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CRITICAL ANALYSIS ON LAWS GOVERNING CROSS- BORDER M & A IN INDIA

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ABSTRACT

The globalization has been driven by cross border mergers and acquisitions (M&A), which are now considered as a way of expanding business, marketing and acquiring new technology to access new markets. India's legal framework in respect of cross border M&A has been thoroughly reformed to bring it in line with global standards to lure in foreign investment. It has a multiplicity of regulators that include the Companies Act, 2013; the Foreign Exchange Management Act (FEMA), 1999; the Competition Act, 2002; sector specific laws. Section 234 of the Companies Act and the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, among others, give an institutionalized treatment to inbound and outbound mergers. Also, various regulatory authorities such as Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), and Competition Commission of India (CCI) may intervene to enforce matters related to corporate governance, foreign exchange norms, and so on. Inevitably, these regulations have helped spur a wave of M&A activity across borders but with a lot of regulatory complexity as well as jurisdictional conflicts. It analyzes the legal framework for cross border M&A in India including the implications for businesses and possible reform.

Keywords: Cross-Border Mergers and Acquisitions, Companies Act 2013, FEMA, Competition Act 2002, RBI, SEBI, Antitrust Laws, Foreign Exchange Regulations.

Introduction

Over the past series of decades, international business has gone through major changes. Mergers and acquisitions (M&A) have been one of the most pronounced trends, as these have become very important corporate growth, restructuring, and market consolidation tools. Cross border merger and acquisitions (M&A) has increasingly, for example, become a driving force in the global economy as companies adopt to expand internationally, gain access to new markets, gain access to innovative technologies and made to have a competitive position. It's the story of how cross border mergers and acquisitions (M&A) in India have gone through a transformation when it comes to regulatory changes, economic liberalization and strategic business expansion. This journey

is India's move from a controlled, protected market for foreign investment to one that's more open and more readily permitting foreign investment.

Regulatory Framework Evolution (2010s)

Cross border mergers under the corporate law framework of India were introduced by the Companies Act, 2013¹⁰⁶⁸. Separate provision under Section 234¹⁰⁶⁹ of the Act was made for cross border mergers of Indian and foreign companies on compliance with the respective regulatory approvals. This provision was major in India's regulatory framework which allowed merging of Indian companies with foreign companies and vice versa. As with mergers of

¹⁰⁶⁸ Companies Act, 2013

¹⁰⁶⁹ Companies Act 2013, s 234

Indian companies with foreign companies, the Foreign Exchange Management (Cross Border Merger) Regulations, 2018¹⁰⁷⁰, introduced another process for inbound and outbound mergers. The regulations made clear the conditions and approvals needed for these types of transactions, and with them, the Indian foreign exchange policies were not being violated by such cross border mergers. According to the regulations any merger, amalgamation or arrangement between an Indian company with a foreign company was defined as cross border merger as per the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.¹⁰⁷¹



¹⁰⁷⁰ Foreign Exchange Management Regulations, 2018

¹⁰⁷¹ Dr. Jamshed J Irani Report (2015) *Report on Company Law*. rep. Available at: <http://www.primedirectors.com/pdf/IJ%20Irani%20Report-MCA.pdf> (last visited March 14th, 2025).

Literature Review

Sr. No.	Nature of Literature	Name of Literature	Covered/Review	Research Gap	Intended Research
1	Journal Article	"Cross Border Mergers: The Indian Perspective" by Soundarya Lahari Vedula	The paper examines the function of mergers and acquisition in the extent of a company's expansion in India. It explains why these mergers are advantageous, like attaining economies of scale and new markets entering. Moreover, the publication discusses the body that regulates these transactions, particularly the Companies Act of 2013 with its amendments on 13th of April 2017 of Section 234 of the act, as made to provide for inbound and outbound cross border mergers. This update addresses the earlier limitations of outbound mergers, and at the same time it factors in the most relevant items such as securities law, tax neutrality, competition law, and foreign exchange rules. The study also covers the existing situation of	Further research is needed to simplify this procedure in order to permit cross border transactions. The application of competition rules in a cross border setting appears not only to be technically questionable, but on the contrary to experience difficulties on the fact of territoriality and jurisdiction. The importance of this study is to draw attention to the differences between the Indian and UK legislation particularly the lack of proper legal framework for cross border mergers in India as opposed to more well developed UK practices. Therefore it indicates the lack of comparative legal analysis. It asserts that the cross-border mergers have	Then, this paper intends to examine the laws of such international mergers like the Companies (Cross-Border Mergers) Regulations. It looks at how previous constraints, such as in Section 234 of the 2013 Act, in which the Reserve Bank of India (RBI) had to give its prior clearance to a merger across borders impact the merger process. In this regard may be advocating changing the present frameworks to enable the merger process to be more efficient (by rationalising and simplifying procedures). Among others, may advocate eliminating the need for RBI permission for some mergers.

