

## **“Critically Examining the Legal Framework of Mergers and Acquisitions in India”**

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### **Abstract**

Merger and acquisitions (“M&A”) activity in India has witnessed significant growth in recent years, driven by globalization, economic reforms, and the country's burgeoning market potential. M&A refers to the consolidation of firms or asset via different forms of financial transaction, comprising mergers, acquisitions, consolidations, tender offers, purchase of assets, and management acquisition. Navigating the legal framework governing M&A transactions in India presents multifaceted challenges for both domestic and international stakeholders. This study delves into the complexities and challenges inherent in the legal landscape of M&A transactions in India.

India's M&A landscape is governed by a plethora of regulations, including the Companies Act, 2013 (“Act, 2013”), the Competition Act, 2002, Securities and Exchange Board of India Act, 1992 (“SEBI Act”), its rules and regulations, and sector-specific laws. The multiplicity of regulatory bodies and overlapping jurisdictions often lead to ambiguity and procedural hurdles.

Conducting comprehensive due diligence is essential for identifying risks and liabilities associated with target companies. However, conducting due diligence in India presents challenges due to factors such as fragmented land records, regulatory opacity, cultural nuances, etc.

Enforcing contractual rights and resolving disputes through India's legal system can be lengthy and resource intensive. The backlog of cases in Indian courts, coupled with procedural complexities, underscores the importance of effective dispute resolution mechanisms in M&A transactions.

The legal framework governing M&A transactions in India is intricate and evolving. While the country offers immense growth opportunities, navigating the legal complexities requires a nuanced understanding of regulatory nuances, proactive compliance measures, and strategic planning. Addressing these challenges effectively can enhance deal certainty and contribute to the sustainable growth of M&A activity in India.

### **Introduction**

Merger and Acquisition (“M&A”) activity in India has undergone a significant evolution in recent years, spurred by a confluence of global economic trends, regulatory reforms, and the expanding market potential of the Indian economy. M&A transactions, comprising mergers, acquisitions, consolidations, tender offers, and asset purchases, represent strategic initiatives aimed at restructuring corporate entities or consolidating assets through various financial

mechanisms. This document endeavors to provide a comprehensive exploration of the intricate legal landscape governing M&A transactions in India, highlighting the multifaceted challenges and complexities inherent in this domain.

The realm of M&A transactions in India is characterized by a myriad of regulatory frameworks and legal considerations, which necessitate a nuanced understanding and diligent navigation by market participants. The Companies Act, 2013, serves as the cornerstone of M&A regulation, providing a comprehensive framework for corporate restructuring, governance, and shareholder protection. Additionally, the Competition Act, 2002, and sector-specific regulations further delineate the regulatory landscape, imposing stringent compliance requirements and oversight mechanisms.

M&A transactions offer a spectrum of benefits to participating entities, encompassing enhanced operational efficiencies, market expansion, and optimized resource allocation. By harnessing synergies and consolidating complementary capabilities, companies can achieve economies of scale, bolster their competitive positioning, and unlock value for shareholders. Moreover, M&A serves as a strategic tool for companies seeking to diversify their portfolios, penetrate new markets, and capitalize on emerging opportunities in an increasingly dynamic business landscape.

The decision to engage in M&A activity is underpinned by a strategic imperative to drive growth, optimize resource allocation, and create sustainable value for stakeholders. Companies embark on M&A transactions to capitalize on growth opportunities, streamline operations, and fortify their market presence. Furthermore, M&A transactions enable firms to leverage their collective strengths, access new technologies, and foster innovation, thereby enhancing their resilience and adaptability in a rapidly evolving marketplace.

Despite the compelling benefits, navigating the legal framework governing M&A transactions in India presents formidable challenges for market participants. The regulatory landscape is characterized by a labyrinth of statutes, including the Companies Act, 2013, the Competition Act, 2002, and sector-specific regulations, which necessitate meticulous compliance and due diligence. Moreover, the multiplicity of regulatory bodies, overlapping jurisdictions, and procedural intricacies contribute to ambiguity and procedural bottlenecks, underscoring the need for diligent navigation and proactive risk mitigation strategies.

Comprehensive due diligence emerges as a cornerstone of M&A transactions, serving as a crucial mechanism for identifying risks, liabilities, and regulatory compliance obligations associated with target entities. However, conducting due diligence in India is beset with challenges, including fragmented land records, regulatory opacity, and cultural nuances, which demand meticulous scrutiny and attention to detail.

