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## CROSS-BORDER M&A IN EMERGING MARKETS: STRATEGIC DRIVERS, RISK TRADE-OFFS AND REGULATORY CHALLENGES

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### I. ABSTRACT

*What propels multinational corporations to undertake cross-border M&A in emerging markets despite the enormous difficulties that lie ahead? The paper investigates how the strong forces of access to fast-growing consumer markets, strategic asset acquisition, cost arbitrage, and technological potential shape the cross-border merger and acquisition (M&A) in the emerging markets, and how the springboard hopes of rising-market multinationals in their effort to compete with multinational corporations influence the cross-border mergers and acquisitions. Nevertheless, these prospects are offset by a range of threats, some of which are political instability, regulatory uncertainty, exchange rate changes, poor governance, and cultural incompatibility. The changing regulatory environment in the emerging markets, including foreign-investment controls, antitrust investigations, tax ambiguities, and the regulation of the digital economy are also described as the factors that further make deal-making difficult, and are emphasized in the analysis. To mitigate these risks, the paper suggests mitigation measures, which include due diligence, hiring of local advisors, hedging, structured deal instruments and preemptive regulatory negotiation. Host government policy recommendations are aimed at improving legal transparency, improving governance systems and creating investor friendly arbitration. By presenting this multi-dimensional analysis, the paper provides valuable lessons to multinational companies, target companies in the emerging-market, and policymakers who should strike a fine balance bet amidst the opportunity and uncertainty that comes with cross-border M&A.*

**Keywords:** Cross-border M&A, Emerging Markets, Regulatory risk, Potential Risk, Due diligence, springboard theory

### II. INTRODUCTION

#### A. What is Cross-border M&A & What Counts as emergent Markets?

Cross-border mergers and acquisitions (M&A) are business transactions whereby a company based in one country buys, merges or takes a majority stake in another company based in another country. In this paper, the term of cross-border M&A will include the inbound acquisitions where foreign enterprises purchase the firms in an emerging market and outbound acquiring where in an emerging market the

firms are purchased or merged with firms in a foreign country.<sup>1148</sup> The term emerging markets refers to nations which are usually typified by fast growing economies, by a changing regulatory and institutional environment, by the expanding integration of emerging markets into the world of trade and investment and by emerging-market multinationals who routinely

<sup>1148</sup> Jianhong Zhang, Arjen van Witteloostuijn, Chaohong Zhou & Shengyang Zhou, Cross-border acquisition completion by emerging market MNEs revisited: Inductive evidence from a machine learning analysis, 59 J. World Bus. 101517 (2024).

pursue assets, market access, and strategic presence outside their national boundaries.<sup>1149</sup>

### B. The Increasing contribution of the emerging markets to worldwide mergers and acquisitions

The cross-border M&A is an important aspect of international deal-making. Cross-border deals comprised about 30 percent of the value of global M&A deals in 2024,<sup>1150</sup> a drop to a high of nearly 50 percent in 2007, however, the value is substantial. Besides, the growth in the emerging markets, albeit unstable, remains high. A review conducted back in 2024 estimates that M&As of emerging-market companies or acquisition targets amounted to about US\$239.9 billion.<sup>1151</sup> These statistics prove that the emerging markets are still the center of cross-border transactions, despite the setbacks on the volume of deals across the globe. The two companies have strategic relevance as to global companies (Bidders) and local companies (Targets).<sup>1152</sup>

To global companies, emerging market cross-border M&A is an opportunity to access high-growth markets, untapped consumer markets, resource or cost economies of scale, and strategic assets (technological, local distribution channels or brand equity) in rapidly developing economies. In case of local companies (targets) in the emerging markets, these M&A deals may raise foreign investment, managerial and technical expertise, access to global supply chains, and the global value-chain integration of the local companies, possibly speeding up their growth, competitiveness and institutional maturity.

<sup>1149</sup> IMAA, All-time high: M&A in emerging markets, IMAA (Sept. 21, 2024), <https://imaa-institute.org/news/all-time-high-ma-in-emerging-markets/>.

<sup>1150</sup> Jens Kengelbach, Daniel Friedman, Anant Shivraj, Tobias Söllner & Dominik Degen, Capturing the Value of Cross-Border Deals, BCG (Oct. 28, 2025), <https://www.bcg.com/publications/2025/capturing-the-value-of-cross-border-deals>.

<sup>1151</sup> Clairfield International, Emerging Markets M&A Review – Q4 2024 (Emerging Markets Financial Review), Jan. 2025, <https://www.clairfield.com/wp-content/uploads/2025/01/2024Q4-Emerging-Markets-Financial-Review.pdf>.

<sup>1152</sup> Alena Bogdanova & Melanie Pussnig, Cross-border M&A Performance Involving Emerging Markets: Impact of Cultural and Institutional Distance (Master's Essay, Lund Univ. Sch. of Econ. & Mgmt. 2017), <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=8912731&fileId=8912734>.

Considering its implications for both parties, international M&A between global and emerging-market companies can redefine industries, affect the competition, and lead to greater global economic integration.

### III. RESEARCH METHODOLOGY

This paper utilizes a strict doctrinal research approach. Doctrinal research, known as library-based research, primarily involves the study and analysis of legal statutes, case law, and academic writings. This method is ideal for exploring the theoretical and conceptual dimensions of law. It systematically presents legal doctrines and principles. In doctrinal research, primary sources include statutory materials, judicial decisions, and authoritative literature. Secondary sources like commentaries, articles, and legal summaries are also essential. The research process entails identifying, gathering, and critically evaluating these sources to assess existing gaps and propose reforms within the international legal framework.

