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Cross-Border Mergers & Acquisitions in India and Beyond

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In a more global economy, cross-border mergers have turned into a highly important strategic vehicle for businesses looking to extend their reach and improve operational effectiveness. In India, the recognition of cross-border mergers at the regulatory level was codified with the notification of Section 234 of the Companies Act, 2013, and the subsequent publication of the FEMA (Cross Border Merger) Regulations, 2018. In this paper, the development, legal framework, and procedural dynamics facilitating inbound and outbound mergers in India are examined. It critically examines the functions of regulatory organisations like the Reserve Bank of India (RBI), Competition Commission of India (CCI), and the Securities and Exchange Board of India (SEBI), and taxation problems, exchange controls, stipulations, and rights of creditors. The report points out how the absence of consistent stamp duty regulations, delay caused by the National Company Law Tribunal (NCLT) creates inefficiencies. Taking inspiration from comparative jurisdictions like Singapore, the European Union, the United Kingdom, and the United States, the research recommends reforms such as single-window clearance, considered regulatory approvals, tax convergence, and cultural integration frameworks to improve the efficiency of India's regime for cross-border mergers.

Keywords: *cross-border merger, inbound & outbound merger, companies, fema.*

INTRODUCTION

In the 21st-century globalised economy, increased access, expansion, and profits are targets that companies can achieve through restructuring tools like cross-border mergers. Particularly in India, cross-border mergers have seen a surge owing to its booming economy. Cross-border mergers have empowered Indian companies to glide into the international market while also allowing access to the diverse Indian market to foreign companies. However, the unfolding of the route of cross-border mergers in India has had its fair share of stones and pebbles.[1]

A 'merger' happens when two or more entities integrate to form a new individual entity. Although the Companies Act doesn't define Mergers, the *Income Tax, 1961,* defines 'Amalgamation' as the merger of two or more entities.[2] 'Merger' and 'Amalgamation' are used interchangeably. 'Acquisition', on the other hand, happens upon the procurement of an entity by another. What separates the two, besides their procedural and regulatory differences, is that under Acquisition, the new entity remains a separate legal entity.

The term 'cross-border mergers' has been interpreted under the *Foreign Exchange Management (Cross Border Merger) Regulations (FEMA)*[3] regulations as a merger, amalgamation, or arrangement entailing an Indian and a foreign company[4] in harmony with the *Companies (Compromises, Arrangements and Amalgamation) Rules.*[5]

TYPES OF CROSS-BORDER MERGERS

Cross-border mergers can be separated into two major categories: Inbound Mergers and Outbound Mergers.

Inbound mergers occur when, during a merger process, a foreign company gives in and the Indian company turns out to be the surviving one, i.e. the Indian entity is the *resultant company*. The *resultant company* is the one that ends up taking over the assets as well as the liabilities of the firm taking part in the process of cross-border merger. Therefore, in an inbound merger,

[1] Sandeep Bhuraria and Monish Surendran, 'Mergers & Acquisitions In India' (*Live Law,* 04 April 2024) <https://www.livelaw.in/law-firms/law-firm-articles-/mergers-acquisitions-zeus-law-associates-companies-act-business-transfer-agreements-demerger-reserve-bank-of-india-254260> accessed 22 May 2025
[2] Income Tax Act 1961, s 2(1)(b)
[3] Foreign Exchange Management (Cross-Border Merger) Regulations 2018
[4] Income Tax Act 1961, s 2 (23)(a)
[5] Companies (Compromise, Arrangement and Amalgamation) Rules 2016

taking place among an Indian company A and a foreign company B, the foreign company will merge into the Indian company, and consequently, A will take over the assets and liabilities of company B. An *outbound merger* is said to occur when, during a merger process, the foreign company *out*lives the Indian company, i.e. the foreign entity is the resultant company. Similarly, in an outbound merger, taking place among an Indian company A and a foreign company B, company A will merge into company B, and B will take over the assets and liabilities of company A.

