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# A STUDY OF CROSS-BORDER MERGERS

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## INTRODUCTION

A business arrangement known as a cross-border merger is one in which the assets and liabilities of firms that are formed in two or more countries are integrated. This results in the integration of operations, ownership structures, and governance processes. These mergers are an important tool for the globalisation of corporations and the restructuring of international organisations.

Cross-border mergers are governed under Section 234 of the firms Act, 2013, which was passed in 2013. This section allows for mergers to take place between Indian firms and foreign corporations that are located in jurisdictions that have been notified by the Central Government in collaboration with the Reserve Bank of India (RBI). It is ensured that such transactions are in accordance with India's foreign exchange restrictions and investment framework thanks to the legal clarity that is provided by the FEMA (Cross Border Merger) Regulations, 2018[1].

In a broad sense, cross-border mergers can be generically classified as:

1. When a foreign firm merges with an Indian corporation, this is referred to as an inward merger.
2. A merger between an Indian corporation and a foreign company is an example of an outbound merger.

It is possible to differentiate the appropriate legal, fiscal, and regulatory requirements by using these categories. These obligations vary greatly depending on the direction in which the merger is proceeding[2].

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[1] Companies Act, No. 18 of 2013, § 234, INDIA CODE (2013).
[2] R. P. Austin & I. M. Ramsay, *Ford, Austin and Ramsay's Principles of Corporations Law* 879 (17th ed. 2022).

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## INBOUND MERGERS

A foreign entity is absorbed by an Indian firm through the process of an inward merger, which ultimately results in the Indian company continuing to exist as the legal entity that survives with the foreign entity. India's efforts to portray itself as a worldwide hub for commercial operations and to attract foreign direct investment (FDI) are particularly significant, and this type of merger is particularly significant in those efforts[3].

These mergers make it possible for international corporations to purchase or combine operations in India without having to deal with the complexity that are connected with establishing new subsidiaries, negotiating licensing regimes, or establishing a presence from the ground up. An alternative strategy would be for the foreign company to merge with an existing Indian company in order to efficiently enter and develop its presence in the Indian market[4].

## REGULATORY BODIES AND LEGAL PROVISIONS

A sophisticated and multi-layered regulatory ecosystem is in place in India for the purpose of regulating inbound mergers. The following are the most important legal instruments and authorities:

**With regard to the Companies Act of 2013, Section 234:**

This section, which was introduced to provide statutory recognition to cross-border mergers, makes it possible for Indian companies to merge with foreign companies, provided that the foreign entity is incorporated in a notified jurisdiction. A notified jurisdiction is one that has been approved by the Central Government in consultation with the Reserve Bank of India (RBI). The provision stipulates that mergers of this kind must be carried out in line with the rules that have been specified and must be approved by the regulatory authorities.[5]

[3] U.N. Conf. on Trade & Dev., *World Investment Report 2023*, U.N. Doc. UNCTAD/WIR/2023 (2023).
[4] EY, *India M&A Trends and Outlook 2022*, https://www.ey.com/en_in/mergers-acquisitions
[5] Companies Act, No. 18 of 2013, § 234, INDIA CODE (2013).

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**The following is an excerpt from Rule 25A of the Companies (Compromises, Arrangements, and Amalgamations) Rules:**

The purpose of this Rule is to operationalise Section 234 and establish the procedural requirements for cross-border mergers. These obligations include filings with the Registrar of Companies (RoC), disclosures to shareholders, and documents before the National Company Law Tribunal (NCLT)[6].

**For the year 2018, the FEMA (Cross Border Merger) Regulations:**

In specifically, these laws, which were issued by the Reserve Bank of India (RBI), explain the conditions that must be met for mergers that are both inbound and outbound.

Norms of valuation, often known as the fair value that should be utilised when documenting property and liabilities.

In accordance with the Foreign Direct Investment (FDI) regulations, foreign shareholders may be granted shares of the Indian corporation.

Restrictions on people's ability to send money back home.

After a merger, there are time constraints for compliance, which normally fall within two years.[7]

**Reserve Bank of India**

One of the most important roles that the Reserve Bank of India (RBI) plays is ensuring that the merger is in accordance with the regulations that govern the management of foreign currencies in India. It may grant clearance that is either general or particular, based on the nature of the merger and the industry that is currently being considered[8].

**National Company Law Tribunal**

The National Company Law Tribunal (NCLT) is the ultimate authority charged with deciding whether or not to approve the merger scheme. Specifically, it checks the process in accordance

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[6] Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Rule 25A.
[7] FEMA (Cross Border Merger) Regulations, 2018, Gazette of India, Part II, Sec. 3(ii).
[8] Reserve Bank of India, *Cross Border Merger FAQs* (2020), https://www.rbi.org.in/.

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with corporate law, guarantees that shareholders and creditors are treated fairly, and investigates whether or not the merger plan complies with the law. The interaction between these bodies guarantees that the merger is open and honest, that it complies with the law, and that it does not put the nation's interests or the stability of the financial system in jeopardy[9].

**Landmark cases**

**In re: Scheme of Arrangement between Transferor Company and Transferee Company, NCLT, Mumbai Bench (2017)**

In this case, an Indian company proposed to merge with a foreign company incorporated in **Mauritius**, and the NCLT was called upon to determine the permissibility and procedural aspects under Section 234. The Tribunal:

- Confirmed that **Section 234 is valid and applicable** for such cross-border transactions.
- Held that the **foreign company must be from a notified jurisdiction** (Mauritius qualified).
- Emphasized that **prior RBI approval** is mandatory before implementation.
- Allowed the merger subject to compliance with **FEMA and Companies Act requirements**.