### IV. LEGAL AND REGULATORY FRAMEWORK

In most of the emerging market economies such as India, inbound and outbound cross borders mergers and acquisitions are regulated by an intertwined but cross-cutting structure of statutory laws and regulations. Mergers or amalgamations between an Indian company and a foreign company are authorized in the **Companies Act, 2013 under Section 234**,<sup>1153</sup> as revised effective 13 April 2017, such a merger must comply with the general merger provisions (Sections 230–232) and procedural protection such as corporate approvals, a creditor consent, a detailed scheme of arrangement, and authorization of a judicial body such as the **National Company Law Tribunal (NCLT)**.<sup>1154</sup>

In addition to this, the **Foreign Exchange Management (Cross Border Merger)**

<sup>1153</sup> The Companies Act, 2013, § 234 (India).

<sup>1154</sup> AZB & Partners, Notification of Cross-border Mergers, AZB & Partners (July 1, 2017), <https://www.azbpartners.com/bank/notification-of-cross-border-mergers/>.

**Regulations, 2018**,<sup>1155</sup> a set of regulations under the FEMA, governs the foreign-exchange and capital-flow components of cross-border mergers, such as how to treat the share swaps, valuation standards, capital-account transactions, repatriation guidelines, and foreign investment compliance.<sup>1156</sup>

In addition to this, cross border M&A also falls under competition/antitrust law under **Competition Act, 2002**,<sup>1157</sup> governing combinations (mergers, acquisitions) which have an appreciable *adverse effect on competition* (AAEC)<sup>1158</sup> and therefore necessitates *Competition Commission of India (CCI)*<sup>1159</sup> review.<sup>1160</sup> In case of listed companies or other targets that are in the form of a public company, securities and takeover laws/regulations may be relevant, e.g., the open-offer requirements of the takeover regulations under the *Securities and Exchange Board of India (SEBI)*.<sup>1161</sup>

The taxation law, e.g. **Income Tax Act 1961**,<sup>1162</sup> stamp-duty laws, accounting/financial-reporting standards also overlap with M&A and affect deal valuation, structure, post-merger integration and compliance costs.

This legal framework together, consisting of corporate law, foreign-exchange law, competition law, securities law and tax/regulatory law, constitutes the regulatory

framework in which cross-border M&A will have to work. There are usually regulatory complexities, overlapping compliance, and procedural risk due to the number of regulators, namely corporate law, central bank, competition regulator, securities regulator, tax authorities, and as well due to the cross-jurisdictional nature of some outbound transactions. Therefore, cross-border M&A in the emerging markets can hardly be analysed through either business or strategic theoretical framework; it involves thorough mapping of the legal framework within the jurisdiction, interpretation of the situation, approval criteria, valuation standards, foreign-investment controls, the protection of investors, and cross-border regulation.

## V. THEORETICAL/CONCEPTUAL FRAMEWORK

### A. International business theories: Springboard Theory and Institutional Voids Theory:

The first theory is the Springboard Theory that Luo and Tung (2007)<sup>1163</sup> argue is specifically used by emerging-market multinationals when seeking to obtain critical resources, including enhanced technologies, international brand names, global networks, managerial expertise, and intangible resources, which are otherwise unavailable in their host markets. In contrast to traditional multinational firms, many of which are typically based in more developed countries and utilize firm-specific advantages, emerging market multinationals rely on acquisitions as a way of overcoming latecomer disadvantages, as well as rapidly narrowing the gap between their capabilities and those of international competitors. In practice, recent research indicates that firms of Asian-Pacific emerging economies have been using cross-border M&A to overcome institutional barriers in their domestic market as well as to acquire strategic resources in the foreign market. Besides, studies have shown that the quality of home country institutions such as regulatory

<sup>1155</sup> Foreign Exchange Management (Cross Border Merger) Regulations, 2018, Notification No. FEMA 389/2018-RB (India), <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11235&Mode=0>.

<sup>1156</sup> Foreign Exchange Management (Cross Border Merger) Regulations, 2018, Notification No. FEMA 389/2018-RB (RBI Mar. 20, 2018), [https://enforcementdirector.gov.in/sites/default/files/Act%26rules/Foreign%20Exchange%20Management%20%28Cross%20Border%20Merger%29%20Regulations%2C%202018\\_0.PDF](https://enforcementdirector.gov.in/sites/default/files/Act%26rules/Foreign%20Exchange%20Management%20%28Cross%20Border%20Merger%29%20Regulations%2C%202018_0.PDF).

<sup>1157</sup> The Competition Act, 2002, No. 12, Acts of Parliament (2002) (India).

<sup>1158</sup> Advocate Gandhi, Understanding “Appreciable Adverse Effect on Competition” – The Core Test of India’s Competition Law, Advocate Gandhi (Nov. 2025), <https://advocategandhi.com/understanding-appreciable-adverse-effect-on-competition-the-core-test-of-indias-competition-law/>

<sup>1159</sup> Wikipedia, Competition Commission of India, Wikipedia (last visited Dec. 9, 2025), [https://en.wikipedia.org/wiki/Competition\\_Commission\\_of\\_India](https://en.wikipedia.org/wiki/Competition_Commission_of_India).

<sup>1160</sup> Ravi Singhania, Manish Kumar Sharma & Sudhanshu Gupta, Mergers & Acquisition Laws in India – Frequently Asked Questions, Singhania & Partners LLP (Nov. 23, 2018), <https://singhania.in/blog/mergers-acquisition-laws-in-india-frequently-asked-questions>.