			international mergers in India, and those recent legal developments.	been put to pains by Reserve Bank of India (RBI's) requirement that it must nod to them. How these affect the viability of such mergers in comparison to jurisdictions where there are no such constraints must be researched.	
2	Journal Article	Insights of cross-border mergers and acquisition in India Dr. Subhash Kumar, Volume 9, Issue 4, 2023, Page No. 29-33	The paper discusses the trend of India's cross border mergers and acquisitions (M&A). Indian organisations are also keen by now to foster alliances with big businesses as well as startups to carry out global consolidation through innovations and operational effectiveness. In the paper, besides the many types of M&A and the legislative structure surrounding them, the paper talks about the difficulties the companies experience, while doing business internationally. These factors are important for those companies that want to grow	The Research Gap of this paper is that cultural alignment or misalignment are rarely explored in how two merging entities will be interrelated. It is also possible to gain deeper insights into how cultural influences impact the performance and integration can be obtained. Considering that the requirements for managing several legal frameworks in cross border transactions are always changing, it would be of interest to consider this a little bit more thoroughly.	The focus of the paper will investigate these different legal structures which govern international M&A in India, for instance: SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2018; Companies Act 2013; FEMA. The Competition Act of 2002 The 2016 Insolvency and Bankruptcy Code The 1961 Income Tax Act Based on the new developments and introduction of new legislation, the paper makes assumptions on the future of cross

			<p>globally to understand.</p> <p>This study therefore contributes to the body of knowledge of international business strategies in the context of Indian companies negotiating international merger and acquisitions. It stresses the importance of understanding what is possible and difficult about cross border transactions.</p> <p>The book goes on to classifying many types of mergers and acquisitions, from conglomerate, to verticals, and horizontal mergers, and each one with their own tactics and ramification. The paper puts forward a number of handicaps to cross-border M&A such as differences in cultures, legal impediments, and post acquisition integration problems</p>	<p>Although they are important, literature available on the effects of mergers on organizational culture, employee morale and retention during integration terms, is often lacking. Study of post merger operations integration solutions is needed especially when existing enterprises from different economic setting are integrated.</p>	<p>border M&A in India.</p> <p>The paper predicts on the future of India's cross border M&A in the face of new developments and possible legislative developments.</p> <p>It also makes recommendations for firms that would like to embark in cross-border M&A, emphasizing the need for careful diligence and strategic thinking.</p>
3	Journal Article	"Regulatory and Legal Challenges in Cross-Border M&A," authored by Pranay	The paper goes on to discuss in great detail the complex regulatory environment of international mergers and	In particular, the research gap of this paper is that It appears that the author did not study the relationship	The focus of this paper will be cross-border M&A activity in its connection with commercial link, economic