This decision was significant because it was among the **first practical applications** of Section 234 and established procedural clarity on cross-border mergers. It set the groundwork for future inbound transactions by interpreting the law in a way that favoured cross-border integration while maintaining regulatory safeguards[10].

**Advantages of inbound merger**

Inbound mergers offer a number of benefits, including market penetration without the need for greenfield investments.

[9] National Company Law Tribunal, *Merger Guidelines*, (2021), https://nclt.gov.in.
[10] In re Scheme of Arrangement Between Transferor Co. and Transferee Co., (2017) NCLT (Mumbai Bench).

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1. International businesses are able to circumvent the high expenses and regulatory delays that are connected with the establishment of new operations for greenfield projects. They are able to get fast access to Indian markets, licenses, and infrastructure through the process of merger consolidation.[11]
2. Access to Indian Labour and Cost Efficiencies: India provides a workforce that is both skilled and cost-effective. A merger with an Indian company allows foreign players to take advantage of the local human resources, information technology systems, and supply networks that are more efficient.[12]
3. Through the process of merging with a domestic entity, foreign corporations are able to capitalise on established brand loyalty, customer networks, and regional presence, all of which would otherwise take years to build up. This allows for faster expansion through establishment of local brand recognition.
4. Simplified Corporate Structure: An inbound merger streamlines complex holding structures and makes post-acquisition integration easier, hence decreasing compliance expenses and the load of administrative work.[13]
5. Regulatory and Tax Incentives: In certain circumstances, tax-neutrality may be granted to inbound mergers under ***Section 47 of the Income Tax Act, 1961***, provided that certain conditions are met. This enables foreign corporations to reorganise without immediately incurring a tax burden[14].

**Disadvantages of inbound merger**

1. Numerous Regulatory Approvals: Despite the fact that the legal structure is in place, businesses are required to seek clearances from the ***Reserve Bank of India (RBI), the National Company Law Tribunal (NCLT),*** sectoral regulators (such as IRDAI, SEBI, and TRAI), and occasionally the Competition

[11] Ashok S. Desai, *Corporate Strategy and M&A*, 42 IND. L.J. 57, 61 (2020)
[12] KPMG, *India Advantage: Human Capital & Innovation* (2021).
[13] Deloitte India, *Simplifying Corporate Structures Post-Merger* (2020).
[14] Income Tax Act, No. 43 of 1961, § 47(xiii), INDIA CODE (1961).

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Commission of India (CCI). There is frequently a lot of overlap in jurisdiction, which results in delays and duplication[15].

2. Accounting Integration: International businesses often keep their accounts in accordance with ***International Financial Reporting Standards (IFRS)*** or other global accounting standards, but India adheres ***to Indian Accounting Standards (Ind AS).*** A considerable obstacle may be presented while attempting to reconcile and restructure financial statements in order to comply with Indian law[16].
3. In accordance with the ***Foreign Exchange Management Act (FEMA),*** any foreign debt or liability must correspond to the Indian external borrowing requirements by the time the merger is complete. It is possible that this will require reclassification, conversion into equity, or payback all within predetermined timeframes.[17]
4. The determination of the fair value of both Indian and foreign organisations can be challenging due to the fact that there are disparities in the dynamics of the market, accounting processes, and the volatility of exchange rates. Additionally, in accordance with Indian legislation, valuations are required to be validated by registered valuers[18].
5. Shareholder Protection: In order to safeguard minority shareholders and creditors, Indian law imposes comprehensive disclosure and approval procedures regarding shareholder protection. Execution may be delayed if it is necessary to ensure compliance with ***Sections 230–232 of the Companies Act,*** which include voting thresholds, scheme approval, and other provisions.[19]
6. Sectoral Restrictions: Certain industries, including as retail, defence, and insurance, are subject to foreign direct investment (FDI) guidelines and approval procedures. It is possible that the relevant ministry or agency will need to conduct additional inspection in the event of an inbound merger involving such industries[20].

[15] Press Information Bureau, *Multi-agency Approval in Cross-Border Deals*, https://pib.gov.in.
[16] ICAI, *Guidance on Accounting Standards for Cross-Border Transactions* (2022).
[17] FEMA Regulations, Reg. 5–6.
[18] Grant Thornton, *Valuation Challenges in Cross-Border M&A* (2022)
[19] Companies Act, No. 18 of 2013, §§ 230–232, INDIA CODE (2013).
[20] FDI Policy (2023), Department for Promotion of Industry and Internal Trade, https://dpiit.gov.in.

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Companies from other countries who are interested in establishing or expanding their operations in India might use inbound mergers as a crucial strategic instrument. Investing, growing, and integrating into one of the most dynamic economies in the world may be accomplished through them in a straightforward manner. However, despite the fact that the legal framework, which is led by ***Section 234 of the Companies Act*** and regulations from FEMA, has greatly matured, the actual execution still requires thorough preparation, expert appraisal, and compliance with many levels of regulatory requirements.

The court precedents and regulatory advancements that have occurred over the course of the past several years show a favourable movement towards allowing such mergers. However, in order to properly unlock the potential of inbound mergers and acquisitions, India must continue to streamline processes and harmonise its rules with international norms.