<sup>1161</sup> Naina Bhardwaj, Regulatory Framework Governing Mergers and Acquisitions in India, India Briefing (July 11, 2023), <https://www.india-briefing.com/news/regulatory-framework-governing-mergers-and-acquisitions-in-india-26416.html>.

<sup>1162</sup> Income-tax Act, 1961, No. 43 of 1961, Acts of Parliament (India).

<sup>1163</sup> *Springboard Theory*, Wikipedia (last visited Dec. 9, 2025), [https://en.wikipedia.org/wiki/Springboard\\_Theory](https://en.wikipedia.org/wiki/Springboard_Theory).

quality, law and governance have a profound impact on the decision/motive that cross-border M&A dealings are made.

At the same time, the Institutional Voids Theory, developed by scholars like Tarun Khanna and Krishna Palepu, highlights that most of the emerging markets are plagued by institutional infrastructure voids the lack of effective intermediaries (credit markets, market-research firms, supply-chain facilitators), lax enforcement of the rules, weak legal protection and poor corporate-governance conventions. Such gaps pose a threat as well as opportunities to the domestically operating firms. Firms, both domestic and foreign, in turn, can use cross-border M&A as a means of circumventing or reducing such institutional failures. As an illustration, the purchase of a company in a jurisdiction that has stronger regulatory, governance, or market-infrastructure arrangements may help an emerging-market multinational to gain the lacking abilities or steadiness. In this regard, M&A will not be just a growth or efficiency instrument; but it will be a strategic instrument to overcome institutional voids.<sup>1164</sup>

The combination of the Springboard Theory and the Institutional Voids Theory create an interesting analytical insight it is possible that cross-border M&A by emerging markets firms can be more aggressive, capability-seeking, and institution-driven than M&A conducted by firms of advanced economies.<sup>1165</sup>

### B. Strategic M & A Motives Framework Cross-Border M & A

In addition to institutional theories, a more traditional strategic-motive approach can be helpful in classifying the reasons why firms (of any nationality) enter a cross-border M&A. The reasons are:

1. **Resource-seeking:** The firms obtain overseas targets to gain access to the resources they do not possess, technology, human capital, natural resources, specialised know-how, or intellectual property.<sup>1166</sup>
2. **Market seeking:** the company enters new consumer markets, new geographic markets, or it exploits demand in new foreign markets- especially appealing when the domestic market is saturated or limited.<sup>1167</sup>
3. **Efficiency-seeking:** Making use of cost advantages (labor, production, scale), consolidating operations, and economies of scale/scope by integration.<sup>1168</sup>
4. **Strategic-asset-seeking:** The focus is on intangible assets, such as global brands, distribution systems, technology, managerial skills, etc., that strengthen long-term competitiveness and worldwide representation. This reason is especially typical of emerging-market multinationals through the Springboard logic.

The use of these categories and the institutional lens explain various trends: e.g. emerging-market multinationals might be particularly motivated by resources and strategic asset-seeking motives, but multinationals of developed economies might be more motivated by efficiency and/or market-related motives in their international expansion.<sup>1169</sup>

<sup>1164</sup> Tarun Khanna & Krishna G. Palepu, *Winning in Emerging Markets: A Road Map for Strategy and Execution* (Harvard Bus. Sch. Press 2010).

<sup>1165</sup> Ping Deng & Monica Yang, *Cross-Border Mergers and Acquisitions by Emerging Market Firms: A Comparative Investigation* (Cleveland State Univ. Monte Ahuja Coll. of Bus. Feb. 2015), [https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1068&context=bus\\_facpub](https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1068&context=bus_facpub).

<sup>1166</sup> Tamara Stucchi, *Emerging market firms' acquisitions in advanced markets: Matching strategy with resource-, institution- and industry-based antecedents*, 30 *Eur. Mgmt. J.* 278 (2012).

<sup>1167</sup> Ping Deng & Monica Yang, *Cross-Border Mergers and Acquisitions by Emerging Market Firms: A Comparative Investigation* (Cleveland State Univ. Monte Ahuja Coll. of Bus. Feb. 2015), [https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1068&context=bus\\_facpub](https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1068&context=bus_facpub).

<sup>1168</sup> *Mergers and Acquisitions*, Wikipedia (last visited Dec. 9, 2025), [https://en.wikipedia.org/wiki/Mergers\\_and\\_acquisitions](https://en.wikipedia.org/wiki/Mergers_and_acquisitions).

<sup>1169</sup> Rosa Caiazza & Saikat Chaudhuri, *Explaining Emerging-Market Firms' Acquisitions of Developed-Market Firms: A Resource-Based Perspective* (Wharton Sch. of the Univ. of Penn. Sept. 2019), [https://faculty.wharton.upenn.edu/wp-content/uploads/2019/09/Caiazza\\_Chaudhuri\\_Explaining-Emerging-Market.pdf](https://faculty.wharton.upenn.edu/wp-content/uploads/2019/09/Caiazza_Chaudhuri_Explaining-Emerging-Market.pdf).

### C. Risk Return trade off in emerging markets

The prospects of EM cross-border M&A are promising, namely, growth opportunities, economies of scale, resources, and market accessibility, but the risks are very high. Bad institutions, regulatory uncertainty, political unsteadiness, foreign exchange fluctuations, and information asymmetries have the potential to destroy returns or even abort deals. Empirical research shows that institutional quality in the domestic and international markets is a strong factor behind the success of M&A acquisitions.<sup>1170</sup>

## VI. RISK ASSOCIATED WITH CROSS-BORDER EMERGING MARKETS M&A

There is good growth and strategic potential in cross-border M&A in emerging markets but the risks are manifold, and many tend to be interrelated and, in a few instances, augmented by the institutional and economic environment within the economies. The key categories of risk are listed below, along with an analysis of the way that they are likely to occur in emerging M&A.

