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CROSS-BORDER MERGERS AND ACQUISITIONS IN CHINA AND INDIA: A STUDY OF REGULATORY AND MARKET DYNAMICS

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Abstract

In light of the ability to promote economic growth, market consolidation and technical improvement, cross-border mergers and acquisitions (M&A) have become essential instruments for business expansion. Due to the growing economies and rising foreign direct investment (FDI), nations like China and India have seen a spike in cross-border M&A activity as globalisation picks up speed. Despite the fact that both countries are key participants in international M&A, there are notable differences between their regulatory environments, economic policies and market dynamics. Historically, China has upheld a state-controlled system in which foreign investment is heavily regulated by the government. Foreign investors frequently encounter obstacles in vital industries due to stringent regulatory clearances, sectoral limitations and protectionist policies. However, Chinese corporations have been able to increase their worldwide footprint, especially in the industrial, technology and energy sectors, thanks to the country's outward M&A policy, which is led by state-backed enterprises.

In contrast, India has taken a more liberal stance, especially following the 1991 economic reforms. A more open environment is offered to foreign acquirers by the regulatory framework, which includes the Companies Act of 1956, SEBI rules, and the Competition Act of 2002. Additionally, Indian companies have actively moved outside, purchasing assets in the consumer goods, pharmaceutical, and technology industries. The benefits and drawbacks of both models are examined in this comparative study of the commercial, legal, and economic aspects of cross-border M&A in China and India. Policymakers and companies may create plans to increase investment prospects, lessen regulatory obstacles, and boost market competitiveness in both economies by being aware of these distinctions.

Keywords

Cross-Border Mergers and Acquisitions, Foreign Direct Investment (FDI), Regulatory Framework, Economic Liberalization, China-India Comparison, Corporate Expansion

Introduction

Cross-border mergers and acquisitions (M&As) have become essential tools of international business strategy in the age of globalisation. They enable companies to quickly increase their global footprints, gain access to new

technologies, reach new consumer markets, and strengthen their competitive positions. China and India, two of the biggest emerging economies in the world, are among the nations seeing a noticeable increase in these kinds of transactions. Both nations have sizable

consumer markets, expanding industrial capacity, and better regulatory frameworks, but they also pose unique legal, political, and economic difficulties that affect the design, implementation, and outcome of international M&A transactions. Domestic transactions, regulatory changes, and active private equity involvement have all contributed to the notable expansion of India's M&A market in 2025. The country's strong economic foundation and investor-friendly policies are the reason for the increase in deal-making. Whereas in China regulatory complexities, such as limitations on foreign investment and national security concerns, have an impact on China's cross-border M&A environment. For foreign investors looking to enter the Chinese market, these factors may present difficulties. Cross-border mergers and acquisitions are more than just commercial agreements; they are heavily impacted by sectoral restrictions, competition laws, and national foreign investment policies. The regulatory environment is getting more complicated as governments in China and India attempt to strike a balance between the needs of economic expansion and the defence of homegrown businesses and national security. Multinational corporations must carefully negotiate approval processes, investment levels, and sector-specific restrictions in this ever-changing ecosystem.

With the help of laws like the Competition Act of 2002⁹³⁵, SEBI Takeover Regulations, and the Foreign Exchange Management Act (FEMA)⁹³⁶, India has gradually liberalised its foreign investment regime and increased transparency. In contrast, China has modernised its national security review and merger control procedures and reorganised its legal system with the Foreign Investment Law of 2020⁹³⁷. Though in different ways, investor sentiment is still impacted by worries about

geopolitical tensions, state influence, and regulatory opacity in both jurisdictions.

