TYPES OF DEMERGER IN INDIA: A COMPARATIVE ANALYSIS WITH US AND UK MODELS

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ABSTRACT

In India, demergers have emerged as a key corporate restructuring technique that helps companies increase productivity, maximize shareholder value, and adhere to changing legal requirements. Demergers give organizations the strategic freedom to reorganize operations, separate non-core businesses, and optimize resource allocation in a dynamic economic environment characterized by globalization, digital change, and growing investor engagement. The several forms of demergers that are permitted by Indian corporate law—such as spin-offs, split-ups, split-offs, slump sales, divestment/divesture equity carve-outs—are explored in this research. With a focus on the regulatory procedures, tax structures in each jurisdiction, it provides a comparative legal and structural analysis of the models implemented in the US and the UK.

The research also explores important legal provisions, significant court rulings, tax ramifications, and the wider effects of demergers on creditors, shareholders, and corporate governance. It also highlights recent trends including cross-border structuring, ESG-driven demergers, and the growing influence of technology in business decision-making. Through case studies and comparative observations, the research highlights inadequacies in the Indian framework and offers reforms to bring domestic practices in line with global best practices.

Keywords: Demergers, Corporate Restructuring, India, US, UK, Tax Implications, Shareholders, Corporate Governance.

1. INTRODUCTION

Demergers are a type of corporate reorganization where a business transfers one or more of its operations to a different organization, frequently leading to the establishment of a distinct legal entity. They accomplish a number of strategic and financial objectives, including separating high-growth or high-risk business segments, cutting operational inefficiencies, releasing hidden shareholder value, and coordinating organizational structure with long-term corporate objectives. Globalization, digital change, rising shareholder activism, and the demand for specialized business models have all contributed to a recent upsurge in demerger activity in the corporate world. Giants in the Indian corporate sector, such as Reliance, ITC, and Vedanta, have adopted demergers as a way to simplify intricate business arrangements and establish industry-specific companies with separate governance frameworks. The primary legal and regulatory framework for demergers in India is comprised of the SEBI (LODR) Regulations, the Companies Act of 2013, and the Income Tax Act of 1961Regulatory organizations, like the Reserve Bank of India (RBI) and the National Company Law Tribunal (NCLT), may provide oversight in specific cases. While the statutory provisions provide a strong mechanism, the process is often time-consuming and riddled with compliance issues.

This research contrasts the several types of demergers that are prevalent in India, such as spin-offs, split-ups, slump sales, and equity carve-outs, with the strategies employed in the US and the UK. Each jurisdiction's corporate governance requirements, tax structures, regulatory strategies, and procedural efficiency are assessed in the research. The impact of such corporate restructuring on creditors, shareholders, and the market as a whole are also examined, along with current trends and notable cases. By comparing these frameworks, this research identifies best practices and makes recommendations for improving India's demerger process in accordance with international norms. Assessing if India's present strategy successfully strikes a balance between the interests of the business, its stakeholders, and the larger economic ecosystem while maintaining global competitiveness is the ultimate objective.

1.1 WHAT IS DEMERGER?

A demerger involves transferring a company's business operations to another company. The term "originating company" or "demerged company" refers to the business whose operations are being transferred. The other business is often referred to as the "resulting company."

According to the Income Tax Act of 1961's Section 2(19AA), a demerged company may assign one or more of its undertakings to a subsequent business in a manner that:[1]

- The demerger has resulted in the transfer of all the undertaking's property from the now-defunct firm to the new one.
- The liabilities that the demerged entity conveyed prior to the demerger must be paid by the new business.
- The assets and liabilities recorded in the demerged company's books of accounts before the demerger are transferred.
- In a demerger, unless the resulting company is also a stakeholder of the demerged company, the new business distributes its shares proportionately to the shareholders of the demerged company.
- Shareholders holding at least three-fourths of the value of the demerged company's shares (apart from shares held before the demerger or by a nominee for the resulting company or its subsidiary) become shareholders if the resulting company purchases the demerged company's assets, property, or undertakings.
- On a going concern basis, the undertaking is being transferred.

