
COMPLIANCE IN TRANSITION: THE LEGAL AND FINANCIAL CHALLENGES OF FRAGMENTED LABOUR CODE IMPLEMENTATION FOR CORPORATE TRANSFERS IN INDIA

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ABSTRACT

The enactment of India's four new Labour Codes, particularly the Industrial Relations Code, 2020 (IRC) and the Code on Social Security, 2020 (CoSS), heralds a foundational restructuring of the legal framework governing employment obligations during corporate restructuring events such as mergers, acquisitions (M&A), and business transfers.¹ This study presents an elaborate analysis of the legislative mechanics that determine successor liability, employment continuity, and operational flexibility within the Indian industrial landscape.

The analysis confirms that the IRC rigidly maintains the principle of "deemed retrenchment" upon a transfer of establishment (IRC Section 73), requiring the mandatory and cumulative fulfillment of three conditions—parity of service terms, recognition of continuous service, and re-employment by the transferee—to avoid substantial compensation liability.² A key finding is the IRC's strategic relaxation of regulatory oversight for mid-sized enterprises by raising the mandatory retrenchment/closure approval threshold from 100 to 300 workers.³ This shift substantially enhances post-acquisition rightsizing flexibility for approximately 15.97% of the industrial workforce.⁴

Concurrently, the CoSS imposes explicit successor financial liability for accrued social security dues, but strategically mitigates transferee risk through a novel provision that caps liability to the value of the acquired assets.⁵ This statutory hedge necessitates sophisticated financial de-risking strategies, including granular indemnification clauses, especially given the CoSS's expansion of the 'Wages' definition, which mandates a minimum

¹ Industrial Relations Code, 2020 (India); Code on Social Security, 2020 (India)

² Industrial Relations Code, 2020, S 73 (India)

³ Industrial Relations Code, 2020, ch. X (India).

⁴ See Annual Survey of Industries (ASI) Results for 2023-24 (data analysis showing economic impact of threshold change).

⁵ Code on Social Security, 2020, § 94 (India).

50% statutory base and requires the retroactive quantification of historic financial shortfalls.⁶ Finally, the fragmented, state-by-state implementation of the Codes mandates a sophisticated dual compliance model, managing both new statutes and predecessor laws simultaneously, creating significant jurisdictional risk in multi-state transactions.⁷

I. Introduction and Legislative Context: The Paradigm Shift in Indian Labour Jurisprudence

I. A. The Legislative Imperative: Consolidation, Simplicity, and the Dual Objective

The legislative project underpinning the four new Labour Codes, including the Industrial Relations Code (IRC) and the Code on Social Security (CoSS), is one of the most consequential legal reforms in modern India, designed to consolidate twenty-nine central labour statutes into a cohesive, simplified, and unified framework.⁸ This consolidation is predicated on a profound dissatisfaction with the complexity, administrative rigidity, and judicial ambiguity characterizing the preceding regime, primarily the Industrial Disputes Act, 1947 (IDA). The multiplicity of statutes under the former regime created a compliance labyrinth, particularly for multi-state and multi-business corporations, necessitating specialized legal and human resources (HR) due diligence that often served to unduly prolong M&A transactions and deter foreign investment.⁹

The new Codes are engineered to serve a distinctly dual-pronged policy objective. First, they aim to dramatically improve India's ranking on the global 'ease of doing business' metric by simplifying compliance, thereby providing industry with the necessary operational agility to compete effectively on a global scale.¹⁰ Second, and equally essential, the Codes strive to extend a robust social security floor to the entire spectrum of the Indian workforce, significantly including previously excluded and vulnerable segments such as unorganized workers, gig workers, and platform workers, defining them explicitly for the purpose of extending welfare schemes.¹¹ This simultaneous pursuit of labor market flexibility and expanded worker

⁶ See The Code on Social Security, 2020: Wages Definition and Implications (Mithras Consultants).

⁷ See Ministry of Labour & Employment, Implementation of Labour Codes (PIB Release, July 24, 2025) (confirming fragmented state implementation)

⁸ Id.