The growing geoeconomic importance of China and India in recent years has drawn more attention from around the world to their respective contributions to the facilitation—or occasionally the obstruction—of cross-border M&A flows. Both nations have seen a shift from being spectators of foreign investment to becoming engaged actors in international investment. In Europe, North America, and Asia, Chinese state-owned enterprises (SOEs) and sizable private conglomerates have set their sights on high-value acquisitions in industries like semiconductors, energy, automotive, and artificial intelligence. In a similar vein, Indian multinational firms have made large outbound acquisitions, particularly in the information technology, pharmaceutical, and natural resources sectors. However, national security concerns, political scrutiny, and regulatory tightening factors that have become more significant in the post-COVID and post-globalization world order have restrained this expanding outbound trend. Cross-border transactions are further complicated by changing geopolitical dynamics, such as the trade dispute between the United States and China, strategic alliances in the Indo-Pacific, and recent policy changes towards economic nationalism.⁹³⁸ Governments now examine transactions not only for their economic effects but also for their potential to affect data sovereignty, supply chain credibility, and national security. Because of this, legal observance in M&A transactions now goes far beyond standard due diligence and necessitates a deep comprehension of investment treaties, bilateral relations, and native political sensitivities. This study explores these complex aspects, highlighting the significance of investor protection, regulatory certainty, and strategic flexibility in the legal framework concerning cross-border M&As in

⁹³⁵ Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India)

⁹³⁶ Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India)

⁹³⁷ *Foreign Investment Law of the People's Republic of China* (adopted Mar. 15, 2019, effective Jan. 1, 2020)

⁹³⁸ Jung Sun Yoo & Park Yohan, *Winners and Losers in U.S.–China Trade Disputes: A Dynamic Compositional Analysis of Foreign Direct Investment*, 105 SOC. SCI. Q. 980 (Mar 5, 2024), <https://doi.org/10.1111/ssqu.13362> (visited on Mar. 18, 2025)

China and India. It also assesses the real-world obstacles investors encounter, the methods used to get past them, and the wider ramifications for regional economic expansion and global trade.

Conceptual Framework of Cross-Border Mergers and Acquisitions

One of the most important ways for businesses to grow internationally is through cross-border mergers and acquisitions (M&As). These deals entail giving a foreign buyer all or part of the ownership, assets, or control of a business located in one nation. The transaction could be an acquisition, in which one business buys and absorbs another, or a merger, in which two businesses unite to form one organisation. In both situations, the transaction crosses international borders and is subject to the political, legal, and economic systems of several different countries.

Cross-Border M&A is divided based on different purpose:

- Horizontal Mergers- where the businesses are on the same market level and in the identical sector
- Vertical Mergers- incorporating businesses at various stages of the same supply chain, and
- Conglomerate Mergers- where businesses from disparate sectors combine in order to diversify their business risk.

Cross-border M&As are driven by a variety of strategic reasons. These include expanding into new markets, acquiring technology or raw materials, attaining economies of scale, building a strong brand, and enhancing supply chain management. Outbound M&As are frequently a means for businesses in developing nations, like China and India, to advance up the global value chain. M&As are a quicker and less risky option for foreign investors looking to enter these markets than greenfield investments, which necessitate starting operations from scratch. However, because of the interaction of several legal

systems, regulatory oversight, cultural disparities, and political sensitivities, these transactions are intrinsically complicated. Careful consideration must be given to matters like sector-specific limitations, foreign exchange compliance, national security reviews, antitrust approvals, and tax ramifications. Therefore, strategic business planning and navigating the complex legal environment of the host nation are equally important to the effective completion of a cross-border M&A.

Legal and Regulatory Framework in China

1. **Foreign Investment Laws-** The Foreign Investment Law (FIL) of 2020, which superseded the previous "Three Laws" system, significantly changed China's foreign investment regulatory environment. The FIL implements a negative list strategy, which restricts or forbids foreign investment in a limited number of sectors. Security review procedures apply to cross-border M&As including foreign investors, especially in fields like critical infrastructure, information technology, and national defence.⁹³⁹
2. **M&A Regulations-** The Measures for the Administration of the Takeover of Domestic Enterprises by Foreign Investors (also referred to as the M&A Rules, 2006)⁹⁴⁰ are the primary regulations that control international M&As. Depending on the type and magnitude of the transaction, these actions need approval from a number of regulatory agencies, including the State Administration for Market Regulation (SAMR) and the Ministry of Commerce (MOFCOM).⁹⁴¹