1.2 DEMERGER OBJECTIVES

1. **Operational Efficiency Goals of Demergers:** Allows each company unit to concentrate on its primary functions.
2. **Value Creation:** Reveals latent value, particularly when a diverse company is undervalued by the market.
3. **Regulatory Compliance:** Separation of functions may be required by regulatory regulations in industries such as banking, energy, or telecommunications.
4. **Attracting Investment:** Strategic or financial investors are more likely to make more

[1] Income Tax Act, 1961

focused investments in distinct businesses.

5. **Encouraging Partnerships or Sales:** It is simpler to establish joint ventures or sell off demerged businesses on your own.

2. TYPES OF DEMERGER IN INDIA

1. **Spin-off:** When a conglomerate company's division or business line becomes its own independent legal entity. In a spin-off, the parent firm no longer owns any shares in the new company and its shareholders are offered direct ownership in the subsidiary. This demerger is generally implemented to allow the subsidiary to make its own decisions and develop its own plan for a particular product. The business associated with that product is taken over by the subsidiary.

2. **Split up:** When a conglomerate decides to divide its operations into several businesses, it may create a single holding company and a few subsidiaries from a single parent company. The holding firm does not have any physical operations and simply possesses financial assets. All of its subsidiaries' shares are the sole assets it possesses. Different subsidies may have different shareholding structures.

3. **Split off:** When a business vertical of the main company is sold to another company, the firm is merely making a business transfer. Prior to being sold to the other company, the vertical is first divided into a separate business.

4. **Equity Carve out:** when a company may offer to sell a strategic investor or a third party a portion of its equity ownership in a subsidiary firm.

5. **Divestment/Divesture:** Divestment is the process of selling a firm's investments, divisions, or subsidiary assets to raise the value of the parent company. As the opposite of an investment, divestiture, or divestment, tends to be when a subsidiary asset or division doesn't live up to expectations.

6. **Slump Sale:** Slump sales involve transferring a firm or division to another corporation as a continuing concern for a lump sum amount. A going concern premise essentially indicates that a company will continue to operate in the foreseeable future.

3. LEGAL AND REGULATORY FRAMEWORK IN INDIA

The legal and regulatory framework for demergers in India is principally defined by three key statutes: The Income Tax Act of 1961, the Companies Act of 2013, and the SEBI (Listing Obligations and Disclosure Requirements) Regulations of 2015 (also known as the SEBI-LODR Regulations).[2] These frameworks cooperate to guarantee that corporate demergers are carried out in a transparent, tax-efficient, and lawful way. Demergers are considered as a type of corporate arrangement under the Companies Act of 2013, and are governed by Sections 230 to 232, which outline the process for compromise, arrangement, and amalgamation. These rules require companies to submit a scheme of arrangement to the National Company Law Tribunal (NCLT), which serves as the adjudicative authority. The NCLT guarantees that the plan is equitable for all parties involved, including shareholders, employees, and creditors. Approval from shareholders and creditors is typically required through meetings convened under the supervision of the Tribunal.[3] The process also requires notices to be sent to regulatory authorities such as the Income Tax Department, the Registrar of Companies (RoC), and the Competition Commission of India (CCI), as applicable.

The Income Tax Act of 1961 plays an important role in taxation, specifically Section 2(19AA), which defines a "demerger" for the purpose of tax neutrality. To qualify for capital gains tax advantages under Sections 47 and 72A, a demerger must meet certain conditions, such includes the transfer of an undertaking as a going concern and the continuity of shareholding ratio. If these conditions are met, neither the demerged firm nor the new company are required to pay capital gains tax on asset transfers. This tax neutrality is a key incentive for companies to opt for statutory demergers instead of simple asset transfers or business sales.[4]

Compliance with the SEBI (LODR) Regulations, 2015 is mandatory for listed companies.[5] In order to safeguard investors and maintain market openness, these regulations place strict disclosure obligations on businesses that are restructuring. In addition to providing comprehensive disclosures through explanatory statements, valuation studies, and fairness judgments from registered valuers or merchant bankers, companies are required to notify stock

[2] Income Tax Act, 1961; Companies Act, 2013; SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
[3]Companies Act, 2013, §§ 230(6).
[4] Ernst & Young, Mergers, Acquisitions and Corporate Restructuring 153–56 (2022).
[5] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, (India).

exchanges about the proposed demerger. SEBI also scrutinizes the scheme to ensure that it does not adversely affect minority shareholders or manipulate the share price. If the demerger leads to the new company's shares being listed, the ICDR (Issue of Capital and Disclosure Requirements) Regulations set by SEBI may be applicable.