⁹ The Code on Social Security, 2020: Wages Definition and Implications, *supra* note 6.

¹⁰ Industrial Relations Code, 2020, Statement of Objects and Reasons (India) (stating objective to facilitate ease of doing business).

¹¹ Ministry of Labour & Employment, Implementation of Labour Codes, *supra* note 7 (confirming extension of social security benefits to gig and platform workers)

protection positions the Codes not merely as a labor reform measure but as an integral component of India's broader economic liberalization strategy and welfare mission.

I. B. Research Scope, Methodology, and Structural Analysis

This study conducts a comparative statutory analysis focused on the tension between facilitating corporate restructuring and upholding accrued employee entitlements. The research juxtaposes the subjective judicial doctrines of the repealed IDA with the prescriptive, rules-based mandates of the IRC and CoSS. The structure of this paper analyzes four critical domains essential for corporate transactions:

1. **Jurisdictional Risk:** Managing the challenges of fragmented, non-uniform statutory implementation across Indian states.
2. **Financial Quantification Risk:** Analyzing the CoSS's expanded 'Wages' definition and the resulting mandatory re-quantification of historic statutory liabilities.
3. **Operational Flexibility and Strategic Rightsizing:** Examining the impact of the 300-worker threshold and the formalization of Fixed-Term Employment (FTE).
4. **Successor Liability and Mitigation:** Deconstructing the IRC's 'deemed retrenchment' rule and the CoSS's financial successor liability cap.

II. Implementation Challenges and Jurisdictional Incoherence

II. A. Constitutional Framework and the Concurrent List: The Dual Compliance Mandate

A major impediment to achieving transactional certainty in corporate restructuring is the stalled and fragmented implementation of the new legislative framework. Under the Indian Constitution, 'Labour' is a subject placed on the Concurrent List, mandating that while the Central Government enacts the Codes, both the Central Government and the respective State Governments must finalize and notify their specific state rules for the Codes to achieve full legal enforceability within that jurisdiction.¹² This decentralized notification process means the Codes' effective date is not uniform nationwide but is staggered jurisdiction by jurisdiction.

¹² *Id.* (explaining the concurrent list nature of labour and the requirement for Central and State rule notification).

This lack of synchronicity undermines the stated objective of compliance simplicity and creates a complex regulatory environment.

II. B. Geographic Fragmentation Risk: Case Study of Stalled Implementation

The resulting geographic fragmentation risk is substantial. As of data referenced in the research (July 2025), while the Central Government and thirty-two States/Union Territories have advanced by pre-publishing draft rules, key industrial regions present critical lacunae.¹³ For example, West Bengal and the Union Territory of Lakshadweep have not pre-published draft rules under *any* of the four Codes. More critically for M&A financial risk, industrial states like Tamil Nadu have yet to finalize or pre-publish their draft rules specifically under the Code on Social Security, 2020 (CoSS).¹⁴

The absence of CoSS rules in a significant industrial state means that the fundamental financial calculations underpinning corporate valuation—specifically, accrued gratuity and provident fund liabilities—continue to be governed by the repealed, pre-reform laws. This legal ambiguity introduces profound uncertainty in quantifying acquired financial liabilities in those specific jurisdictions, thereby increasing the difficulty of providing reliable valuation opinions and warranties to the acquiring entity.

II. C. Strategic Management of Dual Compliance in M&A Transactions

The persistence of legislative uncertainty necessitates that corporations involved in multi-state M&A transactions adopt a dynamic and sophisticated **dual compliance model**.¹⁵ A transaction involving the transfer of undertakings across multiple states must govern the transfer using the new IRC/CoSS provisions in states where rules are operational, while simultaneously adhering to the repealed Industrial Disputes Act (IDA) and former social security acts in jurisdictions where implementation remains stalled.¹⁶

This mandates a structured, proactive compliance strategy:

1. **Jurisdictional Risk Mapping:** Implementation of a mandatory, dynamic matrix to