⁹³⁹ Zhou (Jonathan) Zheng, *The New Foreign Investment Law Usbers in New Regime for Foreign Investments in China*, CLEARY M&A AND CORPORATE GOVERNANCE WATCH (Apr. 11, 2019), <https://www.clearmawatch.com/2019/04/the-new-foreign-investment-law-ushers-in-new-regime-for-foreign-investments-in-china/> (visited on Mar. 20, 2025)

⁹⁴⁰ The Measures for the Administration of the Takeover of Domestic Enterprises by Foreign Investors (M&A Rules, 2006) (promulgated Dec. 3, 2006) (China)

⁹⁴¹ Dezan Shira & Associates, *Mergers and Acquisitions in China*, CHINA BRIEFING, <https://www.china-briefing.com/doing-business->

3. Antitrust Review- Enacted in 2008, "China's Anti-Monopoly Law (AML)⁹⁴²" requires that transactions that reach certain turnover thresholds be reported to SAMR for merger control review. Transactions that could eliminate or restrict rivalries in the Chinese market are prohibited by the AML.

4. National Security and Sectoral Restrictions- Foreign investments that may have an impact on national security are subject to China's 2021 update to its National Security Review System. For sensitive industries, such as media, finance, and information technology, a pre-closing filing is required.

Legal and Regulatory Framework in India

1. Foreign Exchange Management Act (FEMA)- Along with associated policies and guidelines issued by the Reserve Bank of India (RBI), the Foreign Exchange Management Act, 1999 (FEMA) is the main piece of legislation governing cross-border M&As in India. Sectoral caps, government or automated entry points, and pricing regulations must all be followed by foreign investments.

2. Companies Act and SEBI Regulations- The Companies Act of 2013⁹⁴³ and the "SEBI (Substantial Acquisition of Shares and Takeovers) Regulations of 2011 (Takeover Code)⁹⁴⁴" for listed companies also regulate M&A transactions in India. These clauses enforce valuation standards, accessible offer obligations, and disclosure requirements.

3. Competition Act, 2002- Combinations that surpass certain asset or turnover thresholds must be notified, according to India's Competition Act, 2002, which is enforced by the Competition Commission of India (CCI).⁹⁴⁵ The transaction's potential to have a significant negative impact on competition (AAEC) in the Indian market is evaluated by the CCI.

4. Sectoral and National Security Approvals- Additional sector-specific approvals are enforced by India in fields like media, telecom, aviation, and defence. To stop opportunistic takeovers, the government implemented restrictions on foreign direct investment (FDI) from nearby nations, particularly China, in April 2020. These investments now require prior government approval.

Comparative Analysis: China vs. India

China and India offer two different models for analysing the market and regulatory environments for cross-border mergers and acquisitions (M&As), each of which reflects its own political economy, legal customs, and strategic objectives. Their approaches to cross-border M&As differ significantly in terms of legislative structure, foreign investment oversight, competition law, and transparency, despite the fact that both are rapidly expanding emerging markets with substantial potential for foreign investment.

First, there are fundamentally different regimes that govern the entry of foreign investment. China's 2020 Foreign Investment Law established a "negative list" system for operations. All sectors are normally open to foreign investment, with the exception of those that the State Council has designated as "restricted" or "prohibited." While some liberalisation is achieved, significant central control over key industries is maintained. In

guide/china/company-establishment/mergers-and-acquisitions-in-china (visited on Mar. 22, 2025)

⁹⁴² China's Anti-Monopoly Law (AML), (Promulgated Aug. 30, 2007, effective Aug. 1, 2008) (China)

⁹⁴³ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India)

⁹⁴⁴ Securities and Exchange Board of India, *Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011* (as amended on May 17, 2024), SEBI, https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-regulations-2011-last-amended-on-may-17-2024_69218.html/ (visited on Mar. 25, 2025)