The Indian legal framework for demergers is comprehensive but procedural in nature, necessitating meticulous planning and implementation. The lengthy approval procedure and numerous regulatory checkpoints frequently cause implementation delays, although it ensures that the needs of all stakeholders are protected. But the framework continues to evolve through judicial precedents and regulatory reforms aimed at balancing efficiency with oversight.

4. COMPARITIVE ANALYSIS; INDIA VS. US VS. UK

4.1 Demerger Mechanisms in the India

In India, demergers are principally governed by Sections 230–232 of the firms Act, 2013, which require firms to file a scheme of arrangement and receive clearance from the NCLT, the National Company Law Tribunal.[6] To ensure transparency and fairness for shareholders, the Securities and Exchange Board of India (SEBI) mandates that listed companies adhere to further obligations outlined in the LODR Regulations. The Income Tax Act of 1961, Section 2(19AA), defines a tax-neutral demerger as one that allows for capital gains exemption if certain conditions are met, such as continuity of shareholding and the transfer of liabilities and assets on a premise of going concern.[7] The involvement of numerous regulatory agencies, as well as the requirement for tribunal approval, make the Indian method appear lengthy and procedurally hard, despite its structure and robustness.

The demerger of Reliance Industries Limited (RIL) financial services division to Jio Financial Services Ltd. (JFSL) in 2023 is one of the most well-known demerger cases in India. The move aims to establish a concentrated company capable of handling the group's rapidly expanding digital finance sector on its own. The Scheme of Arrangement was submitted in accordance with sections 23-232 of the Companies Act of 2013 and was sanctioned by the NCLT. In order to maintain proportionate shareholding continuity and satisfy tax neutrality requirements under subsection 2(19AA) of the Income Tax Act of 1961, RIL shareholders were granted shares in

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[6] Companies Act, 2013, §§ 230–232 (India).
[7] Income Tax Act, 1961, § 2(19AA) (India).

JFSL in a 1:1 ratio. This case highlights both procedural completeness and tax compliance, demonstrating the official, court-supervised structure of Indian demergers.

4.2 Demerger Mechanisms in the US

Corporate demergers in the US are handled in a more decentralized and flexible manner. Most demergers (also known as spin-offs, split-offs, or split-ups) do not need judicial approval unless they are related to bankruptcy or entail antitrust concerns. The Securities and Exchange Commission (SEC) oversees regulatory compliance related to disclosure and safeguards for investors through its regulatory authority[8], while the Internal Revenue Code (IRC), particularly Section 355, governs tax treatment and permits tax-free spin-offs under certain conditions. These include a legitimate commercial objective, control requirements, and the lack of a strategy to sell the resulting entity. Corporations benefit from increased operational efficiency and strategic autonomy under the US system, but corporate governance and shareholder communication bear a major burden.

In 2015, eBay Inc. spun out PayPal Holdings, Inc., marking a historic demerger in the United States. Strategic factors led to the move, which freed PayPal from being bound by eBay's slower-growing e-commerce operation and allowed it to function autonomously in the expanding digital payments industry. The transaction qualified as a tax-free spin-off under Section 355 of the Internal Revenue Code, since all legal prerequisites were met, including continuity of interest, active trade/business requirements, and a valid commercial purpose. The procedure was run through board approvals, SEC filings, and shareholder communications; crucially, no court approval was required. This case reflects the flexibility and tax efficiency of the US approach to corporate demergers.