		<p>Singha</p>	<p>acquisitions (M&A). Given that globalization and M&A activity is on the rise, it brings forward how businesses should manage a wide variety of legal frameworks and compliance requirements whilst growing their business globally.</p> <p>Given the importance for obtaining financial gain in M&A transactions, the paper explores tax structure optimization repeated across international tax treaties and jurisdictions varying tax treatment, which are both essential for tax considerations in M&A transactions. The thesis highlights the significance of competition rules in order to stop monopolistic practices. Over regulation of such M&A deals in order to make sure they don't hurt market competitiveness is critical.</p> <p>This research argues that a multidisciplinary</p>	<p>between politics of international mergers and acquisitions, for example political environments, such as changing governments, discontinuous national policies, or geopolitical conflicts. These issues may have significant impact on the corporate strategy as well as on the regulatory environment. There is very little discussion of the impact of technology developments, and even less so when it comes to digital mergers and tech corporations. For additional research, that is a topic that would be of interest as to what happens when technology changes quickly and how that impacts on the frameworks and compliance. In the end, better M&A rates can be obtained through more</p>	<p>stability, as well as political changes. Examination of how these elements are affecting regulatory regimes may afford some insight to company's that are considering an international expansion. A more promising branch of research would be to try, say, longitudinal studies in order to find out the long term effect of regulatory compliance on M&A performance and a relationship between regulatory regimes and company outcome over time. Future research might investigate how environmental rules shape cross border M&A and whether firms coordinate their M&A with sustainability outcome by paying attention to sustainability matters.</p>
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			<p>strategy leads to the successful resolution of the regulatory and legal problems in cross border M&A, by synthesizing many case studies and scholarly insights to be a comprehensive resource for the practitioners involved in cross border M&A.</p>	<p>quantitative use of statistical studies or economic modeling to chart how regulatory obstacles affect the odds of success.</p>	
4	Journal Article	"CROSS-BORDER MERGERS AND ACQUISITIONS IN INDIA" by Sayantan Gupta	<p>India's ever changing merger and acquisition (M&A) market, including cross border deals, are described in the paper. It highlights the sharp rise in these transactions over the past ten years as a result of the thriving Indian software sector and the growing desire of Indian businesses to spread their wings on a global scale. This trend can be shown by such acquisitions as Tata Steel's purchase of Corus and Vodafone's ownership of Hutchison Essar. This consists of a summary of the suggested reforms</p>	<p>The lack of thorough studies on how the cultural differences of Indian versus international businesses affect merger effectiveness is called Research gap. According to M&A studies, cultural compatibility often has a significant role to play on whether a transaction goes well cross border. However, knowing how cultural integration procedures affect success of these mergers and acquisitions can be profitable.</p>	<p>The paper was supposed to research the effects of cultural differences and cultural synergies between merging firms on the organizational performance and the merger results through empirical research.</p> <p>So, we will try to watch the performance of Indian businesses that have participated in cross-border M&A after the acquisition by following the market share of their operational and financial indicators. So examine specific industries (IT vs</p>

			<p>that the Irani Report proposed, examination of the role of overseas direct investment in cross border activities, procedural aspects relative to the relevant laws, and introduction to the M&A landscape in India.</p> <p>It also discusses acquisition methods and concludes with a discussion of transactional concerns pertaining to these transactions.</p> <p>Participation of Indian companies in the mergers and acquisitions is due to the need to improve growth, expand market share or acquire new capabilities. These transactions are governed by several laws: a number of laws, such as Companies Act; competition laws and foreign exchange laws.</p>	<p>The actual phases of execution don't form part of the author's description – simply how to resolve the types of problems that can crop up after mergers and integrations.</p>	<p>manufacturing...) and whether they have some kinds of specific difficulty or trend in cross-border M&A activity, to then develop more specialized approaches. Assure that readers receive thorough case studies about 'good' and 'bad' cross border mergers so that they learn the key elements that went right or wrong in each of these. Analyze the effects of varying regulatory environments in India and the target nations on decisions regarding merger and acquisition and on the strategic results of merger and acquisitions.</p>
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Rationale of the Study

This study is purposed to furnish a systematic study on the legal framework constituting cross border mergers and acquisitions in India. It is important for such companies to understand, these regulations and to comply with the legal

requirement for successful transactions. The purpose is to evaluate India's regulatory environment which supports or inhibits conducting cross border M&As in the hope to bring underlining areas to undertake for any

improvement in the status of developing itself as the destination for foreign investment.

Research Objectives

1. It is aimed at the regulatory framework governing cross border M&As in India with specific focus on key laws and regulations.
2. The recommendations provided will steer the regulatory framework to facilitate streamlining of cross border M&A for the future.

Scope of the Study

In this study, the legal aspects regarding cross border M&As in India both the statutes and the regulations would be discussed along with the judicial interpretation. The paper will also discuss the role of regulatory bodies like Reserve Bank of India (RBI) and Securities and Exchange Board of India (SEBI). A study will be carried out to provide insights on practical implications of these regulations from the study of case studies and recent trends.

