India

Negotiated M&A Guide 2022

Corporate and M&A Law Committee

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1. INTRODUCTION

1.1 M&A in India

M&A activity in India occurs through several different structures and modes, the most predominant of which is court-driven mergers, demergers, bilateral share purchases, and business and asset transfers. India at present is a hotspot for M&A activity, and the ease at which M&A activity is presently undertaken in India is a culmination of various policies which had the promotion of M&A activity as a central component.

1.1.1 Economic liberalisation

The initial decades of M&A activity in India were stymied by a relatively protectionist legal regime. This regulatory leash made it onerous for parties to pursue acquisitions and other transactions, resulting in low M&A activity till the 1990s.

In the wake of the 1990s, the liberalisation of certain sectors previously encumbered with restrictions or under state monopoly led to increased private sector investments, as well as foreign investments in the Indian economy. With liberalisation at the forefront of India's economic reforms, India has seen substantial growth in M&A activity as the government has continued to gradually develop the legal regime to actively promote economic activity.

These developments were fruitful as the first two decades of the millennium witnessed several landmark M&A transactions. In 2006, Mittal Steel announced a takeover bid for Arcelor. Another notable acquisition took place in 2007, when Vodafone International Holdings BV acquired a 52 per cent stake in Hutchison Essar (an Indian company) through its holding company. By routing the deal offshore, Vodafone attempted to keep the transaction outside the ambit of Indian tax authorities, which led to a decade-long stand-off. In 2012, the Supreme Court of India ruled in favour of Vodafone. This case made headlines for global tax planning and taxation by countries which held the ultimate assets.

1.1.2 Impact of Covid-19

The Covid-19 pandemic impacted M&A activity worldwide; India is no exception. However, while the pandemic initially hampered M&A activity in the early months of 2020, the market quickly recovered in 2021.

Media reports based on data released by financial market tracker Refinitiv[1] state that M&As in India reached a three-year high after deals worth US$90.4bn were struck in the first nine months of 2021. The same data also revealed that the average deal value stood at US$105m until September 2021. It has been reported widely that, for the years 2020 and 2021, the percentage of first-time buyers has been the highest compared to the percentage for the years 2016 till 2019.[2]

Examples of deals in 2021 include Adani Green's acquisition of SB Energy India for US$3.5bn (approximately INR 262bn); Byju's US$1bn (approximately INR 75bn) acquisition of Aakash Educational Services; and the acquisition of the retail, wholesale, logistics and warehousing businesses of Future Group by Reliance Ventures Limited for US$3.3bn (INR 248 bn).

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[1] Swaraj Singh Dhanjal, 'India M&A activity at three-year high, shows data', (*Mint*, 2 October 2021), see www.livemint.com/news/india/india-m-a-activity-at-three-year-high-refinitiv-11633176536373.html.
[2] Naina Bhardwaj, 'Mergers And Acquisitions Activity In India In 2021' (*India Briefing*, 14 January 2022), see www.india-briefing.com/news/mergers-acquisitions-activity-in-india-in-2021-24074.html.

The Indian M&A landscape's stable recovery from the pandemic bodes well for potential investors and makes India a promising investment destination.

1.2 Legal landscape

M&A activities in India are governed by various statutes, regulations and regulatory bodies. Set out below is the legal landscape for M&A in India, including an outline of the anti-trust and tax regimes.

1.2.1 Companies Act, 2013

Overview

Companies in India are incorporated and regulated under the provisions of the Companies Act, 2013 (Companies Act). Various jurisdictional offices of the Registrar of Companies (RoC), in conjunction with the Ministry of Corporate Affairs (MCA), administer the provisions of the Companies Act.

Types of companies

There are two main types of limited liability companies that may be incorporated in India: private companies [3] and public companies (securities of which may be listed on a stock exchange).[4]

In private companies, it is possible to incorporate in the articles of association[5] certain contractual arrangements such as affirmative vote matters[6] and restrictions with regard to transfers of shares. The Companies Act further permits entrenchment, meaning that specified provisions of the articles may be altered only if conditions or procedures that are more restrictive than those applicable for a special resolution are met or complied with.[7] An acquirer should be mindful of such provisions in the target's articles.

Types of share capital

The Companies Act provides for two types of share capital: equity share capital and preference share capital. Preference shares carry a preferential right to payment in relation to liquidation or payment of dividends, and do not carry voting rights in most instances. Equity shares are ordinary shares (or common stock) and cannot be redeemed, except pursuant to a buy-back or a reduction of share capital.

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[3] Under Indian law, a private company must have a minimum of two shareholders and may have a maximum of 200 shareholders (excluding the present and past employees of the company).

[4] Under Indian law, a public company is defined as a company which is not a private company (but includes a deemed public company – ie, a private company that is a subsidiary of a public company). A public company must have a minimum of seven members and may invite members of the public to subscribe to its securities.

[5] The articles of association is a document setting out the regulations for the management and conduct of the operations of the company. Together with the memorandum of association, which sets out () the primary and ancillary objectives of the company, (2) the authorised share capital of the company, and (3) the subdivision of the authorised share capital, these documents form the charter documents of the company, and the obligations set out therein are binding on the company and its members.

[6] Consent rights with regard to affirmative vote matters, or reserved matters, are special rights often granted to a shareholder without whose consent the company cannot take decisions regarding such matters.

[7] A 'special resolution' under the Companies Act requires 75 per cent of the votes to be in favour of such a resolution in order to be validly adopted in a general meeting of the members/shareholders.

However, private limited companies are permitted a special dispensation to create preference shares and equity shares with rights otherwise than as set out above, by incorporation of such rights into the charter documents of the company (including the articles and memorandum of association).

In addition to shares, a company may issue debentures (debt instruments which may either be secured or unsecured) and convertible debentures and preference shares (ie, instruments that are convertible into equity shares). The kinds of instruments non-resident investors can acquire pursuant to Indian Exchange Control Regulations is elaborated upon below.

Physical versus dematerialised shares

Shares can be issued in the form of physical share certificates or in electronic form (also known as dematerialised shares). Certain classes of companies (including public companies) are required by law to issue shares only in electronic form.

Depositories are entities which are statutorily regulated and provide services in relation to shares issued in electronic form.[8] A company must register with a depository in order to issue shares in electronic form. Shares held in electronic or dematerialised form tend to be more advantageous in M&A transactions as the logistics involved in their transfer are simplified, and tracing the ownership and title to such shares in a pre-transaction diligence stage is a more straightforward process.