4.3 Demerger Mechanisms in the UK

Demergers in the United Kingdom are primarily governed by the Companies Act of 2006, which is overseen by Companies House and Her Majesty's Revenue and Customs.[9] Companies in the United Kingdom can conduct demergers in a variety of ways, including statutory demergers, capital reduction demergers, and liquidations. The tax treatment is generally tax-

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[8] Securities Exchange Act of 1934, 15 U.S.C. Section 78a–78q.
[9] Companies Act 2006, c. 46 (UK); see also Companies House, https://www.gov.uk/government/organisations/companies-house.

neutral, provided the transaction complies with the rules set out in the Corporation Tax Act and receives pre-transaction clearance from HMRC. While judicial approval is not generally required, certain types of demergers, such as those involving a reduction in share capital, do require court approval.[10] The UK framework is relatively flexible but places a strong emphasis on advance tax clearance and compliance with European competition and anti-avoidance rules.

In 2022, GlaxoSmithKline (GSK) executed a significant demerger in the UK by splitting its consumer healthcare division into a new company named Haleon. The transaction was approved by shareholders and obtained pre-clearance from HMRC to guarantee advantageous tax treatment. It was in accordance with the Companies Act 2006 and sought tax neutrality under the Corporation Tax Act. The aim of the demerger was to provide Haleon a unique brand in consumer health products while enabling GSK to concentrate solely on biopharmaceutical innovation. GSK shareholders acquired Haleon shares proportionate to their GSK holdings, and Haleon's shares were listed separately on the London Stock Exchange. This case illustrates how UK companies leverage demergers to pursue focused business strategies, often with minimal judicial intervention but strong emphasis on tax and regulatory compliance.

5. TAX IMPLICATIONS AND SHAREHOLDER IMPACT

5.1 Tax Considerations in India

In India, demergers' tax treatment is primarily governed by Section 2(19AA) of the Income Tax Act, 1961.[11] This section defines a tax-neutral demerger, which, under certain circumstances, permits exemptions from capital gains tax. These consist of the continuing concern transfer of all an undertaking's assets and liabilities, proportionate allocation of shares to the owners of the demerged corporation (except from cash payments), and the continuation of ownership in the new business. Section 47(vib) exempts the demerged business and its shareholders from capital gains tax if certain conditions are satisfied.[12] Additional benefits include the new company's ability to carry forward cumulative losses and unabsorbed depreciation under Section 72A, subject to Central Board of Direct Taxes approval. This tax neutrality protects shareholders' investment value and minimizes financial disturbance by guaranteeing that their

[10] Companies Act 2006, §§ 641–653 (UK) (relating to reduction of share capital and court procedures).
[11] Income Tax Act, 1961, § 2(19AA) (India).
[12] Income Tax Act, 1961, § 47(vib) (India).

acquisition of shares in the new firm is not regarded as a taxable event.

5.2 Tax Considerations in the US

In the United States, Section 355 of the Internal Revenue Code (IRC) exempts corporate spin-offs, split-offs, and split-ups from taxes, if certain strict conditions are followed.[13] The presence of a legitimate business objective, active trade or business test (each company must have been in operation for at least five years), control restrictions (each business must allocate a minimum of 80% of its assets and voting power), as well as a prohibition on instruments that make it easier to sell the resulting company are some of these requirements.[14] The distribution of shares to current shareholders is free from income tax and The parent company is exempt from paying capital gains tax on the transfer if these requirements are met. Though the distributing firm and its stockholders may be subject to large tax obligations as a result of incorrect structure or noncompliance with technical specifications. In order to guarantee compliance and prevent post-transaction challenges, US corporations that are undergoing such demergers frequently ask the Internal Revenue Service (IRS) for early decisions.[15]

5.3 Tax Considerations in the UK

In the UK, the Corporation Tax Act of 2010, the Companies Act of 2006, and different HMRC regulations all have an impact on the tax ramifications of mergers.[16] Tax-neutral treatment, in which the firm and its shareholders do not immediately pay taxes, may be available for a properly planned demerger. Pre-transaction approval by Her Majesty's Revenue and Customs (HMRC), which determines whether the proposed demerger is legitimate and not intended to dodge taxes, is usually required to achieve tax neutrality. Stamp Duty and Stamp Duty Reserve Tax (SDRT) are levied by the UK tax system on share transfers, nevertheless, unless certain exemptions are sought. If the demerger involves a share cancellation or reissuance that is not exempt, shareholders may face capital gains taxes. The UK also offers a capital reduction demerger option, which is frequently used to distribute company assets to shareholders without incurring tax obligations as long as all legal requirements are met.[17]

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[13] I.R.C. § 355(a) (2023).
[14] I.R.C. §§ 355(b), 368(c).
[15] IRS Private Letter Rulings under § 355.
[16] Corporation Tax Act 2010, c. 4 (UK); Companies Act 2006, c. 46 (UK).
[17] Companies Act 2006, §§ 641–653 (UK).

