
DIGITAL ASSETS AND CRYPTOCURRENCIES IN M&A: LEGAL RISKS AND DEAL STRUCTURING

Sanjana Sharma, Symbiosis Law School, Pune

Shambhavi, Symbiosis Law School, Pune

ABSTRACT

Digital assets, cryptocurrencies, tokens, and non-fungible tokens (NFTs), are increasingly involved in mergers and acquisitions (M&A), providing strategic benefits and new legal uncertainties. This study provides a critical assessment of these issues in the Indian context supported by comparison with the United States and the European Union. The study recommends a twin strategy: holistic regulatory redesign drawing on models such as the EU's MiCA, and innovative transactional solutions such as stablecoin-based payments, crypto-specific Material Adverse Change provisions, hybrid valuation techniques, and blockchain-enabled escrow arrangements. By combining traditional M&A principles with the emerging practices involving digital assets, the article argues that ensuring sustainable integration of digital assets in India requires integrated regulation, contractual innovation, and technology-enabled due diligence, balancing market innovation and legal certainty and protecting investor interests.

INTRODUCTION

Cryptocurrencies and digital assets have emerged as key drivers in modern mergers and acquisitions, revolutionizing value definition, exchange, and protection paradigms in corporate deals. Legally uncertain categorization of such assets, as commodities, securities, or currencies under the legal regime¹, presents difficulties in M&A situations, where transparency on valuation and regulatory adherence is paramount.

India, emerging as a fintech and digital asset centre, is confronted with unprecedented issues: the lack of express crypto laws, the uncertain policy of SEBI, FEMA regulations², and inconsistent judicial interventions, like *Internet and Mobile Association of India v. RBI*.³ The imposition of a 30% taxation system on virtual digital assets in the recent past further hinders structuring transactions.⁴

This paper promotes the thesis that even as digital assets complicate conventional M&A models, legal risks remain reducible via regulatory evolution and creative structuring. The research goal is to critically analyse valuation, compliance, due diligence, and cross-border risk in M&A powered by crypto, with specific reference to India and comparative lessons from the United States and the European Union.⁵ Methodologically, the research takes the doctrinal approach complemented by case law and transaction-based case studies to facilitate a link between conventional M&A practice and new digital asset realities.

COMPREHENDING DIGITAL ASSETS IN MERGERS AND ACQUISITIONS

Digital assets constitute a broad and evolving set of blockchain-based instruments that include cryptocurrencies (e.g., Bitcoin, Ether), digital tokens (utility tokens, security tokens, and governance tokens), non-fungible tokens (NFTs) that denote unique digital property, and tokenized securities that replicate conventional financial instruments on distributed ledgers.⁶

¹ The Securities and Exchange Board of India Act, No. 15 of 1992, India Code (1992).

² The Foreign Exchange Management Act, No. 42 of 1999, India Code (1999).

³ *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 467 (India), available at SCC Online, <https://www.scoonline.com>.

⁴ Income Tax Act, No. 43 of 1961, § 115BBH, India Code (as amended 2022).

⁵ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto assets (MiCA), 2023 O.J. (L 150) 40

⁶ FATF, Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers (Oct. 2021), <https://www.fatf-gafi.org>.

These institutions undertake mergers and acquisitions via various routes. Firstly, the acquisition entity can be a cryptocurrency exchange, fintech startup, or blockchain company, as Coinbase frequently acquires wallet and exchange platforms. Secondly, the terms of the deals can involve cryptocurrencies or hybrid transactions involving cash and digital tokens, reflecting the increasing liquidity of digital assets. Thirdly, token exchanges and smart contracts increasingly involve the integration of commitments into code that can automatically execute, decreasing the need for intermediaries and enabling automatic execution.⁷

Relative to traditional assets, digital assets are distinctive. Their decentralized and virtual nature makes ownership difficult to prove, and control more and more dependent on private cryptographic keys.⁸ Their volatility undermines valuation, and their legal classification is inconsistent across borders, especially in cross-border transactions.⁹

LEGAL RISKS IN CRYPTO-ASSET MERGERS AND ACQUISITIONS

The incorporation of digital assets in mergers and acquisitions involves a complex array of legal hazards that are quite distinct from those for traditional assets. Such hazards include valuation, regulatory compliance, due diligence, foreign acknowledgment, and taxation, all of which can compromise deal certainty unless countered by customized structuring.

