Page 1514 - 1530 **DOI:** https://doij.org/10.10000/IJLMH.119028

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 1

2025

Cross Border Mergers

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ABSTRACT

In an era of globalization, cross-border mergers have emerged as a strategic tool for Indian companies seeking international expansion, resource optimization, and operational efficiency. Historically, the regulatory landscape in India restricted outbound mergers, limiting the ability of Indian firms to merge with or into foreign entities. However, the Companies Act, 2013, alongside the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (CAA Rules), and the Reserve Bank of India's (RBI) Foreign Exchange Management (Cross-Border Merger) Regulations, 2018, have collectively redefined India's approach to cross-border mergers by enabling outbound transactions under specific conditions. These legislative advancements have facilitated global fund allocation while maintaining regulatory safeguards to protect India's economic interests.

This research examines the evolving regulatory framework that governs cross-border mergers involving Indian companies, focusing on the shift from the Companies Act, 1956, to the more flexible Companies Act, 2013. It evaluates the role of key regulatory bodies, such as the National Company Law Tribunal (NCLT), in ensuring compliance and safeguarding stakeholder interests. Additionally, the study explores the RBI's regulations on financial risk management, currency exchange, and capital outflows in cross-border mergers.

Despite these advancements, Indian companies face challenges such as navigating complex regulatory compliance across jurisdictions, cultural integration, and financial risk management. This research aims to assess the effectiveness of India's legal framework in supporting cross-border mergers, analysing its impact on regulatory compliance, financial management, and long-term strategic objectives. By identifying the challenges and opportunities associated with cross-border mergers, this study provides valuable insights into their implications for Indian businesses in a globalized market. The findings will contribute to a deeper understanding of how regulatory reforms influence the success of cross-border mergers, shaping India's role as a global business destination.

Keywords*: Mergers, Globalization, Cross-border.*

I. INTRODUCTION

In an increasingly interconnected world, expanding across borders has become essential for

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both established companies and emerging startups, particularly in India, where firms are actively engaging in international transactions. Liberalized economic policies, technological advancements, and global interconnectivity have allowed Indian companies to explore new markets and capitalize on cross-border opportunities, while foreign entities are drawn to India's vibrant economy. Cross-border mergers—mergers or arrangements between Indian and foreign companies—serve as a critical strategy for businesses seeking resource-sharing across different jurisdictions, operational streamlining, and efficient global fund allocation. Historically, however, the scope for cross-border mergers in India was limited. The Companies Act of 1956 only allowed inbound mergers, where foreign companies merged into Indian entities, enabling foreign investment and technology inflows. Outbound mergers, where Indian firms merge with or into foreign companies, were restricted, thereby limiting the potential for Indian companies to optimize their international strategies. This changed with the introduction of the Companies Act, 2013, which allowed outbound mergers under specific conditions. According to Section 234 of the Act, outbound mergers can occur only if the foreign transferee company is from a jurisdiction approved by the Indian government. This legislative development has expanded opportunities for Indian businesses to establish an international presence while ensuring regulatory oversight to protect national interests. To support these changes, the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (CAA Rules) were enacted, providing a structured process for both inbound and outbound mergers. These rules require cross-border merger proposals to gain approval from the National Company Law Tribunal (NCLT), a judicial body responsible for ensuring compliance with India's regulatory standards and protecting stakeholders' interests.[3] By streamlining the process of cross-border mergers, the CAA Rules have bolstered India's role as a global business destination, positioning cross-border mergers as a growth-oriented strategy for Indian enterprises.

Another significant regulatory measure came with the Reserve Bank of India's (RBI) Foreign Exchange Management (Cross-Border Merger) Regulations, 2018, which specifically address issues related to currency exchange and financial risk management in international deals. The RBI regulations clarify how cross-border funds should be managed, helping mitigate risks associated with currency fluctuations. These guidelines also set rules for profit repatriation, asset management, and liabilities in cross-border mergers, ensuring that India's economy is protected from excessive capital outflows while enabling companies to maximize international opportunities. While cross-border mergers present many advantages, challenges such as

[3] By ashwin, Regulation of cross-border mergers in India - a critical analysis Enhelion Blogs (2023), https://enhelion.com/blogs/2023/04/07/regulation-of-cross-border-mergers-in-india-a-critical-analysis/

regulatory compliance across jurisdictions, cultural integration, and financial risks persist. However, the increasing involvement of Indian companies in these transactions underscores a growing confidence in India's legal and regulatory advancements.

(A) Research Scope:

The scope of this research focuses on the evolving landscape of cross-border mergers involving Indian companies, driven by globalization and supported by recent legislative and regulatory reforms. The study will examine how the Companies Act, 2013, the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (CAA Rules), and the Foreign Exchange Management (Cross-Border Merger) Regulations, 2018 by the Reserve Bank of India (RBI) collectively facilitate cross-border mergers. This research will explore how these frameworks provide Indian companies with opportunities for international expansion, foreign investment, and operational efficiency, while maintaining regulatory safeguards that protect India's economic interests.

