
ENHANCING NATIONAL SECURITY THROUGH M&A: LEGAL PATHWAYS FOR DEFENCE SECTOR REFORMS IN INDIA

Ayush Tiwari, Advocate, High Court of Chhattisgarh

ABSTRACT

The geopolitical landscape of South Asia has long been influenced by the strained and often hostile relationship between India and Pakistan. The history of the region is marked by several conflicts—including the wars of 1947, 1965, 1971, and the Kargil clash of 1999—that underscore the region’s volatile peace. The latest flare-up, culminating in **Operation Sindoor**, has reignited national security concerns. This decisive military campaign, involving targeted strikes on terrorist bases and cross-border military infrastructure, indicates a notable evolution in India’s defence strategy—from a traditionally reactive approach to a more assertive and pre-emptive one.

In light of this strategic pivot, the imperative to bolster India’s defence capabilities becomes increasingly clear. A powerful mechanism to achieve this objective lies in the strategic deployment of Mergers and Acquisitions (hereinafter referred to as “**M&A**”). Within the defence sector, M&A can yield significant advantages: it can unify scattered competencies, accelerate access to cutting-edge technologies, generate operational efficiencies through scale, and invigorate domestic manufacturing capacities. The drive toward self-reliance in defence production, as articulated in the Atmanirbhar Bharat initiative, calls for a comprehensive legal and policy framework that facilitates seamless and compliant M&A activity.

This article seeks to examine the growing importance of M&A in the Indian defence landscape through both legal and strategic perspectives. It delves into the applicable regulatory structures, historical developments, and industry dynamics that shape the sector. Special attention is paid to the complexities of Foreign Direct Investment (hereinafter referred to as “**FDI**”) regulations, the Defence Acquisition Procedure 2020 (hereinafter referred to as “**DAP 2020**”), and the role of regulatory bodies such as the Competition Commission of India (hereinafter referred to as “**CCI**”). Furthermore, the discussion highlights how M&A can act as a critical strategic tool, especially in the context of rising regional tensions and the need for greater technological sophistication and military preparedness.

In an era marked by evolving security threats and dynamic geopolitical shifts, India must harness the transformative potential of M&A to establish a resilient, agile, and future-ready defence infrastructure. The article concludes with policy suggestions aimed at strengthening the M&A ecosystem within the defence sector, underscoring its significance for safeguarding national sovereignty in the long run.

Keywords: Defence M&A, India-Pakistan, National Security, Strategic Partnership, FDI, DAP, Competition Law, Disinvestment, Indigenization, Technology-Transfer.

1. INTRODUCTION

India's geopolitical environment, particularly in the context of its historically volatile relationship with Pakistan, continues to be a pressing factor in shaping its national security policies. The long-standing conflict, rooted in partition-related disputes, has evolved over decades, necessitating adaptive military strategies and resilient defence mechanisms. The escalation marked by the recent Operation Sindoor signals a new era of military assertiveness, underlining the urgency of modernizing India's defence sector.

Amidst this backdrop, strategic M&As in the defence sector are not merely financial or corporate decisions—they are pivotal national security imperatives. Consolidation of defence firms, streamlining supply chains, and fostering innovation through technological partnerships can significantly bolster India's military readiness. This article explores the rationale, legal ecosystem, and strategic value of enhancing M&A activity within India's defence landscape in light of the evolving Indo-Pak conflict.

2. HISTORICAL AND GEOPOLITICAL CONTEXT

The partition of British India in 1947 serves as the historical catalyst for the enduring conflict between India and Pakistan. This division gave rise to several full-scale wars - in 1947-48, 1965, 1971, and the 1999 Kargil conflict. Each of these confrontations reflected deep-seated animosities over issues such as Kashmir, terrorism, and water sharing. Recent years have witnessed a shift from conventional warfare to proxy and asymmetric engagements, often involving non-state actors.

The latest escalation - Operation Sindoor - was a decisive retaliatory measure by India following a series of cross-border provocations. Unlike prior engagements, this operation

reportedly targeted strategic assets and infrastructure in Pakistan-occupied territories, aiming to dismantle terror launchpads and critical logistics. This reflects a shift towards a more proactive and technologically advanced military doctrine. In this evolving context, India's defence preparedness cannot rely solely on government expenditure and PSUs. It must leverage private sector efficiencies and global expertise through M&A activity.

3. RATIONALE FOR DEFENCE M&A IN INDIA

3.1. National Security Considerations

With persistent external threats and evolving forms of warfare - including cyber and asymmetric warfare - India must develop a robust, self-reliant defence industrial base. M&A transactions allow consolidation of defence companies, optimizing the production pipeline and creating national champions capable of supplying sophisticated systems.