Effective dispute resolution mechanisms assume paramount importance in the context of M&A transactions, given the potential for conflicts and disagreements to arise during the course of negotiations and post-transaction integration. The backlog of cases in Indian courts, coupled with procedural complexities, accentuates the significance of robust dispute resolution frameworks and contractual safeguards to safeguard the interests of all parties involved.

In conclusion, M&A transactions represent a cornerstone of corporate strategy, enabling companies to achieve strategic objectives, unlock value, and navigate the complexities of the global business landscape. By understanding the legal intricacies, proactively addressing regulatory challenges, and fostering a culture of compliance, companies can capitalize on the transformative potential of M&A transactions to drive sustainable growth and value creation in India's dynamic market environment.

## **Legal Framework Governing Merger and Acquisitions in India**

### **Brief history**

Within the intricate realm of mergers and acquisitions (M&A) in India, a complex legal framework regulates the landscape, overseen by various regulatory bodies tasked with managing potential conflicts and ensuring procedural integrity. At the core of this regulatory apparatus lies the Indian Companies Act of 2013, a seminal legislative instrument delineating the procedural intricacies governing M&A activities, encapsulated within Sections 230 to 240 of Chapter XV.

While antecedent provisions enshrined in the Companies Act of 1956 did permit the initiation of M&A transactions through bilateral agreements, the adjudicative process predominantly remained under the purview of judicial oversight. Noteworthy is the indispensable requirement for approval from the venerable High Court, serving as a pivotal prerequisite for the commencement of any M&A endeavor, with proposals necessitating endorsement by a substantial majority i.e. three-fourths (3/4<sup>th</sup>) of the shareholders or creditors convened at the Board Meeting of the respective entities.

Amidst this regulatory backdrop, it is imperative to underscore the provision for an extended timeframe, spanning up to 210 days, allocated to firms navigating the labyrinthine intricacies of M&A transactions. This temporal expanse significantly surpasses the minimum obligatory stay period for claimants, reflecting a conscientious endeavor to uphold procedural diligence and equitable treatment. As per the dictates of the Companies Act, claimants are entitled to a timeframe commencing either from the filing of notices or upon acknowledgment of the Commission's orders, embodying a comprehensive approach aimed at safeguarding the interests of stakeholders and fostering a conducive environment for corporate consolidation.

Moreover, the thresholds for entry into M&A activities within the Indian legal milieu are notably elevated, predicated on parameters such as asset valuation or annual income. These thresholds markedly exceed those delineated within the European Union (EU) and are twofold higher than those enshrined within the legislative framework of the United Kingdom (UK). This accentuates India's steadfast commitment to nurturing a resilient and dynamic ecosystem conducive to M&A endeavors, facilitating the seamless integration of Indian entities with their global counterparts. Crucially, this convergence is contingent upon the establishment of a cross-border entity within the Indian jurisdiction, underscoring the nation's proactive stance in fostering international collaborations and bolstering its position as a global hub for corporate consolidation.

Drawing from contemporary data and insights gleaned from reputable sources, it is evident that India's M&A landscape is undergoing a paradigm shift, characterized by an upsurge in both domestic and cross-border transactions. According to industry reports, the Indian M&A market witnessed robust activity in recent years, with deal volumes and valuations reaching unprecedented heights. Notably, sectors such as technology, e-commerce, healthcare, and renewable energy emerged as focal points for M&A activity, driven by factors such as technological disruption, regulatory reforms, and evolving consumer preferences.

Furthermore, the regulatory framework governing M&A transactions in India has undergone significant evolution, with legislative reforms aimed at streamlining processes, enhancing transparency, and mitigating regulatory hurdles. The enactment of the Companies Act of 2013 ushered in a new era of corporate governance and accountability, introducing provisions such as time-bound approvals, single-window clearance, and enhanced disclosure requirements. These reforms have engendered a conducive environment for M&A activities, fostering investor confidence and catalyzing corporate consolidation across diverse sectors of the economy.

In addition to legislative reforms, regulatory bodies such as the Competition Commission of India (CCI) play a pivotal role in overseeing M&A transactions, ensuring compliance with competition laws and safeguarding market dynamics. The Competition Act of 2002, supplemented by subsequent amendments, empowers the CCI to regulate combinations, assess their potential impact on competition, and impose remedies to address anti-competitive concerns. Through a judicious application of competition law principles, the CCI endeavors to strike a balance between promoting economic efficiency and preserving competitive markets, thereby fostering a level playing field for businesses and safeguarding consumer welfare.

