

# Understanding Legalities - Mergers, Acquisitions and Combinations

With the liberalization of the Indian economy, globalization, and the need for consolidation and diversification, mergers and acquisitions (M&A) activity has seen a surge in recent years. However, the execution of mergers, acquisitions, and combinations entails intricate legalities that must be comprehended to ensure a successful transaction.



**Jay Bhavesh Parekh, ACS**

Company Secretary  
Seven Islands Shipping Limited  
Mumbai, Maharashtra  
[parekhjay414@gmail.com](mailto:parekhjay414@gmail.com)

## INTRODUCTION

**M**ergers, acquisitions, and combinations are increasingly utilized by businesses in India as a means of achieving economies of scale and growth. However, the implementation of these strategies is subject to a complex legal framework that includes both competition and corporate law. In this article, I aim to provide an overview of the legal aspects of mergers, acquisitions, and combinations in the Indian context, including the regulatory framework, the key legal requirements, procedure to be followed and the consequences of non-compliance.

With the liberalization of the Indian economy, globalization, and the need for consolidation and diversification, mergers and acquisitions (M&A) activity has seen a surge in recent years. However, the execution of mergers, acquisitions, and combinations entails intricate legalities that must be comprehended to ensure a successful transaction.

## REGULATORY FRAMEWORK

The legal framework governing mergers, acquisitions, and combinations in India is primarily governed by the Companies Act, 2013, along with the rules made thereunder (hereinafter the “Companies Act”). There are two types of combinations: mergers and amalgamations, and demergers. The former involves a combination of two or more companies into one, while the latter involves the transfer of one or more undertakings of a company to another or multiple companies.

The process for mergers, acquisitions, and combinations is primarily set out in the Companies Act. It requires obtaining approval from various parties, including the board of directors, shareholders, and regulatory authorities like the National Company Law Tribunal (NCLT), the Securities and Exchange Board of India (SEBI), and the Competition Commission of India (CCI). In addition, the Companies Act outlines the rights of shareholders, creditors, and employees of the companies involved in the combination. Overall, the legal framework in India for mergers, acquisitions, and combinations is well-established and regulates these transactions thoroughly.

### A. Companies Act

The Companies Act is the primary legislation in India that governs the incorporation, management, and operation of companies. It provides a legal framework for mergers, acquisitions, and combinations in India, which are often used as a strategy for corporate growth or restructuring.

Under the Companies Act, a merger is defined as the amalgamation of two or more companies into one new or existing company, while an acquisition is defined as the purchase of one company by another company. A combination is a term that includes both mergers and acquisitions.

The Companies Act sets out the procedures for mergers and acquisitions, including the approval of shareholders and regulatory authorities, the valuation of shares, and the treatment of minority shareholders.

**Approval of Shareholders:** Before a merger or acquisition can take place, the proposal must be approved by the shareholders of each company involved. The Companies Act requires that at least 75% of the shareholders present and voting must approve the proposal.

**Approval of Regulatory Authorities:** The Act also requires approval from various regulatory authorities, including the National Company Law Tribunal (NCLT), the Competition Commission of India (CCI), and the Securities and Exchange Board of India (SEBI). The NCLT and CCI evaluate the impact of the proposed merger or acquisition on competition and ensure that the rights of minority shareholders are protected.

**Valuation of Shares:** The Companies Act also sets out rules for the valuation of shares, which is necessary for determining the share exchange ratio between the

companies involved in the merger or acquisition. The valuation must be done by an independent valuer appointed by the company's board of directors.

**Treatment of Minority Shareholders:** The Companies Act also provides protection for minority shareholders. The Companies Act requires that the shares of minority shareholders be treated on par with the shares of the majority shareholders. Minority shareholders have the right to object to the merger or acquisition and can ask for the fair value of their shares to be determined by an independent valuer.

In summary, the Companies Act provides a comprehensive legal framework for mergers, acquisitions, and combinations in India, which includes procedures for shareholder and regulatory approval, valuation of shares, and protection of minority shareholders' rights.

### B. Competition Act, 2002

The Competition Act, 2002 (hereinafter the "Competition Act") is an important legislation in India that regulates competition in the market by preventing anti-competitive agreements, abuse of dominance, and mergers and acquisitions that may have an adverse impact on competition in the market. Following are some of the important and noteworthy functions of the Competition Act:

**Prohibition of Anti-Competitive Agreements:** The Competition Act prohibits agreements that have an appreciable adverse effect on competition in the market. Such agreements may include agreements between competitors to fix prices, limit production, or share markets, among others. The Competition Act also prohibits vertical agreements between enterprises that may cause an adverse effect on competition in the relevant market.

**Abuse of Dominant Position:** The Competition Act prohibits an enterprise from abusing its dominant position in the market. This may include actions such as imposing unfair conditions on customers or suppliers, refusing to deal with certain customers or suppliers, or charging excessive prices, among others.

