CROSS-BORDER MERGERS AND ACQUISITIONS AND THEIR EFFECT ON THE INDIAN ECONOMY: A STUDY OF LEGAL PROCEDURE, REGULATORY FRAMEWORK AND ECONOMIC IMPACT

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ABSTRACT

Cross-border mergers and acquisitions (M&A) have become a central mechanism through which Indian companies integrate with the global economy, either by acquiring or merging with foreign entities (outbound transactions) or by being acquired by or merged into foreign companies (inbound transactions). This paper examines the legal and procedural framework governing cross-border M&A in India, traces the step-by-step process a transaction typically follows, and analyses the effect of such transactions on the Indian economy, including foreign direct investment (FDI), employment, industrial consolidation, and regulatory reform. The paper draws on primary regulatory sources, government data, and documented transactions such as the Vodafone–Idea merger and the Walmart–Flipkart acquisition to ground the analysis in verifiable fact rather than conjecture.

1. Introduction

A merger or acquisition is termed "cross-border" when the transacting entities are incorporated in different countries, resulting either in the combination of assets and liabilities into a single new entity or in the transfer of control of a domestic company to a foreign acquirer. Globally, cross-border M&A has grown as a preferred route for market entry, technology transfer and capital mobility, driven by liberalisation of trade and investment regimes. India's experience mirrors this global trend: since the enactment of the Companies Act, 2013 and the notification of Section 234 permitting mergers between Indian and foreign companies, cross-border transactions have grown steadily in number and value, reshaping sectors from telecom and retail to pharmaceuticals and information technology.

Historically, the Companies Act, 1956 permitted only inbound mergers, where a foreign company merged into an Indian transferee company; the possibility of an Indian company merging outward into a foreign entity was not recognised in law. This changed with the notification of Section 234 of the Companies Act, 2013, on 13 April 2017, which for the first time permitted both inbound and outbound cross-border mergers, subject to the prior approval of the Reserve Bank of India (RBI).[1]

2. Meaning and Types of Cross-Border M&A

A cross-border merger may be defined as any merger, amalgamation or arrangement between an Indian company and a foreign company, structured in accordance with the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

Regulators classify cross-border mergers into two categories. An inbound merger is one in which the resultant company, after the merger, is Indian; an outbound merger is one in which the resultant company is foreign. Eligibility to undertake such a merger is further restricted to companies incorporated in jurisdictions that are "notified" — broadly, jurisdictions whose securities regulator is a signatory to the IOSCO Multilateral Memorandum of Understanding, whose central bank is a member of the Bank for International Settlements, and which do not

[1] Companies Act, 2013, section 234 (India), as notified by the Ministry of Corporate Affairs, Notification No. S.O. 1182(E) (13 April 2017). Under the earlier Companies Act, 1956, section 394(4)(b), only inbound mergers were possible because a "transferee company" had to be incorporated under Indian law. See Lakshmikumaran & Sridharan Attorneys, "Cross-border merger provisions notified."

appear on the FATF's list of non-cooperative jurisdictions.[2]

Beyond mergers in the strict statutory sense, cross-border transactions in India also take the form of share acquisitions (such as Walmart's purchase of a majority stake in Flipkart), joint ventures, asset purchases, and slump sales. Each structure carries distinct implications for taxation, foreign exchange compliance, and regulatory approval, and dealmakers typically select a structure based on the sector involved, the desired degree of control, and the tax efficiency of the transaction.

3. Legal and Regulatory Framework

Cross-border M&A in India is not governed by a single statute but by an interlocking set of laws and regulators, each addressing a specific dimension of the transaction:

- Companies Act, 2013 — Sections 230 to 232 (read with Section 234) govern the scheme of arrangement, amalgamation, and the approval process before the National Company Law Tribunal (NCLT).

- Foreign Exchange Management Act, 1999 (FEMA) and the FEMA (Cross Border Merger) Regulations, 2018 — govern the foreign exchange dimension of the transaction, including pricing, reporting, and permissible modes of consideration.

- SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 — apply where the target is a listed company, and may trigger a mandatory open offer to public shareholders.

- Competition Act, 2002, as amended by the Competition (Amendment) Act, 2023 — requires notification to the Competition Commission of India (CCI) where prescribed asset, turnover, or (since September 2024) deal-value thresholds are met.[3]

- Income Tax Act, 1961 — determines the tax treatment of the transaction, including capital gains and the taxability of indirect transfers of Indian assets held through

[2] Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, r. 25A(2) and Annexure B (India). The permitted-jurisdiction criteria require that the foreign jurisdiction's securities regulator be a signatory to the IOSCO Multilateral Memorandum of Understanding (or have a bilateral MoU with SEBI) and that its central bank be a member of the Bank for International Settlements, while the jurisdiction must not be named in specified FATF public statements.

[3] Competition Act, 2002, section 5(d) (India), as inserted by the Competition (Amendment) Act, 2023.

offshore structures.

- Sector-specific regulators — including the RBI (banking and NBFCs), IRDAI (insurance), and the Department for Promotion of Industry and Internal Trade (for sectoral FDI caps and approval routes).