## OUTBOUND MERGERS

Outbound mergers are transactions in which an Indian firm combines into a foreign corporation, with the foreign entity becoming the surviving organisation. This type of merger is also known as a "outbound merger." Indian companies are able to deliberately realign themselves in favourable legal and tax jurisdictions through the use of this sort of cross-border restructuring, which affords them the opportunity to expand their footprint around the globe. However, due to the complicated regulatory structure, exchange control constraints, and the requirement for reciprocity between jurisdictions, outbound mergers continue to be extremely uncommon in India.

### Legal frameworks

There is a combination of statutes and regulations that govern outbound mergers, the most important of which are as follows:

1. With regard to the ***Companies Act of 2013, Section 234:***

This clause makes it possible for Indian corporations to merge with international companies that have been incorporated in jurisdictions that have been notified. It is the responsibility of the Central Government, in conjunction with the Reserve Bank of India (RBI), to provide

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periodic notifications to countries that have corporate, legal, and insolvency systems that are equivalent to India's[21].

2. According to the Companies (CAA) Rules, 2016, Rule 25A states:

This Rule establishes the procedural conditions that must be met in order to carry out outbound mergers. These procedures include disclosures, valuation reports, and approvals from the tribunal.

3. For the year 2018, the FEMA (Cross Border Merger) Regulations:

These regulations establish particular pre-conditions and post-conditions for mergers that are external to the company, including the following:

- In accordance with the regulations of the Liberalised Remittance Scheme (LRS) or Overseas Direct Investment (ODI), the shareholders of the Indian company are required to be given shares of the foreign company.
- All of the amalgamated entity's assets, obligations, and operations in India must be in accordance with the Federal Emergency Management Agency (FEMA) and Indian tax rules.
- Any sectoral caps or foreign direct investment limitations that are applicable to the Indian firm must not be violated by the merger[22].
- Although general clearance is available under the 2018 Regulations, any deviation from established limitations (for example, outbound investment limits under LRS) may require prior approval from the Reserve Bank of India (RBI). Compliance with the regulations is also required.[23]

**Case Laws and Judicial Precedents**

Regarding the case of ***Moschip Semiconductor Technology Ltd***., which was heard by the ***National Company Law Tribunal in Hyderabad in 2019***.

In accordance with Section 234 and the provisions of FEMA, this was one of the first occurrences of an outbound merger that was permitted. The Indian company Moschip

[21] Companies Act, No. 18 of 2013, § 234, INDIA CODE (2013).
[22] FEMA (Cross Border Merger) Regulations, 2018, Gazette of India, Part II, Sec. 3(ii).
[23] Reserve Bank of India, *FAQs on Cross Border Mergers*, https://www.rbi.org.in.

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Semiconductor considered the possibility of combining its operations with those of its wholly owned subsidiary located in another country.

Important things to learn from the decision:

- With regard to the outward merger structure, the NCLT gave its approval to the scheme.
- A review of the transaction was conducted by RBI to ensure that it complied with FEMA, particularly with regard to the treatment of outbound shareholding.
- During its proceedings, the Tribunal emphasised the importance of safeguarding Indian shareholders and established disclosure standards as well as post-merger compliance requirements.
- In the context of India's ever-evolving legal system, this case is a significant illustration of how judicial interpretation and regulatory collaboration are making it possible for organisations to combine with other companies.
- Tribunals and the Reserve Bank of India have emphasised the following in future merger approvals, albeit very limited:
- valuers who are registered in both jurisdictions will perform the valuation.
- Make sure that the legal responsibilities of the new company are clearly delineated.
- Conformity with foreign anti-money laundering rules and beneficial ownership disclosures.[24]

**Strategic rationale access to foreign markets:**

Outbound mergers make it possible for Indian companies to have a direct presence in developed markets such as the United States, the European Union, and Singapore. These markets provide better purchasing power and regulatory stability. [25]

1. Acquisition of Technology: A significant number of Indian companies engage in outbound mergers as a means of acquiring proprietary technology, intellectual property rights, or research capabilities that are not easily accessible in the domestic market.
2. Global Headquarters in Jurisdictions That Are Efficient in Tax Policy: It is possible to lower tax payments, enhance access to international

[24] In re Moschip Semiconductor Tech. Ltd., (2019) NCLT (Hyderabad Bench).

[25] D. Daniel Sokol, *Cross-Border M&A Trends*, 81 U. CHI. L. REV. 131, 140–42 (2014).

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financing, and streamline worldwide operations by relocating the corporate structure to a country such as Ireland, the Netherlands, or Singapore.

3. Currency and Capital Flexibility: Foreign domiciliation can provide improved access to global capital markets, increased confidence among foreign investors, and protection against the volatility of the Indian Rupee.

**Concerns regarding regulations and obstacles in the real world**

Outbound mergers continue to be restricted due to a number of legal and regulatory barriers, despite the fact that they have the potential to be strategic.