Key areas of analysis include the shift from only allowing inbound mergers under the Companies Act of 1956 to permitting outbound mergers under the Companies Act of 2013, the role of the National Company Law Tribunal (NCLT) in ensuring compliance, and the RBI regulations that address currency exchange and financial risks. Additionally, the study will assess the challenges Indian companies face, such as regulatory compliance across different jurisdictions and cultural integration, in maximizing the benefits of cross-border mergers. The research will provide insights into the strategic implications of these mergers for Indian companies in a globalized market.

(B) Research Questions:

Despite the regulatory advancements and the growing engagement of Indian firms in cross-border mergers, there remains a significant research gap in understanding the practical implications and challenges these mergers face due to the complex regulatory frameworks across jurisdictions. Existing literature has primarily focused on legislative changes and procedural aspects, yet lacks a comprehensive analysis of how these reforms translate into tangible strategic benefits for companies on an operational level. Additionally, limited research has been conducted on the effectiveness of these regulations in addressing challenges such as compliance across different legal frameworks, cultural integration, and financial risk management.

Given this gap, this research aims to answer the following questions:

(a) How effectively do the Companies Act, 2013, the CAA Rules, and the RBI's Cross-

Border Merger Regulations support Indian companies in achieving successful cross-border mergers, particularly in terms of regulatory compliance, financial management, and operational efficiencies?

(b) What are the primary challenges faced by Indian companies in implementing cross-border mergers, and how do these challenges impact their strategic objectives and long-term growth in the global market?

(C) **Research Objective:**

The primary objective of this research is to evaluate the effectiveness of India's evolving regulatory framework—including the Companies Act, 2013, the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (CAA Rules), and the RBI's Foreign Exchange Management (Cross-Border Merger) Regulations, 2018—in facilitating cross-border mergers involving Indian companies. This study aims to analyse how these legislative and regulatory reforms support Indian companies in achieving international expansion, optimizing financial management, and ensuring regulatory compliance. Furthermore, the research seeks to identify the main challenges faced by Indian companies in executing cross-border mergers, such as navigating regulatory compliance across multiple jurisdictions and managing cultural and financial integration. By examining these factors, the research will offer insights into the strategic implications and potential obstacles that Indian firms encounter, contributing to a more comprehensive understanding of the impact of cross-border mergers on India's global business landscape.

II. EVOLUTION OF CROSS BORDER MERGERS IN THE INDIAN LANDSCAPE

The evolution of cross-border mergers and acquisitions (M&As) in India reflects the country's economic liberalization, globalization trends, and regulatory adjustments aimed at encouraging foreign investment.

- **Pre-liberalization (Before 1991):** India's regulated economy prior to the economic reforms of 1991 operated within a framework designed to protect domestic industries, limit foreign influence, and promote self-reliance. This era, often referred to as the "License Raj," emphasized strict government control over foreign investment and participation. A central component of this restrictive framework was the **Foreign Exchange Regulation Act (FERA) of 1973**, which imposed stringent controls on foreign exchange, foreign investments, and the operations of foreign companies in India. The harsh system of 'License Raj' imposed severe restrictions on private sector operations and foreign investment, discouraging entrepreneurial growth, limiting competition, and creating an environment in which innovation was stifled. In essence, "Licence Raj" was a highly bureaucratic framework that controlled almost every aspect of business, and its legacy is often cited as a significant constraint on India's economic potential during that era.[4]

Aiming to control payments and the use of foreign capital, the Foreign Exchange Regulation act, 1973 (FERA, 1973) imposed extensive restrictions on both inbound and outbound financial transactions. It set stringent caps on foreign ownership, generally allowing foreign entities to hold no more than **40%** in Indian companies. Exceeding this limit required special government approval, which was rarely granted. Additionally, foreign companies operating in India needed licenses for their operations, expansions, and new product lines, creating extensive government oversight. The act also placed tight controls on profit repatriation and capital outflows, making it challenging for foreign companies to send profits back to their home countries or participate in cross-border mergers and acquisitions. These restrictions discouraged foreign investors from establishing a significant presence in India and kept foreign influence over strategic sectors, such as manufacturing, telecommunications, and banking, to a minimum. The heavy regulatory framework also prevented hostile takeovers, as any acquisition of Indian companies by foreign entities required government approval. Consequently, FERA's restrictions led to a largely closed, protected domestic market that shielded Indian companies from foreign competition. However, this lack of exposure also limited innovation and adoption of advanced technology, as foreign firms faced high entry barriers for introducing modern processes. A notable example of FERA's limitations was the exit of global brands like **Coca-Cola**[5] **and IBM**[6] in the late 1970s.