6. ECONOMIC AND MARKET IMPACT OF DEMERGER

A company's market performance, investor mood, and overall economic contribution can all be significantly affected by acquisitions. The larger economic and financial ramifications of a demerger are frequently felt in capital markets and reflected in stock prices, shareholder returns, and sector-wide trends, even when the main goals may be internal restructuring, operational efficiency, or regulatory compliance. In recent years, both the Indian and worldwide markets have witnessed numerous demerger events that resulted in dramatic swings in share prices—either positively or negatively—depending on how investors assessed the potential of the emerging firms. In India, Tata Motors' demerger of its passenger vehicle (PV) division from its commercial vehicle (CV) and electric vehicle (EV) sectors in 2024 provides an instructive example. The strategy goal was to improve operational transparency, draw in targeted investments, and let each division concentrate on its core strengths. Investor interest in Tata Motors' shares initially spiked after the news, fueled by the market's optimism on the independent PV and EV businesses' future prospects, particularly in light of the growing demand for electric mobility. Separating the PV business, according to analysts, allowed for improved resource allocation and investor targeting, especially for investors who are interested in innovation and ESG. The post-demerger period witnessed improved market valuation and more institutional engagement, despite some turbulence before the final approval. This reflects how well-structured demergers can result in long-term shareholder value creation.

The 2015 demerger of eBay and PayPal is regarded as a classic case study in value unlocking on a global scale. With PayPal concentrating on digital payments and eBay on e-commerce, the two titans were divided because it was recognized that each would do better with different management teams, investor bases, and strategic goals. Following the split, PayPal's market capitalization skyrocketed, eventually overtaking eBay, as investors recognized the enormous growth potential of the digital payments sector. PayPal's independence from eBay's larger corporate structure enabled it to seek alliances, technological advancements, and international growth. In contrast, eBay profited from a leaner structure, while it did not grow at the same rate as PayPal. This case demonstrates how demergers in mature industries can result in a re-rating of enterprises based on their individual merits and development prospects.

Not every demerger causes the market to respond favorably. Stock devaluation may result from the market's perception that the demerger is a reaction to internal flaws or financial difficulties.

Due to inadequate strategic execution and a lack of investor trust in its ability to operate independently, Debenhams' market performance declined in the UK when it demerged from its parent company in the early 2000s. These incidents highlight the significance of investor communication, leadership, and post-demerger strategy.

Short-term market volatility but long-term shareholder value appreciation can result from demergers, according to empirical research in the financial literature. This is particularly true when the newly created companies have superior governance, access to finance, and clearer corporate objectives. Potential synergies, operational enhancements, and greater managerial accountability are frequently factored in by market participants, and these factors add up to an increase in worth.

7. CROSS BORDER DEMERGER AND INTERNATIONAL PERSPECTIVE

Cross-border demergers are among the most difficult forms of company restructuring, including the transfer or separation of business entities operating in various countries. Unlike domestic demergers, which are controlled by a single legal and tax jurisdiction, cross-border demergers must navigate a maze of international laws, bilateral tax treaties, regulatory compliance requirements, and frequently contradictory legal frameworks. These complexities can provide considerable hurdles, but they also offer unique potential for global corporate transformation, market penetration, and investor diversification. Legal harmonization is one of the main obstacles in cross-border demergers. Countries' approaches to demergers vary greatly in terms of corporate law, shareholder rights, regulatory clearances, and disclosure standards. The Indian Companies Act, 2013 requires NCLT clearance for any arrangement or demerger, for instance, although other jurisdictions, such as the US, may not need court approval but need strict adherence to SEC disclosure standards and Internal Revenue Code tax neutrality. Comparably, in the UK and the EU, businesses must abide by both national corporate laws and EU rules on cross-border mergers and divisions, particularly when businesses are formed in different member states. The absence of homogeneity frequently demands twin filings, various legal opinions, and governance structure alignment before a demerger can take place. Taxation adds an additional element of difficulty. The consideration of capital gains tax, withholding tax duties, transfer pricing implications, and double taxation avoidance agreements (DTAAs) is necessary for multinational corporations (MNCs) engaging in cross-border demergers. Many countries only permit tax-neutral treatment with specific restrictions or prior revenue authority clearance. For instance, in India, international entities may not automatically be granted tax neutrality under Sections 2(19AA) and 47 of Unless the transaction is covered by the Income Tax Act by an applicable DTAA and is set up to circumvent anti-abuse regulations like the General Anti-Avoidance Regulations (GAAR). To avoid taxing the same transaction more than once, coordination between tax advisors in several jurisdictions is essential.