1. Capital Controls and Overseas Direct Investment Limits: The Liberalised Remittance Scheme (LRS) places restrictions on the capacity of resident individual shareholders to receive shares in foreign firms. At the moment, the maximum amount that can be received is USD 250,000 every fiscal year. To go beyond this, approval from the RBI is required[26].
2. There is no automatic reciprocal recognition of orders issued by the ***National Company Law Tribunal (NCLT)*** or Indian courts in foreign jurisdictions. This means that Indian orders cannot be enforced in those jurisdictions. Procedural delays are a common problem for businesses, and they may need to re-approve their operations in the host country.
3. Complications Regarding Tax Residency: The rules governing controlled foreign corporations (CFC) and place of effective management (POEM) might give rise to tax residency disputes in India, depending on the manner in which the transaction is structured. [27]
4. Due to the absence of rigorous tax planning, outbound mergers may result in the imposition of capital gains tax, withholding tax, and exit taxation in accordance with Indian law and/or the law of the foreign jurisdiction.
5. Both ***the Reserve Bank of India (RBI) and the National Company Law Tribunal (NCLT)*** mandate that the valuation of both entities be carried out by independent registered valuers, with one valuer located in India and the other in a foreign jurisdiction. Furthermore, the plan must incorporate comprehensive

[26] RBI, *Master Direction – Liberalised Remittance Scheme (LRS)*, https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12152.
[27] Income Tax Act, No. 43 of 1961, § 6(3), INDIA CODE (1961).

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disclosures regarding the share exchange ratio, the treatment of debt, and the governance of the post-merger entity.

6. Protection of Minority Shareholders: Outbound mergers are required to conform with ***Sections 230–232 of the Companies Ac***t. This ensures that Indian shareholders are treated properly and that dissident voices are addressed through the use of appropriate exit alternatives.[28]

Indian enterprises have the chance to globalise their operations, boost their competitiveness, and get access to broader finance and consumer markets through the process of outbound mergers from other countries. However, the legal and regulatory framework is still in the process of developing, and there are issues that need to be handled in a comprehensive manner. These challenges include capital controls, tax uncertainties, and judicial enforcement in other countries.

There has been a progressive movement in the way that the judiciary thinks, as seen by landmark rulings such as Moschip Semiconductor, and the regulations that were implemented by the Reserve Bank of India in 2018 have created the groundwork for a more stable cross-border framework. It is anticipated that India would experience an increase in the number of outbound mergers, particularly from industries like as technology, pharmaceuticals, and renewable energy, given that the legal ecology becomes more supportive. This is because India is currently undergoing economic reforms and a rising amount of global integration.

## KEY CONCEPTS: AMALGAMATION, MERGER, ACQUISITION

Within the realm of corporate restructuring, the notions of amalgamation, merger, and acquisition are at the heart of the matter. These principles also serve as the legal basis for international business transactions. Although these words are often used synonymously in business settings, Indian law holds that they have different meanings in the legal system, different standards for operations, and different tax consequences. Analysing the legal framework for cross-border mergers calls for a detailed awareness of these kinds of issues.

## AMALGAMATION

[28] Companies Act, No. 18 of 2013, §§ 230–232, INDIA CODE (2013).

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**Definition:**

Many different statutes and court decisions have defined the term "amalgamation" in various ways. The Companies Act of 2013 does not expressly define the word. In line with the Income Tax Act of 1961, an amalgamation is the combination of one or more businesses with another company or two or more businesses forming a new company. This definition guarantees that the next requirements are satisfied:

1. All of the assets and liabilities of the company merging into another will be transferred to the new company; and those shareholders with at least three-fourths of the value of the company merging into another company are regarded as owners of the merged company.
2. The procedural framework for amalgamations through plans of arrangement that have been approved by the ***National Company Law Tribunal (NCLT)*** is governed by the ***Companies Act of 2013, specifically Sections 230 to 232***[29].

**Characteristics:**

1. This process involves the combination of two or more businesses into a single entity, either new or existing.
2. All of the transferor company's assets, liabilities, and commitments are absorbed, in addition to the transferor company ceasing to exist.
3. Through the acquisition of equity in the newly formed organization, the shareholders of the company that is merging receive compensation.

**Judicial interpretation:**

As stated in the case of ***General Radio & Appliances Co. v. M.A. Khader,*** the Supreme Court of the United States ruled that amalgamation refers to the process of one corporation being absorbed by another, which ultimately results in the absorbed company losing its identity[30].

## MERGER

**Definition:**

[29] Income Tax Act, No. 43 of 1961, § 2(1B), INDIA CODE (1961).
[30] Gen. Radio & Appliances Co. v. M.A. Khader, (1986) 2 SCC 656 (India).

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One type of corporate restructuring is known as a merger, which involves the combination of two companies, with one of the company's continuing to exist while the other company ceases to existed. In contrast to amalgamation, which frequently results in the formation of a new entity, mergers typically include the incorporation of all of the constituents into an already existing body.

**Legal framework:**

The provisions of Sections 230 to 232 of the Companies Act, 2013 make it possible for mergers to take place through the use of schemes that have been approved by the court. Every one of these plans needs to be approved by the NCLT and require the following:

1. A majority of shareholders and creditors (in terms of both value and number) must provide their approval.
2. Disclosures, notices, and affidavits in accordance with legally mandated regulations,
3. reports on valuations compiled by a registered valuer.

**Three categories of mergers**

1. Horizontal Merger: This type of merger involves two organizations that are in the same market and industry (for example, Idea and Vodafone). vertical mergers are when companies that are at different levels of the supply chain combine with one another (for example, a manufacturer combining with a supplier).
2. Conglomerate Merger: This type of merger is used to diversify businesses by bringing together companies from different industries.
3. Reverse Merger refers to the process by which a smaller or financially weaker corporation merges with a larger one, typically for the purpose of gaining tax or regulatory advantages.

**Judicial perspective**

It was highlighted by the court in the case of ***SBI v. Andhra Cements Ltd***. that although economic prudence is the driving force behind mergers, judicial approval protects the protection of creditors and minority shareholders.[31]

[31] State Bank of India v. Andhra Cements Ltd., (2011) 10 SCC 675 (India).

