedantaresourcesplc_cairndealcompletion_presentation_final.pdf).

74. [http://www.bseindia.com/corporates/shpPromoters\\_60.aspx?scripcd=532792&qtrid=73&CompName=CAIRN%20INDIA%20LTD%20&QtrName=March%202012](http://www.bseindia.com/corporates/shpPromoters_60.aspx?scripcd=532792&qtrid=73&CompName=CAIRN%20INDIA%20LTD%20&QtrName=March%202012). See also: [http://www.vedantalimited.com/media/72861/sesa\\_sterlite\\_ar\\_13-14\\_pdf\\_for\\_email.pdf](http://www.vedantalimited.com/media/72861/sesa_sterlite_ar_13-14_pdf_for_email.pdf)

75. Vedanta Plc Annual Report 2011, available at: [http://ar2011.vedantaresources.com/assets/15362\\_Vedanta%20AR11%20FINAL.pdf](http://ar2011.vedantaresources.com/assets/15362_Vedanta%20AR11%20FINAL.pdf)

76. Sesa Sterlite Limited Annual Report 2013-3014, available at: [http://www.vedantalimited.com/media/72861/sesa\\_sterlite\\_ar\\_13-14\\_pdf\\_for\\_email\\_.pdf](http://www.vedantalimited.com/media/72861/sesa_sterlite_ar_13-14_pdf_for_email_.pdf).

Subsequently, in 2014 Cairn granted Vedanta the contentious USD 1.25 billion loan<sup>77</sup> As per Vedanta plc's September 2015 Corporate Presentation, the loan was used to pay off Vedanta's "inter-company debt."<sup>78</sup> As the USD 6 billion acquisition debt was the only inter-company debt on the books of Vedanta at the time, Mr. Dasgupta alleges that Vedanta must have used the loan received from Cairn to repay debt which was originally incurred in order to facilitate the purchase of Cairn's shares in 2011.<sup>79</sup> As section 67(2) of the CA 2013 specifically prohibits a company from

granting a loan to facilitate acquisition of its own shares, Mr. Dasgupta claims that the USD 1.25 billion loan was in contravention of the law, and must be repaid before Vedanta can write it off pursuant to the Transaction.<sup>80</sup> The Bombay High Court has ordered that affidavits in reply be filed by January 5, 2016 and that the matter be listed for *ad interim* relief by January 19, 2016.<sup>81</sup>

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77. "Minority shareholder sues Cairn India" available at: [http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-115121001098\\_1.html](http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-115121001098_1.html)

78. "Vedanta Resources Plc Corporate Presentation 2015" available at: [http://www.vedantaresources.com/media/180101/jpm\\_mid\\_and\\_small\\_cap\\_and\\_ms\\_industrials\\_sept\\_2015.pdf](http://www.vedantaresources.com/media/180101/jpm_mid_and_small_cap_and_ms_industrials_sept_2015.pdf)

79. "minority shareholder sues Cairn India" available at: [http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-115121001098\\_1.html](http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-115121001098_1.html)

80. *Ibid.*

81. *Rajotava Dasgupta v Cairn India & Ors.* Notice of Motion (L) No. 3367 of 2015 with Suit (L) No. 1267 of 2015, available at: <http://bombayhigh-court.nic.in/index.html>



## 4. Legal and Regulatory Considerations

### I. What are the approvals required for the Transaction

Approval	Provision of Law	Status
Approval from stock exchanges (BSE and NSE)	Clause 49 of the Listing Agreements (BSE and NSE).	In principle approval was obtained by Vedanta in relation to the merger.
Approval (Observation Letter) from SEBI	<i>SoA Circular</i>	Received
75% of the Shareholders of Cairn and Vedanta.	Court convened meeting s. 391- 394 of the CA 1956. All shareholders including the non-public shareholders allowed to vote.	Not received yet.
50% approval from the public shareholders of Cairn and Vedanta.	<i>SoA Circular</i>	Not received yet.
Approval of Foreign Investment Promotion Board to be obtained by Vedanta.	Regulation 7 of TISPRO	Not obtained yet by Vedanta.
Approval by Ministry of Petroleum & Natural Gas for transfer/assignment of petroleum mining rights	<i>Petroleum Act, 1934 read with Petroleum and Natural Gas Rules, 1939</i>	Vedanta has engaged in discussions with the ministry in relation to the same.