### A. Political & Regulatory Risk:

Political instability, abrupt policy changes or unpredictability in regulation may often be more common in emerging markets than in developed ones. Government changes, a shift in trade or investment policy, or introduction of new foreign-ownership restrictions may scuttle M&A deals even after the deal is agreed.<sup>1171</sup> In addition, the institutional environment is weak in transparency, ineffective rule of law, corruption, ineffective contract enforcement, or weak regulatory enforcement, which adds to the risk. The institutional weaknesses can disrupt the legal safeguards, bring unpredictability to the

execution of agreements or liabilities, and make after-transaction activities a difficult task.<sup>1172</sup>

### B. Macroeconomic/ Financial Risk:

The emerging markets generally face macroeconomic uncertainty any macroeconomic fluctuations such as currency, inflation, interest rates or sovereign debt can influence valuations, deal financing, and post-deal returns.<sup>1173</sup> In instances where the exchange rates vary considerably, the value of the acquisition cost, as well as the future earnings, may be diluted- reducing the appeal of the deal.<sup>1174</sup> Moreover, any general economic instability or external shocks may threaten the cooperation of the business and its profitability, which makes the expected synergies unpredictable.

### C. Legal & Compliance Risk:

International M&As between emerging markets and foreign jurisdictions and across borders can involve going through complicated and overseas legal systems, taxation systems, reporting regulations, and regulatory compliance necessities. Weak corporate governance standards, lack of transparency, and different accounting standards between target companies increase the chances of unknown liabilities, misreporting, or post-acquisition non-compliance.<sup>1175</sup> Efforts to comply with antitrust/competition laws, foreign-investment laws, taxation requirements, disclosure regulations in both the mother and

<sup>1170</sup> Faisal Mohammad Ahsan, Manish Popli & Vikas Kumar, Formal Institutions and Cross-Border Mergers and Acquisitions: A Systematic Literature Review and Research Agenda, 33 Int'l Bus. Rev. (2024), <https://www.sciencedirect.com/science/article/pii/S0969593124000532>.

<sup>1171</sup> AURIS Finance, Cross-border mergers and acquisitions: balancing opportunities and geopolitical challenges, AURIS Finance (last visited Dec. 9, 2025), <https://auris-finance.fr/en/cross-border-mergers-and-acquisitions-balancing-opportunities-and-geopolitical-challenges/>

<sup>1172</sup> Ping Deng & Monica Yang, Cross-Border Mergers and Acquisitions by Emerging Market Firms: A Comparative Investigation (Cleveland St. Univ. Monte Ahuja Coll. of Bus. Feb. 2015), [https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1068&context=bus\\_facpub](https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1068&context=bus_facpub).

<sup>1173</sup> John Blake, Cross-border mergers and acquisitions in emerging markets: Opportunities and risks, Translink Corporate Finance (Feb. 17, 2025), <https://translinkcf.com/2025/02/17/cross-border-mergers-acquisitions-in-emerging-markets/>.

<sup>1174</sup> Michal Malarski, Cross-Border M&A in Emerging Markets: Opportunities & Pitfalls, Acquinox Advisors (Nov. 7, 2025), <https://acquinoxadvisors.com/cross-border-ma-in-emerging-markets-opportunities-pitfalls/>.

<sup>1175</sup> Yixin Chen, Research on Financial Risks and Compliance Challenges in Cross-Border Mergers and Acquisitions, 2 J. Advances in Eng'g & Tech. (2025), <https://ojs.apspublisher.com/index.php/jaet/article/view/398>.

host countries may bring delays, surprise expenses or even cancel a deal.<sup>1176</sup>

#### D. Returning Due Diligence & Information Asymmetry Risk:

One of the biggest issues about emerging-market M&A is untrusted information. Limited transparency, inadequate record keeping, incomplete documentation or poor disclosure by target companies is usually faced by firms and it is hard to determine the real financial, asset quality, legal liabilities, or contingent risks. Such asymmetry of information raises the risks of overpayment, finding some unpleasant surprises after the deal or inability to realise the synergies.<sup>1177</sup>

#### E. Cultural & Integration Risk:

Even with effective regulation, financial, and legal considerations, the process of merging two companies to conduct business across borders, which is normally characterized by significantly different corporate culture, business practice, and management styles, is a daunting task. The variation in language, business practices, expectations among employees or management philosophy may create tension, staff turnover, lack of tuning, or poor performance.<sup>1178</sup> The challenges of post-merger integration have been identified as one of the main factors that result in poor or failure of most cross-border M&A activities, especially where integration planning is not properly considered in respect to the local context.<sup>1179</sup>

#### F. Competition / Strategic Risk:

Competitive forces can also trigger bidding wars of appealing targets. It is a serious danger during competitive pressure, owing to overpaying where valuations are overstated through growth prospects in developing markets. This sabotages the possibility of the investment payoff. In addition, it is not always easy to maintain any kind of competitive advantage after the merger. The obtained advantage, which could be the entry into new markets, resources, or assets, can weaken in the long-term perspective because of the shift in the market environment, increased rivalry, or inefficient integration.