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## Acquisition

**The scope and the definition**

When one firm purchases a controlling interest or a large ownership in another company, this is referred to as an acquisition to the first company. It is possible that this will involve the dissolution of the company that was bought.

**Acquisitions can range from:**

1. Friendly (a deal that was negotiated) or hostile (a takeover that was unilateral),

2.Acquired by the purchase of assets, the acquisition of shares, or a legislative takeover.

**Principal characteristics**

1. It is possible for the target company to maintain its structural integrity while the transfer of ownership or control takes place.

2.Unless it is constituted as a scheme in accordance with Section 230, it may not require permission from the NCLT.

3.Listed companies are subject to the SEBI (SAST) Regulations, 2011, which must be followed.

**Case law and example**

A merger (with Glaxo) was upheld as a legal acquisition structure by the Supreme Court in the ***case Hindustan Lever Employees' Union v. Hindustan Lever Ltd***. The court made the observation that the commercial wisdom of the shareholders should not be interfered with unless the scheme is plainly unfair[32].

**Tax implications**

In accordance with Section 47, mergers and amalgamations may be eligible for tax neutrality if the following conditions:

[32] Hindustan Lever Employees' Union v. Hindustan Lever Ltd., (1995) 83 Comp Cas 30 (SC) (India).

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1.Maintaining continuity in shareholdings is completed.

2.There is a minimum amount of time that the business continues.

3. In addition, the specified conditions have been satisfied.

In accordance with Section 72A, losses can be carried forward for industrial operations; however, this provision does not apply to financial institutions or acquisition strategies. There is a possibility that the seller will be subject to capital gains tax under Section 45 during an acquisition, and stamp duty may be imposed on the transfer of shares or assets[33].

**Considerations of a strategic nature**

When subsidiaries are consolidated or debt-heavy divisions are restructured, amalgamations are utilized as a financial tool.

Synergies, efficiency, and market consolidation are frequently the goals of mergers, which are frequently strategic in nature.

When it comes to speedy market entry, acquisitions are the preferred method, particularly in international contexts where having a local presence is essential.

Whenever a merger or purchase takes place across international borders, it is subject to additional layers of examination from the following:

1. FEMA, which stands for the Foreign Exchange Management Act's
2. Concerning matters pertaining to anti-trust, the Competition Commission of India (CCI)
3. SEBI, RBI, and IRDAI are examples of sector-specific regulatory bodies.

Though they are occasionally used synonymously, each of the three legal processes and implications—merger, acquisition, and amalgamation—is unique from the others. Companies Act, Securities and Exchange Board of India guidelines, and Income Tax Act all set organised systems for every one of these laws, so guaranteeing procedural fairness, regulatory oversight, and protection for stakeholders. Any international transaction should be organised in a legal and efficient manner depending on these differences. One must have a strong awareness of these differences to organise any transaction in such manner.

## LEGAL BASIS UNDER INDIAN LAW

[33] Income Tax Act, No. 43 of 1961, § 72A, INDIA CODE (1961).

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- **Companies Act, 2013 (Sections 230–234)**

Based on the Companies Act, 2013, which is the legislative basis for corporate restructuring in India, mergers, amalgamations, and agreements constitute part of corporate restructuring in India. More crucially, the National Company Law Tribunal (NCLT) is authorised to authorise mergers including both local and foreign entities as well as to approve plans of compromise or arrangement between businesses and their creditors or members. Comprising the statutory core of this legal architecture, sections 230 through 234 enable the NCLT to act as such.

Section 230 of the Act deals with any compromise or solution that might be attained between a company and its creditors or members. The terms of this section are sufficiently broad to cover operational framework reorganisations as well as finance sector ones. There is leeway for a great spectrum of judicial interpretation since a thorough definition of the term "arrangement" has not been given. The process starts with an application to the National Company Law Tribunal (NCLT). The corporation itself, its creditors, or its members can all apply this tool. Once the application is received, the Tribunal will provide directions for the creditors and shareholders to meet and go over the pertinent concerns. The plan must be approved depending on the situation by a majority consisting of three-quarters of the total value of the creditors or members.
Once the necessary majority approves the plan, the Tribunal will review it to ascertain whether it is fair, legal, and practical. Included in this are the review of the valuation report, the auditor's certificate on accounting treatment, and an affidavit proving statutory conformity. Under particular circumstances, especially where the parties have written permission to have the sessions cancelled, the Tribunal also has the right to refuse meetings under specific criteria. Section 231 gives the Tribunal the power to mandate a compromise or settlement through its clauses. Under Section 230, the National Company Law Tribunal (NCLT) has the power to monitor the implementation of the plan and provide instructions should conflicts or defaults arise in compliance. Regulatory control is kept even after the plan has been approved since the Tribunal's ongoing ability to change the scheme or declare it null and void in the case that the situation so calls for.

