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Cross-Border Mergers and Acquisitions in the Indian Legal Framework: Regulatory Architecture, Judicial Approach and Reform Gaps

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***Abstract*—Cross-border mergers and acquisitions have become a principal route through which Indian and foreign enterprises reorganise ownership, obtain technology and enter new markets. India does not regulate such transactions through a single statute. A deal instead passes through foreign exchange law, company law, competition law, securities regulation, insolvency law and tax law, each administered by a different authority. This paper maps that layered framework, concentrating on the Foreign Exchange Management Act, 1999, the Companies Act, 2013 read with Rule 25A of the 2016 merger rules, the Cross Border Merger Regulations, 2018, the Competition Act, 2002 as amended in 2023, the takeover regulations of the securities market regulator, and the Insolvency and Bankruptcy Code, 2016. Applying a doctrinal method, it also studies how Indian courts and arbitral tribunals have treated offshore transactions, particularly in the Vodafone litigation, and records recent reforms, namely the fast-track route for reverse flips (2024), the deal value threshold (2024), the revised land-border investment policy (2026) and the Income-tax Act, 2025. The paper argues that the framework is now broadly enabling but remains fragmented. Uncertain sequencing of approvals, uneven tax treatment of outbound mergers and the lack of a cross-border insolvency regime are identified as the main weaknesses, and targeted reforms are proposed.**

***Index Terms*—Competition law, Cross-border mergers and acquisitions, FEMA, Foreign direct investment, Indian corporate law, Insolvency, Takeover regulation, Taxation.**

I. INTRODUCTION

A cross-border merger or acquisition is a transaction in which the acquirer and the target are incorporated in different countries, or in which the target's business, assets or shareholders are spread across more than one jurisdiction. From the Indian point of view it runs in two directions. An inbound transaction brings foreign capital or a foreign company into an Indian business, while an outbound transaction takes an Indian entity abroad, either as an acquirer or as a company absorbed into a foreign group. Both have grown steadily since the economic liberalisation of the early 1990s, and the replacement of the Foreign Exchange Regulation Act, 1973 by the Foreign Exchange Management Act, 1999 (FEMA) moved the legal focus from restriction to regulated facilitation [1].

For a long time, however, Indian company law offered no clear mechanism for a merger in which one party was a foreign company. The Expert Committee on Company Law chaired by J. J. Irani recommended in 2005 that Indian law should allow such mergers [2]. Parliament eventually did so through section 234 of the Companies Act, 2013, which was brought into operation in April 2017 together with Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 [3], [4]. The Reserve Bank of India (RBI) then issued the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 to settle the exchange-control position [5].

Even so, a lawyer advising on a cross-border deal cannot rely on those provisions alone. The same transaction may need clearance on foreign investment policy, an order of the National Company Law Tribunal (NCLT), a merger-control filing, an open offer to public shareholders under the takeover code of the Securities and Exchange Board of India (SEBI) and a tax analysis of both the target and its offshore holding chain. This paper therefore treats the subject as an interaction of regimes rather than as the study of one enactment. Part II states the objectives and method, Part III sets out the basic concepts, Part IV describes the regulatory architecture, Part V reviews the judicial and arbitral response, Part VI notes reforms of 2024 to 2026, and Parts VII to IX offer analysis, suggestions and a conclusion.

II. OBJECTIVES AND METHODOLOGY

The study pursues the following objectives:

1) to identify the statutes, regulations and policy instruments that govern inbound and outbound transactions;

2) to explain how the approvals under those instruments are expected to fit together in a typical deal;

3) to examine the approach of the Supreme Court of India and of investment tribunals to offshore transactions; and

4) to assess the gaps that remain and to propose reforms.

The method is doctrinal. Primary sources are statutes, delegated legislation, notifications, policy circulars and judicial or arbitral decisions. Secondary sources are expert-committee reports and published commentary on recent amendments. The law is stated as it stood on 22 October 2026. Because several instruments have been amended in the last three years, readers should check the consolidated text on the official gazette or regulator website before relying on any threshold mentioned here. The paper is academic in purpose and is not legal advice.