1.2.2 Exchange Control Regulations

Foreign direct investment

Long-term investment by foreign investors in the equity capital of Indian companies is foreign direct investment (FDI), and is governed by the Indian Exchange Control Regulations.[9]

Investments under the FDI route can be made in equity shares of an Indian company, share warrants, or other instruments which are fully, compulsorily and mandatorily convertible into equity shares – ie, compulsorily convertible securities such as fully and compulsorily convertible preference shares (CCPSs) and fully and compulsorily convertible debentures (CCDs) (collectively, equity instruments).

Sector-specific rules

FDI into Indian entities can be divided into three categories:

(a) automatic route with or without sector-specific conditions, where the FDI does not require the prior approval of the RBI or the Government of India;

[8] The two depositories currently operating in India are National Securities Depository Limited (NSDL) and Central Securities Depository Limited (CDSL).

[9] Foreign investments in India are primarily governed by (1) the Foreign Exchange Management Act, 1999 (FEMA) and the rules and regulations issued by the Reserve Bank of India (RBI) pursuant to the FEMA (which include the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (Non-debt Rules); and Foreign Exchange Management (Debt Instruments) Regulations, 2019 (Debt Regulations)); (2) the Consolidated Policy on FDI issued by the Department for Promotion of Industry and Internal Trade under the Ministry of Commerce & Industry (DPIIT); and (3) press notes and circulars issued by the DPIIT from time to time. ((1), (2) and (3) are collectively the Indian Exchange Control Regulations).

(b) Government route, where the FDI requires prior Government approval[10] in certain specified sectors or above specified limits;[10] or
(c) prohibited, where FDI is prohibited in certain sectors or above specified limits.

An overview of the restricted sectors and sectors under the approval route is further set out in Annexure 1 to this guide.

While FDI in a few sectors is subject to certain limits and conditions, FDI in most sectors is permitted up to 100 per cent under the automatic route. The onus of complying with limit on FDI is on the Indian company receiving the foreign investment.

FDI in sectors such as trading of food products manufactured in India, public sector banking, print media, uploading/uplinking news and current affairs through digital media/TV channels, etc. is allowed only under the Government route up to specified limits. FDI in sectors such as defence, trading (including through e-commerce), telecommunication, pharmaceuticals, etc. is allowed under the automatic route up to specified limits and subject to specified conditions. FDI in sectors such as specified agricultural activities, tea and coffee plantations, mining (except titanium), etc. is allowed up to 100 per cent with no sector-specific conditions.

Pricing guidelines

S. No.	**Types of transactions**	**Applicability of pricing guidelines**
(A)	Issue of capital instruments to non-residents	Non-residents are permitted to acquire (by way of subscription) equity instruments of an Indian company at a price which must not be less than: I *in case of a listed Indian company* – the price computed in accordance with the relevant Securities and Exchange Board of India (SEBI) guidelines; or II *in case of an unlisted Indian company* – the valuation of the capital instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis (duly certified by a chartered accountant, a SEBI-registered merchant banker or a practicing cost accountant).[11]
(B)	Transfer of Capital Instruments from a person resident in India (resident) to a non-resident[12]	Non-residents are permitted to acquire equity instruments from a resident subject to the same pricing guidelines applicable in (A) above. In case of a transfer of equity instruments between a resident and non-resident, a deferred payment of up to 25 per cent of the consideration is possible in certain cases.

[10] Government approval means approval from the DPIIT, department as identified by the DPIIT or the concerned ministry/department of the Government of India, as the case may be.
[11] In case of convertible equity instruments, the price or conversion formula of the instrument is required to be determined upfront at the time of issue of such instrument. The price at the time of conversion must not, in any case, be lower than the fair value worked out, at the time of issuance of such instruments.
[12] A 'person resident in India' means a (1) subject to some specified exceptions, a person residing in India for more than 182 days during the course of the previous financial year; (2) any person or body corporate registered or incorporated in India; (3) an office, branch or agency in India owned or controlled by a person resident outside India; and (4) an office, branch or agency outside India owned or controlled by a person resident in India.

(C)	Transfer of capital instruments from a non-resident to a resident	Non-residents are permitted to transfer equity instruments to a resident at a price which must not exceed: I. *in case of a listed Indian company* – the price worked out in accordance with the relevant SEBI guidelines; or II. *in case of an unlisted Indian company* – the valuation of the capital instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis (duly certified by a chartered accountant, a SEBI-registered merchant banker or a practicing cost accountant).
(D)	Transfer of capital instruments from a non-resident to another non-resident.	Transfer of equity instruments by a non-resident to another non-resident is not subject to the pricing guidelines. Government approval is not required for transfer of shares from a non-resident to another non-resident in sectors which are under the automatic route. Government approval will be required for transfer of stake by a non-resident to another non-resident in sectors which are under the Government approval route.

1.2.3 Income Tax Act, 1961

The Income Tax Act, 1961 (Income Tax Act) provides for the levy, administration, collection and recovery of income tax in India. The Income Tax Act levies capital gains tax on the transfer of capital assets. Capital gains tax applies to sale of shares unless such shares are stock-in-trade. The tax rate applicable would depend on whether the gains qualify as short-term or long-term capital gains. Sale of listed shares (securities of a listed public company) held for more than 12 months give rise to long-term capital gains, whereas for unlisted securities the threshold is 24 months. The provisions of the Income Tax Act apply to both a purchaser and seller of securities of an Indian company irrespective of both parties being residents or non-residents.

The Income Tax Act prescribes distinctive treatment for certain types of transactions. For instance, where there is a transfer for lump sum consideration of an undertaking, *by any means*, without assigning values to individual assets or liabilities (ie, a business transfer), such transfer will be taxed as a 'slump sale' (see Section 2.1.2).[13]

An important factor to consider in any transaction is that, where there are assessment proceedings or tax litigations under the Income Tax Act pending on any person, including a company, any charge created on, or any transfer of, any assets of such person shall be considered void as per section 281 of the Income Tax Act.[14] That said, the transaction is not considered void if such person has previously obtained the permission of the tax authorities for the transaction. Therefore, if any tax litigation is pending against the target, the requirement to obtain a no-objection certificate from the income tax authorities may need to be evaluated by the parties to the transaction, keeping in mind the timelines involved and the consequences of section 281 of the Income Tax Act being invoked against the transaction.