Mergers and amalgamations of corporations are expressly governed by Section 232 of the corporations Act. The actions and papers that are necessary are outlined in this document. These include the draft scheme of merger, valuation reports, a report from the Registrar of Companies (RoC), and a report from the Official Liquidator, if appropriate. Subject to judicial

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scrutiny and compliance requirements, a supplementary clause of this section permits cross-entity mergers—that is, those between a business and a limited liability partnership (LLP). It is noteworthy that Section 232's wording enables mergers both horizontal and vertical. This law mandates the disclosure of necessary financial information, employee interest issues, and obligations to creditors. One of the most crucial parts of Section 232 is incorporated with ideas of corporate governance. For both companies, for example, the boards of directors must approve the plan and also report to the shareholders ahead of the meeting. Important information including the valuation basis and the interest of the promoter has to be disclosed. Section 233 of the Act calls for attention on fast-track mergers. Small businesses, holding and completely owned subsidiaries, and start-ups can all use this method to get around the more involved NCLT approval process. Important stages in the procedure include the approval of a board of directors, the consent of creditors and shareholders, and documentation with the RoC and official liquidator. Once these procedures have been finished and no objections have been registered, the merger can be concluded without involving the NCLT. Particularly for smaller companies, this clause reflects the legislative desire to simplify corporate activities, therefore facilitating their execution.

Section 234, which permits mergers with firms from other countries across international borders, is the most revolutionary new clause. According to Section 234, mergers and amalgamations between Indian companies and foreign businesses are allowed provided the foreign company is registered in a jurisdiction the Central Government has notified. This section gives the Central Government the power to create rules allowing mergers of this sort in tandem with the Reserve Bank of India (RBI).

Concerns about sovereignty and a rejection of foreign court verdicts led foreign mergers in earlier cases to be not legally enforceable in India. This section marks a change from that jurisprudence. Section 234 has been hailed as a significant shift in India's corporate law scene since it legally permits both inner and outward mergers within regulatory compliance. One could consider this particular reform as a significant one.

Each and every one of the procedural and substantive requirements that are specified in Sections 230 to 232, as well as the specific circumstances that are outlined in FEMA regulations, must be adhered to by a scheme that follows Section 234. It is important to note that as part of the merger plan, owners of the foreign firm may be given the opportunity to receive shares of the Indian transferee company. Those foreign investors who are interested in

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acquiring Indian operations through merger rather than through the purchase of shares or assets will find this provision to be of immeasurable significance.

The interpretation of these provisions has been greatly influenced by case law which pertains to them. The court, in the case of ***General Radio & Appliances Co. v. M.A. Khader***[34], established early jurisprudential clarity on the nature of amalgamation. It defined amalgamation as the process by which one corporation absorbs another company, which ultimately results in the transferor losing their corporate identity. ** In a similar vein, the Supreme Court of the United States ruled in the case of Hindustan Lever Employees' Union v. Hindustan Lever Ltd. that the commercial wisdom of the parties, once it has been vetted by shareholders and approved by regulators, should not be interfered with unless the scheme is plainly unjust. [35]

- **FEMA (Cross Border Merger) Regulations, 2018**

The requirements of ***Section 234 of the Companies Act*** are made operational through the ***Cross Border Merger Regulations, 2018***, which were issued under the ***Foreign Exchange Management Act, 1999 (FEMA).*** Cross-border mergers are subject to these regulations, which were notified by the Reserve Bank of India. These regulations control the treatment of foreign currencies and regulatory compliance standards.

There is a distinction made by the legislation between inbound mergers, which involve the merger of a foreign firm with an Indian company, and outbound mergers, which involve the merger of an Indian company into a foreign corporation. In the case of inbound mergers, the Indian business that emerges from the merger is required to conform with the foreign exchange laws that are relevant to inbound investments. Valuation rules, sectoral caps under the Foreign Direct Investment policy, and reporting requirements are all included in this.[36]

***The Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India)*** Regulations stipulate that any issue of shares to non-resident shareholders must conform with the price criteria and sectoral limits. This is one of the most important conditions that must be met. In order to report the allotment of shares, the resultant company is required to submit Form FC-TRS to the Reserve Bank of India.

[34] Gen. Radio & Appliances Co. v. M.A. Khader, (1986) 2 SCC 656 (India).
[35] Hindustan Lever Employees' Union v. Hindustan Lever Ltd., (1995) 83 Comp Cas 30 (SC) (India).
[36] Companies Act, No. 18 of 2013, §§ 230–234, INDIA CODE (2013).

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The foreign business that is formed as a consequence of an outbound merger is required to conform with India's ODI (Overseas Direct Investment) policy and must be incorporated in a jurisdiction that has been notified of certain requirements. In the event that the sum exceeds the acceptable thresholds, Indian shareholders who wish to receive shares of the foreign firm are required to do so in accordance with the limits of the Liberalised Remittance Scheme (LRS) or to get specific approval from the Reserve Bank of India (RBI). As an additional requirement, Indian businesses are obligated to make certain that any assurances or financial commitments made previous to the merger are in accordance with FEMA post-merger as well.

Furthermore, the FEMA regulations prescribe criteria for compliance after a merger has taken place. These include the following:

1. Within a period of two years, the closure or repatriation of foreign assets that are not permitted to be held in accordance with Indian law.

2. The valuation of assets and liabilities in accordance with generally accepted accounting principles all over the world.

3. Maintaining compliance with Indian accounting requirements following the incoming merger[37].

Furthermore, the regulations stipulate that the permission granted by the ***National Company Law Tribunal (NCLT)*** in accordance with the Companies Act will be considered approval for FEMA purposes as well, provided that the conditions associated with the regulations are met. Nevertheless, the Reserve Bank of India (RBI) retains the authority to demand further clarification or to impose conditions in particular circumstances.