Valuation Risks

Digital assets are notoriously volatile, with prices potentially shifting in double-digit percentages within hours. Volatility erodes good deal pricing and makes traditional valuation techniques unsuitable. Accounting treatment piles on another layer of risk: cryptocurrencies are accounted for as intangible assets according to Indian accounting rules, while in the US there remains debate over whether they are commodities, securities, or something else.¹⁰ Globally, varying techniques under US GAAP and IFRS contribute to the uncertainty of balance-sheet recognition.¹¹ The lack of a widely accepted valuation model increases the risk of mispricing and warps post-trade financial reporting.

⁷ Usha Rodrigues, *Crypto Assets and Corporate Transactions*, 99 N.C. L. Rev. 1279 (2021).

⁸ Sarah Hammer, *The New Financial Deal: Digital Assets, Mergers, and Acquisitions*, 45 U. Pa. J. Int'l L. 221 (2023).

⁹ Deloitte, *M&A and Crypto: Navigating Risks in Digital Asset Transactions* (2022), <https://www2.deloitte.com>.

¹⁰ Virtual Currency Regulation Review 2025, AZB & Partners, <https://www.azbpartners.com/bank/virtual-currency-regulation-review-2025/>

¹¹ PwC, *Global Crypto M&A and Fundraising Report* (2022), <https://www.pwc.com>

Regulatory and Compliance Risks

The regulatory environment of digital assets is one of fragmentation. In India, absence of specific laws relating to cryptocurrencies leads to the reliance on stopgap measures under FEMA and the changing guidelines of SEBI. The Supreme Court decision which struck down the banking ban by the RBI is one such example of regulatory uncertainty¹². In the US, jurisdictional conflicts between the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) have created uncertainty.¹³ In contrast, the EU's Markets in Crypto-Assets Regulation (MiCA) of 2023 provides a unified framework for licensing, disclosure, and compliance, thus a higher level of certainty for mergers and acquisitions in the region.¹⁴

Due Diligence Risks

Classic due diligence procedures are ill-fitted for digital assets. Control and ownership are maintained subject to private keys instead of registries, and therefore verification is challenging. Custody arrangements are typically transparent, as FTX's failure showed, with insufficient controls over customer and corporate funds. In addition, AML and KYC compliance is required as blockchain transactions are pseudonymous and regulators are under FATF obligations.¹⁵ Cybersecurity risks, such as hacking of wallets and smart contract manipulation, complicate the diligence burden.¹⁶

Transnational Hazards

Jurisdictional variations contribute to legal uncertainty. Japan regards cryptocurrencies as valid property, China has blanket prohibition, and India is in regulatory limbo.¹⁷ This inconsistency raises the challenge of enforcing contracts, recognizing digital assets in financial accounts, and designing cross-border transactions.

¹² *supra* note 3

¹³ SEC v. Ripple Labs, Inc., No. 20-cv-10832 (S.D.N.Y. July 13, 2023).

¹⁴ Regulation (EU) 2023/1114.

¹⁵ FORESIGHT 2023, Legal and regulatory trends redefining corporate India, SCC Online, <https://www.sconline.com/blog/wp-content/uploads/2023/01/Foresight-2023.pdf>

¹⁶ Binance, Statement on FTX Transaction (Nov. 9, 2022), <https://www.binance.com>

¹⁷ Andrew Verstein, Crypto M&A and the Law of Financial Innovation, 74 Vand. L. Rev. 501 (2022).

Tax-related risks

Taxation of digital assets is still pending. Cryptocurrencies in India are taxed at a uniform 30% without set off loss, considerably increasing the effective cost of M&A consideration. Uncertainty is further added due to the absence of harmonized taxation.

Together, these dangers highlight the inadequacy of using traditional mergers and acquisitions paradigms to cover digital assets¹⁸. They highlight the need for distinctive expertise, innovative contractual protections, and regulatory innovations to bring cryptocurrency-based transactions into harmony with established norms of corporate law.

DEAL STRUCTURING WITH DIGITAL ASSETS

Digital asset aggregation and acquisition involve creative structuring balancing volatility, regulatory risk, and technology complexity against traditional corporate practice. Successful structuring brings together flexible payment mechanisms, customized contractual protections, and blockchain-based solutions, informed by comparative knowledge across jurisdictions.