### II. Why would the Transaction not trigger a mandatory open offer under the Takeover Code?

The transaction would not trigger the mandatory open offer requirement under the Takeover Code as it would be exempt under Regulation 10 of the Takeover Code wherein any acquisition of shares, voting rights or control is exempt from a mandatory open offer obligation if such an acquisition has been undertaken pursuant to a scheme of arrangement or merger and approved by a competent authority.

### III. Why would the Transaction not require an approval of the Competition Commission of India?

The transaction would not require the approval of the Competition Commission of India as Regulation 4 of the Competition Commission of India Regulation 2011 exempts any acquisition of shares/voting rights within a group. In the case at hand, the merger between Vedanta and Cairn which belong to the same group would be exempt from obtaining such approval.

## IV. What is the recourse available to the minority shareholders?

The minority shareholders (non-promoter shareholders) of both Vedanta and Cairn will have the following recourse under law:

- i. *Block the Merger under the SoA Circular Resolution*- As discussed above, the Transaction would require the approval of “majority of the minority” as per the SoA Circular. This effectively allows Cairn Plc. and LIC (with some assistance or proxies other minority who collectively hold 18.88% out of the total public shareholding of 40.12% in Cairn to block the Transaction.
- ii. *Challenge the Transaction in Court*- It is possible that all minority shareholders may not have a decisive vote at the shareholders meeting and therefore would not be able to block of the Transaction if the majority of the public shareholders vote in favour of the Transaction. There is also a theoretical possibility that Cairn Plc. and LIC even acting collectively may not be able to block the Transaction. In such an event, the minority shareholder may also challenge the Transaction before the Court where the Transaction is presented for approval. It will be open for the minority shareholders (especially Cairn) to argue that the Transaction (a) is prejudicial to the interest of the minority shareholders as the premium paid to the shareholders of Cairn for Vedanta’s debt is not sufficient, (b) is unlawful as it is the final step in a series of transaction that was undertaken in violation of the CA 1956 and CA 2013<sup>82</sup> and (c) is not in public interest as the combined

entity will be a weaker entity and therefore will not be able to increase oil production in the country. While, the court will have the requisite jurisdiction to entertain all these contentions, if the approval (i) of the ‘majority of the minority’ shareholders under the SoA Circular is obtained and (ii) of the Ministry of Petroleum and Natural Gas is obtained, then it will significantly weaken the force of the arguments of the disgruntled shareholders given the court is unlikely to interfere with the commercial wisdom of the parties to the Transaction.

- iii. *Representative Suit*- All the minority shareholders can bring a derivative claim against the Vedanta, Cairn and directors under Order 1 Rule 8 of the Code of Civil Procedure, 1908. The claim will require the court’s permission to be admitted and anecdotally it is seen that such suits are rarely and dismissed on various grounds.<sup>83</sup>

## V. What are the standards of director’s duties in similar transactions?

The duties of the directors have been codified under the new CA 2013.<sup>84</sup> The directors are *inter alia* required to (a) act in the interest of the company, all the shareholders, employees, community and (b) exercise his duties with due care, skill, diligence and act independently. The directors of the respective entities would need to demonstrate that the transaction is fair, reasonable and in the overall interest of the respective companies, its employees and the community.

82. Refer to the discussion above where one of the minority shareholders has challenged the Transaction on the grounds that it is violation of S. 67 of the CA 2013 in that effectively Cairn is paying for the acquisition of its own shares.