¹³ *Id*

¹⁴ *Id.* (noting Tamil Nadu's failure to finalize rules under the CoSS)

¹⁵ See M&A Transaction Documents India Labour Codes Dual Compliance Risk Allocation Indemnities (CorriDalegal) (discussing the need for indemnification in complex regulatory environments)

¹⁶ *Id*

track the state-specific implementation status of all four Codes, defaulting to predecessor central or state laws in jurisdictions without finalized rules.¹⁷

2. **Granular Indemnification:** The transaction documentation (Share Purchase Agreements or Asset Purchase Agreements) must incorporate highly granular and specific indemnity clauses, explicitly allocating liability for labor disputes and financial shortfalls based on whether the governing law at the time of the dispute is the New Code or the Repealed Law.¹⁸ Investors may introduce valuation discounts to the target asset specifically due to the increased duration and complexity of litigation arising from this dual legal environment.

III. Redefining Financial Liability: The Expanded Definition of 'Wages' (CoSS)

III. A. The Statutory Shift: Inclusion and Exclusion Clauses in CoSS

The Code on Social Security, 2020, significantly reforms the legal definition of 'wages' (Section 2(88)), establishing a new statutory base for calculating financial obligations related to social security contributions and benefits.¹⁹ The revised definition aims for comprehensiveness, including all remuneration payable in respect of employment, explicitly encompassing: Basic Pay, Dearness Allowance (DA), and any Retaining Allowance.²⁰ This expansion addresses the historic practice under the repealed statutes where employers often structured compensation to keep the 'Basic Pay' component low, thereby minimizing statutory contributions for Gratuity and Provident Fund.

The statute provides a detailed list of twelve components that are specifically excluded from the computation of 'Wages,' including House Rent Allowance (HRA), conveyance allowance, certain employer contributions to provident funds, gratuity payable on termination, and retrenchment compensation.²¹

¹⁷ Id

¹⁸ Id

¹⁹ Code on Social Security, 2020, S 2(88) (India)

²⁰ Key Definitions Under the Code on Social Security, 2020 (CorriDalegal) (detailing included components: Basic pay, Dearness allowance, Retaining allowance).

²¹ See Key Definitions Under the Code on Social Security, 2020 (CorriDalegal) (detailing included components: Basic pay, Dearness allowance, Retaining allowance).

III. B. The 50% Floor Rule: Legal and Actuarial Implications

The most pivotal anti-evasion mechanism introduced by the CoSS is the mandatory **50% floor rule** (the Proviso to Section 2(88)). This rule mandates a statutory minimum: if the sum of payments made by the employer for the *first nine* excluded components (sub-clauses (a) to (i)) exceeds fifty percent of the total remuneration, the excess amount **shall be deemed** to be part of the statutory 'Wages'.²²

This mechanism ensures that at least 50% of an employee's total gross salary must be recognized as 'Wages' for the calculation of critical statutory obligations, including gratuity, provident fund (EPF) contributions, and Employee State Insurance (ESI) payments.²³ For target companies that historically maintained low statutory component percentages (e.g., Basic Pay below 50% of gross salary), this shift results in a mandatory, non-discretionary increase in the statutory wage base, directly and substantially inflating the actuarial liability for gratuity and potentially other long-term benefits.²⁴

III. C. Quantitative Due Diligence: Re-quantifying Historic Liabilities

The expanded 'Wages' definition necessitates a radical transformation of financial due diligence requirements in M&A. Acquirers must engage specialized actuarial consultants to perform a **retroactive quantification** of historic statutory liabilities. This involves applying the 50% wages floor rule to past employee remuneration structures to calculate potential gratuity and PF shortfalls that were not recognized under the former, narrower wage definition.²⁵

Failure to perform this recalculation exposes the acquiring entity to a significant, often undisclosed contingent liability, as successor liability under the CoSS extends to these dues. The subsequent increase in liability arising from this retrospective revaluation must be recognized as an actuarial loss, which depending on the applicable accounting standard (e.g., AS 15 R or Ind AS 19/IAS 19), must be recognized immediately in the income statement or Other Comprehensive Income (OCI).²⁶ This heightened, quantifiable financial risk

²² *Id.* (detailing the proviso clause regarding the 50% floor for payments made under sub-clauses (a) to (i)).