#### G. Digital/ Technological and Data Risks:

Cross-border M&A is becoming more a deal of technology resources, online businesses, or information-based corporations. In new markets, data protection, intellectual property (IP) rights, cybersecurity legislations, or digital compliance regulations and laws may be undeveloped or unclear.<sup>1180</sup> This adds another dimension of risk to the process of acquiring such firms: unpredictable IP protection, data breach or the lack of adherence to the changing regulations may lead to both legal and reputational expenses. The commentators state that the M&A of the digital era in the emerging markets is characterized by a set of challenges. Moreover, fast digital unfreezing of these economies can make the business models outdated in a short period of time- a seemingly promising digital or technological asset can lose its value should the local regulatory or market conditions alter.

#### H. Regulatory Scrutiny and National-Security/ Geo-Political Risk:

Lastly, cross-border M&A, especially in sensitive industries like infrastructure, telecommunication system, energy, or natural resources, can come under the attention of the host-country regulator or of the national-security agencies.

<sup>1176</sup> Annliya Anil, Cross-Border Mergers and Acquisitions: Regulatory Challenges in Multi-Jurisdictional M&A Transactions, *Indian J. Legal Rev.* (IJLR), Vol. 5, Issue 6 (2025), 109–123, <https://ijlr.iledu.in/wp-content/uploads/2025/04/V5I611.pdf>.

<sup>1177</sup> Alen Sacek, Due Diligence in Mergers and Acquisitions in Emerging Markets: Evaluated Risk Factors From the Academic and Practical View, *11 J. Modern Accounting & Auditing* 363, 363–72 (2015), <https://www.davidpublisher.com/Public/uploads/Contribute/55dac3151b597.pdf>.

<sup>1178</sup> Clifford Chance, Cross-border M&A: Perspectives on a Changing World (Clifford Chance 2025), [https://www.cliffordchance.com/content/dam/cliffordchance/PDF/feature\\_topics/Cross\\_Border\\_Changing\\_World.pdf](https://www.cliffordchance.com/content/dam/cliffordchance/PDF/feature_topics/Cross_Border_Changing_World.pdf).

<sup>1179</sup> Richa Adwani, Insights into Mergers and Acquisitions: Legal Perspective, *ASLP* (Nov. 2025), <https://aslp.in/assets/insights/articles/Insights%20into%20Mergers%20and%20Acquisitions%20-%20Legal%20Perspective%20by%20Richa%20Adwani.pdf>.

<sup>1180</sup> Michal Malarski, Cross-Border M&A in Emerging Markets: Opportunities & Pitfalls, *Acquinnox Advisors* (Nov. 7, 2025), <https://acquinnoxadvisors.com/cross-border-ma-in-emerging-markets-opportunities-pitfalls/>.

Considering the current geopolitical tensions in the world, there is a possibility that the governments of emerging-market countries will increase foreign-investment restrictions, restrictions, or approvals, thus making the completion of deals quite uncertain and lengthy. In this category, transactions can be stalled, blocked or even accompanied by very hostile terms (e.g. compulsory divestments, local partner conditions), thus skewing the anticipated returns or strategic justification.<sup>1181</sup>

To conclude, although cross-border M&A presents a great opportunity in an emerging market, its interdependence and multiplicity of risks, including institutional, macroeconomic, regulatory, informational, cultural, strategic, technological, makes it a high-stakes venture. Before any firm decides to engage in cross-border investment in emerging situations, it is critical to identify such risks at the outset and critically evaluate the institutional, economic and legal conditions.

#### I. Tax Risks and Double-Taxation:

The cross-border mergers and acquisitions are often faced with tough taxation risks and complexities. Cross-border transactions in many jurisdictions such as in the emerging markets can result in double taxation of the same income, capital gains or the transfer of assets between the country of the acquirer and the country of the target. The risk is especially severe in case of the lack of a favourable bilateral tax treaty or the presence of indirect-transfer provisions such as the sale of a foreign entity holding assets in the target country. Besides, variations in tax regimes like tax rates, dividends withholding, interest, and royalty withholding taxes, capital-gains taxes, transfer-pricing regulations, and asset and share versus share sales taxes create uncertainty on how to value the deal, cash flows after the merger, and repatriation. Such a failure or improper organization could lead to litigation in courts,

<sup>1181</sup> AURIS Finance, Cross-border Mergers and Acquisitions: Balancing Opportunities and Geopolitical Challenges, AURIS Finance (last visited Dec. 9, 2025), <https://auris-finance.fr/en/cross-border-mergers-and-acquisitions-balancing-opportunities-and-geopolitical-challenges/>.

finances or back-tax, as has been seen in some acclaimed historical cases.<sup>1182</sup>

Such tax risks, together with other regulatory and institutional uncertainties, increase the risk-return trade-off in emerging-market cross-border M&A and have an impact on the feasibility of deals, integration after the deal and long-term returns.<sup>1183</sup>

The strategies to deal with these risks include an early-stage comprehensive tax due diligence by acquirers, an evaluation of the applicability of the *double-taxation treaties (DTAAs)* or bilateral tax treaties, consideration of possible deal structures (asset sale, share transfer, slump sale, and so on), and in some cases, the establishment of tax-efficient holding-company jurisdictions or treaty-friendly jurisdictions.