Moreover, the Securities and Exchange Board of India (SEBI) governs M&A transactions involving listed companies, enforcing regulations aimed at protecting the interests of minority shareholders and ensuring transparency in capital markets. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, prescribe stringent disclosure norms, takeover thresholds,

and open offer requirements to safeguard shareholder rights and promote fair play in the securities market.

In tandem with regulatory oversight, institutional mechanisms such as the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) adjudicate M&A disputes, provide timely resolutions, and uphold the sanctity of contractual agreements. These quasi-judicial bodies serve as bastions of corporate justice, ensuring adherence to legal norms, protecting stakeholder interests, and fostering an environment conducive to corporate restructuring and consolidation.

Furthermore, the intersection of M&A transactions with tax laws, foreign exchange regulations, and intellectual property rights necessitates a holistic understanding of the legal landscape. The Indian Income Tax Act of 1961 prescribes provisions governing tax implications arising from mergers, demergers, and amalgamations, ensuring compliance with fiscal norms and optimizing tax efficiencies for businesses. Similarly, the Foreign Exchange Management Act of 1999 regulates cross-border transactions, foreign investments, and repatriation of funds, safeguarding the integrity of India's external sector and promoting capital inflows. Additionally, intellectual property laws govern the protection and enforcement of IP rights in M&A transactions, safeguarding innovation and fostering a conducive environment for research and development.

In essence, the legal framework governing M&A transactions in India is characterized by its dynamism, resilience, and adaptability to evolving market dynamics. As India continues its trajectory of economic growth and globalization, the regulatory landscape is poised to witness further reforms and enhancements, aimed at fostering investor confidence, promoting corporate governance, and safeguarding stakeholder interests. Through a judicious blend of legislative reforms, regulatory oversight, and institutional mechanisms, India seeks to consolidate its position as a preferred destination for M&A activities, driving economic prosperity and sustainable development in the years to come.

## **Legal compliance**

Let's dive deeper into the legal framework governing mergers and acquisitions (M&A) in India by elaborating on the key acts and regulations mentioned earlier.

### **Companies Act, 2013:**

The Companies Act, 2013, represents a significant overhaul of India's corporate law framework, aiming to enhance transparency, accountability, and investor protection. Within this comprehensive legislation, Sections 230 to 240 specifically address mergers and amalgamations, providing a structured legal framework for corporate restructuring activities.

1. Section 230<sup>1</sup>: This section empowers companies to propose compromises or arrangements with their creditors and members, facilitating the consolidation of businesses through mergers or amalgamations. It outlines the procedures for obtaining approval from the National Company Law Tribunal (NCLT) for such arrangements, ensuring judicial oversight and fairness in the process.

2. Section 231<sup>2</sup>: The provision grants the NCLT the authority to enforce compromises or arrangements proposed under Section 230, ensuring compliance with the approved scheme and protection of stakeholders' interests.

3. Section 232<sup>3</sup>: Section 232 lays down the framework for mergers and amalgamations between companies, outlining the procedures for obtaining approval from shareholders, creditors, and the NCLT. It specifies the rights and obligations of various stakeholders involved in the merger process, ensuring adherence to legal requirements and safeguarding their interests.

4. Section 234<sup>4</sup>: This section deals with the merger or amalgamation of an Indian company with a foreign company, providing guidelines for obtaining approval from the NCLT for cross-border transactions. It facilitates globalization and cross-border collaboration by enabling international companies to merge with Indian firms and vice versa.

In the recent times, this form of transaction has become a preferred choice for entities as it helps to cover a vast market area and provides that geographical boundaries don't hinder the growth.

5. Section 235<sup>5</sup>: Section 235 grants dissenting shareholders the option to exit the company by selling their shares at a fair value determined by the NCLT if they do not agree with the proposed scheme of merger or amalgamation. This provision protects the rights of minority shareholders and ensures their fair treatment in corporate transactions.

The Companies Act, 2013, along with rules and regulations framed thereunder, establishes a robust legal framework for mergers and acquisitions in India, promoting corporate restructuring while safeguarding the interests of stakeholders.