²³ *Id.* (explaining that gratuity benefits and other social security calculations will be based on the new wages definition, which must be at least 50% of gross salary).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* (detailing accounting treatment for actuarial loss under AS 15 R and IAS 19/Ind AS 19).

significantly impacts transaction valuation and increases the demanded quantum of indemnification and security.

The following table illustrates the application of the 50% floor rule and its inherent compliance check:

Component	Example 1: Compliant Structure	Example 2: Non- Compliant Structure	Analysis
Total Remuneration (Gross)	₹100,000	₹100,000	Baseline
Statutory Floor (50% of Gross)	₹50,000	₹50,000	Statutory Minimum Wage Base
Statutory Wages (Basic + DA + Retaining)	₹60,000	₹35,000	Actual Statutory Wages Paid
Excluded Components (a) to (i)	₹40,000	₹65,000	Components that can be excluded without penalty
Comparison: Exclusions vs. Floor	₹40,000 < ₹50,000 (Compliant)	₹65,000 > ₹50,000 (Non-Compliant)	Determines Deemed Addition
Deemed Wages Addition (Excess Exclusions)	₹0	₹15,000 (₹65,000 - ₹50,000)	Amount added back to satisfy floor
Total Wages for CoSS Calculations	₹60,000	₹50,000	The base for statutory contributions

This mandatory imputation (Example 2) ensures that acquiring entities cannot rely on the transferor's historically low contribution basis, effectively clarifying the true quantum of inherited financial liability at closing.

IV. Legal Framework for Business Transfers and Employee Continuity

IV. A. IRC Section 73: Codification of the Deemed Retrenchment Principle

The Industrial Relations Code, 2020, consolidates the mechanism for managing employee tenure during changes in corporate control under Chapter IX, Section 73. This section governs the legal status of employees following a transfer of ownership or management and rigorously maintains the historical legal presumption established by the IDA, 1947: that the transfer is a **"deemed retrenchment."**²⁷ This presumption triggers the employer's statutory liability to pay retrenchment compensation to every worker who has completed not less than one year of continuous service.

IV. B. The Jurisprudential Shift: Rules-Based Certainty vs. Functional Continuity Doctrine

Historically, under Section 25FF of the repealed IDA, jurists and courts evolved the **Doctrine of Functional Continuity**, stipulating that a 'transfer' was deemed to have occurred only when the undertaking retained its core operational identity as a 'going concern' under the new management.²⁸ This judicial reliance on subjective factors—such as the nature of the business, location, and equipment used—introduced complexity and litigation risk, particularly in modern, fragmented asset-carve-out transactions.

The IRC strategically shifts away from this subjective judicial doctrine, favoring absolute certainty through a rules-based approach. The focus is no longer on the *nature* of the transferred undertaking but exclusively on the *explicit contractual commitment* by the buyer to protect the employee's rights.

IV. C. The Three Cumulative Conditions for Exemption: A Rigorous Standard

The critical finding in the analysis of the new Code is that the proviso to IRC Section 73 stipulates three cumulative and mandatory conditions that must be fulfilled to successfully nullify the deemed retrenchment and avoid compensation liability.²⁹ **Failure to satisfy even one of these conditions immediately nullifies the exemption and triggers the statutory**

²⁷ Industrial Relations Code, 2020, S 73 (India).

²⁸ See Industrial Disputes Act, 1947, § 25FF (India) (detailing the historical three conditions under the IDA).

²⁹ Industrial Relations Code, 2020, S 73 Proviso (India).

compensation liability.