Payment Mechanisms

Cryptocurrencies are becoming more widely employed as consideration in M&A, and in whole or in part. Straightforward payment in Bitcoin or Ether provides speed and liquidity but remains subject to price volatility. Stablecoins, which are tied to fiat currencies, are generally used to remove volatility, specifically in US transactions, to maintain value of the transaction.¹⁹ Blockchain escrow arrangements introduce another degree of security by releasing funds only upon the satisfaction of defined conditions.

Contractual Provisions

In the context of valuation risk and regulatory risk of digital assets, risk is transferred more specifically in contracts. Material Adverse Change (MAC) provisions may specifically mention crypto market crashes or regulatory prohibitions as grounds for renegotiation or

¹⁸ Blockchain in Mergers & Acquisitions: A Pristine Notion in Indian Scenario, <https://ccl.nluo.ac.in/post/blockchain-in-m-a-a-pristine-notion-in-indian-scenario>

¹⁹ Osborne Clarke, Crypto and Blockchain in M&A: How to Address Issues Around Volatility, Validity and Valuation (June 29, 2022), <https://www.osborneclarke.com>.

termination.²⁰ Earn-out arrangements, tying a portion of purchase price to future performance of digital assets, share valuation risk between buyer and seller.

Technology-Enabling Structuring

Smart contracts, autonomous contracts programmatically coded on blockchain, facilitate programmatic enforcement of agreement terms like payment release, milestone confirmation, and compliance verification.²¹ These technologies transform M&A closing, automate verification processes, and provide immutable audit trails of value to regulators.

Comparative Frameworks

Global structuring techniques reflect the diversity of jurisdictional territories. In the United States, stablecoins have become a low-volatility financing tool.²² The European Union's Markets in Crypto-Assets (MiCA) regulation offers a harmonized framework that eases compliant token transactions in mergers and acquisitions.²³ By contrast, the unsettled regulatory environment in India forces practitioners to use hybrid techniques, such as offshore share exchanges together with indirect holdings of digital assets, to avoid pitfalls in local legal interpretations.

Together, these mechanisms demonstrate how M&A structuring of digital assets is departing from conventional paradigms²⁴. Through synergizing contractual protections, blockchain efficiencies, and comparative regulatory expertise, parties can achieve innovation and legal prudence in balance, enabling value creation in states of uncertainty.

CASE STUDIES

The dynamics of digital assets in mergers and acquisitions (M&A) are best revealed with recent high-profile transactions that expose both the opportunities and weaknesses of this new

²⁰ Baker McKenzie, *Crypto Assets in M&A: Structuring Challenges and Solutions* (2023), <https://www.bakermckenzie.com>

²¹ Clifford Chance, *Digital Assets in M&A: Risks and Opportunities* (2022), <https://www.cliffordchance.com>

²² Stibbe, *The MiCA Regulation Explained: What Has Changed Since June 2024?* (July 30, 2024), <https://www.stibbe.com>

²³ FSMA, *What Is the Impact of MiCA on the Regulation? FAQ* (Dec. 29, 2024), <https://www.fsma.be/en/faq/20-what-impact-mica-regulation>.

²⁴ *Mergers & Acquisitions, An Indian Legal, Regulatory and Tax Perspective*, https://nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Mergers___Acquisitions_in_India.pdf

frontier.

Coinbase Acquisitions

Coinbase, the largest exchange, has taken a steady acquisition approach targeting blockchain-native companies, including the 2019 acquisition of Xapo's institutional custody business, the 2020 acquisition of Tagomi (prime brokerage), and the 2021 acquisition of Bison Trails (infrastructure services). These deals are a crypto-native M&A model, where acquirers and target operate in the same technological and regulatory landscape²⁵.

Binance–FTX Collapse

On the other hand, the collapsed 2022 Binance–FTX deal is a classic case of the repercussions of ambiguous custody terms and lax due diligence. Binance's declaration of the intention to acquire FTX was promptly retracted following the discovery of material gaps in FTX's reserves and governance arrangements. This incident illustrates the absolute significance of proof-of-reserves, solvency verification, and transparent custody in cryptocurrency mergers and acquisitions, but these are hard to verify²⁶.

PayPal–Curv

PayPal's 2021 acquisition of Curv, a digital asset custody firm, shows how incumbent financial institutions adopt a more regulated and consumer-protection-oriented approach. By acquiring custody technology rather than speculative tokens, PayPal positioned itself with regulatory requirements for safe asset custody²⁷.