83. Vikramaditya Khanna & Umakanth Varottil, *The rarity of derivative actions in India: reasons and consequences in Dan W. Puchniak, Harald Baum & Micheal Ewing Chow, The Derivative Action in Asia: A Comparative and Functional Approach (2012)*

84. S. 166 of CA 2013.

## VI. What are the lessons for future M&A transactions?

This Transaction reflects the increasing risks to M&A transactions. M&A transactions in India not only have to navigate through regulatory issues but will also have to delicately handle concerns of the activist minority shareholders (assisted by proxy advisory firms). Once some of the provisions under CA 2013 such as class actions suits, squeeze out of minority shareholders, new scheme of arrangements requirements and constitution of the new tribunal to efficiently resolve shareholder disputes is operationalized, the rules of the M&A game are likely to change further. The lessons for the board, directors and controlling shareholders from this Transaction are as follows:

- i. Deals will be closely scrutinized by proxy advisory firms and their recommendations will have significant weight in the manner in which shareholders vote at meetings.
- ii. Active and early engagements will the proxy advisory firms and minority shareholders will be required to be undertaken. The announcement of M&A transaction should be supported by adequate and robust materials justifying the terms of the deal and the rationale.
- iii. The directors will be required to in some detail justify the manner in which they approved the deal. It would be advisable for the directors to clearly articulate the basis on which they have voted for and against the deal and insist that the same be incorporated in the minutes of the meeting in which such matters are discussed.

## 5. Tax Considerations

### I. Is the Transaction tax-exempt?

As per section 47 of the ITA, amalgamations or mergers qualifying under section 2(1B) are tax neutral. As such, any gain in the hands of Cairn or its shareholders resulting from the transfer of shares pursuant to the Transaction will be exempt from capital gains tax.

Section 47(vi) of the ITA states that, “any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company” will not be considered as a ‘transfer’ for the purpose of assessment of capital gains. Section 47(vii) extends this exemption to “any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company”

Further, section 2(1B) of the ITA defines ‘amalgamation as follows:

“amalgamation”, in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

- i. all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;
- ii. all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of

*the amalgamated company by virtue of the amalgamation;*

- iii. *shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation.*

*Otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company*

As a result of the Transaction, (i) the property of Cairn immediately before the merger will become the property of Vedanta, (ii) all liabilities of Cairn immediately before the merger will become the liabilities of Vedanta, and (iii) the current shareholders of Cairn will become the shareholders of Vedanta. Hence, this should result in a tax-neutral transaction for both Cairn and its shareholders.

### II. How do Cairn’s potential tax liabilities effect the Transaction?

Cairn currently has an ongoing dispute with the Income Tax Department (“IT Department”) in relation to Cairn plc’s subsidiary CUHL transferring shares of its Indian subsidiary to Cairn in 2006.<sup>85</sup> As CUHL was Cairn’s promoter at the time of the transaction, the IT Department issued a demand notice to Cairn

85. “IT Dept. slaps Rs. 20,495 cr. Tax demand on Cairn India” available at: [http://www.business-standard.com/article/companies/it-dept-slaps-rs-20-495-cr-tax-demand-on-cairn-india-115031300634\\_1.html](http://www.business-standard.com/article/companies/it-dept-slaps-rs-20-495-cr-tax-demand-on-cairn-india-115031300634_1.html).

in March 2015 worth INR 20,295 crores for CUHL's failure to deduct withholding tax on capital gains earned on the 2006 transaction.<sup>86</sup> Cairn has objected to this demand by filing a writ petition with the Delhi High Court which is currently pending.<sup>87</sup>

As per the Scheme of Arrangement, all proceedings by or against Cairn are to be transferred into the name of Vedanta by virtue of the order of sanction from the High Court.<sup>88</sup> This means that before such order is granted, Vedanta will need to satisfy the High Court that it has enough cash reserves to meet Cairn's tax liabilities in the event that the Delhi High Court rules in favor of the IT Department.