Research Question

1. How does the regulatory framework governing cross border mergers and acquisition in India interplay with each other and what are the key components of the regulatory framework governing cross border mergers and acquisitions in India?
2. In light of that, what are the major compliance challenges confronted by companies that are engaging in cross border M&As in India and specifically approvals from regulatory authorities like RBI, SEBI and CCI?

Methodology

A qualitative research will be conducted with the help of existing legal frameworks, case laws and regulatory guidelines. To do so, it will use scholarly articles and industry reports to bring an understanding of the subject. The literature review will be carried out, regulatory documents will be examined, and case studies in cross

border M&A will be reviewed, in order to identify patterns and challenges in this area.

Laws Governing Cross-Border M&A in India

1. Regulatory Framework for Cross-Border M&A

India maintains an intricate regulatory structure for international mergers and acquisitions (M&As) which demands compliance with various laws from different institutional entities. The Companies Act, 2013 contains Section 234¹⁰⁷² which serves as legal basis for cross-border mergers by specifying procedures regarding deals involving Indian firms and their foreign counterparts. Through its Foreign Exchange Management Act (FEMA)¹⁰⁷³ the government of India establishes regulatory standards to control financial transactions between different countries particularly in inbound and outbound merger situations. The Reserve Bank of India (RBI) needs mandatory approval to validate foreign exchange policy compliance for transactions. In order for listed companies to merge the Securities and Exchange Board of India (SEBI) demands complete disclosure and approval measures to ensure transparency and fairness. Before large transactions take place the Competition Commission of India (CCI) requires clearance because it ensures mergers will not cause anti-competitive behaviors. Regulatory changes during recent times intend to simplify and facilitate cross-border M&As with amendments to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 in addition to changes to the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016. The process improvements create better conditions for foreign investments to choose India as their destination.¹⁰⁷⁴

1.1. Role of Reserve Bank of India (RBI)

The Reserve Bank of India exercises primary authority to regulate all aspects of cross-border

¹⁰⁷² *Ibid*

¹⁰⁷³ *Ibid*

¹⁰⁷⁴ Cross-Border M&A in India: 2024 Market Developments and Regulatory Changes Available at: <https://www.india-briefing.com/news/cross-border-ma-in-india-2024-market-and-regulatory-updates-34873.html/> (last visited March 20th, 2025).

mergers and acquisitions (M&As) within the Indian context. The regulatory framework of the Reserve Bank of India revolves around the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 that oversee both inbound and outbound mergers. Indian cross-border transactions must meet both foreign exchange policies and macroeconomic targets according to regulatory requirements. Whenever cross-border mergers follow authorized regulatory requirements the RBI provides automatic approval eliminating the requirement for individual separate approvals. Through financial monitoring the RBI ensures that foreign M&As meet India's economic policy requirements. The institution takes responsibility for determining the value of merging businesses according to Rule 25A of the Companies (Compromises, Arrangement or Amalgamation) Rules, 2016¹⁰⁷⁵. Affiliated entities must rely on RBI for approval of materials as well as share transmissions which must align with FEMA directives. The guidelines of these regulations mandate approval from RBI for any merger that does not follow their standards. After the merger the RBI checks that loan obligations by the foreign firm which turn into Indian company liabilities match External Commercial Borrowing Regulations for a specified period. Through its regulatory oversight the RBI creates transparent cross-border M&A transactions that protect economic interests of the nation and ensure operational compliance.¹⁰⁷⁶

1.1 Overseas Direct Investment (ODI) Policy

The Reserve Bank of India (RBI)¹⁰⁷⁷ has enacted the Overseas Direct Investment (ODI)¹⁰⁷⁸ policy to give a regulatory structure to Indian entities to invest in foreign ventures including joint ventures and wholly owned subsidiaries. Under this policy, there are only two ways in which

such investments under this policy might be made: the Automatic Route and the Approval Route. Indian companies are permitted to invest up to 400 percent of their net worth without prior approval of RBI under the Automatic Route; this offers ease to the established businesses, say in sectors like pharma or IT, for global expansion. The advantage of this route lies in the fact that this route is especially favorable for firms eager to marketing their products in the international markets with the bypassing bureaucratic delays. On the other hand, investments in sectors over this limit or in the categories in the restricted list such as real estate or banking will need approval of RBI under the Approval Route. Also, investments in countries designated as 'non-cooperative' by the Financial Action Task Force (FATF) as well as countries where Indian Government has imposed sanctions are covered by this route.