⁹⁴⁵ Lakshmikumaran & Sridharan Attorneys, *Competition law in India – Deal Value Threshold and other changes notified*, LAKSHMISRI.COM (Sept. 12, 2024), <https://lakshmisri.com/newsroom/news-briefings/competition-law-in-india-deal-value-threshold-and-other-changes-notified/> (visited on Mar. 25, 2025)

contrast, India's Foreign Exchange Management Act (FEMA), 1999, uses a sector-specific cap and route mechanism. Certain sectors of investments are subject to the automatic route, which does not require prior government approval, whereas other sectors require government clearance. Because of its published guidelines and organised procedures, India's system tends to offer more predictability and transparency even though it may appear more fragmented. China's cross-border M&A regime is more centralised from the standpoint of regulatory authorities, with important organisations such as the "National Development and Reform Commission (NDRC), the State Administration for Market Regulation (SAMR), and the Ministry of Commerce (MOFCOM) playing important roles.⁹⁴⁶" However, the overlapping responsibilities of these authorities frequently lead to opacity and bureaucratic delays. The Reserve Bank of India (RBI) oversees foreign exchange, the Securities and Exchange Board of India (SEBI) oversees capital market transactions, the Competition Commission of India (CCI) oversees antitrust matters, and the Department for Promotion of Industry and Internal Trade (DPIIT) oversees foreign direct investment (FDI) policy.

Although this decentralisation might appear laborious, each agency functions in accordance with explicit statutory mandates, offering a comparatively transparent regulatory. Although both jurisdictions have highly developed antitrust and competition laws, their approaches to enforcement differ. Transactions exceeding specific turnover thresholds must be notified in advance under SAMR's administration of China's Anti-Monopoly Law. Nonetheless, political factors and industrial policy objectives are frequently reflected in enforcement. On the other hand, pre-merger notifications are required for qualifying transactions under India's Competition Act, 2002. The CCI is known for its prompt and

professional evaluations, frequently approving non-problematic mergers under its "green channel" regime in less than 30 working days. For investors, this improves regulatory certainty. There are also significant differences in the national security examine procedures.

China's security review system was formalised in 2021, and foreign acquisitions in areas of concern now require pre-closing filings. The review's scope is wide, its criteria are frequently ambiguous, and the reviewing agencies have a great deal of discretion. Without a legally binding national security law, India effectively targeted Chinese investors in 2020 when it implemented a country-specific restriction requiring prior authorisation from the government for investments from nations that share land borders with India. China's policies are extensive and institutionalised, whereas India's are selective and reactive. Last but not least, India offers a more foreseeable and rules-based framework with judicial remedies for harmed investors in terms of regulatory candour and investor protection.

Therefore, China and India are both desirable locations for M&A, but China offers bigger scale and prospective advantages at the expense of greater political and regulatory risks, while India's regulatory environment is generally more open, translucent, and supportive of investor confidence.

Market Dynamics and Trends

Macroeconomic variables, industry priorities, investor sentiment, and shifting geopolitical environments all influence the market motion encompassing cross-border mergers and acquisitions (M&As) in China and India. Although the reasons, trends, and industries involved show distinctive national priorities and monetary strategies, both countries have seen significant increases in both inward and outward M&A activity over the past 20 years.