Moreover, based on the same 2006 transaction, the IT Department has also issued a demand notice on Cairn Plc for INR 10,247 crore as withholding tax and fines on the alleged INR 24,500 crore capital gains it made in 2006.<sup>89</sup> As a part of this demand, the IT Department has also restricted Cairn Plc from selling its last 9.82% stake in Cairn.<sup>90</sup> Cairn Plc has appealed against the demand and has also filed a Notice of Dispute under the UK-India Investment Treaty.<sup>91</sup> However, until a settlement is reached, Cairn's shares in Cairn are frozen.<sup>92</sup> As such, Vedanta will also need to get approval from the IT Department before it can cancel Cairn Plc's shares and issue the company new shares in Vedanta in accordance with the swap ratio.<sup>93</sup>

86. *Ibid.*

87. "Cairn India to merge into Vedanta Ltd. Board approves merger" available at: <http://economictimes.indiatimes.com/industry/energy/oil-gas/cairn-india-to-merge-into-vedanta-ltd-board-approves-merger/articleshow/47663868.cms>.

88. "Scheme of Arrangement between Cairn India Limited and Vedanta Limited and their Respective Shareholders and Creditors", clause 7.1, available at: <https://www.cairnindia.com/investors/scheme-arrangement>.

89. "IT Dept. slaps Rs. 20,495 cr. Tax demand on Cairn India" available at: [http://www.business-standard.com/article/companies/it-dept-slaps-rs-20-495-cr-tax-demand-on-cairn-india-115031300634\\_1.html](http://www.business-standard.com/article/companies/it-dept-slaps-rs-20-495-cr-tax-demand-on-cairn-india-115031300634_1.html).

90. Cairn "News: Indian tax Dispute" available at: <http://www.cairnenergy.com/index.asp?pageid=27&newsid=471>.

91. Cairn Energy Plc Half Yearly Report Announcement dated August 18, 2015, available at: [http://www.cairnenergy.com/files/results\\_and\\_presentations/2015/180815/2015\\_half\\_yearly\\_results\\_announcement.pdf](http://www.cairnenergy.com/files/results_and_presentations/2015/180815/2015_half_yearly_results_announcement.pdf).

92. Cairn "News: Indian Tax Dispute" available at: <http://www.cairnenergy.com/index.asp?pageid=27&newsid=471>.

93. "Cairn Vedanta merger faces big challenges" available at: [http://www.business-standard.com/article/companies/cairn-vedanta-merger-faces-big-challenges-11506220124\\_1.html](http://www.business-standard.com/article/companies/cairn-vedanta-merger-faces-big-challenges-11506220124_1.html).

## 6. Epilogue

It is perhaps too early to write the epilogue for this Transaction. Given the dynamics at play it could go either way for Vedanta. Eventually, in political democracy the ballot boxes determine the fate of the candidate and in corporate democracy the process is no different. The

pundits have had their say, now the ball is fairly in the court of the shareholders to decide their own fate.

Will it be a photo finish or an anti-climax? We will have to wait till the latter half of 2016.



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# Nishith Desai Associates

LEGAL AND TAX COUNSELING WORLDWIDE

## MUMBAI

93 B, Mittal Court, Nariman Point,  
Mumbai 400 021 India

Tel: +91 - 22 - 6669 5000

Fax: +91 - 22 - 6669 5001

## SILICON VALLEY

220 S California Ave., Suite 201,  
Palo Alto, CA 94306, USA

Tel: +1 - 650 - 325 7100

Fax: +1 - 650 - 325 7300

## BANGALORE

Prestige Loka, G01, 7/1 Brunton Rd,  
Bangalore 560 025, India

Tel: +91 - 80 - 6693 5000

Fax: +91 - 80 - 6693 5001

## SINGAPORE

Level 30, Six Battery Road,  
Singapore 049909

Tel: +65 - 6550 9855

Fax: +65 - 6550 9856

## MUMBAI BKC

3, North Avenue, Maker Maxity  
Bandra – Kurla Complex,  
Mumbai 400 051, India

Tel: +91 - 22 - 6159 5000

Fax: +91 - 22 - 6159 5001

## NEW DELHI

C-5, Defence Colony  
New Delhi - 110024, India

Tel: +91 - 11 - 4906 5000

Fax: +91 - 11 - 4906 5001

## MUNICH

Maximilianstraße 13  
80539 Munich, Germany

Tel: +49 - 89 - 203006 - 268

Fax: +49 - 89 - 203006 - 450

## NEW YORK

375 Park Avenue Suite 2607  
New York, New York 10152

Tel: +49 - 191 7794 9063