#### VII. REGULATORY ISSUES IN EMERGING MARKETS

The fragmented and unpredictable and dynamic regulatory and institutional environment often hinders the cross-border mergers and acquisitions in the emerging economies. The legal and regulatory system is usually described as very complicated and dynamic, and with inconsistent laws that bring about uncertainties to foreign investors. Such various authorities as competition regulators, foreign-investment screening agencies, securities regulators and tax administrations can have overlapping or conflicting jurisdictions, which, in turn, lead to coordination challenges and slowness in the approval process.<sup>1184</sup>

In addition to these barriers to M&A activity, the foreign investment limits are also barriers: many emerging markets limit foreign ownership, certain sectors, or place strict performance and

<sup>1182</sup> Amit Jain, Tax Considerations in Cross-Border M&A: An In-Depth Overview of the Indian Landscape, BTG Advaya (Oct. 15, 2024), <https://www.btgadvaya.com/post/tax-considerations-in-cross-border-m-a-an-in-depth-overview-of-the-indian-landscape>.

<sup>1183</sup> Dhruva Advisors, M&A in India – Tax Perspective (2023), <https://www.dhruvaadvisors.com/wp-content/uploads/2023/07/14615839201.pdf>.

<sup>1184</sup> The Attorneys, Regulatory Challenges in Cross-Border M&A Deals, The Attorneys (Oct. 2024), <https://theattorneys.co/regulatory-challenges-in-cross-border-ma-deals/>.

local-content conditions. These limitations have the potential to delay or even cancel transactions, reduce the attractiveness of specific industries to foreign acquirers, and subject them to burdensome compliance costs. Another major challenge is competition or antitrust law. Poor merger-control regimes in many emerging-market jurisdictions are since their competition regulators do not have the resources or competence to investigate complex transactions. Therefore, cross-border mergers can have haphazard results, lengthy course of review, or lack of consistency in implementation. There often is a significant difference between jurisdictions with regards to taxation and financial-reporting regimes. Differences in the tax law, treatment of capital-gain, transfer-pricing regulations and accounting or disclosure reporting create a state of ambiguity on the amount of tax burden, profit repatriation and financial reporting.<sup>1185</sup>

The corporate governance and disclosure in many of the emerging economies are very poor or underdeveloped. Variations in shareholder protection, structure of boards, transactions between related parties, transparency and enforcement risks can provide worries to foreign acquirers about minority shareholder rights and the reliability of long-term governance. Another obstacle is cross border regulatory coordination.<sup>1186</sup> The process of aligning domestic regulatory demands with those of the host country, especially in capital controls, profit repatriation, foreign exchange laws, and reporting processes is usually complex. Moreover, regulatory uncertainty or political risks such as sudden changes in regulations, nationalization risk or expropriation has remained to be a thorny issue to investors.<sup>1187</sup>

The risks are even more numerous in the digital-economic environment, because new markets do not necessarily have strong regulatory frameworks to protect data, cybersecurity, or digital property. In the case of M and A transactions of technology companies, digital platforms, or data-rich companies, uncertainties in the context of intellectual-property rights, data-privacy laws, and cross-border dataflows represent significant barriers. All in all, these regulatory and institutional issues, which are complex, fragmented, poorly enforced, legally unclear, and overlapping in jurisdiction, tax-related and governance-related, and ambiguous in the digital era, are significant obstacles to the effective implementation of cross-border M&A in emerging markets.<sup>1188</sup>

#### VIII. MITIGATION MEASURES AND BEST PRACTICES

To overcome such difficulties and increase the chances of cross-border M mergers success in new markets, the companies (as well as policymakers) should be strategic, structured, and context-sensitive. One of the most important pillars is pre-deal planning and due diligence. Local advisors such as legal, tax, regulatory, etc. are useful in uncovering regulatory traps, latent liabilities, poor governance or compliance problems. The robustness of decision-making is improved with the help of scenario planning of macroeconomic risks, political risks, or currency risks and careful evaluation of corporate-governance practices in the target country.<sup>1189</sup>

Deal structuring can help deal with exposure: acquirers can use it to deal with exchange-rate risk; hedging instruments (forward contracts,

<sup>1185</sup> OECD, Cross-Border Merger Control: Challenges for Developing and Emerging Economies (OECD Roundtables on Competition Policy Papers No. 122, Sept. 30, 2011), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2011/0/9/cross-border-merger-control\\_cf19d571/b6efd932-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2011/0/9/cross-border-merger-control_cf19d571/b6efd932-en.pdf).

<sup>1186</sup> WebsiteClosers, Legal Challenges in Cross-Border Mergers and Acquisitions: Lessons Learned from Recent Cases, WebsiteClosers (2025), <https://www.websiteclosers.com/resources/legal-challenges-in-cross-border-mergers-and-acquisitions/>.

<sup>1187</sup> Rohit Modh, Legal Challenges in Cross-Border Merger and Acquisition: A Study of India's Regulatory Framework (LL.M. dissertation, Himachal

Pradesh Nat'l Law Univ. Shimla 2025), <https://ds7-backend.ndl.gov.in:8443/hpnl/api/core/bitstreams/acbc9f99-cba3-43a8-b38b-995a58d6b913/content>.

<sup>1188</sup> Yichong Liu, Risks and Challenges in Cross-Border Mergers and Acquisitions Under Digital Transformation, in Proceedings of the 2024 2nd International Conference on Management Innovation and Economy Development (MIED 2024) (Atlantis Press 2024), <https://www.atlantispress.com/article/126004028.pdf>.

<sup>1189</sup> Maheshwari & Co., Due Diligence in Cross-Border Mergers and Acquisitions, Maheshwari & Co. (Mar. 7, 2025), <https://www.maheshwariandco.com/blog/due-diligence-in-cross-border-mergers-and-acquisitions/>.

currency swaps) or with contingent-payment structure (earn-outs) and staged acquisitions to deal with upfront commitment. In some situations, joint ventures or minority investments will provide a less risky entry mode than some form of outright acquisition, as it will introduce the business into small steps and reduce the risk of integration.