1. Inbound and Outbound M&A Activity- Beijing's "Go Global" strategy, which pushed Chinese businesses to buy

⁹⁴⁶ Zhai Bing, *Corporate M&A 2025 – China*, CHAMBERS AND PARTNERS (Apr. 17, 2025), <https://practiceguides.chambers.com/practice-guides/corporate-ma-2025/china> (visited on Apr. 19, 2025)

foreign businesses in order to obtain technological know-how, brand recognition, and access to global markets, was the main driver of the mid-2010s outbound M&A boom in China.⁹⁴⁷ This goal was reflected in significant agreements like ChemChina's purchase of Syngenta and HNA Group's investments in the international hospitality and aviation industries. But starting in 2017, the Chinese government clenched capital controls and started to restrict "irrational investments" overseas, especially in the sports, entertainment, and real estate industries. These limitations were prompted by worries about capital flight and debt-driven foreign acquisitions. In spite of this, China still encourages foreign mergers and acquisitions in fields that serve its interests, like critical raw materials, green energy, and high-tech manufacturing. Although foreign investors frequently encounter obstacles relating to rules transparency, data stipulations, and rising worries over national security and value chain autonomy, inbound M&A in China is still active.

On the other hand, India's M&A market has been steadily expanding, especially since liberalisation, with a noticeable increase in foreign purchases of Indian companies in industries like consumer goods, fintech, information technology, and pharmaceuticals. Although not as vigorous as China's, Indian outbound M&A activity is motivated by domestic companies' aspirations for global expansion and the search for strategic assets overseas. To expand their global reach, companies such as Sun Pharma, Bharti Airtel, and Tata Group have entered into high-profile cross-border agreements. M&A growth has also been

aided by the government's investor-friendly policies, such as loosening FDI regulations in important industries (such as retail, defence manufacturing, and insurance), as well as by India's growing appeal as a consumption-led economy.

2. Global Pandemics- The COVID-19 pandemic had a major impact on patterns in both countries and changed the global M&A scene. Deal activity initially slowed due to the high level of uncertainty, but it quickly increased again with an emphasis on industries like medical care, digital services, energy efficiency, and logistics. Global investors like Facebook and Google made high-profile investments in Jio Platforms, causing a wave of fusion in the digital economy, particularly in India.⁹⁴⁸ Meanwhile, the COVID-19 pandemic had an effect on China's cross-border M&A activities, resulting in a drop in deal volume and value. It draws attention to the trend towards government-favored industries and the difficulties brought on by regulatory scrutiny in both Europe and the United States.⁹⁴⁹

3. Geopolitics and Trade- Additionally, trade disputes and geopolitical tensions have had a significant impact on market trends. Investment flows have been redirected by the trade war between the United States and China, the tightening of CFIUS (Committee on Foreign Investment in the United States) regulations, and the increasing economic alignment between India and the West. Nowadays, a lot of global firms are investing in India in addition to or instead of China as part of their "China

⁹⁴⁷ Toma George-Sorin & Tohanean Dragos, *China's Go Global Strategy: An Overview*, STRATEGII MANAGERIALE, http://www.strategiimanageriale.ro/images/images_site/articole/articol_b74e4fb51ef0b77b44122a1dd9e4ca6.pdf (visited on Apr. 20, 2025)

⁹⁴⁸ Gopalakrishnan Narayanan Badri & Jain Miheer, *India has become a hotspot of merger and acquisition deals amid Covid-19 crisis*, POLICY CIRCLE (Sept. 18, 2021), <https://www.policycircle.org/economy/india-merger-and-acquisition-deals/> (visited on Apr. 20, 2025)

⁹⁴⁹ Li Haiping, Niu Z. Layton & Xu Emma, *Focus of China Cross-Border M&A Turns to Government-Favored Sectors and Away From West*, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP (Dec. 13, 2022), <https://www.skadden.com/insights/publications/2022/12/2023-insights/a-possible-recession/focus-of-china-cross-border-ma> (visited on Apr. 26, 2025)

plus one" strategy, which aims to diversify supply chains.