3.2. Enhancing Indigenous Capability

M&A provides an opportunity for technologically advanced firms to integrate with smaller innovators or underperforming Defence Public Sector Undertakings (hereinafter referred to as "DPSUs"). This approach bolsters national manufacturing efforts and advances the Atmanirbhar Bharat agenda by limiting import reliance.

3.3. Strategic Partnerships with Global Original Equipment Manufacturers (OEMs)

The Strategic Partnership Model (hereinafter referred to as "SPM") under the DAP, 2020 facilitates M&A-driven collaborations between Indian firms and foreign OEMs. Such partnerships can expedite knowledge transfer and bring in global best practices.

4. LEGAL AND REGULATORY FRAMEWORK GOVERNING DEFENCE SECTOR M&A

The legal and regulatory framework governing M&A in India's defence sector is multi-faceted, shaped by a blend of national security imperatives, corporate law norms, foreign investment regulations, and sector-specific procurement policies. These legal instruments collectively aim to encourage private sector participation, streamline foreign collaboration, and ensure that strategic interests are preserved during corporate consolidations.

4.1. FDI Policy

The FDI regime in India's defence sector has undergone substantial liberalization in recent years. As per the Consolidated FDI Policy¹ and subsequent press notes issued by the Department for Promotion of Industry and Internal Trade (hereinafter referred to as “**DPIIT**”), foreign investment up to 74% is permitted under the automatic route for companies engaged in defence manufacturing, provided they obtain a valid industrial license. Beyond 74%, foreign investment requires prior government approval, particularly in cases where access to modern technologies or sensitive infrastructure is involved. All foreign investments in defence are subject to security clearance by the Ministry of Home Affairs (MHA) and must comply with guidelines laid down by the Ministry of Defence (MoD). This calibrated liberalization is intended to attract global OEMs to set up joint ventures or wholly-owned subsidiaries in India, thereby facilitating technology transfer, capital inflow, and skill development.

4.2. DAP, 2020

The DAP, 2020 - formerly known as the Defence Procurement Procedure (hereinafter referred to as “**DPP**”) - serves as the guiding document for capital acquisition by the Indian armed forces. The DAP outlines several procurement categories such as 'Buy (Indian–Indigenously Designed, Developed and Manufactured)', 'Buy (Indian)', and 'SPM'², which prioritize domestic production and indigenous capability development. Of particular relevance to M&A is the SPM, which enables select Indian private sector companies to partner with global OEMs for the manufacturing of critical military platforms like submarines, fighter aircraft, and helicopters. Moreover, the DAP introduces the ‘Make I’ and ‘Make II’ subcategories under its 'Make' procedure, incentivizing private sector R&D and production. M&A activity becomes a crucial conduit for aligning corporate structures with these procurement models, enabling entities to meet eligibility thresholds and consolidate expertise. The table below depicts the foreign investment allowed under various categories of capital acquisition under the DAP (*as defined subsequently*):

¹ Consolidated FDI Policy, 2020: <https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020.pdf>

² Defence Acquisition Procedure, 2020: https://www.mod.gov.in/dod/sites/default/files/DAP-2020_after_BPR_Ph_V_01_APR_2024.pdf

S. No.	Categories	FDI Threshold
1.	Buy (Indian – Indigenously Designed Developed and Manufactured) or (Indian IDDM)	49%
2.	Buy (Indian)	74%
3.	Buy and Make (Indian)	74%
4.	Buy (Global – Manufacture in India)	74%
5.	Buy (Global)	74%
6.	Strategic Partnership Model	49%
7.	Make-I (Government Funded)	49%
8.	Make – II (Industry Funded)	49%
9.	Make-III	74%
10.	Design and Development / Innovation	49%

4.3. Industrial Licensing Regime

Under the Industries (Development and Regulation) Act, 1951 and the Arms Act, 1959³, the production of defence items is a licensed activity. The Ministry of Commerce and Industry, in consultation with the Ministry of Defence, issues industrial licenses to eligible companies. In recent years, the government has simplified the licensing process, extending the license validity

³ Section 5 of the Arms Act, 1959 and Entry 37 of First Schedule r/w Sections 2 and 3(i) of the Industries (Development and Regulation) Act, 1951

to 15 years (extendable by another 3 years) and publishing a consolidated list of defence products requiring licenses. This streamlined regime encourages private firms to enter the sector and facilitates smoother structuring of M&A deals involving licensed entities. Acquiring firms must ensure compliance with licensing conditions post-merger, and any change in ownership or control must be duly notified to the concerned ministries.

4.4. Competition Law Considerations

M&A activities in India are regulated by the CCI under the provisions of the Competition Act, 2002, which mandates an assessment of whether such combinations are likely to have an Appreciable Adverse Effect on Competition (AAEC) in the relevant product or geographic market. While most defence transactions may not trigger AAEC concerns due to the concentrated and heavily regulated nature of the market, combinations involving large players or cross-border deals could attract review. Even in cases where a combination could potentially result in an Appreciable Adverse Effect on Competition (AAEC), Section 54 of the Competition Act authorizes the Central Government to grant exemptions when national security interests justify such exclusions. Such exemptions may be relevant in defence-sector M&As where strategic imperatives override pure market considerations.