***The Reserve Bank of India (RBI)*** wrote these rules with the intention of striking a balance between liberalisation and prudential safeguards. Despite the fact that it makes it possible to conduct transactions across international borders, the framework guarantees that capital controls, prohibitions on foreign ownership, and compliance systems are maintained[38].

The case of ***In re Moschip Semiconductor Technology Ltd***. is an example of the judicial implementation of the regulations. In this case, the ***National firm Law Tribunal (NCLT) Hyderabad*** Bench granted approval for a merger between an Indian firm and its overseas subsidiary in accordance with the cross-border regime. The transaction was subjected to a

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[37] Foreign Exchange Management (Cross Border Merger) Regulations, 2018, Gazette of India, Part II, Sec. 3(ii).
[38] Reserve Bank of India, *Cross Border Merger FAQs* (2020), https://www.rbi.org.in/.

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thorough examination by both the Tribunal and the RBI in order to guarantee that it complied with valuation standards, shareholder protection criteria, and reporting requirements. The fact that the FEMA framework allows for general approval of mergers that are in compliance with the requirements is yet another important aspect of the framework.[39] Specific clearance is only necessary in the event that the terms differ from the norms that have been specified. With the help of this general approval procedure, the weight of regulatory red tape is greatly reduced, which in turn makes it simpler for businesses to carry out mergers crossing international borders.[40]

In addition, the regulations place an emphasis on protecting investors and being transparent. All parties involved, including shareholders, creditors, and employees, are required to be provided with complete disclosures in the documentation pertaining to the scheme. By placing a strong emphasis on fair valuation and post-merger compliance, India is able to maintain the integrity of its capital and corporate governance frameworks.[41]

It is the junction of the ***Companies Act of 2013 and the FEMA (Cross Border Merger) Regulations of 2018*** that serves as the basis for the legal framework that underpins cross-border mergers in India. The FEMA Regulations handle the regulatory and foreign exchange compliance aspects of mergers and arrangements, while Sections 230 to 234 offer the procedural and judicial framework for mergers and arrangements. India's dedication to fostering cross-border corporate transactions while simultaneously preserving legal and financial discipline is shown in the degree to which these regulations are compatible with one another.

Over passage of time, the implementation of these laws has been refined via the application of judicial interpretation, administrative guidance, and practical experience. India's attractiveness as a venue for international corporate restructuring would be further enhanced by the continuation of refining efforts, which will include the establishment of more transparent norms for outbound mergers, valuation, and shareholder protection.

- **Jurisdictions Notified under Indian Law**

The concept of notified nations and the efficiency of cross-border mergers in line with Indian law—mostly in line with Section 234 of the Companies Act, released in 2013—have a direct

[39] Foreign Exchange Management (Cross Border Merger) Regulations, 2018, Gazette of India, Part II, Sec. 3(ii).
[40] In re Moschip Semiconductor Tech. Ltd., (2019) NCLT (Hyderabad Bench).
[41] Companies Act, No. 18 of 2013, §§ 230–234, INDIA CODE (2013).

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link. Only in cases whereby the foreign company was registered in a jurisdiction specifically notified by the Central Government in cooperation with the Reserve Bank of India (RBI) is a merger or amalgamation with a foreign company approved. Then the merger or amalgamation can be regarded as legal.

This notification mechanism guarantees that cross-border mergers would only occur with countries having legal, regulatory, and corporate governance systems akin to those of India. It also serves as a guard against jurisdictional arbitrage, tax avoidance, and enforcement problems resulting from dealings with countries lacking suitable legal reciprocity or financial transparency.

## LEGAL BASIS:

Under Section 234(1) of the Companies Act, 2013, mergers and amalgamations between companies registered under the Act and companies incorporated outside India are permitted only with prior approval of the Reserve Bank of India, and only in cases whereby the foreign company is incorporated in a jurisdiction that has been notified by the Central Government[42].

Furthermore, included in 2017 was Rule 25A of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 to enable Section 234 into effect. These mergers can only be executed with countries that have been notified; they must follow Reserve Bank of India (RBI) stated policies [43].

During the month of March in 2018, the Reserve Bank of India (RBI) announced the FEMA (Cross Border Merger) Regulations, 2018. These regulations made it clear that the "automatic route" can only be utilised for inbound and outbound merges if the foreign firm is from a jurisdiction that has been notified of the possibility[44].

### LIST OF NOTIFIED JURISDICTIONS (AS OF 2023)

The list of jurisdictions that are considered acceptable for cross-border mergers with Indian corporations was issued by the Ministry of Corporate Affairs (MCA) in cooperation with the Reserve Bank of India (RBI) in accordance with a notification that was announced on April 13, 2017. These jurisdictions include countries that:

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[42] Companies Act, No. 18 of 2013, § 234, INDIA CODE (2013).
[43] Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Rule 25A, Gazette of India.
[44] Foreign Exchange Management (Cross Border Merger) Regulations, 2018, Gazette of India, Part II, Sec. 3(ii).

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1. Are members of the Financial Action Task Force (FATF) or of groups that are members of FATF (e.g., European Union),

2. Are signatories to the Multilateral Memorandum of Understanding of IOSCO, and

3. Have bilateral cooperation arrangements with SEBI or other Indian regulators.

The list includes the following jurisdictions (non-exhaustive):

1. The United States of America
2. United Kingdom
3. Germany
4. France
5. Singapore
6. Switzerland
7. Japan
8. South Korea
9. United Arab Emirates
10. Australia
11. New Zealand
12. Netherlands
13. Ireland
14. Mauritius
15. Canada
16. South Africa[45]

[45] Ministry of Corporate Affairs, Notification No. G.S.R. 279(E), Apr. 13, 2017, available at https://www.mca.gov.in/.