The Vodafone Idea demerger and its indirect effects on the parent firm, Vodafone Plc, domiciled in the United Kingdom, are notable instances. Vodafone's Indian operations underwent several restructurings, including the merger of Vodafone India with Idea Cellular and subsequent asset separations. Both Indian and British regulators closely examined the demerger of tower infrastructure and other verticals. Vodafone Plc had to maintain regulatory compliance in India while carefully managing investor expectations in the UK, especially in the face of ongoing tax challenges and concerns with retroactive taxes. Cross-border restructuring carries financial and reputational concerns, which this case highlighted, especially in situations where the host country's tax regulations are ambiguous or evolving.

Cross-border demergers can unlock substantial wealth despite the difficulties. In accordance with the strategic requirements of each market, they enable businesses to customize investor interactions, optimize operations, and concentrate on localized strengths. Foreign direct investment (FDI), technical spillovers, and sectoral competitiveness benefit emerging economies. For developed economies, they allow for the reallocation of resources to high-growth regions while also aligning with global ESG, innovation, and regulatory standards.

8. CONCLUSION

A key instrument for corporate restructuring in international business contexts, merger activity offers strategic avenues for increasing operational effectiveness, generating shareholder value, and adjusting to shifting market conditions. A comparative study of the US, UK, and India reveals the advantages and disadvantages of various regulatory systems. India's judicially-supervised demerger process, controlled by Sections 230–232 of the 2013 Companies Act, provides a structured and legally sound methodology, however it is frequently criticized for being time-consuming and procedurally complex. Companies can execute demergers more quickly and responsively to the market in the US and the UK, which offer comparatively more flexible options, especially with regard to regulatory approvals and tax neutrality.

To enhance the effectiveness of India's demerger regime, several key recommendations emerge. The Income Tax Act might encourage more businesses to consider restructuring by streamlining tax laws and facilitating tax-neutral demergers through more transparent conditions. Reducing the stringent proportional shareholding requirements and advance CBDT clearances could expedite the process and discourage advantageous deals. It is imperative—especially in an era of global company integration—to establish thorough and consistent criteria for cross-border demergers. India currently lacks a comprehensive framework for resolving cross-border legal disputes, international taxes, and regulatory harmonization. Reducing legal uncertainty and attracting foreign investment can be achieved by integrating treaty-based dispute resolution procedures and aligning such regulations with international standards. SEBI (LODR) Regulations' improved disclosure norms and minority shareholder safeguards should be reinforced even more to encourage justice and openness, particularly in publicly traded companies. Companies should be compelled to disclose thorough disclosures about post-demerger business models, shareholding arrangements, risk assessments, and governance rules, in addition to the demerger plan itself. Investor confidence will increase as a result, particularly among institutional and retail investors who might otherwise be wary of company reorganization.

In the development of contemporary corporations, demergers have a revolutionary impact. A demerger's effectiveness depends on the underlying legal, tax, and governance framework, regardless of whether it is motivated by company strategy, regulatory challenges, or market opportunities. A well-rounded, hybrid system can be created by incorporating the judicial protections found in Indian law with the effective, market-driven models of the US and the UK. Along with protecting shareholder interests and promoting economic progress, such a model would facilitate smooth business restructuring. With progressive reform, India has the potential to emerge as a global hub for efficient and investor-friendly corporate reorganization.

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