III. CONCEPTUAL FOUNDATIONS

A. Forms of Cross-Border Transactions

Cross-border control changes in India take five common forms. The first is a direct purchase or subscription of shares of an Indian company by a non-resident. The second is an asset purchase or slump sale, in which a business undertaking is transferred for a lump-sum price. The third is a statutory merger or demerger approved under a scheme of arrangement. The fourth is a share swap, where the consideration is paid in shares of the acquirer rather than in cash. The fifth is an indirect transfer, in which shares of a foreign holding company are sold abroad although the value of that company is derived largely from assets in India. Each form triggers a different mix of regulators, and the choice of form is itself a significant legal decision.

B. Inbound, Outbound and Reverse-Flip Mergers

An inbound merger is one in which a foreign company merges into an Indian company, so that the resulting entity is Indian. An outbound merger is the opposite: an Indian company merges into a foreign company and the survivor is foreign [5]. A third pattern, commonly called a reverse flip, arises when a business that was earlier placed under a foreign parent, often for access to venture capital, is moved back under an Indian parent. Reverse flips are in substance inbound mergers or share swaps, and recent policy has been shaped largely by the demand for them.

IV. REGULATORY ARCHITECTURE

The sub-sections below discuss each instrument in turn, and Table I, placed at the end of this Part, summarises them.

A. Foreign Exchange and Foreign Direct Investment

Capital-account transactions between residents and non-residents are regulated by FEMA and by the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules), which are administered together with the Consolidated FDI Policy of the Department for Promotion of Industry and Internal Trade (DPIIT) [1], [6], [7]. Three questions arise in every inbound acquisition of shares, which is regulated as foreign direct investment (FDI). The first is whether the sector is open to foreign investment at all. The second is whether the investment falls under the automatic route or needs prior government approval. The third is whether a sectoral cap, such as the limit applicable in defence or in certain media activities, restricts the stake that a non-resident may hold.

Pricing and payment rules also apply. Shares issued to non-residents must not be priced below fair value, and shares transferred by a non-resident to a resident must not be priced above it, with valuation performed on internationally accepted methods. A limited portion of the consideration may be deferred or placed in escrow for a prescribed time. Reporting to the RBI follows closing, and delay attracts compounding penalties. Share-swap transactions carry their own valuation and approval conditions and should be examined separately.

A security-driven layer was added by Press Note 3 of 2020, which required government approval for any investment where the investor, or its beneficial owner, is situated in a country sharing a land border with India [8]. In March 2026 the DPIIT amended the policy through Press Note 2 (2026 Series). The amendment adopts the beneficial-ownership test of the Prevention of Money Laundering framework, permits non-controlling beneficial ownership of up to 10 per cent from such countries under the automatic route, and introduces time-bound processing for a few sectors [9]. The change reduces, but does not remove, the screening burden for funds with a distant link to a land-border country.

Outbound deals are governed by the Foreign Exchange Management (Overseas Investment) Rules, 2022 and the directions issued under them [10]. An Indian entity investing abroad must observe limits on financial commitment that are linked to its net worth, restrictions on certain sectors and conditions designed to prevent round-tripping. Funding by way of external commercial borrowing or guarantees must in addition satisfy the separate borrowing framework.

B. Company Law and the Cross Border Merger Regime

Domestic mergers are sanctioned under sections 230 to 232 of the Companies Act, 2013, which require shareholder and creditor meetings, notice to regulators and a final order of the NCLT [3]. Section 234 extends this machinery to a merger between an Indian company and a foreign company, but only with the previous approval of the RBI. Rule 25A prescribes the details. It requires, among other things, that the foreign company belong to a permitted jurisdiction, that valuation be done by qualified valuers following internationally accepted principles, and that the transferee company obtain the RBI's approval before the scheme is presented to the NCLT [4].