Active participation in regulators is required. Premature engagement of the appropriate authority regulating bodies and open settlement of deal mechanisms, compliance strategies and governance can hasten approvals. Obtaining all required approvals such as antitrust, FDI, tax, etc., before concluding terms, as opposed to after signing, minimises uncertainty and avoids the threat of gridlock. Close management should also be paid for post-merger integration (PMI). In addition to financial and legal alignment, the companies are to make sure that there is organisational and cultural integration, corporate-governance standard alignment, reporting and compliance systems integration, and minority-shareholder interests protection. Through well-articulated governance structures, effective communication and strong management structures increase stakeholder confidence.<sup>1190</sup>

Risk-management wise, companies must seek to diversify and balance their portfolios, not being overexposed to regulatory or institutional risk in a particular country. Value preservation can be achieved through political-risk insurance, depending on investment treaties, and formulating deals in such a way that they can be flexible or provide an exit.<sup>1191</sup>

Policymakers and regulators in emerging markets, who simplify and streamline the process of approvals, clarify the laws on FDI and merger-control, strengthen corporate-

governance standards, reinforce transparency standards, and create more effective and reliable systems of dispute-resolution (e.g. investor-state arbitration, effective courts) can make its markets more appealing to cross-border M&A.<sup>1192</sup> These strategies significantly increase the chances of successful cross-border M&A in emerging markets when properly executed, i.e. by rigorously performing due diligence, structuring the deal, engaging in proactive regulatory interaction, good governance practices, and risk management diversification.<sup>1193</sup>

## IX. CASE STUDIES:

This part discusses the findings and practical deals to explain the practice of cross-border mergers and acquisitions (M&A) in emerging economies, success, failures, and strategic springboard acquisitions.

### A. Example 1: A Successful Intercountry Takeover in an Emerging Economy

Over the past few years, the cross-border M&A market has been quite resilient in India. There has been recent evidence of an Indian M&A market coming back to strength with a 2024 report showing a 66 per cent increase in the value of deals in the first nine months of 2024 over the same time in 2023.<sup>1194</sup> This recovery is an indication of a revised investor confidence, positive macroeconomic environment and sustained demand by both inbound and outbound acquirers. Cross-border transactions in and out of technology, media, telecommunications (TMT), industrial, and healthcare firms have been made by many firms.

<sup>1190</sup> Jens Kengelbach, Daniel Friedman, Anant Shivraj, Tobias Söllner & Dominik Degen, Capturing the Value of Cross-Border Deals, BCG (Oct. 28, 2025), <https://www.bcg.com/publications/2025/capturing-the-value-of-cross-border-deals>.

<sup>1191</sup> WebsiteClosers, Legal Challenges in Cross-Border Mergers and Acquisitions: Lessons Learned from Recent Cases, WebsiteClosers (2025), <https://www.websiteclosers.com/resources/legal-challenges-in-cross-border-mergers-and-acquisitions/>.

<sup>1192</sup> Gaurav G. Arora & Aditi Richa Tiwary, Cross-Border M&A Transactions in Emerging Economies: International Legal Harmonisation and the Viability of an International Corporate Legal Order, IBA (Jan. 17, 2024), <https://www.ibanet.org/cross-border-M%26A-transactions-in-emerging-economies-international-legal-harmonisation-and-viability-of-international-corporate-legal-order>.

<sup>1193</sup> Emily Johnson, Legal and Regulatory Risk Management in Cross-Border Mergers and Acquisitions (2025) (unpublished manuscript), [https://www.researchgate.net/publication/393324752\\_Legal\\_and\\_Regulatory\\_Risk\\_Management\\_in\\_Cross-Border\\_Mergers\\_and\\_Acquisitions](https://www.researchgate.net/publication/393324752_Legal_and_Regulatory_Risk_Management_in_Cross-Border_Mergers_and_Acquisitions).

<sup>1194</sup> Archana Rao, Cross-Border M&A in India: 2024 Market Developments and Regulatory Changes, India Briefing (Oct. 21, 2024), <https://www.india-briefing.com/news/cross-border-ma-in-india-2024-market-and-regulatory-updates-34873.html>.

As an illustration, foreign investors of Indian companies in the TMT or industrial segments are accessing to a fast-growing local market, local talent, economies of scale, and acquiring firms are accessing to the high growth of the middle-class in India. These transactions, previously followed by due diligence, regulatory boards and post-acquisition integration, represent ideal examples of how emerging market targets and international acquirers can achieve strategic synergies: access to a market, resource-advantage, and scale of operations.<sup>1195</sup> Therefore, this setting confirms the arguments of strategic-motives framework: acquirers get market-seeking and efficiency/resource-seeking benefits. To the target firms, these M&A deals provide access to capital, international networks, and increase in capabilities.

### B. Example 2: Failed or Challenged Deal –High Non-Completion Risk

Although many deals prove to be successful, empirical studies show that the rate of failure or breakdown in cross-border M&A of emerging markets is very high. In a detailed survey of 24693 buy initiatives by emerging-market multinational enterprises (EMNEs) arranged across borders, success rates are by no means guaranteed, because of an enormous number of factors to consider (institutional distance, complexity of regulations, and deal-specific parameters).<sup>1196</sup>

Even older longitudinal studies, including those of Brazil, Russia, India and China, reported that inbound transactions of cross-border are especially susceptible to failure: country-level political, legal and trade-environment variables greatly lower possibilities of success.<sup>1197</sup> As an

example, transactions can fail because of unexpected changes in regulations, foreign investment policies, or poor enforcement of the law in the target countries. This highlights the empirical fact of the trade-off between risk and risk: even potentially good deals are doomed due to external institutional and regulatory uncertainty.