### **Competition Act of 2002:**

The Competition Act of 2002 aims to prevent anti-competitive practices, promote competition, and protect consumer interests in the Indian market. It regulates combinations, including

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<sup>1</sup> Companies Act, 2013 (Act 18 of 2013), S. 230

<sup>2</sup> Companies Act, 2013 (Act 18 of 2013), S. 231

<sup>3</sup> Companies Act, 2013 (Act 18 of 2013), S. 232

<sup>4</sup> Companies Act, 2013 (Act 18 of 2013), S. 234

<sup>5</sup> Companies Act, 2013 (Act 18 of 2013), S. 230



mergers, acquisitions, and amalgamations, through the Competition Commission of India (CCI).

1. **Regulation of Combinations:** Section 5<sup>6</sup> and Section 6<sup>7</sup> of the Act govern combinations, specifying thresholds for notification and approval by the CCI. Any combination meeting the prescribed thresholds based on assets and turnover must be notified to the CCI for approval.

2. **Assessment Criteria:** The CCI evaluates combinations based on various factors, including market shares, competition dynamics, and potential adverse effects on competition. It assesses whether the combination is likely to cause an appreciable adverse effect on competition (AAEC) within the relevant market in India.

3. **Remedies and Conditions:** If the CCI finds that a combination is likely to have an AAEC, it may impose conditions or modifications to address competition concerns. These remedies may include divestiture of assets, licensing of intellectual property rights, cease and desist or any other measures deemed necessary to preserve competition in the market.

4. **Appeals Process:** Decisions of the CCI regarding combinations are subject to appeal before the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court of India, providing a mechanism for judicial review and redressal of grievances.

The Competition Act of 2002, along with regulations and guidelines issued by the CCI, ensures a competitive and level playing field in the Indian market, fostering innovation, efficiency, and consumer welfare.

### **Securities and Exchange Board of India (SEBI):**

SEBI regulates mergers and acquisitions involving listed companies in India through the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. These regulations aim to protect investor interests, ensure market integrity, and promote transparency in corporate transactions.

1. **SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, (Takeover Code):** These regulations focus on the acquisition of shares or voting rights in a listed company and the takeover process. They establish thresholds for disclosure and require open offers to public shareholders in certain cases of substantial acquisition, ensuring fairness and transparency in change of control transactions.

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<sup>6</sup> Competition Act, 2002 (Act 12 of 2003), S. 5

<sup>7</sup> Competition Act, 2002 (Act 12 of 2003), S. 6

2. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [SEBI (LODR)]: These regulations lay down obligations for listed companies concerning disclosures, corporate governance, and other matters. They mandate disclosure of material events, including mergers and acquisitions, to stock exchanges, ensuring transparency and dissemination of information to investors.

SEBI's regulatory framework for mergers and acquisitions enhances market efficiency, investor confidence, and corporate governance standards in the Indian securities market.

### **Foreign Exchange Management Act (FEMA) of 1999:**

FEMA governs foreign exchange transactions and regulates cross-border investments and transactions in India. While it does not directly regulate mergers and acquisitions, FEMA rules and regulations have significant implications for such transactions involving foreign exchange transactions.

1. Investments and Acquisitions by Foreign Entities: FEMA regulations govern investments made by foreign entities into Indian companies, including mergers and acquisitions. Foreign investors need to comply with FEMA regulations while investing in or acquiring Indian companies to ensure compliance with foreign exchange norms.

2. Prior Approval: In certain cases, prior approval from the Reserve Bank of India (RBI), which is the regulatory authority under FEMA, may be required for mergers and acquisitions involving foreign exchange transactions. This approval ensures compliance with FEMA regulations and foreign investment norms, promoting transparency and adherence to regulatory requirements.

3. Valuation and Pricing Guidelines: Pricing/Valuation guidelines are governed by FEMA and RBI notification. They ensure that transactions adhere to specific rules to maintain equality and transparency, preventing undervaluation or overvaluation of assets in mergers and acquisitions.

4. Reporting and Documentation: FEMA regulations require the reporting of foreign exchange transactions related to mergers and acquisitions to the RBI or authorized banks. Documentation and reporting requirements ensure transparency and facilitate regulatory oversight of cross-border transactions.

FEMA's regulatory framework aims to facilitate foreign investment, promote economic growth, and maintain stability in the foreign exchange market while safeguarding India's financial interests.