1. **Transferee Employment:** The worker must be re-employed by the acquiring entity (the transferee employer) under the express terms of the transfer agreement.³⁰
2. **Parity of Service Terms:** The terms and conditions of service must be “not less favorable” than those enjoyed immediately prior to the transfer (the parity principle).³¹ This requires a meticulous comparison of all material contractual benefits, including fixed remuneration, designation, location, and statutory entitlement bases (now subject to the CoSS 'Wages' definition).
3. **Legal Recognition of Continuous Service:** The transferee must provide an explicit, legally binding recognition that the worker’s entire service period with the transferor shall be treated as **continuous and uninterrupted service** for all statutory purposes.³²

IV. D. Contractual Priority: Continuous Service as a Condition Precedent

The third condition—recognition of continuous service (as defined by IRC Section 66)—is the most crucial and least negotiable component. Legal liability is only averted by an explicit, written commitment integrated directly into the transaction documents (e.g., Share Purchase or Asset Purchase Agreements). The absence of a clear contractual commitment to recognize continuous service means the transaction is legally deemed to create an immediate, unfunded statutory liability for the buyer, equivalent to retrenchment compensation (15 days' wages for every completed year of service) for every eligible employee.³³ Therefore, ensuring this continuity is an absolute pre-closing legal certainty requirement, demanding that the transaction structure and documentation are aligned to satisfy this non-derogable statutory mandate.

V. Operational Flexibility and the 300-Worker Threshold**V. A. Lifting Mandatory Government Approval: Strategic Rationale**

One of the most significant changes promoting corporate operational flexibility is the strategic

³⁰ Id.

³¹ Id.

³² Id.

³³ Industrial Relations Code, 2020, S 73(1) (India).

relaxation of governmental control over mid-sized industrial establishments. Historically, the IDA, 1947, imposed stringent regulatory requirements—mandating prior government permission for lay-off, retrenchment, and closure—on establishments employing 100 or more workers.³⁴ This threshold was widely criticized for contributing to "labor market rigidity," actively discouraging growth beyond the 100-worker limit and leading to fragmented or artificially suppressed operational units.³⁵

The IRC reverses this legacy by confining these stringent requirements—mandatory prior government permission (IRC Sections 79 and 80)—to Chapter X, which now applies exclusively to establishments employing **300 or more workers**.³⁶

V. B. Impact on Mid-Sized Entities (100–299 Workers)

For industrial establishments employing between 100 and 299 workers, the mandatory requirement of seeking prior government approval for workforce rationalization is entirely removed.³⁷ These mid-sized entities are now subject only to the general provisions of Chapter IX, requiring adherence to statutory due procedure (e.g., the Last-in, First-out rule under IRC Section 71) and the payment of statutory retrenchment compensation.³⁸

The removal of governmental discretion dramatically reduces the administrative timeline and the risk of litigation associated with post-acquisition integration and rightsizing exercises. Economic analysis confirms the magnitude of this policy change: the increase in the threshold affects an estimated 7.07% of factories and **15.97% of the total industrial workforce** previously covered by the rigid government approval mechanism.³⁹ This converts a process governed by political and administrative uncertainty into a predictable, rules-based process, substantially enhancing the operational attractiveness and de-risking of mid-cap industrial acquisitions.

V. C. Simplification of Regulatory Overhead: Standing Orders

A related administrative simplification is the raising of the threshold for the mandatory

³⁴ See Industrial Relations Code, 2020, Statement of Objects and Reasons (India).

³⁵ *Id.* (noting critics' concerns about the 100-worker threshold leading to arbitrary service conditions).

³⁶ Industrial Relations Code, 2020, § 79 & 80 (India) (mandating prior government approval for establishments with 300 or more workers).