[13] Section 2(42C) of the Income Tax Act

[14] As per Section 281 of the Income Tax Act, in the event an assessee creates a charge or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, during the pendency of any proceeding under the Act or after the completion thereof, but before the service of notice under Rule 2 of the Second Schedule of the Act, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise. As per the explanation to the section, 'asset' includes shares and securities as well.

In practice, as the process of obtaining such a certificate can be time-consuming, parties may instead elect to obtain a certificate from a chartered accountant confirming that the target has not received any notice or any order from any tax authority which remains outstanding on the date of such letter, or that the target has sufficient funds or assets to discharge any claims that may arise.

1.2.4 Goods and Services Tax

In 2017, the Goods and Services Tax (GST) regime replaced the erstwhile indirect tax regime in India. Under the GST regime, Central GST and State GST is levied on all intra-state supplies of goods or services, and Integrated GST is levied on imports and all supplies of goods or services undertaken in the course of inter-state trade or commerce.

While there is no GST on the sale of a business as a slump sale, the rate of GST will vary in an asset purchase depending on the type of asset being sold. Notably, GST is not applicable on sale of shares, as 'securities' are specifically excluded from the definition of goods and services.

1.2.5 Stamp duty

Stamp duty is payable on certain specified instruments executed or received in India and would be payable on a share purchase agreement or a business transfer agreement, and such other documentation with respect to M&A in India.[15] The amount of the stamp duty payable would generally depend on the document executed, as well as the state-specific stamp laws, and accordingly varies from state to state. In practice, it may not be practical for parties to an agreement to be present at the same location at the time of execution. To account for this, it is recommended that agreements expressly make mention of the place of execution. Stamp paper can be procured in advance of executing the document by paying the stamp duty applicable on such document at its place of execution. Transaction documents should ideally also state which party will bear the stamp duty costs.

For instance, in the state of Karnataka, the stamp duty on a business transfer agreement which effects the delivery of property is 3 per cent of the consideration or market value (whichever is higher). The stamp duty payable on a share transfer form executed in connection with a transfer of shares is 0.015 per cent of the value of, or the consideration paid for, the shares.

1.2.6 SEBI

SEBI is the nodal authority regulating companies that are listed or to be listed on stock exchanges in India. Compliance with SEBI regulations is necessary for prescribed categories of transactions involving listed companies. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations) restrict and regulate the direct and indirect acquisition of control and substantial shares or voting rights of listed companies. The Takeover Regulations also prescribe when an acquirer is required to make an open offer to the existing shareholders of a listed target, inviting them to tender their shares in the target company at a particular price. [16] This provides an exit option to such shareholders in the event of a change

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[15] Any document not stamped or insufficiently stamped will not be admissible as evidence for any purpose, without there being the evidence of payment of the correct stamp duty. While typically the penalty for insufficient stamping is by way of a monetary penalty, in a few states any person executing a document not duly stamped is punishable with a fine or imprisonment.

[16] The Takeover Regulations require the acquirer of control over or 25 per cent or more of the shares or voting rights of, a listed company, to make an offer to acquire a minimum of 26 per cent of the voting capital of the company. The Takeover Regulations further provide that if an acquirer already holds 25 per cent or more (but less

in control.[17]

FDI in a listed company by a foreign investor will require compliance with the regulations issued by the SEBI and the Indian Exchange Control Regulations, in addition to compliance with tax and antitrust requirements as applicable.

1.2.7 Competition Act, 2002

The Competition Act, 2002 (Competition Act) is the antitrust legislation in India.[18] The statutory body tasked with implementing and administering the provisions of the Competition Act is the Competition Commission of India (CCI).[19]

Under the Competition Act, a 'combination' means any acquisition of shares, voting rights, control or assets of an enterprise, or mergers and amalgamation between enterprises, that meet certain thresholds. A combination meeting the financial thresholds requires mandatory notification to the CCI and cannot be consummated until the CCI issues an order or direction on the combination, or until the completion of the statutory review period of 210 days. The thresholds prescribed under the Competition Act are:

		Assets	**OR**	**Turnover**
Enterprise level	**India**	> INR 2,000 crore (INR 20bn)		> INR 6,000 crore (INR 60bn)
(Calculated with the assets or turnover of the acquirer and target enterprise, including its divisions, units and subsidiaries)	**Worldwide (with India component)**	>US$1bn with at least INR 1,000 crore in India (INR 10bn)		>US$3bn with at least INR 3,000 crore in India (INR 30bn)
OR				
Group level	**India**	> INR 8000 crore (INR 80bn)	**OR**	> INR 24000 crore (INR 24bn)
(Calculated with the assets or turnover of group to which the target entity will belong post-acquisition)	**Worldwide (with India component)**	> US$4bn with at least INR 1000 crore in India (INR 10bn)		> US$12bn with at least INR 3000 crore in India (INR 30bn)

The purpose of the CCI's review is to, *inter alia*, ensure that a proposed combination has no

than 75 per cent) of the target company, and acquires at least 5 per cent shares or voting rights in the target company, the acquirer will be obligated to make an open offer.

[17] The Takeover Regulations define 'control' to include: the right to appoint a majority of the directors, or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding, management rights, shareholders agreements or voting agreements, or in any other manner provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position.

[18] The Competition Act seeks to promote and sustain competition in markets while protecting the interests of consumers and preventing practices that could have an adverse effect on competition.

[19] The CCI, along with its investigative arm, the office of the Director General, jointly administers the provisions of the Competition Act.

'appreciable adverse effect on competition' within the relevant market in India. Notable examples of transactions that required approval from the CCI are Facebook and Google's acquisition of stakes in Jio Platforms, and FedEx India's acquisition of a minority stake in Delhivery.

Since the Competition Act envisages a mandatory notification regime, a failure to notify a notifiable transaction attracts a penalty under the Competition Act. Further, where a combination has been consummated without notifying the CCI, the CCI has the power to initiate investigation into such combination within a period of one year from the date on which the combination takes effect.[20]

That said, in addition to the financial thresholds discussed above, certain other exemptions to notification exist. These include:

The Green Channel route

Under the Competition Act, combinations which meet certain criteria are deemed to be approved upon filing a valid short form notification with the CCI, under what is known as the 'Green Channel' route (ie, such transactions are deemed to be approved without the need to wait for a formal approval notification from the CCI).