See generally Mondaq/M&A Private Equity India, "Cross Border Mergers – Key Regulatory Aspects to Consider".

Two recent reforms are worth noting. First, with effect from 10 September 2024, the Competition (Amendment) Act, 2023 introduced a deal-value threshold for CCI notification, closing a gap that had previously allowed high-value acquisitions of low-revenue Indian technology targets to escape merger review.[4]

Second, a Ministry of Corporate Affairs notification effective 17 September 2024 extended the "fast-track" merger route to certain cross-border combinations — specifically, mergers of a foreign parent into its wholly owned Indian subsidiary — allowing such deals to bypass NCLT approval, subject to RBI sign-off, provided at least 90 percent of shareholders and creditors by value consent.[5]

4. Procedure for a Cross-Border Merger or Acquisition in India

While the precise sequence varies with deal structure, a typical cross-border M&A transaction involving an Indian company proceeds through the following stages:

1. Strategic evaluation and target identification: The acquirer identifies a target and conducts a preliminary assessment of strategic fit, market access, and regulatory feasibility, including whether the target sector permits foreign investment under the

[4] The deal-value threshold and the accompanying Competition Commission of India (Combinations) Regulations, 2024, took effect on 10 September 2024 pursuant to Ministry of Corporate Affairs notifications dated 9 September 2024. Transactions exceeding Rs. 2,000 crore (approximately US$238 million) where the target has "substantial business operations" in India now require CCI notification even where the target would otherwise qualify for the de minimis asset/turnover exemption. See Morgan Lewis, "Competition Commission of India Provides Updated Deal Value Threshold" (Sept. 2024).

[5] Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024, inserting Rule 25A(5), effective 17 September 2024. Approval under Section 233 of the Companies Act requires shareholders holding at least 90 percent of the total number of shares and creditors representing nine-tenths in value. See Lexology, "MCA allows foreign companies to merge with their wholly owned Indian subsidiaries via fast-track route" (Oct. 2024).

automatic or government approval route.

2. Due diligence: Legal, financial, tax, and (increasingly) cultural and ESG due diligence is conducted on the target, covering corporate records, material contracts, litigation, labour compliance, intellectual property, and environmental practices.

3. Structuring and valuation: The transaction is structured (merger, share purchase, or asset purchase) based on tax efficiency and regulatory considerations. Where a statutory merger is contemplated, valuation must be certified by a Registered Valuer using internationally accepted methods, as required under the Companies Act and FEMA.[6]

4. Drafting the scheme of arrangement: For a merger under Sections 230–232, the companies draft a formal "Scheme" setting out the terms of the merger, treatment of shareholders and creditors, and the effective date.

5. Board and shareholder approvals: The board of each company approves the scheme, followed by approval from shareholders and creditors (typically requiring a defined majority by value and number).

6. Regulatory clearances: Depending on the transaction, approvals or notifications are obtained from the RBI (under the FEMA Cross Border Merger Regulations), the CCI (where competition thresholds are met), SEBI (for listed targets), and, for FDI from land-border-sharing countries, the Central Government under Press Note 3 of 2020.

7. NCLT sanction (where applicable): The scheme, along with proof of the requisite approvals, is filed before the NCLT, which examines objections from regulators and creditors before sanctioning the scheme; deemed RBI approval and the fast-track route can, in qualifying cases, reduce or eliminate NCLT involvement.

8. Post-merger compliance and integration: Following sanction, the resultant company completes reporting obligations (including filing on the RBI's FIRMS portal), transfers

[6] Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, r. 25A(2)(b) (India). The valuation report submitted to the RBI must be prepared in accordance with internationally accepted principles of accounting and valuation by a valuer who is a member of a recognised professional body in the relevant jurisdiction.

assets and liabilities, repays or novates outstanding borrowings, and integrates operations, systems, and personnel.

5. Effects on the Indian Economy

5.1 Foreign Direct Investment and Capital Formation

Cross-border M&A is a significant channel of FDI into India. Cumulative gross FDI inflows into India crossed US$1 trillion between April 2000 and March 2025, and provisional inflows for FY 2024–25 stood at approximately US$81.04 billion, a rise of about 14 percent over the previous fiscal year.[7]

India's overall M&A market (domestic and cross-border combined) crossed roughly US$113 billion in deal value in 2025, approximately 42 percent higher than in 2024, while cross-border deal activity specifically rose by around 66 percent in the first nine months of 2024, led by the information technology, manufacturing, and banking sectors.[8]

5.2 Sectoral Consolidation and Industrial Structure

Cross-border transactions have reshaped the competitive structure of several Indian industries. In telecommunications, the 2018 merger of Vodafone India and Idea Cellular created what was then India's largest telecom operator by subscriber base, a deal valued at approximately US$23 billion with projected annual cost synergies of around Rs. 140 billion.[9]

In e-commerce and retail, Walmart's 2018 agreement to acquire an approximately 77 percent stake in Flipkart for close to US$16 billion marked one of the largest inbound acquisitions in Indian technology-enabled retail, and was explicitly framed by Walmart as a long-term commitment to job creation and investment in India.[10]

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[7] Press Information Bureau, Government of India, "India Records USD 81.04 Billion FDI Inflow in FY 2024–25." Provisional FDI inflows rose from US$71.28 billion in FY 2023–24 to US$81.04 billion in FY 2024–25, and gross FDI inflows since April 2000 exceeded US$1 trillion.