³⁷ *Id.*

³⁸ Industrial Relations Code, 2020, S 71 (India)

³⁹ Annual Survey of Industries (ASI) Results for 2023-24, *supra* note 4.

application of certified Standing Orders, which govern working conditions, employee classification, and disciplinary procedures.⁴⁰ The IRC raises this mandatory application threshold to 300 or more workers.⁴¹

This legislative change relieves smaller and mid-sized acquired units from the lengthy and bureaucratic process of seeking government approval for detailed Standing Orders.⁴² This streamlining facilitates the rapid implementation and harmonization of uniform Human Resources (HR) policies across the combined entity post-acquisition. However, critics note an attendant risk: entities employing fewer than 300 workers may, in the absence of certified orders, potentially introduce arbitrary or non-standard service conditions, mandating thorough due diligence to ensure compliance with best labor practices and mitigation of future disputes.⁴³

VI. Strategic Workforce Optimization and Rationalization

VI. A. Formal Integration of Fixed-Term Employment (FTE)

The Industrial Relations Code formally integrates and legitimizes Fixed-Term Employment (FTE) into the statutory framework, providing a clear legal basis for contracts with a specific duration and end date, often tied to project funding or defined requirements.⁴⁴ Crucially, this formalization is coupled with a clear mandate for the **parity principle**: FTE workers performing similar duties as permanent employees must receive statutory benefits (ESI, EPF, gratuity, bonus) equivalent to those received by permanent workers.⁴⁵ This provision ensures that FTE cannot be utilized merely as a mechanism for statutory cost avoidance.

VI. B. The Retrenchment Exemption: A Strategic Tool for M&A Rightsizing

The most strategically valuable aspect of FTE for corporate restructuring is its explicit exemption from the stringent rules governing retrenchment. The IRC explicitly stipulates that the termination of an FTE worker's service purely due to the **completion of the contract**

⁴⁰ See IR Code Standing Orders Threshold 300 Workers Implication (Shankariasparliament) (explaining the nature of Standing Orders).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* (noting that companies with less than 300 workers will not be required to furnish a standing order, potentially leading to arbitrary service conditions).

⁴⁴ See Fixed Term Employment (IRC Employee on Employment Contracts with Specific Duration and End Date) (IRC Careers).

⁴⁵ Industrial Relations Code, 2020, S 2(o) (India)

tenure is legally not considered retrenchment.⁴⁶

This feature provides acquirers with a legally defined, low-litigation pathway for achieving necessary workforce rationalization and synergy realization post-acquisition, provided the termination aligns strictly with the fixed term expiry.⁴⁷ This contrasts sharply with the often-litigious and procedurally burdensome process required for terminating permanent employees, which demands adherence to LIFO (Last-in, First-out) and payment of compensation, and potentially government approval if the 300-worker threshold is met.⁴⁸ For M&A practitioners, the review of a target company's workforce should focus on the integrity and remaining tenure of compliant FTE contracts as a calculable, low-cost opportunity for operational integration and workforce reduction.

VII. Successor Financial Liability and Statutory Risk Mitigation (CoSS)

VII. A. Codified Successor Liability for Accrued Social Security Dues

The Code on Social Security, 2020, establishes an explicit and unambiguous framework for successor financial liability. The statute mandates that the transferee entity is liable for all accrued contributions, cess, or any other social security amount payable under the Code up to the date of transfer.⁴⁹ This liability specifically encompasses financial shortfalls that are retroactively quantified based on the expanded 'Wages' definition (Section III). This provision clearly establishes the principle that the acquiring entity inherits the statutory financial obligations of the undertaking.

VII. B. The Statutory Hedge: In-Depth Analysis of the Asset Cap Provision

Crucially, the CoSS introduces a powerful statutory limitation on the extent of this successor liability, serving as an effective de-risking mechanism for buyers.⁵⁰ The provision states:

"Provided that the liability of the transferee shall be limited to the value of the assets obtained

⁴⁶ See IRC Fixed-Term Employment Termination is not Retrenchment M&A Strategy (HR Future) (discussing the convenience of fixed-term contracts for retrenchment exercises).

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Code on Social Security, 2020, S 94 (India).

⁵⁰ Id.

by him by such transfer."⁵¹

This legislative cap legally limits the acquiring entity's exposure to inherited financial liabilities (such as historic unpaid PF or ESI contributions, or gratuity shortfalls calculated on the revised 'wages' definition) to the fair market value of the specific assets acquired.⁵² This protection fundamentally shifts the burden for any residual financial gap—the "**gap liability**"—back onto the transferor.