**Regulation of Mergers and Acquisitions:** The Competition Act regulates mergers, acquisitions, and combinations that may have an adverse impact on competition in the market. The CCI is responsible for evaluating whether a proposed merger or acquisition may have an adverse impact on competition in the market. The CCI may approve the merger or acquisition subject to certain conditions, or it may prohibit the merger or acquisition if it determines that it would have an appreciable adverse effect on competition in the market.

The Competition Act aims to promote and sustain competition in the market, protect consumer interests, and ensure freedom of trade in India. The Competition Act also provides for penalties and other consequences for non-compliance with its provisions.

### C. SEBI Regulations

The Securities and Exchange Board of India (SEBI) is the primary regulatory body for the securities market in India. Its objective is to protect the interests of investors in securities and to promote the development of the securities market in India. One of the ways SEBI achieves this is by regulating the process of M&A in the Indian securities market.

SEBI regulations require companies to disclose information about M&A transactions to the stock exchanges and to their shareholders. This is to ensure that all relevant information is made available to investors so that they can make informed decisions about their investments. The information that must be disclosed includes the terms and conditions of the proposed merger or acquisition, the valuation of the companies involved, and any potential risks or benefits associated with the transaction.

SEBI also specifies the procedures for obtaining approval from the stock exchanges for mergers and acquisitions. The companies involved in the M&A transaction must submit a draft scheme of the merger or acquisition to the stock exchanges for approval. The scheme must include details about the companies involved, the share exchange ratio, and the benefits and risks of the transaction. The stock exchanges will then review the scheme and provide their approval if they find that it is in compliance with SEBI regulations.

In addition to the above, SEBI also requires companies to obtain approval from their shareholders for M&A transactions. The companies must hold a general meeting of their shareholders to obtain approval for the transaction. Shareholders must be provided with all relevant information about the transaction and must be given the opportunity to ask questions and express their views.

Overall, SEBI regulations aim to ensure that M&A transactions in the Indian securities market are conducted in a fair and transparent manner, with all relevant information made available to investors and with the approval of the stock exchanges and shareholders.

### TYPES OF COMBINATIONS

There are various types of combinations, which include horizontal mergers, vertical mergers, and conglomerate mergers.

**A. A horizontal merger :** A horizontal merger is a merger between two or more companies that operate in the same industry and are direct competitors. The main goal of such a merger is to combine the resources and capabilities of the merging companies to create a larger entity that can achieve greater economies of scale and scope, increase market share, and gain a competitive advantage over its rivals.

By merging, the companies hope to achieve a larger customer base and a stronger presence in the market,

which can lead to higher profits and greater market power. However, such mergers can also reduce competition and increase the risk of monopolistic practices, such as price fixing or other anti-competitive behaviors that harm consumers.

Regulatory bodies such as antitrust authorities may scrutinize such mergers to ensure that they do not result in anti-competitive practices that harm consumers. In some cases, the authorities may require the merging companies to divest some of their assets or take other measures to mitigate the risk of anti-competitive practices.

- B. Vertical Merger:** A vertical merger occurs when two or more companies that operate at different stages of the production process combine. This means that a company that is involved in producing a particular good or service merges with another company that is involved in providing the raw materials or other inputs necessary to produce that good or service.

For example, a car manufacturer might merge with a company that produces the steel that is used to make the cars. Or a company that produces pharmaceuticals might merge with a company that manufactures the chemicals that are used in the production of those pharmaceuticals.

Vertical mergers are often done with the aim of increasing efficiency and reducing costs. By bringing together different stages of the production process under one roof, companies can potentially reduce transaction costs, improve communication, and streamline operations.

However, there can also be potential downsides to vertical mergers. For example, they can reduce competition in the industry, potentially leading to higher prices for consumers. They can also create conflicts of interest between the different stages of the production process, such as between the manufacturer and the supplier of raw materials, which could potentially harm other businesses in the supply chain.

- C. Conglomerate mergers:** Conglomerate mergers are a type of merger that involves the combination of two or more companies that operate in different industries or markets. The aim of such a merger is to create a larger company that has a more diversified business portfolio, allowing it to spread its risks across multiple industries and reduce its dependence on any one market or product.

For example, suppose a company that produces consumer electronics merges with a company that operates in the healthcare industry. In that case, the resulting conglomerate would have a more diverse range of products and services, making it less vulnerable to economic or market fluctuations in any one industry.

With the liberalization of the Indian economy, globalization, and the need for consolidation and diversification, mergers and acquisitions (M&A) activity has seen a surge in recent years. However, the execution of mergers, acquisitions, and combinations entails intricate legalities that must be comprehended to ensure a successful transaction.

Conglomerate mergers can take two forms: pure conglomerate mergers and mixed conglomerate mergers. In a pure conglomerate merger, the companies involved have no common business interests, while in a mixed conglomerate merger, the companies involved have some overlapping business interests.

Pure conglomerate mergers are less common than mixed conglomerate mergers because they involve companies from completely different industries that have no common interests. However, both types of mergers have the potential to create a more resilient and diversified company.