- **Economic Liberalization (1991- Early 2000s):** The **economic liberalization of 1991** marked a transformative shift for India, opening its economy to foreign investment and integrating it into the global market. Before 1991, India's restrictive policies had deterred foreign investment and cross-border mergers. The reforms, however, introduced new policies and regulations that reduced state control, lifted barriers to foreign direct investment (FDI), and allowed private enterprise to thrive. For the first time, foreign companies had opportunities to participate meaningfully in India's growth,

[4] Business Standard, explained: What was Licence Raj and why is India better off without it? Business Standard (2023), https://www.business-standard.com/india-news/explained-what-was-licence-raj-and-why-is-india-better-off-without-it-123080900215_1.html

[5] George Fernandes: The man who threw out coca-cola and IBM from India, BBC News (2019), https://www.bbc.com/news/world-asia-india-47039190

[6] 2018 Sujit John / TNN / Oct 10, in 1977, IBM exited India. now, it's celebrating 25 years of its second coming, with a Bang: Bengaluru News - Times of India the Times of India, https://timesofindia.indiatimes.com/city/bengaluru/in-1977-ibm-exited-india-now-its-celebrating-25-years-of-its-second-coming-with-a-bang/articleshow/66138047.cms

with investment now permitted in sectors like information technology, automotive, pharmaceuticals, and consumer goods.

The replacement of the **Foreign Exchange Regulation Act (FERA)** with the **Foreign Exchange Management Act (FEMA) in 1999**[7] further boosted this shift. FEMA introduced relaxed foreign exchange controls, enabling Indian companies to expand their reach by making foreign investments more accessible. Indian firms were now able to acquire foreign companies, participate in joint ventures, and enter global markets more effectively, a freedom previously hindered under FERA. Notably, **the IT sector**, which emerged strongly post-liberalization, began to take advantage of cross-border opportunities in the early 2000s. Companies like **Infosys and Wipro** rapidly expanded globally, securing strategic acquisitions and partnerships in the United States and Europe to tap into global demand.[8]

As these regulatory changes took root, landmark cross-border mergers and acquisitions (M&A) began transforming Indian industry. By the late 1990s and early 2000s, Indian companies across sectors were initiating acquisitions abroad, a striking example of which was **Tata Tea's acquisition of Tetley Tea in the UK in 2000**[9]. This acquisition, valued at $407 million, marked one of the first large-scale outbound M&A deals by an Indian company and signalled India's newfound presence on the global stage. Tata Tea's purchase of Tetley Tea not only provided the company with a well-established brand but also gave it access to markets in Europe and North America. In the automotive sector, **Tata Motors' acquisition of Jaguar and Land Rover (JLR) from Ford in 2008**[10] stands out as one of the most prominent cross-border deals. The $2.3 billion acquisition provided Tata Motors with advanced automotive technology and global brand equity. Despite being initially met with scepticism, Tata's stewardship revitalized JLR, leading to impressive growth in sales and profitability. This acquisition demonstrated how cross-border M&As could provide Indian companies with valuable assets, intellectual property, and access to international markets.

- **Globalization Booms (Post 2005):** India's economic liberalization policies, particularly

[7] Harish Khan, Foreign Exchange Management Act (FEMA): An overview Legal Wires - World leaders in legal education and research (2024), https://legal-wires.com/lex-o-pedia/foreign-exchange-management-act-fema-an-overview/#:~:text=The%20transition%20from%20FERA%20to%20FEMA%20marked%20a,introduced%20a%20more%20facilitative%20and%20flexible%20regulatory%20framework.
[8] Metla Sudha Sekhar et al., Wipro, Infosys outpacing each other to meet demands in unfavourable global environment The Economic Times, https://economictimes.indiatimes.com/tech/ites/wipro-infosys-outpacing-each-other-to-meet-demands-in-unfavourable-global-environment/articleshow/45423814.cms
[9] 2000-tata tea-tetley merger: The Cup that cheered India Today, https://www.indiatoday.in/magazine/cover-story/story/20091228-2000-tata-tea-tetley-merger-the-cup-that-cheered-741660-2009-12-24
[10] From tetley to jaguar land rover, how Tata went global under Ratan Tata's leadership The Week, https://www.theweek.in/news/biz-tech/2024/10/10/from-tetley-to-jaguar-land-over-how-tata-went-global-under-ratan-tata-leadership.html

post-2000, laid the groundwork for a significant rise in cross-border mergers and acquisitions (M&As), with Foreign Direct Investment (FDI) playing a pivotal role. As India sought to integrate more fully into the global economy, the government adopted several FDI-friendly policies that opened its doors to multinational corporations (MNCs) and foreign investors. In 2000, the Indian government shifted to an automatic route for FDI in many sectors, where approvals were no longer needed from central authorities, simplifying the entry process for foreign investors. This approach fostered a business environment in which MNCs could more easily establish or expand their operations in India, fuelling a wave of cross-border M&As.[11]

In 2005, further liberalization efforts allowed FDI in previously restricted sectors like retail, real estate, and telecommunications, attracting global players. Vodafone's acquisition of Hutchison Essar in 2007 is a landmark example, made possible by these relaxed norms. In 2015, the **Make in India** initiative incentivized manufacturing investment by foreign companies, contributing to an unprecedented level of cross-border mergers in sectors like automotive and electronics, as firms sought to capitalize on India's market potential and lower manufacturing costs. The government also raised the FDI cap for insurance and defence from 26% to 49% in 2014, and in 2020, to 74% in insurance under the automatic route, sparking investments from global firms seeking access to India's expanding markets.[12] To support Indian companies' outbound M&A activities, India gradually relaxed foreign exchange and capital controls, particularly with the **Foreign Exchange Management Act (FEMA)** replacing the more restrictive FERA in 1999. This allowed Indian firms to invest abroad more freely, with companies like Tata Group and Infosys making significant acquisitions globally.