Transactions which may avail of the Green Channel route are those where, considering all plausible alternate market definitions, the parties to the combination (including their respective group entities or any entity in which they, directly or indirectly, hold shares or control), do not have any horizontal, vertical or complementary overlaps in their activities. Synergy Metals Investment Holding's stake acquisition in JSW Cement is an example of a transaction approved under the Green Channel route.

De minimis exemption

A combination is exempt from notification if the value of assets of the target in India does not exceed INR 3.5bn (around US$46m) or the value of the turnover of the target does not exceed INR 10bn (around US$133m) respectively. This small target exemption (*de minimis* exemption) is available until 28 March 2027. It is applicable only to acquisitions and is not applicable to mergers or amalgamations.

1.2.8 Special provisions for start-ups

In recognition of the burgeoning Indian start-up culture, the Consolidated FDI Policy has introduced a policy that has eased the manner in which start-ups can raise funds. Start-ups require recognition by the DPIIT[21] to be considered eligible to avail of tax and regulatory benefits. This concept was introduced by the government under its 'Start-up India' initiative.

Eligible start-ups[22] can obtain regulatory benefits under the Companies Act, FEMA, the Income Tax Act, the Insolvency and Bankruptcy Code, 2016 (IBC), etc. Some of the more beneficial relaxations are elaborated upon below.

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[20] Under section 43 of the Competition Act, the maximum penalty for failure to notify a notifiable transaction to the CCI is 1 per cent of the combined assets or turnover, whichever is higher, of the combining parties.

[21] An entity is considered a 'start-up' if it is an eligible start-up that is not more than ten years old, with a turnover not exceeding US$13.24m (INR 1bn), and works towards innovation, development or improvement of products/processes/ services, or a scalable business model in terms of employment generation and wealth creation.

[22] *Ibid*.

Angel tax exemption

One important relaxation afforded to eligible start-ups is the angel tax exemption[23] under the Income Tax Act. Eligible start-ups can benefit from this, provided their aggregate paid-up share capital and share premium after issue or proposed issue of share does not exceed US$3.3m (INR 250m).[24] The angel tax exemption comes with end-use restrictions of investments on specified assets. The angel tax exemption will not apply if the investment is in the nature of a capital contribution made to any other entity, shares and securities, bullion, archaeological collections, or any work of art.

Convertible notes

Convertible notes (CN) are defined as instruments evidencing receipt of money, initially as a debt, which are repayable at the option of the holder, or which are convertible into such number of equity shares of the company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument. As set out above, while FDI is permitted only through equity instruments, eligible start-ups not only have the benefit of issuing CN but also have relaxed guidelines on raising external commercial borrowing, and the opening of foreign bank accounts for overseas subsidiaries. Eligible start-ups can only issue CN if the minimum amount of investment from a single investor in a single tranche is US$33,104 (INR 2.5m). The maximum period of conversion or repayment is five years.

1.3 Recent developments & trends

1.3.1 Press Note 3 (PN3)

On 22 April 2020, the Government of India amended the FDI Rules and the Consolidated FDI Policy to impose restrictions, mandating approval for FDI being received from countries that 'share a land border' with India (restricted countries). Restricted countries that share a land border with India are China, Bangladesh, Pakistan, Bhutan, Nepal, Myanmar and Afghanistan. Since Pakistan and Bangladesh already faced similar restrictions, and the only remaining restricted country with significant FDI flows was China, it can be deduced that the amendment was directed towards Chinese investments into India.

Impact on M&A from China

The reasoning provided by the Government of India for this move was to 'curb opportunistic takeovers/acquisitions' of Indian entities in view of the Covid-19 pandemic. While this move was consistent with the global trend of protectionism, another possible explanation was national security and growing border tensions.

The People's Bank of China raised its stake in India's key commercial bank, Housing Development Finance Corp. Ltd (HDFC), from 0.8 per cent to 1.01 per cent through open market purchases, which triggered Indian regulators to introduce this change. These tensions also resulted in more than 100 Chinese apps being banned for security reasons, including ByteDance's video-sharing app TikTok, and Tencent's video game PUBG.

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[23] Angel tax refers to the tax levied on consideration received by privately held companies towards issue of shares for a value that exceed the face value of such shares (called 'securities premium') where the premium cannot be justified.

[24] While calculating this aggregate, investment from Non-Residents, venture capital companies or venture capital funds, and shares issued to other specified companies are exempted.

The amendment does not clarify whether restricted countries would include autonomous regions such as Hong Kong and Taiwan. Media reports and conversations with AD Banks indicate that government officials have unofficially clarified that investments from Taiwan will not be impacted by the amendment to the FDI Rules, but that investment from Hong Kong would. China, along with Hong Kong and Taiwan, accounted for 1.43 per cent of the total FDI inflows between April 2000 and March 2021. While it may not seem significant, most investments from China are in strategic sectors such as pharmaceuticals, technology, digital payments and automobiles.

Since April 2020, the government has received over 120 FDI proposals worth US$1.63bn (INR 120bn) from China. Alibaba is the single largest shareholder in Paytm; 18 of India's top 30 companies and start-ups are Chinese-funded. Some of China's largest venture capital firms, such as Qiming, CDH and Morningside, have all made early-stage bets in India. Following the amendment to the FDI Rules, several proposals from restricted countries were viewed with caution.

Scope of the amendment

The amendment to the FDI Rules seeks to cover direct and indirect FDI. The former is straightforward, since the FDI Rules provide that an entity of, a person situated in or a citizen of a restricted country shall acquire capital instruments only with government approval. This covers companies, citizens, residents, etc. The restrictions apply in the event of a transfer of ownership of any existing or future FDI in an entity in India resulting in an entity of, a person situated in or a citizen of a restricted country owning such FDI.

The latter is where the matter becomes more complicated and nuanced. The FDI Rules mandate government approval when (1) the beneficial owner of the proposed FDI into India is situated in or is a citizen of a restricted country; and (2) a transfer of ownership of any FDI in an entity in India, would result in the beneficial ownership of such FDI falling within the restrictions mentioned above. While there are no numerical thresholds or control tests prescribed by the amendment,[25] many AD Banks consider a beneficial interest of 10 per cent of shares or voting rights in the investor to be the threshold for being considered a beneficial owner.[26]

With investments from China at global level becoming more ubiquitous by the year, even a miniscule holding of shares by a Chinese company or national in the ultimate parent (whether listed or unlisted), could possibly be under scrutiny.