In the last year ODI has clarified several aspects of the compliance and investment structuring through recent updates to the ODI. Therefore, the RBI's updated Master Direction on Foreign Investments states that supervised persons shall always adhere to sector specific guidelines and compliance requirements on overseas investments. Furthermore, it facilitates the downstream investments by FOCCs through deferrable payment arrangement to FOCCs and through the equity instruments swap. Overall, the ODI policy aims to encourage India's exporting Indian businesses' global expansion under the regulatory standards.

1.2 Foreign Direct Investment (FDI) Regulations

The rules that govern Foreign Direct Investment (FDI) determine the entire dynamics of cross-border mergers and acquisitions (M&As) that take place in India. The primary legislation that controls FDI consists of the Foreign Exchange Management Act (FEMA) together with the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. There are three classifications for FDI sectors under the regulations based on their admission process through automatic route or sectorial caps or

¹⁰⁷⁵ Companies Rules 2016, 25A

¹⁰⁷⁶ RBI rolls out regulations for cross-border mergers Available at: <https://www.corporateprofessionals.com/media/rbi-rolls-out-regulations-for-cross-border-mergers/> (last visited March 20th, 2025).

¹⁰⁷⁷ *Ibid*

¹⁰⁷⁸ Overseas Direct Investment Policy in RBI s iv

requiring government approval. Investments through the automatic route can accept 100% FDI in single brand retail trading but previous government approval is needed for insurance sector investments beyond specified limits. The government has implemented new reforms which simplify FDI rules particularly for exchanges of shares between Indian companies and foreign entities. August 2024 amendments under the Foreign Exchange Management Act standardized the investment treatment between Overseas Citizen of India holdings and Non-Resident Indian entities. Foreign direct investments from countries with border relations to India must obtain government authorization because of security-related factors. Transactions under Foreign Exchange regulations need approval from the Reserve Bank of India unless they comply with specified criteria. M&A regulations enable businesses to perform inbound transactions by protecting economic security interests of the country.¹⁰⁷⁹

1.3 Approval Process for Cross-Border M&A

Foreign mergers and acquisitions need to satisfy multiple regulatory authorities through various approval requirements when done across national borders in India. From September 17, 2024 onwards the Reserve Bank of India (RBI) discontinued its approval process for Merger Regulations-compliant cross-border mergers because these transactions received automatic approval. Recent regulations now require all cross-border merging companies including both Indian entities and foreign businesses to get prior RBI approval when doing deals in the startup field. The merger scheme needs shareholder and creditor approval at the beginning before NCLT receives the filing application for sanction approval. The process of mergers between foreign holding companies and their Indian subsidiaries requires dual approval from RBI before they can initiate their merger. Before commencing operation the

Indian firm must receive governmental approval through Section 233 of the Companies Act 2013. The Competition Commission of India (CCI) demands clearance for extensive transactions because it helps stop anticompetitive practices. The Securities and Exchange Board of India (SEBI) upholds fairness and transparency as the institution offers oversight for listed company mergers. The multiple regulatory approvals create a system that allows businesses to meet diverse legal standards and supports international business deals.¹⁰⁸⁰

1.4 FEMA Approval

Cross-border mergers and acquisitions (M&As) within India operate under the regulations of the Foreign Exchange Management Act (FEMA). The Foreign Exchange Management (Cross Border Merger) Regulations of 2018 controls the FEMA approval process for M&As across borders which the Reserve Bank of India issued through its March 20th, 2018 announcement. The Companies (Compromises Arrangements and Amalgamation) Rules 2016 establishes the guidelines which control both international and domestic merger transactions by defining a cross-border unification as joint business combination activities between Indian and non-Indian firms. FEMA Cross Border Merger Regulations automatically approve the transactions that follow their standards so parties do not need additional RBI approval if fulfillment conditions are achieved. The company must obtain prior RBI approval when any of the established conditions are not fulfilled during the transaction process. A binding requirement exists which establishes that merger valuations of both Indian and foreign companies must follow the calculation methods mentioned in Rule 25A¹⁰⁸¹ of the Companies Merger Rules. The management and company secretary positions in involved companies need to submit a FEMA Regulations compliance certificate to NCLT when applying

¹⁰⁷⁹ India: Nuances of Cross Border M&A-Indian Regulatory Perspective <https://www.advoc.com/news/india-nuances-of-cross-border-m-and-a-indian-regulatory-perspective> (last visited March 20th, 2025).