EVOLUTION OF CROSS-BORDER MERGERS IN INDIA

The Cross-border Merger bodywork in India evolved with the country's economic liberalisation. The framework for the Indian Company legislation was rooted in the *Companies Act 1956*, which was heavily influenced by British legislation. The *Companies Act 1956* permitted inbound mergers, permitting foreign companies to merge into Indian companies. However, it did not allow outbound merger, where Indian companies merge into foreign companies. Because, as per the application of the 1956 Act, *Section 394(4)(b) "Transferee Company"*[6] restricts the outbound merger because it fails to include any company other than one within the meaning of the Act, if the foreign company were excluded from serving as transferee company in the merger scheme than as a result, Indian corporate law will prohibit the outbound cross border merger.[7]

The *Companies Act, 2013,* through the notification for *Section 234* in April 2017, allowed the application of outbound and inbound cross-border mergers. *Section 234*[8] allowed the cross-border merger and Amalgamation with Foreign companies incorporated in any jurisdiction, as approved by the Central government. Section 234 was intended to provide legal recognition to outbound mergers, allowing Indian companies to trace cross-border restructuring with enhanced regulatory certainty. These changes from the Act of 1956 to 2013 signified a major legislative step that highlighted India's decision to make its corporate law at par with the global business practices.[9]

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[6] Companies Act 1956, s 394(4)(b)

[7] 'India: Cross-border merger provisions notified' (*Majumdar and Partners,* 26 April 2017) <https://www.majmudarindia.com/india-cross-border-merger-provisions-notified/> accessed 22 May 2025

[8] Companies Act 2013, s 234

[9] 'Cross-Border Merger Framework in India: Limited Efficacy' (*S&R Associates,* 24 April 2023) <https://www.snrlaw.in/cross-border-merger-framework-in-india-limited-efficacy/> accessed 22 May 2025

Further, in September 2024, the Ministry of Corporate Affairs amended,[10] as per which the process of a merger or amalgamation between the transferor company, incorporated outside India, being a holding company, and the transferee Indian Company, being a wholly owned subsidiary company incorporated in India, mandates prior approval from the RBI, on application to the Central government, and in compliance with the fast-track merger under *Section 233*.[11] Through this move, the government enables the reverse flipping, which means that the companies that were incorporated in foreign now shift their base to India to get the tax benefit as well as the IPO market. The main objective of the amendment was to allow for the fast-track process under the application to ease the burden on NCLT caused by pending cases, resulting in delays in the processing of the applications.

However, even with the above reforms, the cross-border merger in India must adhere to other regulatory frameworks for approval as well, like that of the *Competition Commission of India (CCI)* and SEBI. If the value of assets exceeds the financial threshold, then as per *Section 5* and *Section 6* of the *Competition Act*[12]*,* it needs to be notified to the Competition commission of India for approval, even for cross-border mergers, accompanied by other sectoral regulators like *SEBI's Substantial Acquisition of Shares and Takeovers (SAST), SEBI (Listing Obligations and Disclosure Requirements) Regulations*[13], and the Income Tax Department.

THE RECIPE: PROCEDURE FOR CROSS-BORDER MERGERS IN INDIA

In India, the procedural framework for cross-border mergers is rigid and lengthy, as it has to go through various stages and regulatory conditions. The initial step is to rectify the non-compliance by the companies involved, to ensure both companies have clear legal and regulatory records. In case of a foreign company, it must be located in a jurisdiction, prescribed or approved by the central government and must fulfil the key conditions: there securities market regulatory need to be signatory to the *IOSCO Multilateral Memorandum of Understanding (MoU)* or have a Bilateral MoU with SEBI; the central bank of such company must be a member of an International Settlements; and the their jurisdiction must be listed by the *Financial Action Task Force* as high risk or non-cooperative. After the eligibility is confirmed, it is mandatory to obtain