Shedding some light on the current picture, The Finance Ministry has introduced amendments to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, to streamline Foreign Direct Investment (FDI) regulations, as part of the Union Budget 2024-25. These changes are aimed at facilitating cross-border share swaps between Indian and foreign companies, simplifying the process for mergers, acquisitions, and other strategic initiatives. By allowing the exchange of Indian company equity for foreign company equity, the amendments enhance the ability of Indian firms to expand globally through cross-border M&As, facilitating their entry into new markets and strengthening their international presence. Additionally, the amendments provide greater transparency on the treatment of downstream investments by

[11] India's FDI policy - indbiz: Economic Diplomacy Division IndBiz, https://indbiz.gov.in/invest/fdi-policy/
[12] FDI limit in insurance sector increased from 49% to 74% and foreign ownership and control allowed with safeguards, https://pib.gov.in/Pressreleaseshare.aspx?PRID=1693902

entities owned by Overseas Citizens of India (OCI), aligning them with the policies for Non-Resident Indian (NRI)-owned entities. This change ensures a more uniform and transparent regulatory approach, benefiting both foreign investors and Indian companies. Furthermore, the policy also opens up opportunities for FDI in White Label ATMs, which is expected to promote financial inclusion across India.[13]

III. THE CURRENT REGULATORY FRAMEWORK

Cross-border M&A transactions have been a significant driver of Foreign Direct Investment (FDI) inflows into India. To strengthen the economic ties between nations, it became essential to establish a conducive environment for cross-border mergers. In India, such transactions are governed by a comprehensive set of regulations under several laws, including the Companies Act, 2013, Foreign Exchange Management Regulations, the Competition Act, 2002, and other related statutes. Essentially, the regulatory framework for cross-border mergers and acquisitions (CBMAs) in India is shaped by corporate laws, foreign exchange regulations, capital market rules, and merger control regulations. These laws address various aspects such as entry routes, deal value thresholds, sectoral caps, required approvals from authorities like the RBI, investment limits, and mandatory disclosure requirements.

- **The companies Act, 2013:** The Companies Act, 2013 (CA, 2013) was introduced to replace the Companies Act of 1956, addressing the changing needs of the corporate landscape. A significant part of this update is Chapter XV, which focuses on compromises, arrangements, and amalgamations, with Sections 230 to 240 outlining the procedures and guidelines for these transactions. A key feature of the CA, 2013, is Section 234, which allows cross-border mergers and amalgamations between Indian and foreign companies. This provision came into effect on April 13, 2017, and it facilitates the process of merging or amalgamating Indian companies with foreign entities, thus opening avenues for global business integration. Section 234 specifically stipulates that cross-border mergers are permitted only when one of the entities involved is a "foreign company." Additionally, it requires that such mergers receive prior approval from the Reserve Bank of India (RBI). The terms of these mergers can also involve the payment of consideration to the shareholders of the Indian company in forms such as depository receipts (DRs) or other instruments, depending on the arrangement. The Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016, specifically Rule

[13] Govt simplifies FDI rules to help Indian firms expand via mergers, acquisitions - ET legalworld ETLegalWorld.com, https://legal.economictimes.indiatimes.com/news/law-policy/govt-simplifies-fdi-rules-to-help-indian-firms-expand-via-mergers-acquisitions/112574777

25A, further clarifies the procedural requirements for cross-border mergers. These mergers must comply with Sections 230 to 232 of the CA, 2013, and also require RBI approval. Rule 25A, along with Annexure B, specifies the jurisdictions in which these mergers are permissible, ensuring that the process follows a structured, legal framework. This regulatory environment ensures that cross-border mergers are carried out in compliance with India's corporate, financial, and legal standards.[14]