¹⁰⁸⁰ https://www.moneycontrol.com/news/economy-2/government-mandates-rbi-approval-for-cross-border-mergers-from-sep-17-12820633.html#goog_rewarded (last visited March 20th, 2025)

¹⁰⁸¹ *Ibid*

together with the managing director/whole-time director.¹⁰⁸²

1.5 SEBI Approval

India's Securities and Exchange Board of India (SEBI) maintains essential control over all cross-border mergers and acquisitions (M&As) concerning listed companies in the nation. The regulations established by SEBI serve multiple functions which include providing transparency while safeguarding shareholder interests. Within SEBI regulation all listed Indian companies conducting cross-border M&As need to reveal complete information about both businesses alongside deal structures and potential conflicts. All foreign entities seeking to acquire shares or control in Indian listed companies need to obtain prior approval from SEBI based on the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The Takeover Code managed by SEBI presents requirements for disclosure management alongside requirements for open share purchases and the safeguarding of minority shareholder interests. Companies under Indian stock exchange control must reveal their full ownership when they acquire more than 5% of these companies while an open purchase offer for 26% more shares becomes mandatory at 25% ownership threshold. Through its oversight SEBI assures that the agreement terms are equitably distributed among shareholders to avoid arbitrary conduct toward minority stakeholders.¹⁰⁸³

1.6 Competition Commission of India (CCI) Approval

Through its essential function the Competition Commission of India (CCI) controls transnational mergers and acquisitions in India to prevent anti-competitive behavior. The approval process of the CCI operates under the Competition Act of 2002 together with the Competition Commission of India (Procedure in regard to the transaction of business relating to

combinations) Regulations, 2011. CI must receive notification for every cross-border merger above specified financial thresholds prior to its approval. A combination of companies needs to notify the authorities if their financial performance surpasses defined thresholds which depend on the value of assets and business volume between the participating entities. The CCI obtains 210 days to evaluate the combination while assessing its possible adverse impact on competition (AAEC) in the market. The parties who participate in the transaction must maintain status quo without completing their transaction during this timeframe. The CCI possesses two options when reviewing such combinations: it either blocks the transaction entirely or requires parties to implement modifications for competing better. The merger control authority now requires mandatory notifications when international transactions meet both INR 20 billion in value threshold and significant local business operations in India by targets. Entities seeking "green channel" approval from CCI can receive full approval immediately after they submit their filing since their transactions generate minimal or no competition concerns. The operations of the CCI act to safeguard healthy competition dynamics between businesses within the Indian market framework¹⁰⁸⁴

1.7 National Company Law Tribunal (NCLT) Approval

Cross-border mergers and acquisitions (M&A) in India need approval from the National Company Law Tribunal (NCLT)¹⁰⁸⁵. A scheme of merger must be filed before the NCLT for review until the tribunal ensures protection of all interests involving minority shareholders together with creditors and employees. Gaining approval for the scheme by NCLT requires either scheduled creditor and shareholder meetings or it allows dispensing meetings when 90% of creditors support the scheme. The NCLT lacks any specific timeframe to issue its decision thereby stretching the duration of inbound

¹⁰⁸² FEMA Cross Border Merger Regulations issued by RBI <https://www.khaitanco.com/thought-leadership/FEMA-cross-border-merger-regulations-issued-by-RBI> (last visited March 20th, 2025).