VII. C. Valuation Methodologies and Legal Interpretation

A core ambiguity in applying the asset cap lies in the lack of statutory clarity regarding the appropriate methodology for determining the "value of the assets obtained." This ambiguity requires the buyer to establish a legally defensible valuation methodology during due diligence, linking this calculation directly to the maximum liability cap. Consideration must be given to whether the value refers to the book value, the liquidation value, or the negotiated fair market value, as this calculation determines the exact extent of the statutory protection afforded to the transferee. The existence of the cap strongly favors transactions structured as Asset Purchase Agreements (APAs) over Share Purchase Agreements (SPAs), as the assets and their market value are more clearly delineated in an APA, maximizing the protective effect of the cap.⁵³

VII. D. De-Risking Mechanisms: Utilizing Escrow, Indemnities, and R&W Insurance

The expansion of the CoSS wage definition increases the total inherited liability, which consequently widens the potential "gap liability" (the difference between total liability and the asset cap). This heightened financial exposure necessitates sophisticated mitigation strategies:

1. **Robust Contractual Indemnities:** The buyer must secure robust contractual indemnities from the seller that cover the quantified gap liability, as well as associated litigation and defense costs.
2. **Financial Security:** To ensure the seller's capacity to fulfill these obligations, transaction documents must mandate financial security mechanisms, such as funding

⁵¹ Id

⁵² See The Art of the Bad Deal: Successor Liability in M&A Transactions (Ballard Spahr) (discussing the general rule of non-liability in asset deals).

⁵³ Id.

escrow accounts specifically calculated to cover the gap liability, or securing Representations and Warranties (R&W) insurance specifically tailored to cover breaches related to labor law compliance and undisclosed pre-transfer liabilities.⁵⁴

VIII. Adjudication, Dispute Management, and Union Dynamics

VIII. A. Restructured Adjudication System: The Unified Tribunal (IRC Section 44)

The IRC introduces a significantly restructured and unified Tribunal system, consolidating the functions of existing Labour Courts and Industrial Tribunals into a single structure.⁵⁵ This unification is intended to streamline the often-protracted process of industrial dispute resolution, simplifying the procedural landscape and expediting the disposal of cases by integrating both judicial and administrative members.

VIII. B. Managing Historical Litigation Risk: Transfer of Pending Cases (IRC Section 51)

A crucial procedural concern for M&A transactions is the mandatory requirement under IRC Section 51 for the seamless transition of all pending cases initiated under the repealed laws (like the IDA) to the new unified Tribunals.⁵⁶ This legal transfer immediately exposes the acquiring entity (transferee) to all historical litigation risk.

Comprehensive due diligence is therefore required to meticulously catalogue all pre-transfer disputes. The initial phase of the new system's operation may lead to heightened risk exposure due to procedural delays, jurisdictional confusion, or inconsistencies as the new Tribunals establish precedent. Transaction documents must ensure that indemnification covers all financial and legal costs related to these inherited cases transferred under Section 51, reinforcing the need for R&W insurance to mitigate contingent litigation risk.⁵⁷

VIII. C. Collective Bargaining and Union Dynamics

The IRC also introduces standardized and detailed procedures for the recognition of

⁵⁴ *Id.* (suggesting indemnification and security mechanisms like source of funds or other security to satisfy indemnification claims).

⁵⁵ Industrial Relations Code, 2020, § 44 (India).

⁵⁶ Industrial Relations Code, 2020, S 51 (India).

⁵⁷ Reducing Litigation Risk M&A Transactions and Regulatory Compliance (Womble Bond Dickinson) (emphasizing the need for proactive due diligence to uncover potential legal liabilities).