- **Foreign Exchange Management Act, 1999 (FEMA, 1999) and its relevant regulations:** The Foreign Exchange Management (Cross Border Merger) Regulations, 2018, notified under FEMA 389/2018-RB on March 20, 2018, provide a structured framework for cross-border mergers. According to these regulations, mergers that comply with their provisions are automatically considered approved by the Reserve Bank of India (RBI), eliminating the need for separate approval. However, mergers that do not adhere to the regulations must still obtain prior approval from the RBI. These regulations also allow Indian companies to issue or transfer securities to foreign residents, provided they follow pricing guidelines, respect sectoral caps on foreign investment, and meet other conditions outlined in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017. This ensures that foreign investments in India are closely regulated to safeguard national economic interests. Additionally, the regulations permit Indian residents to hold securities of foreign companies, in accordance with the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004. This facilitates outbound investments, allowing Indian entities to explore international markets and expand their global presence. Foreign investments into India follow two main routes: the Automatic Route and the Approval Route. The Automatic Route allows investments in sectors such as pharmaceuticals, where no prior approval is necessary, provided the investments comply with the relevant regulations. Conversely, the Approval Route is required for sectors that need a more detailed review, where specific government approvals are mandatory before proceeding. These regulations create a balanced approach to cross-border mergers and acquisitions, promoting global integration while protecting domestic interests. They streamline the process, ensuring both inbound and outbound investments are conducted transparently and within a regulated framework, fostering economic

[14] Regulation of cross-border mergers in India - a critical analysis Enhelion Blogs, https://enhelion.com/blogs/2023/04/07/regulation-of-cross-border-mergers-in-india-a-critical-analysis/

growth and encouraging foreign investment in India.[15]

- **Brothers of the Night's watch- Income tax act, 1961 and the Competition act, 2002:** The Information Technology (IT) Act and the Competition Act, 2002 (CA02) play crucial roles in regulating cross-border mergers in India, benefiting the economy by encouraging inbound mergers and protecting against anti-competitive market practices. One key distinction between inbound and outbound mergers lies in their tax treatment. Inbound mergers are eligible for tax exemptions, such as the exemption from capital gains tax on the transfer of capital assets under Section 47 of the IT Act, which does not apply to outbound mergers. As a result, outbound mergers could lead to substantial tax liabilities for Indian companies and their shareholders. Additionally, Section 72A of the IT Act, which allows the carry forward of tax losses, is only applicable to inbound mergers, further enhancing the tax advantages for companies entering into mergers within India. The CA02 regulates cross-border mergers to safeguard competition within the domestic market. The Act uses asset and turnover thresholds to determine when mergers require regulatory scrutiny. The 2007 amendment to CA02 mandates that mergers exceeding these thresholds must be notified to the Competition Commission of India (CCI) for approval. The CCI has the authority to investigate the competitive impact of mergers under Sections 20, 29, 30, and 31 of the Act, with the power to impose penalties for violations. The Act also imposes a 210-day waiting period after notification for any cross-border merger, and grants the CCI extraterritorial jurisdiction to assess mergers outside India that may affect domestic competition.[16]

The implication of the Competition act however, has a significant implication on the cross-border mergers in India given the merger review policy that the Act envisages. The Competition Act, 2002, in line with modern competition law frameworks, focuses on three key enforcement areas:

- The prohibition of anti-competitive agreements (Section 3),
- The prohibition of abuse of dominance (Section 4),
- The regulation of mergers (Sections 5 and 6).

[15] (PDF) cross border mergers and acquisitions by Indian firms- an analysis of pre and post merger performance, https://www.researchgate.net/publication/331083029_Cross_Border_Mergers_and_Acquisitions_by_Indian_firms-_An_Analysis_of_Pre_and_Post_Merger_performance

[16] An introduction to the legal framework of cross-border mergers: Structuring Considerations & Regulatory compliances Shareholders - Corporate/Commercial Law - India, https://www.mondaq.com/india/shareholders/1492240/an-introduction-to-the-legal-framework-of-cross-border-mergers-structuring-considerations-regulatory-compliances

The Act operates under the "Effects Doctrine," which asserts that domestic competition laws apply not only to firms operating within the country but also to foreign firms and domestic firms located outside the country, as long as their actions or transactions have an impact within the domestic market. The "nationality" of firms is not a determining factor when enforcing the provisions of this Act.[17]

- **SEBI ACT and its associate guidelines:** On November 4, 1994, SEBI introduced a takeover code to regulate significant acquisitions of shares, aiming to enhance transparency and reduce secret agreements. The code mandates that any acquisition increasing an entity's ownership in a company beyond 15% requires a public offer. It applies to negotiated, open market, and bailout takeovers. A takeover typically involves acquiring sufficient shares to gain controlling interest in a registered company, often by purchasing shares from shareholders at an agreed price. The introduction of globalisation made India's economy more accessible to foreign investments, prompting companies to expand through mergers and acquisitions to remain competitive. However, this environment also attracted entities with large discretionary funds, potentially exploiting the system at the expense of ordinary investors. To safeguard investors and ensure takeovers and mergers fostered market growth rather than harm, SEBI, established in 1992 under the SEBI Act, was empowered to regulate the securities market. A committee led by P.N. Bhagwati was tasked with studying the impact of takeovers and mergers and formulating appropriate regulations to protect and develop the market.[18]