¹⁰⁸³ *Ibid* 18

¹⁰⁸⁴ *Ibid* 22

¹⁰⁸⁵ National Company Law Tribunal

mergers. The Companies Act of 2013 now features Section 233¹⁰⁸⁶ which enables holding and subsidiary companies to skip NCLT approval when they get Regional Director approval to complete their merger process. The fast-track merger route under Section 233 enables straightforward mergers between holding and subsidiary companies to gain approval through the Regional Director which simplifies operations and decreases merge timelines. NCLT approval continues to serve as an important requirement because it ensures compliance with Indian corporate law along with stakeholder protection during cross-border M&As. Additional government approvals become mandatory for companies originating from neighboring countries to India because they require submission of Form No. CAA-16.¹⁰⁸⁷

2. Role of Ministry of Corporate Affairs (MCA)

As the regulatory body The Ministry of Corporate Affairs (MCA)¹⁰⁸⁸ tightly controls all cross-border mergers and acquisitions (M&A) that occur in India. Section 234 of the Companies Act 2013 received notification from MCA on April 13 2017 to enable cross-border mergers when Indian companies and foreign entities fulfill requirement approval standards. The notification introduced Rule 25A which specified the steps for conducting inbound and outbound merger operations through the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016. As part of its duties the MCA needs to verify Companies Act, 2013 compliance and provide regulatory updates for merger processes. The Companies Amendment Rules of 2024 simplified merger assessments through RBI clearance requirements for foreign holding enterprises seeking to merge with their Indian subsidiaries while improving monitoring standards. The MCA analyzes Central Government applications under Section 233 of

the Companies Act to validate whether cross-border deals abide by national economic goals. Through its rules and regulations the MCA enhances both the market expansion of cross-border M&A and safeguards stakeholder rights.¹⁰⁸⁹

3. Reverse Flipping in M&A

For determining if a reverse flip has taken place in a cross-border M&A transaction, there are a number of indicators and steps to be looked at. A reverse flip is structurally either an inbound merger whereby the foreign entity merges into its Indian subsidiary with the Indian entity being the surviving entity or share swap arrangement in which shareholders of the foreign parent exchanges their shares for equity in the Indian subsidiary. The provision of these transactions states Section 234 of the Companies Act, 2013, Cross Border Merger Regulations 2018, and sometimes requires permission from RBI as well from NCLT. It is also important to comply with FEMA and to follow the rules of the non-debt instrument. The transaction will have to either be tax neutral otherwise under section 47(vi) of the Income Tax Act, 1961 or compute the tax implications of capital gains under the India-Mauritius or India-Singapore DTAs, which would provide effect.

Apart from the structural and regulatory aspects, motivations driven by strategic such as riding out India's IPO market, benefiting from the winners of regulatory change like Rule 25A, and gaining the advantage of India's favorable startup friendly tax regime, are evidence for a reverse flip. Similarly, a reverse flip also needs thorough documentation and due diligence, which includes audit of the transfer of tangible assets and intellectual property to the Indian entity, cross-check of board resolutions and filings with the MCA, and fair valuation of the shares and the assets. These are some examples of principles that PhonePe, Groww and Pine Labs follow.

¹⁰⁸⁶ *Ibid*

¹⁰⁸⁷ Streamlining Inbound Cross-Border Mergers: India's New Rules for Foreign Holding Companies and their Indian Subsidiaries <https://whiteandbrief.com/indias-new-rules-for-cross-border-mergers-simplified/>

¹⁰⁸⁸ The Ministry of Corporate Affairs 2017

¹⁰⁸⁹ Notification of Cross-border Mergers <https://www.azbpartners.com/bank/notification-of-cross-border-mergers/> (last visited March 20th, 2025)

4. Case Laws and Precedents in Cross-Border M&A in India

Cross-border mergers and acquisitions (M&A) in India have been shaped by several key case laws and precedents that have clarified the regulatory framework and provided guidance on compliance with Indian laws.