Challenges and Compliance Issues

There are several operational, legal, and regulatory obstacles in cross-border M&A transactions between China and India. Below are the main obstacles and legal concerns that acquiring companies and investors frequently encounter:

CHINA

- 1. Regulatory Opacity and Bureaucratic Overlaps-** China's regulatory environment is still complicated in spite of legislative changes like the Foreign Investment Law and the negative list system. The overlapping roles of several regulatory bodies, including MOFCOM, NDRC, and SAMR, frequently cause delays and irregularities in approvals. Uncertainty can arise from opaque processes, particularly in delicate industries.
- 2. National Security Review Mechanism-** National security reviews apply to acquisitions in the defence, information technology, or crucial infrastructure sectors. These reviews are difficult to comprehend and predict because they are voluntary and lack publicly stated criteria or explicit timeframes.
- 3. Capital Outflow Restrictions-** Chinese regulators keep a careful eye on outbound transactions to stop capital flight. The government forbids "irrational" foreign investments, especially in the entertainment, sports, and real estate sectors. It can be challenging and time-consuming to get permits and foreign exchange authorisations for such transactions.
- 4. Cultural and Governance Differences-** Due to disparities in business culture, governance standards, and unofficial relationships with local government bodies, foreign investors frequently encounter challenges when attempting

to integrate with Chinese target companies. These elements make strategic alignment and post-merger integration more difficult.

INDIA

- 1. Multi-layered Regulatory Approvals-** Under the Companies Act, FDI policy, and FEMA, foreign acquirers are subject to a number of regulatory frameworks. Several authorities, including the RBI, DPIIT, CCI, and SEBI, may require approvals. Transactions may be delayed by the need for cooperation across these bodies.
- 2. Sectoral Caps and Government Route Requirements-** Many industries have been liberalised, but some—like defence, telecom, and insurance—need government approval or have restrictions on foreign ownership. These limitations may deter foreign involvement and make deal structuring more difficult.
- 3. FDI Policy Restrictions on Neighbouring Countries-** India effectively targets Chinese investors by requiring regulatory approval for assets from nations that share a land border with India as of April 2020. This gives cross-border M&A compliance a geopolitical component, which raises questions about the viability and timeliness of deals.
- 4. Post-Merger Integrations Issues-** Regional diversity, informal business practices, and acquired entities' reluctance to change are the main causes of integration difficulties in India. These problems have an impact on operational effectiveness and have the potential to reduce deal value.
- 5. Taxation and Dispute Resolution Risks-** China and India both have a history of inconsistent tax authority decisions and retroactive taxation. Investor confidence may be damaged in India by judicial and regulatory dispute delays. Domestic remedies can take a long time, and

international arbitration procedures are still evolving.

Recommendations

The following changes are suggested to improve cross-border M&As in China and India in terms of efficacy, transparency, and investor confidence:

- To cut down on bureaucratic red tape and disarray from overlapping authorities, both nations should create a single-window authorisation mechanism to streamline and unify approval processes.
- Particularly in national security and antitrust reviews, regulatory agencies should publish comprehensive guidelines with clear deadlines and impartial approval standards.
- Accelerate the execution of arbitral awards and promote the implementation of international arbitration norms to strengthen investor protection.
- In order to encourage fair competition, China should further reduce each sector on its negative list, while India should review and liberalise foreign ownership wraps in strategic sectors.
- Provide incentives or advisory services supported by the government to assist foreign investors in operationally and culturally integrating with domestic companies.
- To give investors stability and certainty, eliminate any doubts surrounding retroactive taxation and guarantee adherence to tax treaties.
- China should think about gradually easing restrictions on capital outflows to help local businesses expand internationally.
- Encourage regional frameworks and bilateral investment treaties (BITs) that facilitate safe, rule-based M&A between the two nations and their trading partners.

Conclusion

China and India's cross-border mergers and acquisitions are significant catalysts for global integration, innovation, and economic growth. Although there are many opportunities in both nations, foreign investors face particular difficulties due to their different regulatory environments, policy priorities, and market dynamics. India's more open and transparent framework contrasts with China's state-driven strategy, which affects optimism among investors and deal execution. To fully realise the possibility of cross-border M&As in both jurisdictions, it is imperative to address regulatory complexities, improve transparency, and promote greater policy coherence. Sustained institutional and legal reforms will be essential to guaranteeing long-term and profitable investment flows as global economic interdependence increases.