1.3.2 Other amendments to enhance investment

Despite the PN3 amendments, other recent revisions to India's FDI policy have relaxed FDI restrictions in key sectors. These relaxations indicate the government's initiative to promote FDI in the country and present an optimistic future for FDI in India. For instance, FDI of up to 74 per cent is now permitted through the automatic route in the defence sector for companies

[25] Neither the FDI Rules nor the amendment provides a definition of 'beneficial owner' or 'beneficial ownership'. The definition may be construed *in pari materia* with definitions under other Indian laws, for example under the Companies Act where a 'significant beneficial owner' is defined to mean any individual who, acting alone or together, holds beneficial interests of 10 per cent or more in the shares, voting rights or distributable dividend in a financial year, of a company, or the right to exercise, or the actual exercising of significant influence or control, over the company.

[26] AD Banks take the view that 'beneficial ownership' is to be construed in line with the definition of a 'significant beneficial owner' under the Companies Act.

seeking new industrial licences.[27] Another favourable relaxation was implemented when the Ministry of Finance notified rules to increase the FDI limit in the insurance sector to 74 per cent from 49 per cent. 100 per cent FDI is also now permitted in the telecom sector via the automatic route. Separate from the FDI policy, the Companies Act was recently amended to reduce penalties and decriminalise many offences under the Companies Act.

These amendments cumulatively improve the FDI regime in India and make it more convenient for M&A deals to be brought to fruition. India will continue to be an attractive investment destination in the future as the M&A regime of the country is further streamlined and simplified.

2. TYPES OF TRANSACTION STRUCTURES ADOPTED IN PRIVATE M&A TRANSACTIONS

2.1 Acquisitions

An acquisition or takeover entails an arrangement wherein an acquirer assumes a controlling interest in the capital or substantially all of the assets and liabilities of a target entity.

2.1.1 Acquisition of shares

The process of acquiring a controlling stake in a target entity can either be friendly or hostile, and may be structured by way of a contractual agreement to purchase shares from the existing shareholders. This is also typically the process to acquire a minority stake in a target. An example of an acquisition of shares is Edelweiss Infrastructure Yield Fund and Sekura Energy's acquisition of 74 per cent shareholding in Engie Group's solar energy assets in India. Similarly, Tata Consumer Products Limited acquired 100 per cent of the equity shares of Kottaram Agro Foods, owner of the brand Soulfull.

Some of the typical contracts seen in a share acquisition are:

Share purchase agreement

A share purchase agreement is entered into by parties buying and selling shares in a target. It sets out key terms such as the number and price of shares being sold, mode of payment for these shares, escrow arrangements etc.

Shareholders' agreement

A shareholders' agreement is an agreement amongst the company and its shareholders that outlines the internal management framework of the company to effectively protect the overall interest of shareholders by setting out their rights and obligations. To enforce the rights of the parties to a shareholders' agreement, it is advisable that all terms of the shareholders' agreement are incorporated in the articles of the company.

[27] FDI beyond the 74 per cent limit would require Government approval where it is likely to result in access to modern technology or for other reasons to be recorded. Further, in cases that affect national security, the Government reserves the right to scrutinise such investments.

Deed of adherence

A deed of adherence succeeds a shareholders' agreement and is used when a new shareholder undertakes to be bound to an existing shareholders' agreement. It is a convenient document that bypasses the need to draft a new shareholders' agreement for every new shareholder joining the company.

2.1.2 Acquisition of assets and liabilities

The acquisition of the assets and liabilities of a target entity may entail the acquisition of cherry-picked assets and liabilities of the target, or the acquisition of an entire business undertaking of the target on a 'going concern' basis.

The acquisition of a business on a going concern basis is commonly referred to as a 'slump sale'. Section 2(42C) of the Income Tax Act defines slump sale as a 'transfer of one or more undertaking, by any means, for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales'. Notable examples of slump sales are Tata Motors Limited's transfer of its defence business to Tata Advanced Systems Limited for an upfront consideration of US$30.1m (INR 2.28bn), and Ruchi Soya Industries' acquisition of the biscuit business from Patanjali Natural Biscuits Private Limited for a consideration of US$7.94m (INR 600.2m).

Some of the typical contracts seen in an acquisition of assets and liabilities of a target entity are:

Asset transfer agreement

An asset transfer agreement is for the transfer of identified assets for a specific consideration, and sets out key terms such as the list of assets and liabilities, consideration, representations and warranties, indemnification etc.

Business transfer agreement

A business transfer agreement effects a transfer of a business as a whole, including assets and liabilities. The undertaking is transferred as a going concern for a lump sum consideration. As mentioned above, the acquisition of a business on a going concern basis is commonly referred to as a 'slump sale'.

Tripartite transfer agreement

A buyer and seller may enter into tripartite transfer agreements with employees of the seller in cases where the employees are being transferred to the new owner of the business or assets. It is crucial to delineate the terms on which the employees are being transferred, outline employer obligations, and prescribe employee benefits that equal or improve upon the terms of their previous employment.

Transitional services agreement

A transitional services agreement is where the seller agrees to provide certain services and know-how with respect to the business or assets sold to the buyer for a specified transition period, during which the buyer is habituated and familiarised with the operation of with the business or assets sold.

2.2 Arrangements

Conceptually, a merger is the combination of two or more entities into one,[28] and an amalgamation is the merger of one or more companies with another company, or the merger of two or more companies to form one company.[29]

The Companies Act lays down the procedure for schemes of arrangement or compromise between a company, its shareholders or its creditors (arrangement). Provisions under the Companies Act governing arrangements are broad enough to account for mergers, amalgamations, demergers, spin-off and other types of compromises, settlements, agreements and arrangements between a company and its members or creditors. Under the Income Tax Act, arrangements which satisfy certain prescribed conditions are eligible for beneficial tax treatment.

2.2.1 Merger

A merger is, in its essence, an arrangement between two or more companies. Companies desiring to undergo a merger must make an application to the jurisdictional National Company Law Tribunal (NCLT).[30]

A majority in number, representing at least three-fourths in value of the creditors or shareholders, must agree to the merger to make it binding on all creditors and shareholders of the company. The applicants must also notify statutory authorities such as the Reserve Bank of India, income tax authorities, the relevant sectoral regulator and so on, seeking their representations, if any, on the merger. The provisions of the Companies Act governing an arrangement are comprehensive; under these provisions, the NCLT is empowered to sanction any alterations in the corporate structure of a company. In 2018, the merger of Idea Cellular and Vodafone India resulted in an equity infusion of US$900m (INR 67.5bn) at Idea and US$1.1bn (INR 86bn) at Vodafone. The merger of Bharti Infratel with Indus Towers to create a mega-tower company represents one of the biggest mergers of 2020, where Vodafone Idea sold its Indus stake for US$497m (INR 37.6bn). Vodafone Group will hold a 28.12 per cent stake in the merged entity, while Airtel Group will hold about 36.7 per cent.