Negotiating Unions (IRC Section 14). This standardization typically requires verifying the support of a substantial proportion of the workforce (e.g., 51% via membership verification or ballot) to achieve recognized bargaining status, aiming to establish a single, representative bargaining agent.⁵⁸

This necessitates proactive management of collective bargaining relationships post-transfer. Acquirers must engage early with existing trade unions to manage the transition of any existing Collective Bargaining Agreements (CBAs) and navigate the new recognition process. A failure to engage proactively and adhere to the new recognition mechanisms can lead to industrial action that severely disrupts post-acquisition integration and synergy realization.⁵⁹ The standardization of union recognition, while complex in the short term, offers a potential long-term benefit for industrial stability.

IX. Conclusion and Prescriptive Strategic Framework

The transition to India's new Labour Codes, while characterized by ongoing and geographically fragmented implementation, successfully establishes defined boundaries and clarifies obligations for corporate restructuring.⁶⁰ The resulting regulatory landscape is strategically bifurcated: it grants substantial operational flexibility for mid-sized establishments through the 300-worker threshold exemption and provides strategic workforce tools like the formalized FTE contract. Simultaneously, the framework transforms the core employee protection mechanism (deemed retrenchment) into a contract-dependent, rules-based compliance challenge (IRC Section 73). Crucially, the Codes heighten financial risk exposure for historic non-compliance by expanding the statutory 'Wages' base under the CoSS, even while providing a financial hedge through the successor liability asset cap.⁶¹

Successful navigation of corporate transfers under the new Codes necessitates a sophisticated, integrated legal, actuarial, and HR strategy:

1. **Prioritize Contractual Certainty for Continuity (IRC Section 73):** Legal counsel must embed the absolute fulfillment of the three cumulative conditions under IRC

⁵⁸ Industrial Relations Code, 2020, S 14 (India).

⁵⁹ IR Code Standing Orders Threshold 300 Workers Implication, *supra* note 40 (discussing concerns over union conditions).

⁶⁰ Ministry of Labour & Employment, Implementation of Labour Codes, *supra* note 7.

⁶¹ Code on Social Security, 2020, S 94 Proviso (India).

Section 73—especially the explicit, mandatory recognition of the worker's continuous service—as a primary warranty and Condition Precedent to the closing of the transaction.⁶²

2. **Mandatory Actuarial Recalibration (CoSS Wages):** Financial due diligence must rigorously quantify statutory liabilities using the expanded CoSS definition of 'Wages' and the 50% floor rule, conducting retroactive actuarial calculations to quantify the precise financial shortfall.⁶³
3. **Implement a Dynamic Jurisdictional Risk Map:** A detailed matrix must be maintained to track the state-specific implementation status of all four Codes. This matrix should guide differential indemnity calculations, accounting for regulatory lag in states where predecessor laws still govern key aspects of liability, thereby mitigating the risk of dual compliance.⁶⁴
4. **Financial De-Risking via Asset Cap Utilization:** Strategically structure the transaction, where operationally feasible, to maximize the protective effect of the CoSS asset cap provision. Crucially, calculate the resulting "gap liability" and secure comprehensive indemnities from the seller, backed by sufficient security mechanisms such as escrow funds or dedicated Representations and Warranties insurance.⁶⁵
5. **Proactive HR Integration and Union Engagement:** Utilize the IRC's formalization of FTE contracts for predictable and low-risk strategic rightsizing. Simultaneously, engage with trade unions early to negotiate the transition of Collective Bargaining Agreements and adhere to the new recognition procedures (IRC Section 14) to maintain industrial peace and ensure seamless operational integration post-transfer.⁶⁶

⁶² Industrial Relations Code, 2020, S 73 Proviso (India).

⁶³ The Code on Social Security, 2020: Wages Definition and Implications, *supra* note 6.

⁶⁴ Ministry of Labour & Employment, Implementation of Labour Codes, *supra* note 7.

⁶⁵ The Art of the Bad Deal: Successor Liability in M&A Transactions, *supra* note 52.

⁶⁶ IRC Fixed-Term Employment Termination is not Retrenchment M&A Strategy, *supra* note 46.