[10] Companies (Compromise, Arrangement and Amalgamations) Rules 2016, r 25A
[11] Companies Act 2013, s 233
[12] Competition Act 2002, ss 5-6
[13] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015

the RBI approval. And, it is the responsibility of both companies that the valuation of their entities is done by the valuer being a member of a recognised professional body in the transferee company's jurisdiction and the value decided by him is adhered to the international acceptance accounting principle as per *Rule 25A* of the *Companies Rules, 2016*.[14]

Following this, the merger scheme can be drafted, which needs to include the terms of the merger, details of consideration either through cash, depository receipts, or both and the manner of transferring liabilities and assets of the company, which are required to be approved by the Board of Directors of the merging companies. Prior approval of the RBI is required in compliance with the FEMA regulations, specifically *Regulation 9*[15]*,* which can be submitted to NCLT.

Once the application has been filed, the public notice needs to be issued in both English and a local language newspaper to inform the people and invite any objections regarding the merger. The No Objection Certificate must be obtained from the creditors and the shareholders with regard to the merger of the companies. The company can also take the approval of the NCLT for such dispensation. If the dispensation is approved by NCLT, then the company needs to issue the notice to all regulatory authorities, such as the Registrar of Companies (ROC), Regional Director (RD), Shareholders, Liquidator, and tax authorities. After this, a 30-day window period is provided to the shareholders or authorities to raise objections or comment on the merging scheme. If no objection is raised by any authority, then the drafted petition can be filed before the NCLT for final approval. The NCLT can hear the matter and decide the case after ensuring all the procedural criteria are fulfilled; it can approve the merger application and issue an order. The Certified true copy with all obtained NOCs must also be filed in the Registrar of Companies as part of the post approval process.[16]

Regulatory Framework: The regulatory framework for Inbound and Outbound mergers has been defined in *Regulation 4* and *Regulation 5* of the *Foreign Exchange Management (Cross Border Merger) Regulations, 2018,*[17] respectively.

[14] Companies (Compromise, Arrangements and Amalgamations) Rules 2016, r 25A
[15] Foreign Exchange Management (Borrowing and Lending) Regulations 2018, r 9
[16] India: Cross-border merger provisions notified (n 7)
[17] Foreign Exchange Management (Cross Border Merger) Regulations 2018

Inbound Merger: *Regulation 4*[18] allows the resultant company to acquire the assets and liabilities of the foreign company, irrespective of its location, given it is under the FEMA regulations. Indian companies are allowed two years from the date of sanction of the scheme of merger by the *National Company Law Tribunal (NCLT)* to ensure that all such transferred liabilities and assets are FEMA-compliant. The period within which any such non-compliant asset or liability has to be regularised or otherwise treated is two years. Such assets or liabilities, unless regularised within two years, should be sold or otherwise settled.

In addition, even if the activities of the foreign company constitute branches or offices abroad, the Indian company may keep them, as long as they are allowed under FEMA and foreign office establishment laws related thereto by Indian firms. Interestingly, foreign shareholders of the consolidating foreign company who receive shares in the Indian company as consideration for the merger are considered foreign investors. Thus, such a share issue has to be by the *Foreign Direct Investment (FDI) Policy*, including sectoral caps, entry modes (automatic or approval), price guidelines, and reporting, like, the issued share value should not need to exceed 100% of the net worth of the Indian Company.

In cases where a foreign company is merged as a Joint Venture or wholly owned subsidiary company of an Indian Company, its transaction should comply with the ODI regulations. It needs to fulfil the requirements of Regulations 6 and 7, particularly if the transaction includes Step-down subsidiary foreign companies.

Borrowings and guarantees of the foreign company become the borrowing of the resultant company. The Indian resultant company will be liable for all the debts and liabilities of the company. Resultant companies need to comply with FEMA and all the ECB norms post-inbound merger. The borrowing from the foreign company cannot make a repayment for a minimum period of 2 years, unless it is permitted by the RBI.

The assets of the foreign company need to be acquired by the Indian company as per the RBI directions. Assets that are not located abroad and were not permitted to be held or acquired as per the Indian law, then have to be returned within 2 years of the sanction of the scheme. The resultant company, in case of an inbound merger, can open a bank account in a foreign country

[18] Foreign Exchange Management (Cross Border Merger) Regulations 2018, r 4

for the cross-border merger-related transactions for 2 years as per the scheme sanctioned by the NCLT.