## PROCEDURE FOR MERGERS, ACQUISITIONS, AND COMBINATIONS

Mergers, acquisitions, and combinations are complex business transactions that require careful planning, execution, and evaluation. Here's a general overview of the procedures involved:

- 1. Pre-transaction planning:** Before the transaction, both companies should conduct a thorough analysis of their own strengths and weaknesses, as well as those of their potential partner. They should also identify areas of overlap and determine the strategic fit of the transaction.
- 2. Valuation:** Both companies should determine the fair value of their assets and liabilities to establish a fair exchange ratio or price. This process typically involves hiring a third-party appraiser to provide an objective valuation.
- 3. Due diligence:** The acquiring company should conduct a comprehensive review of the target company's financial statements, contracts, legal documents, and operational procedures to identify any potential risks or liabilities.
- 4. Negotiation:** Once the due diligence process is complete, both companies should enter into negotiations to establish the terms of the transaction, including the exchange ratio or price, the structure of the transaction, and any contingencies or conditions.

5. **Documentation:** Once the terms have been agreed upon, both companies should prepare and execute legal documents, such as a merger agreement, acquisition agreement, or purchase agreement.
6. **Regulatory approvals:** Depending on the nature of the transaction and the industries involved, both companies may need to obtain regulatory approvals from board of directors, shareholders and various other stakeholders including regulatory agencies and government agencies.
7. **Integration:** After the transaction is complete, the companies should begin the process of integrating their operations, systems, and cultures to realize the benefits of the transaction.
8. **Post-transaction evaluation:** Finally, both companies should evaluate the success of the transaction and identify any areas for improvement or further integration. This evaluation process should continue over time to ensure the ongoing success of the combined entity.

Overall, the procedures involved in mergers, acquisitions, and combinations can be complex and time-consuming, and it's important to have experienced professionals to guide the process.

## CONSEQUENCES OF NON-COMPLIANCE

In India, mergers, acquisitions, and combinations are governed by the Companies Act and Competition Act. Non-compliance with the legal requirements for such transactions can lead to various consequences, including:

1. **Imposition of penalties:** Non-compliance with the legal requirements can result in penalties being imposed by the competition authorities. The CCI has the power to impose a penalty of up to 1% of the total turnover or assets of the company, whichever is higher, for non-compliance with the provisions of the Competition Act.
2. **Rejection of the merger/acquisition:** Non-compliance with the legal requirements may lead to the rejection of the merger or acquisition by the regulatory authorities. For instance, the CCI can reject a merger or acquisition if it finds that the transaction is likely to have an adverse effect on competition in the relevant market.
3. **Legal action:** Non-compliance with the legal requirements can also result in legal action being taken against the companies involved. The Companies Act provides for legal action against the company and its officers for non-compliance with the provisions of the Companies Act.
4. **Damage to reputation:** Non-compliance with the legal requirements can lead to damage to the reputation of the companies involved. This can have a negative impact on their brand image and customer loyalty.

5. **Delay in the transaction:** Non-compliance with the legal requirements can result in a delay in the completion of the transaction. This can lead to increased costs and uncertainty for the companies involved.

In summary, non-compliance with the legal requirements for mergers, acquisitions, and combinations in India can have significant consequences for the companies involved. It is important for companies to comply with the provisions of the Companies Act, Competition Act, 2002 and other statutes to ensure a smooth and successful transaction.

## CONCLUSION

In conclusion, mergers and acquisitions are a common strategy used by companies to achieve growth and expand their market share. However, they can also be complex and challenging endeavours that require careful planning, execution, and integration. Success in mergers and acquisitions relies heavily on various factors such as strategic fit, cultural alignment, communication, and leadership. As such, companies should carefully evaluate the potential benefits and risks before embarking on any merger or acquisition. While they can offer significant opportunities for growth and competitive advantage, they can also result in significant costs and challenges if not managed effectively. Ultimately, the success of mergers and acquisitions will depend on the ability of the companies involved to work together towards a common goal and create value for their stakeholders.

Further, mergers, acquisitions, and combinations are subject to a complex legal framework in India. Therefore, it is essential for parties involved in such transactions to seek legal advice and ensure compliance with the relevant laws and regulations. By doing so, the parties can avoid the consequences of non-compliance and ensure a smooth and successful transaction.

## REFERENCES:

1. Mergers and Acquisitions (M & A): Process & Judicial Response: <https://www.amity.edu/UserFiles/Journal/atal.pdf>
2. Reasons and Motives for Amalgamation, Merger and Acquisitions: [https://www.raijmr.com/ijrmp/wp-content/uploads/2017/11/IJRMP\\_2014\\_vol03\\_issue\\_05\\_05.pdf](https://www.raijmr.com/ijrmp/wp-content/uploads/2017/11/IJRMP_2014_vol03_issue_05_05.pdf)
3. Merger And The Role of Competition Commission of India : <https://www.legalservicesindia.com/article/2244/Merger-And-The-Role-of-Competition-Commission-of-India.html>
4. Importance of compliance risk management in M&A transactions - iPleaders : <https://blog.iplayers.in/importance-compliance-risk-management-ma-transactions/>