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It is important to note that tax havens or jurisdictions with inadequate regulatory control, such as the British Virgin Islands or Panama, have not been notified, which means that mergers involving companies that are formed in those countries are not permitted.

## IMPLICATIONS OF NOTIFICATIONS REGUIREMENT

Several significant repercussions are associated with the restriction that mergers must only take place with companies that are incorporated in notified jurisdictions:

1. It guarantees that Indian authorities can have reasonable confidence about the transparency and quality of governance in the foreign jurisdiction. This is called regulatory comfort.
2. Reciprocal Enforcement: Indian orders and rulings might be accepted and followed more readily in these countries, hence lessening of legal uncertainty in circumstances arising following a merger.
3. By requiring membership in the Financial Action Task Force (FATF) or other comparable criteria, India guards itself from mergers potentially used for money laundering or aiding terrorist organisations.
4. The law might limit economic freedom since it would bar Indian businesses from merging with corporations in developing or high-growth sectors not yet acknowledged. This is so even if the demand is meant to guarantee security.
5. Outbound Merger Planning: In the case of outbound mergers, the Indian firm is only permitted to combine with a foreign company if the foreign company is located in a jurisdiction that has been subject to notification. The number of possible destinations is reduced as a result, which may have implications for the structural tactics.

### JUDICIAL AND REGULATORY INTERPRETATION

In **In re: Scheme of Arrangement between Transferor Company and Transferee Company**, NCLT Mumbai Bench (2017), the Tribunal considered whether a merger between an Indian company and a Mauritian company could proceed under Section 234. The Tribunal approved the scheme after confirming that Mauritius was a **notified jurisdiction** under the

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MCA circular. This case reinforced that **judicial endorsement of cross-border mergers hinges on prior government notification of the foreign jurisdiction**[46]

Another example can be seen in **In re: Moschip Semiconductor Technology Ltd.**, where the NCLT Hyderabad Bench scrutinized whether the proposed outbound merger involved a notified jurisdiction. The transaction was ultimately approved only after the Tribunal was satisfied that the foreign entity met all jurisdictional and regulatory standards.

In both instances, the NCLT emphasized the **pre-condition of notification as a jurisdictional bar** and treated compliance with this requirement as non-negotiable[47].

## POLICY AND REFORM OUTLOOK

Stakeholders in the industry have expressed a desire to see the list of informed jurisdictions expanded to include the following jurisdictions:

1. Indonesia, Thailand, and Vietnam are just few of the ASEAN countries that are included.
2. South African countries such as Kenya and Nigeria, as well as
3. Venezuela and Mexico are two examples of emerging economies in Latin America.
4. Indian corporations, particularly those in the infrastructure and pharmaceuticals industries, have both operational and strategic interests in these countries, which is the basis behind this decision making. Regulators, on the other hand, have so far taken a cautious and calibrated approach, maintaining financial security, anti-money laundering compliance, and governance parity as the primary criteria.

The following would need to be aligned with the expansion of the list:

1. The bilateral investment treaties (BITs) that India has signed,
2. Trade agreements for the exchange of tax information (TIEAs),
3. Insolvency and corporate restructuring mechanisms that are recognised under UNCITRAL or their local equivalents have been recognised.

Regarding the legality and enforceability of cross-border mergers with Indian companies, the concept of notified nations is absolutely crucial. India has created a legislative strategy that is both clear and cautious with the aid of Section 234 of the Companies Act, Rule 25A,

[46] In re Scheme of Arrangement Between Transferor Co. and Transferee Co., (2017) NCLT (Mumbai Bench).
[47] In re Moschip Semiconductor Tech. Ltd., (2019) NCLT (Hyderabad Bench).

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and the FEMA Cross Border Merger Regulations, therefore enabling cross-border integration while preserving the integrity of its regulatory system.

The court application of this framework shows in the National Company Law Tribunal (NCLT) decisions that the need is not only mandatory but also rather significant. Companies thinking about global mergers must start with looking at the foreign entity's eligibility to operate in the relevant jurisdiction. Moreover, these organisations should be ready to show proof of their eligibility during the merger's planning and approval phases. As India keeps opening its business environment and enhancing its place in global value chains, it is expected that the list of notified countries would progressively grow. With the certainty that regulatory authorities will provide direction, this will enable more Indian businesses to restructure their operations and engage globally, hence enabling their competitiveness.

## CONCLUSION

Specifically, in line with Section 234 of the Companies Act of 2013, this chapter provides both the FEMA Cross Border Merger Regulations of 2018 and a legal definition of cross-border mergers inside India. It divides these kinds of mergers into two categories: inbound mergers—in which a foreign firm combines with an Indian company—and outbound mergers—in which an Indian company merges with a foreign-based company. Together with an examination of the necessary approvals, the procedural standards, and the regulatory precedents—such as Moschip Semiconductor—this chapter provides a complete study of the regulatory environment for both sorts. It clarifies in terms of the procedures and taxes relevant under Indian law the results of every legal concept of merger, acquisition, and amalgamation. Apart from this, the chapter examines the notified nations depending on Indian law—that is, the United States, the United Kingdom, and Singapore—above which cross-border mergers are barred. It also tackles the implications for policy, legal interpretations, and the prospects for extending eligible jurisdictions so bringing India in line with the finest standards used elsewhere.