Outbound Mergers: *Regulation 5*[19] deals with outbound mergers, wherein an Indian company merges with a foreign company, and the merged entity is outside India. Outbound mergers are tightly regulated due to capital flight fears and jurisdictional concerns. Foreign companies, under this section, must be incorporated in a jurisdiction notified by the central government; such jurisdictions are those that are in harmony with international standards on anti-money laundering, combating financing of terrorism, and have entered into information exchange agreements with India.

In an outbound merger, all the assets and liabilities of the Indian company are consolidated into the foreign company. The foreign company has to make sure that it's a going concern in India, viz., any branches, subsidiaries, or offices, remain in compliance with Indian laws like FEMA, Companies Act 2013, tax laws, and industry-specific legislations like those of Securities and Exchange Board of India, Reserve Bank of India, etc.

One of the strongest points of outbound mergers is the handling of Indian resident shareholders. Where residents receive foreign company shares in consideration for the merger, the acquisition needs to be by the *Liberalised Remittance Scheme (LRS)* of the *Reserve Bank of India (RBI)*. The LRS permits residents to invest up to USD 250,000 in a financial year in foreign assets. Where the received foreign shares are worth more than the above limit, the shareholder needs to either obtain special approval from the RBI or restructure the consideration. The Indian office is required to be treated as the branch office of the resultant company, governed by FEMA Liaison office regulations. The NCLT sanction scheme of outstanding borrowings of the Indian company should conform to the FEMA Act and Regulations, and obtaining a No Objection Certificate from the lender is required as well.

The foreign firm may also hold the foreign assets of the Indian firm under Overseas Direct Investment rules. Similar to inbound mergers, two years of relief are given to the resultant company to convert any non-conforming assets or liabilities into assets or liabilities conforming to Indian foreign exchange law. In case of non-compliance by the foreign company within such

[19] Foreign Exchange Management (Cross Border Merger) Regulations 2018, r 5

a window, the asset or liability in question shall have to be divested or converted into compliance with the Indian laws. Indian companies are allowed two years from the date of sanction of the scheme of merger by the National Company Law Tribunal to ensure that all such transferred liabilities and assets comply with the FEMA regulations. Within two years, any such non-compliant asset or liability has to be regularised or otherwise treated. Such assets or liabilities, unless regularised within two years, should be sold or otherwise settled. The resultant company in the case of an outbound cross-border merger can open a non-resident Rupee account under the FEMA Regulation, 2016.

Sugar and Spice: When businesses from various nations and backgrounds sit at the same table, they don't merely merge resources and systems; people, assumptions, values, and work habits all converge. Unless the cultural differences are digested and harmonised, even the best deals go awry. Cultural integration is one of the most sensitive and pervasive challenges in such transactions.

Every organisation possesses its own organisational culture, not just based on internal values and leadership, but also on national culture. In cross-border deals, these multiple layers of culture add up in terms of complexity. For instance, Western multinationals might prioritise individualism, expediency, and hierarchies of levels, while multinationals from Asian countries, such as India, might prioritise collectivism, consensus decision-making, and hierarchical deference.

Effective cultural integration starts with awareness, the understanding that there are cultural differences and that they are important. Awareness needs to be followed by a formal due diligence process on culture in parallel to the financial and legal analysis. Mapping not just how the company looks on paper, but also how it feels to be there on a day-to-day basis, is critical. These findings can be used to drive adaptive integration plans that are not script-driven, but an organic coming together of cultures.[20]

Just as valuable are employee-centred approaches like surveys, focus groups, and observational studies to determine areas of pain or cultural clashes beforehand. Looking at history also works;