[8] Bain & Company, India M&A report, as reported in "India M&A Deal Value Hits $113B in 2025, Up 42%" (Jan. 2026); India Briefing, "Cross-Border M&A in India: 2024 Market and Regulatory Updates" (Jan. 28, 2025), reporting a 66 percent year-on-year rise in the total value of Indian deals in the first nine months of 2024.

[9] Vodafone Group, "Merger of Vodafone India and Idea: Creating the Largest Telecoms Operator in India." Contemporaneous reporting valued the completed transaction at approximately US$23.2 billion. See "Idea-Vodafone merger to create country's largest telecom operator," The Print (Aug. 31, 2018).

[10] Walmart Inc., Form 8-K (May 9, 2018), U.S. Securities and Exchange Commission. Walmart agreed to pay approximately US$16 billion for an initial stake of approximately 77 percent in Flipkart Group.

Such large transactions tend to accelerate consolidation, pushing smaller domestic players toward niche strategies, strategic partnerships, or exit, while simultaneously bringing global capital, technology and managerial practices into the acquired Indian businesses.

5.3 Employment, Technology Transfer and Capital Markets

Cross-border acquisitions often bring capital for expansion and technology upgrades, and acquirers frequently cite job creation and supply-chain investment as strategic rationale, as Walmart did in its Flipkart announcement. Cross-border deal activity has also been linked to a stronger pipeline of initial public offerings, as larger, globally integrated Indian companies use public listings to provide exit routes for private equity and venture capital investors who entered through earlier cross-border investment.

5.4 Taxation and Regulatory Precedent

Cross-border M&A has also shaped Indian tax jurisprudence. The Supreme Court's ruling in Vodafone International Holdings B.V. v. Union of India held that India's tax authorities could not tax an offshore transfer of shares between two non-resident entities merely because the underlying asset was an Indian business; the judgment, and the retrospective legislative amendment that followed it, continue to serve as the reference point for structuring inbound deals through intermediate holding companies.[11]

5.5 Strategic and Security Considerations

Not all cross-border investment is treated identically. Since 2020, Press Note 3 has required prior government approval for any foreign investment — including investment arising through a merger — originating from an entity based in a country sharing a land border with India, reflecting a policy shift toward balancing openness to capital with considerations of economic security.[12]

India's regional position also matters: in 2024, developing Asia as a whole attracted roughly US$605 billion in FDI, representing about 40 percent of global FDI flows, with India recognised as a leading destination for new project announcements and capital expenditure

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[11] Vodafone International Holdings B.V. v. Union of India, (2012) 6 SCC 613 (Supreme Court of India).
[12] Government of India, Department for Promotion of Industry and Internal Trade, Press Note No. 3 (2020 Series), dated 17 April 2020, amending para. 3.1.1 of the Consolidated FDI Policy.

within the region.[13]

6. Challenges and Constraints

- Regulatory complexity: a single large transaction can simultaneously trigger obligations under company law, securities law, competition law, foreign exchange law, and sector-specific regulation, requiring careful sequencing of approvals.
- Valuation and currency risk: exchange-rate volatility and divergent valuation methodologies between jurisdictions can complicate deal pricing and post-merger accounting.
- Approval timelines: dependence on the NCLT and multiple regulators can extend deal timelines, even though fast-track and deemed-approval routes have reduced this friction for qualifying transactions.
- Cultural and integration risk: differences in management style, labour practices, and corporate culture between merging entities can affect post-merger performance, independent of legal compliance.
- Geopolitical and trade-policy uncertainty: shifts in global trade policy, including tariff measures affecting export-oriented sectors, can alter the calculus for both inbound and outbound Indian cross-border deals.

7. Conclusion

Cross-border mergers and acquisitions have moved from a legally constrained possibility before 2013 to a substantial and increasingly well-regulated channel of capital formation for the Indian economy. The legislative and regulatory architecture built around Section 234 of the Companies Act, 2013, the FEMA Cross Border Merger Regulations, 2018, and subsequent reforms to competition law and fast-track merger procedures has progressively reduced procedural friction while preserving oversight of competition, foreign exchange, and national-security concerns. Transactions such as the Vodafone–Idea merger and the Walmart–Flipkart

[13] UN Trade and Development (UNCTAD), World Investment Report 2025 (June 19, 2025). Developing Asia attracted US$605 billion in FDI in 2024, representing 40 percent of global FDI flows and 70 percent of flows to developing economies.

acquisition illustrate both the scale of capital such deals can mobilise and their capacity to reshape entire industries. As India pursues continued integration with global capital markets, the trajectory of reform suggests that cross-border M&A will remain a central, if closely supervised, instrument of the country's economic growth.

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