The 2018 Regulations supply the exchange-control conditions. A scheme that complies with them is treated as having the RBI's approval, which removes the need for a separate application in the usual case. For inbound mergers the Indian resulting company may issue securities to non-resident shareholders of the foreign company only as FDI rules allow. Borrowings and guarantees carried over from the foreign company must be brought into line with the external borrowing regime, and assets that a non-resident may not hold in India must be disposed of, in each case within a stipulated period, which is generally two years from the date of the sanction order. Parallel conditions govern outbound mergers, including the treatment of securities received by Indian residents and of overseas liabilities [5].

A significant procedural change came on 9 September 2024. The Ministry of Corporate Affairs (MCA) inserted sub-rule (5) into Rule 25A, allowing a foreign holding company to merge into its wholly owned Indian subsidiary through the fast-track procedure of section 233, which is handled by the Central Government rather than the NCLT [4], [11]. The amendment was designed to ease reverse flips. Commentators have noted a tension between its mandatory wording and section 233, which describes the fast-track route as optional [12].

C. Competition Law

A transaction that crosses the asset or turnover thresholds in section 5 of the Competition Act, 2002 is a combination that must be notified to the Competition Commission of India (CCI) and cannot be completed until it is cleared [13]. The Act applies to a deal made entirely abroad if it affects competition in India, which is the effect of its extraterritorial reach. The Competition (Amendment) Act, 2023 added a deal value threshold, and the Competition Commission of India (Combinations) Regulations, 2024 took effect on 10 September 2024 [14], [15]. A deal with a value above INR 2,000 crore becomes notifiable if the target has substantial business operations in India, which the regulations test through its gross merchandise value, turnover or number of Indian users [15]. The small-target exemption is not available for deals caught by this threshold.

The 2023 amendments and the 2024 regulations also shortened the overall review period to 150 days and codified a test of material influence for the concept of control. A green-channel route allows deemed approval for transactions with no overlaps, but an incorrect filing can lead to the approval being revoked. Failure to notify, or closing before approval, exposes the parties to penalties. The Competition Law Review Committee had earlier recognised that value-based triggers were necessary for digital and data-driven businesses whose size is not captured by assets or turnover [16].

D. Securities Regulation and Takeovers

Where the target is a company listed in India, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 apply [17]. Acquisition of 25 per cent or more of the voting rights, or of control, obliges the acquirer to make an open offer to public shareholders for at least 26 per cent of the capital. The Regulations also reach indirect acquisitions. A purchase of shares in a foreign parent is treated as a direct acquisition of the Indian listed company when the Indian company contributes more than 80 per cent of the parent's net asset value, sales or market capitalisation. Indirect acquisitions of control, or of 25 per cent or more of the voting rights, also oblige the acquirer to make an open offer, with pricing rules adapted to the indirect structure. Schemes of arrangement of listed companies need, in addition, an observation letter from the stock exchanges and SEBI before approaching the NCLT.

E. Insolvency Law

Foreign investors increasingly purchase distressed Indian businesses through the resolution process under the Insolvency and Bankruptcy Code, 2016 (IBC) [18]. Section 29A bars certain persons, including wilful defaulters and those with specified connections to defaulting promoters, from submitting a resolution plan, and a foreign bidder must therefore examine its group links with care. The Code has no operative chapter on cross-border insolvency, and the Insolvency Law Committee recommended in 2018 that the UNCITRAL Model Law be adopted in India [19]. Until Parliament acts, a foreign creditor or representative has no statutory route to recognition.

