



Merger And Acquisitions

Merger & Acquisition Industry Alerts

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Mergers and Acquisitions Industry Alerts

What's the Buzz?

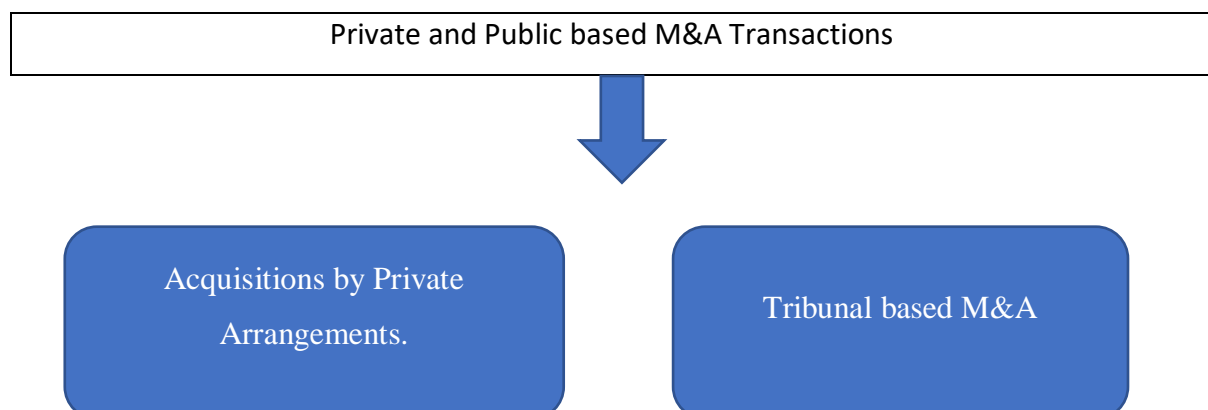
Recently, it has been reported that the parent company of India's ShareChat will acquire local rival MX's short-video platform in an around \$700 million deal. After the ban of the Chinese apps like the Tiktok in India, certain Indian short video apps have taken the market by storm, Thus, estimating that this industry shall ensure huge profits, ShareChat's parent company, Mohalla Tech which had launched a same short video app called 'Moj' wants to increase its market reach with this massive deal.

How is M&A regulated in India?

Some of the important legislations governing the M&A in India are:

- The Foreign Exchange Management Act 1999 especially, Foreign Exchange Management (Cross Border Merger) Regulations 2018 and the rules and regulations therein read with the rules, circulars and directions issued by the RBI.
- The Competition Act 2002 which regulates on the anti-competitive agreements.
- The Companies Act 2013 which governs the general functioning of companies as well as regulation of issuance of shares are concerned.
- The Contracts Act 1872 that shall govern the entire contractual obligations between the parties involved in a deal.
- The SEBI Act 1992 read with its rules, circulars, directions, guidelines and notifications.

What are the types of M&A Transactions approved in India?



Private Transactions: This is done on the basis on personal contractual agreement between the Buyer and the Seller subject to whatever necessary approvals. They can be in the form of:

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- i. Share Acquisitions (either from existing shareholders or subscription of fresh sales)
- ii. Asset transfer (buyer purchases identified assets of the seller with individual values assigned to the seller)
- iii. Business Sales. (transfer of an undertaking or a business unit as an ongoing concern and the employees are transferred too).

Tribunal based M&A: Mergers/ Demergers, Acquisitions or Business sales require the approval via the concerned National Company Law Tribunal as well as the approval from shareholders and creditors, sectoral regulators, stock exchanges as well as the SEBI (if a listed company is involved).

What does the FEMA Cross Border Merger Regulations dictate?

The FEMA Regulations provide that any transaction undertaken in relation to a cross-border merger in accordance with the FEMA Regulations shall be deemed to be approved by the RBI. The Regulations also require the managing director/whole time director and company secretary of the company involved in such cross-border merger to furnish a certificate undertaking to ensure compliance with the FEMA Regulations along with the application made to the relevant National Company Law Tribunal (NCLT) in relation to such merger.

'Cross border merger' has been defined in the FEMA Regulations as "*any merger, amalgamation or arrangement between Indian company and foreign company in accordance with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 notified under the Companies Act, 2013*".

Rules as to Inbound Merger

In an Inbound Merger, a foreign company will merge into an Indian company and accordingly, all properties, assets, liabilities and employees of the foreign company will be transferred to the Indian company.

- If there is an issue/ transfer of security by the resultant Indian company to a person resident outside of India, it must adhere to the conditions and reporting requirements for foreign investment laid down in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.
- If a JV/WOS of an Indian company merges with its Indian parent company, the Indian parent company shall have to comply with the conditions prescribed for transfer of shares of such JV/WOS as laid down in the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 (ODI Regulations).
- According to the Foreign Exchange Management (Foreign Currency Account by a Person Resident in India) Regulations, 2015, offshore offices of foreign company to

become branch/office of the Indian company outside India pursuant to the Inbound Merger.

- Any borrowing from overseas sources entering into the books of the resultant Indian company pursuant to the Inbound Merger, should comply with external commercial borrowing norms or trade credit norms or other foreign borrowing norms, as laid down under Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, Foreign Exchange Management (Borrowing or Lending in Rupees) Regulations, 2000 or Foreign Exchange Management (Guarantee) Regulations, 2000, within a period of two years from the date of sanction of such merger by the NCLT.

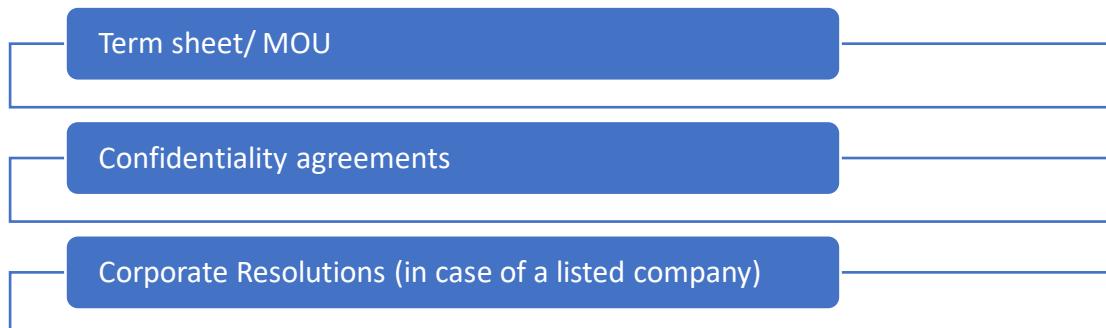
Rules as to outbound Merger

Here, Indian company will merge into a foreign company and accordingly, all properties, assets, liabilities and employees of the Indian company will be transferred to the foreign company.

- A person resident in India, being a holder of securities in the Indian company, is permitted to acquire or hold securities of the foreign company, in accordance with the ODI Regulations.
- The Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 shall govern the offices deemed as the branch of foreign company pursuant to the outbound merger.
- The foreign company shall be permitted to open a Special Non-Resident Rupee Account (SNRR Account) for a maximum period of two years from the date of sanction of the cross border merger by the NCLT, for undertaking the transactions under the FEMA Regulations.

The Beginning Steps

The basic and important preliminary documents required for the commencement of the M&A transactions have been listed below;



It must be noted that if any party suffers a breach of contract under foreseeable circumstances, then they are entitled to the damages as contemplated under the Indian Contracts Act.

The Methods and the People involved in the Transaction

Methods involved in the finance acquisition:

- Equity
- Debt

So, who are the professionals involved in the determination of the deal?