IV. SECTORAL ANALYSIS

Cross-border mergers have emerged as a crucial approach for Indian companies aiming to broaden their international presence, acquire advanced technologies, and boost their competitive edge. With India increasingly connecting to the global economy, industries such as Information Technology (IT), Pharmaceuticals, Automobiles, and Energy have significantly gained from these mergers. These deals enable the exchange of resources and expertise while providing Indian businesses access to global markets, enhancing their overall market value and positioning. By facilitating the exchange of resources, knowledge, and market access, cross-border mergers significantly contribute to the growth and global competitiveness of these

[17] Implications of competition act, 2002 on cross-border mergers and acquisitions LexQuest Foundation, https://www.lexquest.in/implications-of-competition-act-2002-on-cross-border-mergers-and-acquisitions/ s
[18] Role of sebi: Cross border merger, takeover ..., https://ijirl.com/wp-content/uploads/2022/03/ROLE-OF-SEBI-CROSS-BORDER-MERGER-TAKEOVER-CODE.pdf (last visited Nov 15, 2024)

industries, ultimately bolstering India's economic standing.

- **IT and Software services:** In the IT sector, cross-border mergers have played a transformative role for Indian companies, allowing them to establish themselves as global leaders in technology and innovation. Major players like **Tata Consultancy Services (TCS), Infosys, and Wipro** have strategically leveraged mergers and acquisitions to expand their international presence and diversify their service portfolios. A prominent example is **HCL Technologies' acquisition of IBM's software products**[19] in 2019 for $1.8 billion, a move that significantly bolstered HCL's product offerings in high-demand areas such as cybersecurity, marketing automation, and collaboration tools. This acquisition not only enhanced HCL's technological capabilities but also positioned it as a leading provider of innovative enterprise solutions.

Similarly, **Wipro's $1.45 billion acquisition of Capco**[20], a UK-based management and technology consultancy, in 2021 marked a significant milestone in the company's global expansion strategy. This acquisition enabled Wipro to deepen its expertise in banking, financial services, and insurance (BFSI), gaining access to an elite client base and strengthening its presence in Europe and North America. These mergers have provided Indian IT companies with access to advanced technologies, specialized skill sets, and a diversified clientele across multiple industries and geographies. By integrating global knowledge and resources, these firms have been able to accelerate innovation, drive digital transformation, and offer tailored solutions to meet the dynamic needs of global businesses. Additionally, such mergers have empowered Indian IT firms to compete effectively with multinational giants, enhancing their reputation as trusted technology partners on the global stage. The success of these cross-border mergers demonstrates the strategic vision of Indian IT companies in aligning their growth trajectories with the evolving demands of a technology-driven world. It highlights their ability to harness global expertise while retaining their core strength in delivering cost-effective, high-quality IT services.

- **Pharmaceutical Sector:** Indian pharmaceutical companies are employing various strategies to enhance their market share and diversify their product portfolios. One key approach involves acquiring divisions of smaller Indian or international firms to gain

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[19] HCL Technologies to acquire select IBM software products for $1.8B HCLTech, https://www.hcltech.com/press-releases/products-and-platforms/hcl-technologies-acquire-select-ibm-software-products-18b

[20] Wipro limited announces acquisition of Capco, https://www.wipro.com/content/dam/nexus/en/investor/news/2021/investors-deck-wipro-limited-announces-acquisition-of-capco.pdf

direct access to established therapeutic segments. This allows them to improve their market presence and capitalize on existing opportunities. For example, Cipla strengthened its position in the Indian market by acquiring the Vysov and Vysov M brands from Novartis AG. Another strategy involves securing exclusive marketing rights for patented products through licensing agreements with innovators. These agreements allow companies to market and sell products in specific regions for a set period. A notable instance is the co-marketing agreement between Glenmark Pharmaceuticals and Torrent Pharmaceuticals for the diabetes drug Remogliflozin Etabonate in India. Additionally, non-exclusive licensing agreements, such as Gilead's licensing of Remdesivir during the pandemic, have been used to address surging demand for particular medications.

Divesting non-core divisions or brands is another tactic employed by Indian and global pharmaceutical companies to focus on their core portfolios. This helps them allocate resources more efficiently and achieve cost savings in areas like inventory, sales, and marketing. For example, Sanofi divested its nutraceutical business to Universal NutriSciences. Moreover, collaborations between foreign pharmaceutical companies and their Indian counterparts for research and development are on the rise. These partnerships aim to develop formulations for both domestic and international markets. One example is the collaboration between MedGenome and the US-based clinical research organization Emmes, which specializes in rare diseases.

Under the **Drugs and Cosmetics Act, 1940**, Section 18(c) mandates obtaining a license for manufacturing, selling, stocking, or distributing drugs, with Section 18B requiring the maintenance of related records. However, the **Drugs and Cosmetics Rules, 1945**, while silent on mergers and acquisitions (M&A), address changes in company structure or ownership and their implications on licensing. According to Rules 23 and 27, along with Form 10, companies must notify the licensing authority in writing of any changes to their ownership, composition, or organizational structure. The existing license remains valid for a maximum of three months after such changes. The **Cosmetic Rules, 2020**, and the **Medical Devices Rules, 2017**, provide a clearer definition of "change in constitution," a term not explicitly defined in the Drugs and Cosmetics Rules, 1945. This creates interpretive challenges for Form 10, which governs similar changes under these rules. Additionally, the timelines for submitting applications to update licenses vary across these regulations.