F. Taxation

Tax law influences structure more than any other branch. Capital gains arise on transfer of shares or assets, and the indirect-transfer provision deems income to arise in India when shares of a foreign entity derive substantial value from Indian assets [20]. After the Finance Act, 2015 the rule applies only where the Indian assets represent at least half of the foreign entity's global assets and exceed a stated value, and small shareholders holding no control or management rights are excluded. The general anti-avoidance rule (GAAR) in Chapter X-A can recharacterise an arrangement lacking commercial substance, and a foreign company whose place of effective management is in India is treated as a tax resident.

Tax-neutral treatment of amalgamations is mostly built around Indian companies. The exemption for transfers in a scheme of amalgamation requires that the amalgamated company be an Indian company, while a narrower exemption protects an offshore amalgamation that transfers shares of an Indian company, subject to continuity of shareholding and absence of tax abroad. An outbound merger, in which the survivor is foreign, does not fit comfortably within the first exemption. Since 1 April 2026 the Income-tax Act, 2025, administered by the Central Board of Direct Taxes (CBDT), has replaced the 1961 Act for tax years beginning on or after that date, and commentary describes the new indirect-transfer provision as re-drafted but substantively continuous [21]. Transactions in earlier years continue to be assessed under the old Act. Stamp duty on transfer of immovable property through a court or tribunal order is a state subject and must be examined separately.

TABLE I. PRINCIPAL INSTRUMENTS GOVERNING CROSS-BORDER M&A IN INDIA

Instrument	Authority	Principal concern
FEMA; NDI Rules, 2019; FDI Policy	RBI; DPIIT	Entry route, sectoral cap, pricing, reporting
Companies Act, 2013, ss. 230-234; Rule 25A	NCLT; MCA; RBI	Scheme sanction; foreign-company mergers
Cross Border Merger Regulations, 2018	RBI	Exchange-control conditions; deemed approval
Competition Act, 2002, s. 5-6	CCI	Asset, turnover and deal-value thresholds
SEBI Takeover Regulations, 2011	SEBI	Open offer for listed targets; indirect acquisitions
Insolvency and Bankruptcy Code, 2016	NCLT; creditors	Eligibility of bidders (s. 29A)
Income-tax Act (1961 / 2025)	CBDT	Capital gains, indirect transfer, GAAR, amalgamation

V. JUDICIAL AND ARBITRAL APPROACH

A. Offshore Transactions and Tax

The leading decision is *Vodafone International Holdings B.V. v. Union of India*, in which the Supreme Court held in 2012 that a sale of shares of a Cayman Islands company by one non-resident to another, outside India, was not taxable in India although the company indirectly controlled an Indian telecom business [22]. The Court respected the legitimacy of holding structures and drew a distinction between genuine commercial planning and sham arrangements. Its reasoning followed the earlier approach in *Union of India v. Azadi Bachao Andolan*, which accepted that treaty-based structuring is not unlawful in itself [23].

Parliament responded in the Finance Act, 2012 by amending the Income-tax Act with retrospective effect to cover indirect transfers [20]. Foreign investors resisted, and in 2020 two investment tribunals constituted under the India-United Kingdom investment

treaty ruled against India in the Vodafone and Cairn disputes, finding a breach of fair and equitable treatment [24], [25]. The Taxation Laws (Amendment) Act, 2021 then withdrew the retrospective demands, subject to conditions [26]. The episode is often cited as evidence that legislative certainty carries real weight in cross-border deal making.

B. Sanction of Schemes

In sanctioning schemes of arrangement, courts have long held that their role is supervisory. In *Miheer H. Mafatlal v. Mafatlal Industries Ltd.*, the Supreme Court explained that the tribunal examines fairness, statutory compliance and absence of fraud, but does not substitute its own view for the commercial judgment of the majority of shareholders [27]. That principle continues to guide NCLT benches in cross-border schemes, although the benches must also confirm that the RBI conditions and the valuation requirements have been met.

C. Foreign Bidders under the IBC

In *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*, the Supreme Court interpreted the ineligibility criteria in section 29A and emphasised the legislative aim of keeping out persons responsible for a company's default [28]. The decision illustrates that a foreign acquirer's eligibility turns on the conduct and connections of its wider group, not only on the bidding entity.