- **Sun Pharmaceutical Industries Ltd. Case**

The Sun Pharmaceutical Industries Ltd. stand before the National Company Law Tribunal (NCLT) is a significant case. Sun Pharmaceutical Industries Ltd. sought permission from the National Company Law Tribunal to demerge its business operations while relocating investments to wholly owned Dutch and US subsidiaries. RBI guidelines and stock exchange approval did not stop the NCLT from taking the position that demergers remain beyond the scope of cross-border mergers. According to the National Company Law Tribunal the Companies Act 2013 Sections 230, 232 and 234¹⁰⁹⁰ together with Rule 25A of the Merger Rules fail to explicitly authorize cross-border demergers although domestic compromises and arrangements including demergers are permitted internally. The case emphasizes how inadequacies exist in the current process for handling borderless business activities.¹⁰⁹¹

- **TATA Motors and Jaguar Land Rover (2008)**¹⁰⁹²

Ford sells automotive luxury car brands of Jaguar and Land Rover for \$2.3 billion to Tata Motors. The purpose of this move was to allow Tata Motors have direct access to the premium automobile market while making Jaguar Land Rover one of the best luxury car brands in the world. On the strength of Tata Motors' MDR capability to turn around a laggard, it was the acquisition that put an end to the seemingly endless cycle of mergers and acquired for the group.

¹⁰⁹⁰ *Ibid*

¹⁰⁹¹ Sun Pharmaceutical Industries Ltd. No.38/NCLT/AHM/2019

¹⁰⁹² Tata Motors, 'Tata Motors and Jaguar Land Rover Acquisition Agreement' (26 March 2008)

- **Reliance-Disney Merger (2024)**¹⁰⁹³

Reliance Industries Limited is on the cusp of cashing in on a virtually untapped majority of the Middle East's population. Reliance is making a move to enter the fiercely competitive digital content space as streaming continues to catch on in India. Reliance will be able to tap into Disney's bonanza of brands, including Marvel, Star Wars, Pixar, as well as its very own original platforms including JioCinema. Through integration with other resources, the merged entity is anticipated to strengthen content offers and raising the market share against competitors, Netflix and Amazon Prime Video. Beyond this deal, the media industry continues to consolidate to reach the necessary scale and dovetailing content required to attract subscribers.

- **Data Infrastructure Trust's Acquisition of ATC India Assets (2024)**¹⁰⁹⁴

American Tower Corporation's India has transferred the assets to the Data Infrastructure Trust entity, a new digital infrastructure form, walled for about \$2.5 billion. The significance of this acquisition comes as industry is increasingly seeing the growth of India's digital infrastructure sector due to rising internet connectivity and higher data consumption in the country. With Data Infrastructure Trust set to deploy the acquisition to boost its portfolio of telecom towers and data centers, both tech companies can weather the rising demand for the reliable connectivity solutions. The significance of infrastructure investment emerges itself in assisting India's digital transformation and economic development through this deal.

CONCLUSION

As India has got integrated into the global economy, M&As across the border are considered a vital component of India's economic landscape. These transactions are

¹⁰⁹³ Reliance Industries and The Walt Disney Company, (14 February 2024)

¹⁰⁹⁴ Data Infrastructure Trust Completes Acquisition of ATC Telecom Infrastructure Private Limited from American Tower Corporation' (12 September 2024)

quite complex and multifaceted in terms of legal framework, consisting of different statutes, regulations or guidelines to achieve foreign investment while observing national interest. Section 234 of the Companies act, 2013¹⁰⁹⁵ lays the foundation for Cross Border merger by the Indian companies with the foreign companies under certain conditions. Approval from the National Company Law Tribunal (NCLT) and observations based on sector specific regulations follow as this provision requires that the Indian economy is scrutinized before such transactions take place.

At the same, there are some other laws which govern foreign investments in India and are mandatory following under the Companies Act and this law is known as Foreign Exchange Management Act (FEMA), 1999. Foreign Exchange Management (Cross Border Merger) Regulations, 2018 prescribe a structured framework to facilitate both inbound as well as outbound mergers on the line of foreign exchange policies of India. These regulations stipulate that any foreign transaction should play in line with the country's economic objectives without involving its financial stability. In addition, there are regulatory bodies like Reserve Bank of India (RBI) to ensure compliance with norms of foreign exchange and Competition Commission of India (CCI) to check cases of merger for anti-competitive effects.

In summary, Indian regulatory framework for M&As across the border has advanced significantly in terms of encouraging foreign investment and securing its national interests, however there is a need for continuous improvement. India can elevate itself as a hub of strategic investments with efforts toward simplification of tax implications, reduction of procedural inefficiencies, steps toward sustainability, generation of incentives for reverse mergers and the formulation of cultural integration frameworks.

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¹⁰⁹⁵ *Ibid* 8

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