2.2.2 Fast-track merger

The Companies Act also provides for a fast-track merger. A fast-track merger requires the approval of, *inter alia*, the shareholders, creditors and the RoC, and may be entered into by the following companies:

(a) two or more ‘small companies’;[31]
(b) a holding company with its wholly owned subsidiary;
(c) two or more start-up companies;[32]

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[28] The term ‘merger’ is not defined under the Companies Act or Income Tax Act.

[29] Section 2(1B), Income Tax Act (1961).

[30] The NCLT is a quasi-judicial tribunal appointed by the Government in accordance with the provisions of the Companies Act, to decide matters arising from corporate laws such as the Companies Act and the IBC.

[31] Private companies having paid-up capital of less than INR 5m (US$66,658) and turnover of less than INR 20m (US$266,631) as per their last audited financial statements.

[32] A private company incorporated under the Companies Act or Companies Act, 1956, and recognised as such in accordance with notification number GSR 127 (E), dated the 19 February 2019 issued by the DPIIT, available at www.startupindia.gov.in/content/dam/invest- india/Templates/public/198117.pdf.

(d) one or more start-up companies with one or more small companies; and
(e) such other class of companies as may be prescribed.

The scheme must be approved by shareholders holding at least 90 per cent of the total number of shares, and creditors representing nine-tenths in value, before it is presented to the relevant statutory authorities for approval.

Thereafter, if the authorities have any objections, they should communicate these to the Central Government. The Central Government, upon considering objections and suggestions, will either direct NCLT to take up the scheme as an ordinary merger, or pass the final order confirming the scheme under the fast-track process.

2.1.4 Cross-border merger

Mergers between Indian and foreign companies are permitted under the Companies Act with prior approval of the RBI. Under the Companies Act, a 'foreign company' means any company or body corporate incorporated outside India which conducts any business activity in India in any manner. In addition to adhering to the general process prescribed for a merger under the Companies Act, a cross-border merger requires that the (1) foreign company is incorporated in a permitted jurisdiction and meets certain conditions; and (2) the transferee company ensures a valuation is done by a recognised professional body in its jurisdiction in accordance with internationally accepted principles of accounting and valuation.

The RBI issued the Foreign Exchange Management (Cross Border Merger) Regulations in 2018, which provide that any transaction undertaken in relation to a cross-border merger in accordance with the FEMA regulations shall be deemed to have been approved by the RBI.

2.1.5 Demerger

Unlike a merger, a demerger may be undertaken to move a business unit into a separate entity. A demerger may be completed through the procedure set out for an arrangement under the Companies Act or contractually by way of a business transfer agreement. Max India Limited announced its demerger into three listed companies in 2016 – Max Financial Services Ltd, Max India Ltd, and Max Ventures & Industries Ltd. The reason for this demerger was to boost its growth and development phase and also enable it to have a sharper focus on each of the operating businesses.

Another example of a demerger would be of Wipro, which declared a scheme of demerger to demerge its non-IT business into a separate unlisted company called Wipro Enterprises. The reason was to create a separate unlisted company out of Wipro's customer care, lighting, furniture, hydraulics, water and medical diagnostic product business.

2.2 Joint ventures

A joint venture (JV) is the coming together of two or more businesses for a specific purpose, which may or may not be for a limited duration. The purpose of the joint venture may be an entry into a new business or an entry into a new market (which requires specific skills, expertise or the investment by each of the joint venture parties). Parties can either set up a new company or use an existing entity through which the proposed business will be conducted. The parties typically enter into an agreement to set out the rights and obligations of each joint venture party and the broad framework for the management of the company; such terms are then incorporated in the charter documents of the company to strengthen their enforceability.

A notable example in this regard is Exide Industries, which manufactures batteries. It made an investment of US$4.4m (INR 331m) in its JV with Swiss firm Leclanche to build lithium-ion batteries and provide energy storage systems for India's electric vehicle market.

3 PRE-AGREEMENT STAGE

3.1 Documentation

3.1.1 Term sheet

The nascent stages of an M&A transaction will typically involve a document entered into between the parties which elucidates the crucial provisions and proposed terms of the transaction. This document may be in the form of a term sheet, letter of intent, memorandum of understanding, heads of terms, etc. It is regarded as the first crucial step in a transaction and is entered into before the parties sign any definitive agreements – although this may be disregarded in some cases. Such a document typically sets out the broad terms of the transaction: the parties involved, transaction structure, purchase price, diligence process and the general obligations of the parties to the transaction.

Parties may mutually agree upon the binding or non-binding nature of such a document, for instance making only certain provisions binding – such as the exclusivity obligation, confidentiality obligations, dispute resolution and provisions pertaining to the governing law. While Indian courts generally recognise the non-binding nature of such documents, there have been cases where courts infer the parties' intention to make the agreement binding through their conduct. For instance, an arbitral tribunal recently held the term sheet between hotel and hostel aggregators Oravel Stays Private Ltd and Zostel Hospitality Private Ltd to be binding between the parties based on the parties' conduct with regard to it.

3.1.2 Confidentiality obligations

Transactions of this nature typically involve the transmission of confidential information, including financial or proprietary information. In some instances, knowledge of the transaction itself is required to be treated as confidential. To account for this, parties may enter into non-disclosure agreements at the early stages of the transaction to define confidential information and set out the confidentiality obligations of the parties in the broadest terms possible. Alternatively, parties may include confidentiality obligations in the term sheet.

3.1.3 Exclusivity obligations

An exclusivity agreement or a clause in the term sheet requiring the sellers in the transaction not to engage with other offers and competing bids for an agreed period of time are common. This effectively eliminates bids competing the buyer's bid for a specified time period. A breach of such an obligation would entitle the non-breaching party to an interim injunction.

3.2 Due diligence stage

3.2.1 Typical scope of legal due diligence

Corporate compliance

Corporate bodies in India are subject to various compliance requirements under laws and regulations such as the Companies Act. Buyers must scrutinise a target's filings with statutory bodies like the RoC, SEBI and RBI to assess the target's corporate compliance history. Companies incorporated under the Companies Act are required to, *inter alia*, hold a certain number of board and shareholder meetings annually, file their annual report and financial statements within a financial year, and so on. SEBI and the Companies Act impose additional compliance requirements on listed companies. Failure to adhere to the statutory compliance requirements leave the target liable to penalties and may also delay the transaction process.