**Indian Income Tax Act, 1961:**

The Indian Income Tax Act, 1961, contains provisions governing the tax implications of mergers, demergers, and amalgamations. These provisions impact various aspects of corporate restructuring, including capital gains, carry-forward of losses, minimum alternate tax (MAT), deductions, and exemptions.

1. **Tax Treatment of Capital Gains:** The Income Tax Act specifies the tax treatment of capital gains arising from mergers and acquisitions, including exemptions available under certain conditions. The tax implications vary based on the nature of assets transferred and the structure of the transaction.

2. **Treatment of Losses and MAT:** The Act provides guidelines for the treatment of accumulated losses and unabsorbed depreciation in mergers and amalgamations. Minimum Alternate Tax (MAT) provisions may also apply, affecting the tax liability of companies involved in restructuring transactions.

3. **Deductions and Exemptions:** Certain deductions and exemptions may be available to companies undergoing mergers and amalgamations, subject to compliance with specified conditions. These incentives aim to promote corporate restructuring and facilitate the consolidation of businesses.

4. **Advance Rulings and Tax Planning:** Companies engaged in mergers and acquisitions often seek advance rulings from the Income Tax Authorities to clarify the tax implications of proposed transactions. Tax planning plays a crucial role in optimizing the tax efficiency of restructuring transactions while ensuring compliance with legal requirements.

The Indian Income Tax Act provides a comprehensive framework for addressing the tax implications of mergers and acquisitions, guiding companies in structuring transactions to minimize tax liabilities and maximize value for stakeholders.

By elaborating on these key acts and regulations, we gain a deeper understanding of the legal landscape governing mergers and acquisitions in India, encompassing company law, competition law, securities regulations, foreign exchange regulations, and tax law. These legal frameworks aim to promote transparency, fairness, and investor protection while fostering economic growth, innovation, and competitiveness in the corporate sector.

**Conclusion**

In summation, the arena of mergers and acquisitions (M&A) in India epitomizes a multifaceted legal tapestry interwoven with regulatory strictures, jurisprudential interpretations, and commercial imperatives, delineating the contours of corporate strategy and economic

dynamism. This discourse traverses the expanse of legislative enactments, judicial adjudications, and regulatory edicts that constitute the foundational bedrock of the M&A landscape in India. From the seminal precepts enshrined within the Companies Act, 2013, to the intricate mandates of competition law and securities regulations, each facet of the regulatory architecture contributes to the intricate mosaic of M&A transactions, delineating rights, obligations, and procedural safeguards for stakeholders.

Central to this regulatory paradigm is an unwavering commitment to transparency, fairness, and investor protection, underscored by the imperatives of corporate governance and ethical rectitude. By steadfastly adhering to these cardinal principles, corporations can engender trust, instill confidence, and mitigate risks in the pursuit of strategic transactions, thereby bolstering market integrity and fostering sustainable growth.

However, amid the rigors of regulatory compliance and legal scrutiny, M&A transactions emerge as seminal endeavors, catalyzing synergies, unlocking latent value, and propelling innovation across diverse sectors of the economy. From the hallowed precincts of corporate boardrooms to the hallowed halls of regulatory agencies, the pursuit of M&A transactions embodies a convergence of strategic vision, tactical acumen, and meticulous execution, guided by an unyielding commitment to excellence and value maximization.

Looking ahead, the trajectory of M&A activity in India is imbued with promise and potential, buoyed by the imperatives of economic liberalization, globalization, and technological innovation. As corporations navigate the vicissitudes of an ever-evolving commercial milieu, the imperatives of adaptability, resilience, and foresight assume paramount importance, guiding them through the vicissitudes of market dynamics and regulatory exigencies.

In this voyage of discovery and transformation, stakeholders must remain vigilant, proactive, and collaborative, nurturing a culture of legal compliance, ethical rectitude, and stakeholder engagement. By embracing the tenets of good governance, probity, and inclusivity, corporations can chart a course toward sustainable growth, value creation, and societal welfare, thereby harnessing the transformative potential of M&A transactions as catalysts for progress and prosperity.

In essence, the panorama of mergers and acquisitions in India embodies a crucible of opportunity, innovation, and collaboration, where corporations embark on transformative odysseys to shape the destiny of business and society. As we navigate the intricacies and challenges of this dynamic ecosystem, let us remain steadfast in our pursuit of excellence, integrity, and holistic development, thereby illuminating a path toward a brighter and more equitable future for all stakeholders involved.

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