4.5. Companies Act, 2013 and Securities and Exchange Board of India (SEBI) Regulations

Sections 230 to 232 of the Companies Act, 2013 regulate the procedural framework and structural mechanisms for mergers, amalgamations, and corporate arrangements. These provisions require the approval of the National Company Law Tribunal (hereinafter referred to as “NCLT”), creditor and shareholder consent, and adherence to disclosure norms. In cases where listed companies are involved, the SEBI mandates compliance with takeover regulations, including the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “**Takeover Regulations**”), and disclosure under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”). Strategic defence M&A transactions involving listed companies must navigate these regulatory landscapes while ensuring confidentiality and strategic alignment with national defence policies.

4.6. Strategic Disinvestment Policy

The Government of India has progressively implemented a strategic disinvestment policy that seeks to reduce its stake in DPSUs and encourage private sector efficiencies. Transactions involving strategic sales—such as those in Bharat Earth Movers Limited (BEML)—are increasingly structured as M&A deals. These disinvestments must comply with the Department of Investment and Public Asset Management (DIPAM) Guidelines⁴ and receive approvals from the Cabinet Committee on Security (CCS), in addition to meeting sectoral and corporate legal requirements. The role of private acquirers in such deals is of strategic significance, as it affects both the operational capability of key defence platforms and the trajectory of domestic industrial capacity building.

5. STRATEGIC IMPLICATIONS OF M&A IN DEFENCE

In the context of India's evolving security dynamics, particularly with Pakistan and other regional adversaries, M&A in the defence sector transcend corporate consolidation – they are instruments of statecraft. The strategic implications of such transactions are far-reaching, with direct consequences on military readiness, technological self-sufficiency, and the broader objective of defence indigenization.

5.1. Enhancing National Security and Deterrence

The foremost strategic benefit of M&A activity in the defence sector lies in strengthening India's national security architecture. Through strategic consolidations, firms can pool capabilities, reduce redundancies, and enhance their ability to deliver complex defence systems on time. This operational readiness is especially critical in scenarios involving rapid mobilization and high-intensity conflict, such as those that could arise from escalating Indo-Pak tensions. M&A transactions enable the creation of integrated defence conglomerates that can respond more effectively to emergent military requirements and reduce logistical fragmentation in procurement.

⁴ Press Information Bureau, Government of India, "Policy of Strategic Disinvestment announced: Clear Roadmap for Strategic and Non-Strategic Actors", 01 February 2021, <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1693899>

5.2. Promoting Technological Self-Reliance

A core pillar of India's defence modernization strategy is achieving technological sovereignty. M&A deals that involve the acquisition of domestic start-ups, R&D-driven enterprises, or foreign firms with dual-use technologies can accelerate innovation cycles. When structured within the strategic partnership framework, such acquisitions facilitate knowledge transfer, skill development, and the absorption of next-generation technologies. This, in turn, aligns with national missions such as Atmanirbhar Bharat and the Defence Production and Export Promotion Policy (DPEPP) 2020, which aim to transform India from a major defence importer to a net exporter and global manufacturing hub.

5.3. Economic and Industrial Growth

Beyond national security, the strategic value of M&A lies in its potential to catalyze industrial growth and economic development. M&A in the defence sector frequently drive infrastructure development, fosters the growth of supporting industries, and creates opportunities for high-skilled employment. The multiplier effect on the economy is substantial - ranging from the development of Special Economic Zones (SEZs) for defence production to the growth of micro, small and medium enterprises (MSMEs) integrated into global supply chains. This growth is particularly valuable in Tier-II and Tier-III cities, where many private defence manufacturers are based, thereby fostering regional economic balance.

5.4. Increasing Global Competitiveness and Export Potential

M&A deals that create vertically integrated, well-capitalized, and technology-driven defence entities enhance India's global competitiveness. As Indian firms grow in scale and capability, they become viable contenders in the international arms market. Strategic acquisitions of companies with established global networks or dual-use patents can ease entry into export markets, particularly in the Global South, which seeks cost-effective defence solutions. The DPEPP 2020 aims to achieve annual defence exports worth USD 5 billion by 2025—an objective that requires not just policy support, but also strong, globally competitive private players. M&A serves as a mechanism to build such champions.

5.5. Strategic Autonomy in Geopolitical Negotiations

Possessing a robust and self-reliant defence industrial base confers strategic autonomy in

geopolitical negotiations. M&A-driven consolidation reduces India's reliance on external suppliers who may be subject to export controls, sanctions, or shifting diplomatic allegiances. By fostering indigenous alternatives through consolidated and capable firms, India enhances its leverage in bilateral and multilateral engagements, particularly in procurement diplomacy and regional security frameworks such as the Quad and BRICS.