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[20] Ignacio Fantaguzzi and Christopher Handscomb, 'The Importance of Cultural Integration in M&A: The path to success' (*McKinsey & Company,* 01 February 2024) <https://www.mckinsey.com/industries/oil-and-gas/our-insights/the-importance-of-cultural-integration-in-m-and-a-the-path-to-success> accessed 22 May 2025

knowing the most pivotal moments of success and failure in each of the companies provides insight into what values have made them what they are.[21]

In India, India's deep internal diversity and multilayered regulatory context further exacerbate the difficulties of cultural integration in cross-border M&A. Indian companies have layered cultures on the basis of regional languages, caste and community ties, urban-rural orientations, and strong family business culture. As foreign companies step into India through M&A, they will have to realise that integration cannot be undertaken as a "one-size-fits-all" activity.

India's political environment and policy orientation can also control cultural integration. Local or nationalist sentiment has to be handled with care so that integration does not look like economic or cultural domination. A delicate cultural strategy has to involve interaction with not only employees but also local stakeholders, government, and political leadership, particularly for industries like telecom, infrastructure, and energy.

Cross-border merger cultural integration is not a soft problem to remediate post-hoc; rather, it is a strategic necessity that must be put at the very centre of the M&A process. It demands systematic cultural diagnostic tools, employee involvement, historical and observational analysis, and top-down leadership commitment to honour, learn from, and reconcile cultural differences. Cultural integration, well executed, doesn't merely prevent conflict; it provides a chance to build a stronger, more innovative, and globally oriented organisation that capitalises on the strengths of both parties.

MANAGING THE SPICE: Handling the Challenges

The Cross-Border Merger scheme in India faces a major regulatory overload issue due to the requirement of approvals from various authorities. *Section 234* of the *Companies Act*[22], read with *Rule 25A* of the *Companies (Compromise, Arrangement and Amalgamation) Rules*[23], provides the framework for the cross-border merger in India. The merger scheme needs to be sanctioned by the NCLT as per *sections 230-232* of the *Companies Act,2013,*[24] along with the

[21] Rashmi. A, 'Bridging the Divide: Navigating Cultural Integration in Cross-Border M&A'(2024) 6(1) International Journal for Multidisciplinary Research <https://www.ijfmr.com/papers/2024/1/12838.pdf> accessed 22 May 2025
[22] Companies Act 2013, s 234
[23] Companies (Compromise, Arrangement and Amalgamation) Rule 2016, r 25A
[24] Companies Act 2013

mandatory prior approval of the RBI under the *FEMA (cross-border) Regulation, 2018,*[25] as amended on March 20, 2018, FEMA Merger Regulations. If the value exceeds the financial threshold, then as per *sections 5 and 6* of the *Competition Act, 2002*[26], it needs to be notified to the Competition Commission of India for approval, accompanied by other sectoral regulators like SEBI, the Income Tax Department.[27]

On the other hand, Singapore has an easier and more efficient regulatory framework due to the lack of multiple approvals, except in scenarios where competition is affected. As per *section 54* of the *Competition Act, 2004,*[28] of Singapore, the merger is allowed with a voluntary notification if it results or is expected to result in a substantial lessening of competition. There is no prerequisite for approval until it triggers the competition.

There is a need for a single window clearance mechanism in India, which can help in speeding up the process of merger by reducing the different bodies for approval of the merger scheme. India can also come up with an idea of deemed approval for the regulators who do not respond within the given period, especially when no objection is raised. A list for certain thresholds and recommended countries could be created for an automatic approval system.

The cross-border merger in India under the *Companies Act, 2013* and other regulatory frameworks is backlogged, as there is no clear timeline for the *National Company Law Tribunal (NCLT)* to approve the merger scheme, which increases the chances of delay in the approval process of the merger scheme. This raises the cost, causes a delay in the process, leaves room for unpredictability, and investors lose confidence.