Accordingly, it is essential to identify any compliance-related issues at an early stage. Once identified, such non-compliances may be resolved (ie, compounded) by way of an application before the relevant authority. The charter documents of the target company (ie, the memorandum of association and articles of association) should be reviewed as they may prescribe restrictions or procedures for actions which may be relevant to the proposed transaction, such as a transfer of the target company's shares. A compliance diligence is undertaken by examining filings made by the target with the RoC for a limited look-back period (usually three to five years). Where the target is listed, one should examine filings with the relevant stock exchanges and SEBI for a similar limited look-back period.

Foreign exchange compliance

Companies are required under FEMA to report details of FDI received to the RBI and the RBI must acknowledge the reporting. This is a key component of any due diligence on an Indian company, as a failure to report can result in a significant penalty and may also stall a transaction until the reporting has been regularised.

If the company is involved in other transactions (export/import, etc) involving foreign exchange, it will be important to assess compliance with FEMA in respect of these transactions, including assessing whether foreign exchange due to it has been repatriated within the prescribed timeline, filings reporting exports have been made, etc.

Contract review

Depending on the size of the stake being acquired, it is important to undertake a review of all material contracts of the target, such as leases and licences of immoveable property, loan agreements, and vendor and customer contracts.

The determination of the materiality of such contracts would depend on the operations of the target company and the structure of the transaction. Such contracts may include change of control clauses which may impose obligations on the target in the event of an M&A transaction. Other onerous clauses may be pertinent to the buyer, such as assignment of intellectual property rights. Once identified, consent letters may be obtained by the target from the relevant counterparties or, in some cases, contracts may be renegotiated as a condition precedent to the transaction.

Tax

Tax diligence is crucial to identify tax-related risks, exposures and benefits of the target, and also structure the transaction in the most tax-favourable way. Diligence in the matter of taxation is typically undertaken by ascertaining the target's representations concerning its tax matters and designing protections for the buyer through warranties and indemnities.

Intellectual property

Transactions typically involve the transfer of intellectual property (IP) rights and in some cases such transfers constitute the primary motivation for the transaction. In such cases, a thorough intellectual property diligence must be carried out to ensure that the seller or target, as the case may be, holds good title to such IP rights, and that all employees or consultants or other such persons engaged by the seller have assigned their intellectual property to the seller.

Data privacy and information security

A target's business model may involve the storing and sharing of personal data of the target's employees, customers and other stakeholders. Acquirers must review the robustness of the target's data protection and information security policies, and compliance with Indian data protection and privacy laws (such as the Information Technology Act, 2000 (IT Act)). Furthermore, the General Data Protection Regulation (GDPR) may present a compliance risk for Indian target companies to which GDPR's extra-territorial provisions apply.

Labour and employment

Laws relating to employment in India do not stem from a single comprehensive piece of legislation. Since the Constitution of India classifies 'labour' as a subject on which both central and state governments are empowered to legislate, there are more than 200 pieces of labour legislation governing subjects ranging from conditions of employment to social security, health, safety, welfare, trade unions, industrial and labour disputes. Depending on the acquisition stake, a review of the target's business should typically be undertaken to ensure compliance with applicable labour and employment laws.

Litigation

Litigation due diligence is undertaken to assess risks above a certain quantum of materiality. A public search of the target's name is typically undertaken on the online records of courts in India like the Supreme Court, High Courts, NCLT, etc.

Real estate

Like IP rights, immovable property forms an essential part of transactions. Due diligence on a target's real estate typically involves a review of title documents, notifications and government orders to assess present ownership and possession-related compliance. A review of the relevant contractual agreements and public records is generally undertaken to identify liens, encumbrances and third-party interests.

4 MAIN TRANSACTION AGREEMENT

4.1 Typical clauses seen in transaction documents

The typical clauses seen in M&A transaction documents are as follows:

4.1.1 Consideration

The consideration clause stipulates the purchase price owed by the buyer to the seller and may include additional details such as method and time of payment. The consideration may also be subject to post-closing adjustments.

4.1.2 Pre-closing obligations

A pre-closing obligations clause mandates that the seller complies with all agreed obligations and conditions under the agreement during the period between the execution and closing dates. This may include conducting the target's affairs in the ordinary course of business, stand-still obligations, etc.

4.1.3 Conditions precedent and conditions subsequent

Conditions precedent clauses stipulate that a transaction's consummation is subject to certain events occurring, or certain actions being undertaken by the parties. For instance, a condition precedent clause can state that a transaction will not take effect until the required CCI approval is obtained. Other conditions precedent can include administrative matters such as passing of shareholders' resolutions, execution of key documents, the filing of mandatory documents with the concerned authorities, etc. A conditions subsequent clause lists the obligations of a relevant party after the transaction closes.

4.1.4 Representations and warranties

Representations and warranties are a set of assertions by the parties, based on which the parties enter into the transaction, and are typically backed by an indemnity in case of misrepresentation or inaccuracy. The seller typically provides elaborate representations and warranties, which often have materiality thresholds and knowledge qualifiers. Representations and warranties provided by a seller in acquisition documents typically cover the following areas:

(a) title to shares (or assets, as the case may be);
(b) capacity and authority;
(c) absence of conflicts;
(d) assets;
(e) indebtedness;
(f) financial statements;
(g) taxes;
(h) contractual commitments;
(i) employment matters;
(j) compliance with law;
(k) litigation; and
(l) anti-corruption and anti-bribery.

4.1.5 Indemnity

An indemnity clause is invoked when a party breaches a representation or warranty, in order to compensate the affected party of the consequences of such a breach. Sellers typically limit their liability in several ways including (1) *de minimis* provisions; (2) cure periods; (3) capped indemnity; and (4) time periods for indemnity. Buyers may seek specific indemnities for issues identified during the due diligence stage.

4.1.6 Termination

A termination clause typically confers rights on the parties to terminate the agreement in certain agreed situations such as through mutual agreement, breach of a representation, legal roadblocks, failure to fulfil closing obligations, etc.