India's Regulatory Vacuum

Crypto M&A remains hindered in India, though. In the absence of a defined legislative regime, coupled with FEMA limits and regulatory caution by SEBI and RBI, there is discouraging uncertainty for fintech–crypto mergers and acquisitions²⁸. This is in sharp contrast with US and

²⁵ Coinbase, Coinbase Acquires Xapo's Institutional Custody Business (Aug. 15, 2019), <https://blog.coinbase.com>

²⁶ Binance, Statement on FTX Transaction (Nov. 9, 2022), <https://www.binance.com>](<https://www.binance.com>)

²⁷ PayPal Holdings Inc., PayPal to Acquire Curv (Mar. 8, 2021), <https://newsroom.paypal-corp.com/>

²⁸ NASSCOM & EY, India's Web3 Startup Landscape (2022), <https://nasscom.in>

EU trends and underscores the cost of inaction by the regulator.

WAY FORWARD/ RECOMMENDATIONS

The involvement of digital assets in mergers and acquisitions requires two overlapping fronts of reform: contractual innovation and regulatory clarity. Without these, India risks losing market leadership to jurisdictions offshore where legal certainty is already attracting capital and consolidation.

Regulatory Reform

For India, the way out is to eliminate uncertainty over the characterization of assets. Today, cryptocurrencies are mostly considered "Virtual Digital Assets" under the Income Tax Act but are not formally classified under the securities, commodities, or foreign exchange framework²⁹. Proper characterization of cryptocurrencies under the Foreign Exchange Management Act (FEMA)³⁰ and the regulatory regime under SEBI would lead to greater certainty in transactions and harmonize supervisory regulation³¹.

As per the European Union's Markets in Crypto-Assets (MiCA) Regulation, India could introduce a comprehensive licensing and compliance regime for issuance, custody, transfer, and disclosures of digital assets³². It would include regulatory arbitrage, improve consumer protection, and attract institutional investors by providing stable rules of engagement for M&A.

Contractual Innovation

As regulatory developments occur, contractual terms are still required to address crypto-specific risks. Material Adverse Change (MAC) terms must be re-negotiated to address abrupt token price fluctuation or regulatory action. Earn-out structures based on future performance of digital assets can fairly distribute valuation risks between buyer and seller.

Due Diligence and Audit Practices

M&A practice needs to create standard best practices for crypto due diligence. Proof-of-

²⁹ *supra* note 4, § 115BBH

³⁰ *supra* note 2

³¹ *supra* note 1

³² *supra* note 14

reserves verification, verification of wallet ownership, cybersecurity audits, and blockchain-based transaction monitoring should become the standard. Establishing such best practices would reduce the custodial opacity that led to such transactions as Binance–FTX to fail.

Valuation Frameworks

Finally, valuation models must be updated. Hybrid models that integrate DCF methods with blockchain-specific metrics, like transaction volume, active addresses, and token liquidity, offer a more accurate evaluation of long-term viability. This dual-pronged model reconciles the unpredictability of finance and the foreseeability of markets. Through providing regulatory clarity, contract creativity, and improved valuation and audit practices, India can facilitate responsible integration of digital assets into its M&A market. These reforms would balance innovation and investor protection, placing India in a position to maximize the strategic value of digital assets while ensuring legal certainty and market integrity.

CONCLUSION

Cryptocurrencies and digital assets possess tremendous transformative potential along with unique risks within mergers and acquisitions. The built-in volatility, unclear legal status, and technical considerations pose challenges to traditional methods of valuation, due diligence, and regulatory compliance. In India, the lack of express statutory recognition creates immense uncertainty around crypto-related M&A transactions and thereby deters domestic as well as foreign consolidation efforts.

A sustainable future direction is based on a fair strategy that combines the openness of regulation with contractual and technological advancements. Application of regulatory frameworks such as MiCA, along with tools such as stablecoin payment systems, crypto-specific MAC provisions, and hybrid valuation methods, can perhaps balance legal certainty with market fluidity³³.

Concurrently, the future of digital asset M&A is a function of more than legal reform: it is a function of creative deal structuring, technology-facilitated execution, and cross-disciplinary cooperation between lawyers, regulators, technologists, and market participants³⁴. In the end,

³³ *supra* note 21

³⁴ NLIU-Trilegal Summit, Summit on Corporate and Commercial Laws (2019), [https://www.sconline.com/blog/wp-content/uploads/2019/07/NLIU-Trilegal-Summit-2019.pdf]

anticipatory regulatory reform and transactional innovation are necessary to release value while protecting parties and markets in these transformative transactions.

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