However, in the U.S merger process, as per *Section 251* of the *Delaware General Corporation Law,*[29] the merger can proceed without the involvement of the court once it is approved by the shareholders and board directors of the companies. If there is an objection with regard to the

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[25] Foreign Exchange Management (Cross Border Merger) Regulations 2018
[26] Competition Act 2002, ss 5-6
[27] Ambarish Bharadwaj Sivashankaran, 'Cross Border Mergers and Competition Law'(2023) 5(3) International Journal for Multidisciplinary Research <https://www.ijfmr.com/papers/2023/3/2887.pdf> accessed 22 May 2025
[28] Competition Act 2004, s 54
[29] Delaware General Corporation Law, s 251

merger scheme, then the court can be involved in the process. The UK also allows court-free mergers in the case of wholly owned subsidiaries.

To improve the process of merger, there is a need for an amendment to mandate NCLT to admit or reject the merger application within a particular period. India could adopt a time-bound approval process for mergers, taking inspiration from *Section 12 (1)* of the *Insolvency and Bankruptcy Code*[30], which requires the Corporate Insolvency Resolution Procedure to be completed within 330 days, and further extensions beyond this period are only given in scarce situations. Fast-track processes can be added to save time and cost for start-ups, small companies and other cross-border mergers with a lower risk.

In India, the transfer of assets in the merger scheme is applicable to tax under *Section 45* of the *Income Tax Act, 1961*[31], but there is an exemption under *Section 47(iv)*[32] of the Act, given that the transferee company is an Indian Company. However, there is no such exemption made for an outbound merger, putting the investors who opt for the outbound merger at a disadvantage. The outbound mergers are also subject to capital gain tax in India as per *section 47(vi)* and *section 47(vii)*[33], when read with *section 45* of the *Income Tax Act, 1961*. The protection under the Indian Tax law is only provided to the resultant Indian Company and not to the resultant foreign company. Furthermore, the applicability of *Section 72A*[34] of the IT Act, which talks about carry-forward of losses for mergers, is unclear for cross-border mergers.

The stamp duty is provided through the *Indian Stamp Duty Act 1899*[35], which is a central Act that provides a general framework; the power to levy and collect stamp duties falls with the states under the Seventh Schedule of the Indian Constitution. Certain states demand stamp duty on merger schemes, whereas others do not, which leaves room for ambiguity in merger scheme matters. The states also prescribe their own rate for the stamp duty, which is based on the market value of the properties or the whole consideration of the merger, making it more expensive and creating inconsistency among jurisdictions. Such structures discourage cross-border restructuring and hinder business growth, but countries like Singapore, on the other hand, have

[30] Insolvency Bankruptcy Code 2016, s 12(1)
[31] Income Tax Act 1961, s 45
[32] Income Tax Act 1961, s 47(iv)
[33] Income Tax Act 1961, s 47(vi) and (vii)
[34] Income Tax Act 1961, s 72A
[35] Indian Stamp Act 1899

tackled such issues by offering stamp duty exemptions, making the procedure less burdensome, and Mauritius does not levy Capital gains tax[36] whatsoever all, making it a tax-neutral stage for mergers. India can issue CBDT circulars for a merger-friendly tax treatment or use a better legally binding alternative for clarifying other things involving capital gains tax on mergers. India can follow Singapore and offer stamp duty exemptions or institute a central mechanism similar to GST to help create uniform and standardised stamp duty regulations.

A major regulatory challenge for outbound mergers in India originates from FEMA. While *Section 234* of the *Companies Act*[37], when read with *Rule 25A* of the *Companies Rules 2016*[38], lays out the enabling provision, they are still subjected to further requirements; the foreign company needs to be located in an area which is approved by the Central government, and it is mandatory to take prior approval from the RBI. They should also be FATF-compliant, should be signatories to bilateral tax information exchange or members of the OECD framework, and the financial regulators should have an MoU with SEBI. Although these conditions are set up as a safeguard against tax evasion and regulatory arbitrage, they also limit the ambit of jurisdictions for outbound mergers.

Indian residents purchasing shares in a foreign resulting company are required to adhere to the *Liberalised Remittance Scheme (LRS)*, with a ceiling of USD 250,000 annually, thereby limiting the viability of high-value transactions. Institutional investors are eligible to utilise the *Overseas Direct Investment (ODI)* route, but are also subject to sectoral ceilings and stringent compliance requirements.