4.1.7 Dispute resolution and governing law

A dispute resolution clause sets out the method in which the parties will dispense with any disputes that may arise out of or in relation to the transaction. This can include binding and non-binding methods of dispute resolution such as negotiation, mediation and arbitration. Considerations such as the jurisdiction, choice of procedural rules and the seat of arbitration would be addressed in such clause. The rules of the Singapore International Arbitration Centre are a common choice amongst parties to govern the arbitration procedure.

Parties also typically prescribe the law which will govern the terms of the contract entered into by them. Where at least one party to the contract is India, it is typical for the parties to agree on Indian law as the substantive law to govern the contract.

4.1.8 Confidentiality

Confidentiality clauses define the scope of confidential information, restrictions on sharing such information, obligations of the parties with respect to such sensitive information, and the consequences of breaches.

4.1.9 Non-competition

Acquirers typically negotiate for clauses restricting the promoters of the target company from competing with the target's business after the sale of the target for a specified duration. Non-compete clauses may raise competition concerns before the CCI and need to be further tested against Indian employment laws.

4.2 Execution through electronic methods

The use of electronic signatures to sign documents is permissible under Indian law. That said, only certain types of e-signatures have the presumption of validity in India. The IT Act currently recognises only two kinds of electronic signatures: (1) digital signatures, issued by way of a digital signature certificate; and (2) other electronic signatures (generally called E-Sign) using e-authentication technique using e-KYC services. Further, only certifying authorities are recognised and licensed under the IT Act to issue electronic signature certificates.[33]

Additionally, the IT Act, read with the Evidence Act, 1872 (Evidence Act) equates presumptive value in eSign affected from digital signature to a wet ink signature. Electronic signatures through service providers like Docusign, AdobeSign or FIDO are not recognised electronic signatures under the IT Act, as such providers are not empanelled eSign service providers under the IT Act.

4.3 Pre-closing

Transactions which involve a gap between signing and closing typically involve pre-closing conditions in the transaction documentation. Parties are typically expected to bring down warranties at closing, along with providing an updated or closing disclosure letter. Additionally, standstill obligations are set out between signing and closing in order to provide comfort to the

[33] A list of such eSign service providers is accessible on the website of the Controller of Certifying Authorities, Ministry of Electronics & Information Technology.

buyer. A material adverse change clause usually gives the buyer the right to walk away from the transaction before closing if intervening events have a material adverse effect on the target. It is not common to have break fees or hell-or-high-water clauses in such transactions.

4.4 Closing and post-closing

The following are typical closing and post-closing actions in Indian M&A transactions.

4.4.1 Restating representations and warranties

The parties typically reaffirm the truth and accuracy of representations and warranties made in earlier stages of the M&A transaction (such as date of execution) on the date of closing.

4.4.2 Updated disclosure letter

Sellers typically inform buyers of factual disclosures which relate to its representations and warranties. Since there may be a period of days or months between the signing date and the closing date, it is crucial for sellers to provide buyers with an updated disclosure letter on the date of closing. This may also benefit sellers, since sellers can avoid future claims arising from issues already disclosed to the buyers. Buyers may require sellers to update the disclosure letter a certain number of days prior to closing to provide latest information on the items in the original disclosure letter, reflect additional actions of the seller to fulfil covenants, or make corrections.

4.4.3 Filing of Form FC-TRS

Form FC-TRS is filed with the RBI where there is a transfer of shares of an Indian company from a resident to a non-resident or vice versa. This filing must take place within 60 days of the transfer of equity instruments or receipt or remittance of funds, whichever is earlier

4.4.4 Filing for change in directors in Form DIR-12

An M&A transaction may likely result in a change in directors on the board of the company. This requires submission of Form DIR-12 with the Registrar of Companies within 30 days from the date of appointment or resignation of directors.

ANNEXURE 1

RESTRICTED SECTORS AND SECTORS UNDER APPROVAL ROUTE

FDI in the following sectors is subject to foreign investment limits or other conditions mentioned below (with or without Government approval):

(a) Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities – permitted up to 100 per cent with Government approval.
(b) Petroleum refining by the PSUs, without any disinvestment or dilution of domestic equity in the existing PSUs – permitted up to 49 per cent under the automatic route.
(c) Petroleum refining by the PSUs in cases where an 'in-principle' approval for strategic disinvestment of a PSU has been granted by the Government – permitted up to 100 per cent under the automatic route.
(d) Retail trading, including through e-commerce, in respect of food products manufactured or produced in India – permitted up to 100 per cent with Government approval.
(e) Defence – permitted up to 74 per cent under the automatic route. Government approval is required beyond 74 per cent wherever it is likely to result in access to modern technology or for other reasons.
(f) Terrestrial broadcasting FM (FM Radio) – permitted up to 49 per cent with Government approval.
(g) Uplinking of 'news & current affairs' TV channels – permitted up to 49 per cent with Government approval.
(h) Uploading/streaming of news and current affairs through digital media – permitted up to 26 per cent with Government approval.
(i) Print media – permitted up to 26 per cent–100 per cent (depending on the sub-sector) with Government approval.
(j) Scheduled air transport service/domestic scheduled passenger airline and regional air transport service – permitted up to 49 per cent under the automatic route. Government approval is required beyond 49 per cent. Permitted up to 100 per cent under the automatic route for non-resident Indians.
(k) Satellites – establishment and operation – permitted up to 100 per cent with Government approval.
(l) Private security agencies – permitted up to 49 per cent under the automatic route. Government approval is required for beyond 49 per cent up to 74 per cent.
(m) Telecom services (including Telecom Infrastructure Providers Category-l) – increased under the automatic route from 49 per cent to 100 per cent.
(n) Multi brand retail trading – permitted up to 51 per cent with Government approval.
(o) Pharmaceuticals – permitted up to 100 per cent under the automatic route.
(p) Green field projects: permitted up to 100 per cent under the automatic route.
(q) Brownfield projects: permitted up to 74 per cent under the automatic route. Government approval is required beyond 74 per cent.
(r) Banking (private sector) – permitted up to 49 per cent under the automatic route. Government approval is required beyond 49 per cent up to 74 per cent.
(s) Banking (public sector) – permitted up to 20 per cent with Government approval.
(t) Infrastructure companies in the securities market – permitted up to 49 per cent under the automatic route.
(u) Insurance companies – permitted up to 74 per cent to insurance companies under the automatic route, and up to 100 per cent to intermediaries and insurance intermediaries under the automatic route.
(v) Pension sector – permitted up to 49 per cent under the automatic route.
(w) Power exchanges – permitted up to 49 per cent under the automatic route.