- **Energy and Infrastructure:** Mergers and Acquisitions (M&A) are pivotal in reshaping

India's energy and infrastructure sectors, driving growth, operational efficiency, and technological advancement. These sectors, being capital-intensive and fragmented, benefit from M&A as they consolidate resources, reduce inefficiencies, and optimize operations. A prime example is **ONGC's 2018 acquisition of Hindustan Petroleum Corporation Limited (HPCL)**[21], which created a vertically integrated energy major, streamlining supply chains and enhancing cost efficiency. Similarly, India's transition to renewable energy, aligned with its ambitious targets of achieving net-zero emissions by 2070 and 500 GW of renewable capacity by 2030, is supported by M&A deals. **Adani Green Energy's $3.5 billion acquisition of SB Energy India in 2021**[22]**,** the largest renewable energy deal in India, underscores this trend, enabling access to ready-built green portfolios while minimizing development risks.

In infrastructure, M&A enhance project execution by combining financial strength and technological expertise. For instance, **L&T's acquisition of Mindtree in 2019** integrated digital solutions into infrastructure projects, improving delivery timelines and risk management. M&A also attract foreign direct investment (FDI), as demonstrated by BP's ₹7,000 crore partnership with Reliance in fuel retail, which brought global best practices to India. However, challenges persist, including regulatory delays, valuation disputes, and cultural integration issues, exemplified by the Vedanta-Cairn India merger's setbacks. Despite these challenges, M&A remain integral to achieving India's energy and infrastructure aspirations. With strategic support and sound policy frameworks, these transactions can accelerate sustainable development, bolster economic growth, and enhance India's global competitiveness.

V. Regulatory Challenges and Effectiveness of M&A in India

Mergers and Acquisitions (M&A) in India have become a critical growth strategy for companies seeking operational efficiency and global competitiveness, particularly through cross-border mergers. These transactions are governed by a comprehensive regulatory framework that includes the Companies Act, 2013; Foreign Exchange Management Act, 1999 (FEMA); Competition Act, 2002; and SEBI guidelines. While these laws have modernized the M&A process, their complexity poses significant challenges. Compliance across jurisdictions, obtaining approvals from bodies like the National Company Law Tribunal (NCLT) and the

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[21] ONGC completes rs 36,915 crore HPCL acquisition, becomes first integrated oil major - ET energyworld ETEnergyworld.com, https://energy.economictimes.indiatimes.com/news/oil-and-gas/ongc-completes-rs-36915-crore-hpcl-acquisition-becomes-first-integrated-oil-major/62725587 (last visited Nov 16, 2024)

[22] Adani Green Energy Closes India's largest renewables M&A deal for USD 3.5 billion; a 46% increase in operational capacity Adani Green Energy, https://www.adanigreenenergy.com/newsroom/media-releases/agel-completed-the-acquisition-of-sb-energy-holdings-ltd (last visited Nov 16, 2024)

 [ISSN 2581-5369]

Reserve Bank of India (RBI), and adhering to sector-specific FDI caps often result in procedural delays and increased costs. Tax policies further complicate the landscape, with inbound mergers enjoying benefits like capital gains tax exemptions and the carry-forward of tax losses, advantages not extended to outbound mergers. Moreover, cultural integration and operational alignment across borders remain persistent challenges for companies.

Cross-border mergers, in particular, have gained traction due to liberalized policies, robust legal frameworks, and increasing global integration. The Companies Act, along with FEMA regulations, has provided clarity and structure to both inbound and outbound mergers, enabling businesses to navigate international markets more effectively. However, challenges persist, including tax disparities in outbound mergers, procedural delays in regulatory approvals, and the complexity of compliance with jurisdictional regulations. Nevertheless, successful transactions like Tata Steel's acquisition of Corus and Hindalco's acquisition of Novelis highlight Indian companies' ability to compete globally.

Despite these hurdles, India's regulatory framework has evolved to support M&A effectively. The Companies Act, 2013, for instance, replaced the restrictive provisions of its predecessor by permitting outbound mergers under Section 234, enabling Indian companies to expand globally. Similarly, the Foreign Exchange Management (Cross-Border Merger) Regulations, 2018, have streamlined currency management and asset allocation, striking a balance between facilitating investments and safeguarding economic interests. These advancements have spurred foreign direct investment (FDI), with notable cross-border transactions like Walmart's acquisition of Flipkart underscoring India's attractiveness to global investors. Such mergers bring capital, technology, and expertise, bolstering domestic economic growth and competitiveness. The Competition Act, 2002, also plays a vital role by regulating anti-competitive practices and ensuring mergers do not lead to monopolies. The Competition Commission of India (CCI) reviews transactions that meet specified thresholds to protect market dynamics and consumer welfare. Simultaneously, SEBI's regulations enhance transparency in securities transactions, mandating disclosures and public offers to protect investors. Additionally, tax exemptions for inbound mergers incentivize foreign firms to merge with Indian entities, facilitating technology transfers and investment inflows.