By contrast, the European Union (EU) allows EU/EEA company outbound mergers under *Directive (EU) 2017/1132,* without exchange control impediments under the free movement of capital in the single market. Likewise, the United States lacks a FEMA-style regime, with the mergers being governed mainly at the state level, federal government regulation (e.g., by CFIUS) limited to issues of national security. Against the backdrop of these cross-border practices, India's exchange control regime does seem too restrictive. To facilitate easy, smooth outbound mergers, the government can expand the list of sanctioned jurisdictions and introduce an

[36] Income Tax Act 1961, s 45
[37] Companies Act 2013, s 234
[38] Companies (Compromise, Arrangement and Amalgamation) Rule 2016, r 25A

automatic route for low-risk, compliant transactions. Liberalisation in harmony with cross-border practices would render India more attractive for cross-border corporate restructuring.

Under the *Companies Act, 2013, sections 230 to 232*[39] deal with schemes of compromise, arrangement, and amalgamation. *Section 230(3)*[40] requires notice of the scheme of merger to all members and creditors, and *Section 230(5)*[41] also requires notice to regulators like the Registrar of Companies (ROC), the Regional Director, and other sectoral regulators. The framework enables creditors to review the terms of the scheme and file objections with the NCLT. The law is not clear, however, whether foreign creditors are covered under the definition of *"creditors"* under these provisions, specifically in the case of inbound mergers where an Indian company is taking over a foreign company. This legislative uncertainty creates uncertainty and procedural complexity, especially in the case of cross-border liabilities and claims.

Additionally, the existing regime gives any creditor, no matter how small or large their claim, the right to object to the merger. Even a single objection, irrespective of materiality or merit, can delay or derail the merger process. In contrast, jurisdictions such as Delaware in the United States have a more business-oriented and efficient regime. Creditor approval for corporate mergers is not necessary under Delaware law unless the merger is disadvantageous to the solvency of the firm or fraudulent transfer of assets. The emphasis is on protecting creditors through statutory remedies post-merger, as opposed to pre-approval rights during the transaction. To bring Indian law into convergence with global best practices without affecting valid creditor interests, reforms can be made in the shape of a *"deemed consent"* regime. Under such an arrangement, creditors who don't respond within a certain time frame would be considered to have given their consent to the scheme. The law can be further modified to provide *"materiality thresholds"* so that only creditors with claims over a certain value or a significant portion of aggregate liabilities can object to the scheme. Such reforms would facilitate merger clearances, minimise procedural delays, and enhance cross-border deal legal certainty, particularly inbound mergers involving foreign creditors.

[39] Companies Act 2013, ss 230-232
[40] Companies Act 2013, s 230(3)
[41] Companies Act 2013, s 230(5)

CONCLUSION

India's regime for cross-border mergers, although legally facilitated under the *Companies Act 2013*[42] and FEMA Regulations, is procedurally cumbersome and conceptually incomplete in important areas. Regulatory overlap, absence of enforcement of timelines at the NCLT, and prohibitive exchange control provisions under FEMA impede the ease and swiftness of such deals. In addition, the lack of tax exemptions for mergers going abroad, overlap in stamp duty legislations between states, and uncertainty about the handling of foreign creditors create additional complexity and uncertainty. In contrast, places such as Singapore, the EU, and the US provide streamlined, tax-neutral, and business-conducive structures. To be competitive on the International corporate restructuring map, India needs to become more facilitative. Reforms like time-bound NCLT clearance, consent deemed by creditors and regulators, tax and stamp duty harmonisation, and automatic approval channels for compliant jurisdictions are the need of the hour. Cultural integration must also be accorded strategic priority, especially in a socially and politically intricate context such as India. By putting in place such reforms, India can become a globally competitive jurisdiction for cross-border mergers, supporting both inbound investment and outward expansion.

[42] Companies Act 2013