6. CHALLENGES AND CONSIDERATIONS

While strategic M&A activity holds immense promise for transforming India's defence sector, it is not without critical challenges. Navigating the defence M&A landscape requires addressing a complex mix of legal challenges, security priorities, market fluctuations, and gaps in policy enforcement with careful planning and regulatory acumen.

6.1. Balancing Security Concerns with Investment Liberalization

One of the primary challenges lies in balancing the liberalization of foreign investment norms with the need to safeguard national security. While the automatic route now permits foreign direct investment up to 74%, transactions that involve strategically sensitive assets such as technology, IP, or essential infrastructure require scrutiny due to their inherent vulnerabilities. The lack of a comprehensive national security review mechanism—similar to the U.S. Committee on Foreign Investment (CFIUS)—can result in fragmented oversight. Although the Ministry of Home Affairs conducts background checks and security clearances, there remains a need for a codified, inter-ministerial framework to assess the strategic implications of foreign-controlled mergers in the defence domain.

6.2. Regulatory Complexity and Overlaps

The defence sector sits at the intersection of multiple regulatory domains: corporate law, competition law, industrial licensing, foreign investment policy, and public procurement norms. As a result, M&A activities in this sector frequently experience delays due to overlapping regulatory approvals and a lack of procedural clarity. For instance, the absence of harmonization between DAP provisions and the Companies Act's procedural requirements for mergers can create confusion regarding eligibility, licensing continuity, and post-merger obligations. Moreover, DPSUs often operate under special statutes or guidelines issued by the Department of Defence Production (DDP), adding another layer of regulatory scrutiny for

strategic disinvestment-related M&A.

6.3. Difficulty in Achieving Effective Technology Transfer

Despite the relaxation in FDI norms, effective technology transfer remains elusive in many joint ventures and M&A transactions. Foreign OEMs are often reluctant to part with core technologies due to concerns over intellectual property protection, commercial replication, and strategic misuse. Even when technology is transferred, Indian partners may lack the requisite absorptive capacity - such as skilled manpower, supporting R&D infrastructure, and supply chain maturity - to fully utilize it. This limits the transformative potential of M&A and underscores the need for simultaneous investments in human capital and industrial ecosystems.

6.4. Capital Constraints in India's Defence Manufacturing Space

Another structural challenge is the relative lack of financial depth and scale among domestic private players. Unlike global defence giants, Indian firms - especially MSMEs - often lack the balance sheets or creditworthiness required to undertake large-scale acquisitions or partnerships. This financial fragility impairs their ability to consolidate, absorb legacy liabilities, or invest in long-term R&D. Although government-backed initiatives such as iDEX (Innovations for Defence Excellence) and the Defence Investor Cell aim to support start-ups and smaller firms, access to patient capital remains limited. Venture capital and private equity interest in the sector is growing but remains cautious due to long sales cycles and regulatory opacity.

6.5. Cultural and Operational Integration Post-Merger

Lastly, M&A in the defence sector must contend with integration risks - both cultural and operational. Defence companies typically operate with strict hierarchical structures, unique corporate cultures, and stringent security measures. Mergers that appear strategically sound on paper may falter in execution due to incompatibility in corporate governance, information-sharing restrictions, or workforce resistance. In the case of cross-border M&A, issues related to export control laws, cybersecurity, and compliance with international treaties (such as the Wassenaar Arrangement) further complicate integration.

7. CONCLUSION

The convergence of India's national security priorities and its aspiration for technological sovereignty has brought the defence sector to the forefront of strategic policymaking. In this context, mergers and acquisitions are no longer confined to boardroom decisions; they are instruments of geopolitical significance and economic transformation. As India navigates a volatile regional environment - particularly in relation to Pakistan - its ability to modernize and consolidate its defence production ecosystem through strategic M&A will be critical to achieving credible deterrence and sustained military preparedness.

However, unlocking the full potential of M&A in this sector demands more than liberalized policy - it requires a calibrated regulatory environment that integrates national security imperatives with investor confidence. This includes creating a unified approval mechanism, strengthening domestic financial capacity, and institutionalizing safeguards for technology transfer and post-deal integration. Furthermore, the role of the state must evolve from that of a gatekeeper to a strategic enabler - one that actively guides, incentivizes, and monitors defence consolidations through inter-ministerial coordination and long-term vision.

In conclusion, defence-related M&A in India stands at a critical crossroads. When supported by coherent legal frameworks, strategic foresight, and institutional reform, these transactions can become a cornerstone of India's journey towards self-reliance, strategic autonomy, and global defence leadership. As regional threats continue to evolve, so too must India's legal and industrial responses - ensuring that corporate consolidation translates into national resilience.