In the test of assessment, one can say that M&A, including cross-border transactions, have strengthened India's position as a global business hub, fostering economic growth and foreign investment. While the regulatory framework has become more conducive, challenges such as procedural inefficiencies and tax disparities must be addressed to unlock the full potential of M&A in India. Continued reforms and efficient policy implementation are essential to enhance the effectiveness of these transactions, enabling Indian firms to thrive in an increasingly interconnected world.

VI. Policy recommendations

To enhance the effectiveness of mergers and acquisitions (M&A) in India, particularly cross-border transactions, the government should introduce targeted policy reforms to address regulatory complexities, procedural inefficiencies, and tax disparities while fostering a business-friendly environment for both inbound and outbound investments. A single-window clearance system can streamline approvals from regulatory authorities such as the NCLT, RBI, and SEBI, minimizing delays and enhancing efficiency. Improved coordination among these agencies, supported by digital platforms for automated compliance, can further reduce bureaucratic hurdles and improve transparency. Tax reforms are essential to create parity between inbound and outbound mergers. Extending tax benefits, such as capital gains tax exemptions and the carry-forward of tax losses, to outbound transactions can incentivize Indian firms to explore global opportunities. Additionally, rationalizing the capital gains tax structure and strengthening Double Taxation Avoidance Agreements (DTAA) with key trade partners can reduce tax burdens and foster investor confidence. In sensitive sectors like defense and telecommunications, relaxing FDI caps and introducing safeguards in place of rigid restrictions can encourage cross-border mergers. Similarly, providing incentives for priority sectors such as renewable energy, healthcare, and technology can attract investments, expedite growth, and bring global expertise to domestic markets.

Procedural delays in M&A transactions can be mitigated by strengthening the NCLT's infrastructure, increasing the number of benches, and employing specialized personnel for complex cases. Empowering regional RBI offices to handle preliminary approvals and enforcing standardized timelines for decision-making (e.g., a 90-day limit) can provide businesses with greater certainty and efficiency. In addition, the Competition Commission of India (CCI) should revise its asset and turnover thresholds to reflect current market realities, avoiding unnecessary scrutiny for smaller transactions. Collaboration with international competition authorities can harmonize cross-border merger reviews, ensuring regulatory requirements do not discourage global investments. Enhancing SEBI's investor protection framework by mandating better disclosures and safeguarding minority shareholders' interests can further boost confidence in securities transactions. Post-merger integration challenges, particularly cultural and operational alignment, can be addressed by providing incentives for cross-cultural training programs and advisory support for SMEs engaging in cross-border mergers. Simplifying FEMA regulations for overseas investments and reducing compliance costs can encourage Indian firms to expand globally. Furthermore, incorporating provisions in trade agreements to reduce investment barriers and foster reciprocal treatment can support outbound M&A efforts.

Transparency and capacity building are critical to the success of M&A reforms. Public awareness campaigns can educate businesses on the benefits, risks, and compliance requirements of cross-border mergers, while training programs for regulatory officials can enhance their ability to handle complex international transactions and adopt global best practices. To ensure policies remain relevant and effective, a periodic review mechanism should be established to assess their impact and introduce necessary amendments based on market trends. Utilizing data analytics to identify bottlenecks in the regulatory process can enable evidence-based policymaking and continuous improvement. By implementing these reforms, the government can streamline the M&A process, reduce regulatory burdens, and create a robust ecosystem that supports business growth. Addressing inefficiencies, ensuring equitable tax policies, and fostering global integration will attract greater investments and position India as a competitive player in the global marketplace. These measures not only promise to enhance the effectiveness of M&A but also strengthen India's reputation as a dynamic and thriving business hub.

VII. Conclusion

In conclusion, the evolving regulatory framework for cross-border mergers in India, encompassing the Companies Act, 2013, the CAA Rules, 2016, and the RBI's Foreign Exchange Management (Cross-Border Merger) Regulations, 2018, has significantly enhanced opportunities for Indian companies to expand internationally. These reforms have shifted the landscape from a restrictive regime under the Companies Act, 1956, to one that supports both inbound and outbound mergers, enabling businesses to capitalize on globalization while safeguarding national economic interests. By addressing key aspects such as regulatory compliance, financial risk management, and operational streamlining, the framework has positioned cross-border mergers as a critical strategy for growth and competitiveness. However, challenges remain, including navigating complex jurisdictional regulations, ensuring cultural integration, and managing financial risks. The research underscores the need for continuous refinement of these frameworks to address practical implementation challenges and maximize strategic benefits for Indian companies, fostering their long-term growth and positioning India as a key player in the global business arena.