### C. Example 3: Springboard Outbound M&A of Emerging Markets Firms

EMNEs apply the so-called springboard logic i.e. acquiring strategic resources, technology, or global networks abroad; this logic is also empirically supported. In a 2024 M&A study of the bank-sector, it was found that a subset of emerging-market banks, following a consolidation, have enhanced their financial performance (ROA, ROE) and structural alignment, suggesting that cross-border or inter-market consolidation benefits them.<sup>1198</sup>

In a broader sense, it has been recently noted in an empirical study of many cross-border acquisitions by EMNEs that a great number of predictors are key to the completion and success of the deals: institutional environment, firm characteristics, deal structure, and contextual factors. These results indicate that, in case of EM companies choosing targets cautiously, structuring deals correctly, and integration after acquisitions, they may use M&A to springboard to advanced markets or to acquire strategic assets, which is in line with theoretical expectations.<sup>1199</sup>

## X. POLICY / STRATEGIC IMPLICATIONS

As per the above analysis and the evidence of the case, some implications can be drawn to various stakeholders' multinational acquirers,

<sup>1195</sup> Naman Jain, Emerging Trends in Cross-Border Mergers in India and the US (unpublished working paper, SSRN July 21, 2023), <https://ssrn.com/abstract=4507424>.

<sup>1196</sup> Jianhong Zhang, Arjen van Witteloostuijn, Chaohong Zhou & Shengyang Zhou, Cross-border acquisition completion by emerging market MNEs revisited: Inductive evidence from a machine learning analysis, 59 J. World Bus. 101517 (2024), <https://www.sciencedirect.com/science/article/pii/S1090951624000014>.

<sup>1197</sup> Chenxi Zhou, Jinhong Xie & Qi Wang, Failure to Complete Cross-Border M&As: "To" vs. "From" Emerging Markets, 47 J. Int'l Bus. Stud. 1077, 1077–1105 (2016), <https://doi.org/10.1057/s41267-016-0027-y>.

<sup>1198</sup> Canan Yildirim, Mouloud Tensaout & Veronika Belousova, Cross-Border Mergers and Acquisitions by Emerging Country Banks: What do Acquisition Premiums Tell Us? 66 Res. Int'l Bus. & Fin. 102042 (2023), [https://www.researchgate.net/publication/374354412\\_Cross-border\\_mergers\\_and\\_acquisitions\\_by\\_emerging\\_country\\_banks\\_What\\_do\\_aquisition\\_premiums\\_tell\\_us](https://www.researchgate.net/publication/374354412_Cross-border_mergers_and_acquisitions_by_emerging_country_banks_What_do_aquisition_premiums_tell_us).

<sup>1199</sup> Kartik Saini, Aahna & Niyati Trivedi, Mergers and Acquisitions in Emerging Markets, 7 Int'l Res. J. Modernization Eng'g & Tech. Sci. (Issue 1 Jan. 2025), [https://www.irjmet.com/uploadedfiles/paper//issue\\_1\\_january\\_2025/65860/final/fin\\_irjmet1736065390.pdf](https://www.irjmet.com/uploadedfiles/paper//issue_1_january_2025/65860/final/fin_irjmet1736065390.pdf).

emerging-market targets, regulators, and investors.

Concerning multinational acquirers targeting emerging-market companies, acquiring acquirers need to practice due diligence, thoroughly evaluate institutional and regulatory risk and structure deals that can be flexible: e.g. staged acquisitions, earn out and joint ventures to reduce uncertainty. They are also advised to take into consideration integration issues, institutional distance, and cultural fit to increase the chances of success to the maximum.

To targets in emerging markets firms intending to be acquired ought to enhance their governance, disclosure, standard of transparency, and compliance in order to make them appeal to international acquirers. Developing strong financial and managerial infrastructure and foreseeing regulatory scrutiny value and trust.

To regulators and policymakers to entice high-quality foreign M&A investment, regulatory bodies should strive to be clear, predictable and consistent in their policies, especially policies relating to foreign investment approval, merger regulation, corporate governance, tax and repatriation. The risk can be mitigated by making regulatory processes easier and enhancing protection of the investors, legal enforcement, and transparency, which would stimulate more stable inbound M&A flows.

When financing M&A dealings across borders in emerging markets, various risks such as political, exchange-rate, regulatory, and integration risks should be carefully considered. The investors would want to get the flexibility of financing structure provided by convertible instruments or staged finance, and the structure would require robust governance and exit process. Advisory and due diligence services will be used in assessing the quality of the target and the viability of the deal.

## XI. CONCLUSION:

In a nutshell, cross-border mergers and acquisitions within the emerging markets are endowed with high strategic benefits such as finding growth markets, resource benefits, technology sharing, and integration globally. However, empirical outcomes and current studies on institutional settings show that regulatory, legal, tax, and institutional environments are the most important determinants of successful results. The complexity in regulatory regimes, institutional distance, poor governance, or uncertain policy changes often halt or delay the transactions.

To realize the long-term worth, buyers need to undertake comprehensive due diligence, embrace careful deal structuring and introduce strong post-merger integration, most specifically on governance, compliance and tax planning. At the same time, the host countries will be able to stimulate sustainable foreign investment by improving the quality of institutions, improving regulatory transparency and investor-protection systems. Through identification of this risk-reward equilibrium, firms, investors and policymakers can enter the cross-border M&A in a realistic manner and better equipped to strategy-wise