VI. RECENT REFORMS, 2024 TO 2026

Four developments deserve attention because they alter day-to-day deal planning. First, the 2024 amendment to Rule 25A offers the fast-track route for foreign holding companies merging into wholly owned Indian subsidiaries [4]. Later amendments to Rule 25 have extended fast-track eligibility further [11]. Second, the deal value threshold and the 2024 Combinations Regulations enlarge the class of notifiable transactions [15]. Third, Press Note 2 of 2026 introduces a codified beneficial-ownership test and a 10 per cent automatic-route threshold for land-border investors [9]. Fourth, the Income-tax Act, 2025 re-enacts the tax law in a new structure, so that practitioners must identify which Act governs each tax year [21]. Together these changes show a policy preference for easier inbound consolidation combined with stronger screening of competition and security concerns.

VII. CRITICAL ANALYSIS

Several structural weaknesses remain. The first is sequencing. A foreign merger may need RBI compliance, NCLT sanction, CCI clearance, stock exchange observation and DPIIT approval, and no statute or circular fixes the order in which they are to be sought or requires the authorities to coordinate. Parties therefore draft long-stop dates and conditions precedent defensively, and delay at one body can disturb approvals already obtained.

The second weakness is the narrowness of eligible jurisdictions. Rule 25A confines cross-border mergers to foreign companies from jurisdictions that meet prescribed criteria, which may exclude some holding locations used in practice and pushes parties back to share swaps or asset transfers [4]. The third is the asymmetry in tax treatment. Because the merger exemptions are aimed at Indian amalgamated companies, outbound mergers are exposed to capital gains, and this discourages the very outbound consolidation that the 2018 Regulations were meant to permit.

Fourth, the deal value threshold is conceptually sound for digital markets but has created uncertainty in the assessment of substantial business operations and in the valuation of deferred or contingent consideration. Fifth, the beneficial-ownership clarification of 2026 improves predictability, but approval timelines outside the listed sectors remain open-ended, and security screening continues to operate through executive policy rather than through a statute with defined review standards. Sixth, the absence of a cross-border insolvency framework leaves foreign creditors and foreign acquirers of distressed assets without a predictable route to recognition. Finally, India's move away from earlier investment treaties toward a narrower model has reduced the forum for investor claims, which makes domestic legislative stability even more important.

VIII. SUGGESTIONS

The weaknesses identified above suggest the following reforms. A coordination protocol among the RBI, the Ministry of Corporate Affairs, the CCI, SEBI and the DPIIT would let parties file once, share documents among authorities and receive a combined timetable. Statutory timelines for NCLT decisions in cross-border schemes would reduce the cost of delay. The Government should consider widening the list of permitted jurisdictions on the basis of objective regulatory-cooperation criteria and publishing that list in one place. Tax neutrality should be extended, with suitable anti-abuse conditions, to outbound mergers. The deal value regime would benefit from illustrative

guidance on valuation of deferred consideration. Finally, Parliament should enact Part Z of the Code on the basis of the UNCITRAL Model Law, as recommended in 2018 [19]. A consolidated and periodically updated guide to cross-border transactions, issued jointly by the regulators, would also help smaller businesses that cannot afford extensive advisory support.

IX. CONCLUSION

India's treatment of cross-border mergers and acquisitions has moved from near prohibition to structured permission within three decades. Foreign exchange law, company law, competition law, securities regulation, insolvency law and tax law now each supply a workable component, and the reforms of 2024 to 2026 show continued willingness to improve the system, especially for inbound consolidation. The difficulty that remains is one of integration. Without clear sequencing, symmetrical tax treatment and a cross-border insolvency framework, the cost of compliance will remain high and unpredictable. A coordinated reform of those three areas would do more to improve the investment climate than any further relaxation of individual thresholds.

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