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EY Regulatory Alert

Cross border 'fast track' merger permitted under automatic route

Regulatory Alerts cover significant regulatory news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest regulatory issues. For more information, please contact your EY advisor.

Executive summary

On 6 June 2026, the Reserve Bank of India (RBI) issued a notification¹ amending the rules governing cross-border mergers under the Foreign Exchange Management Act, 1999 (FEMA), as part of India's ongoing efforts to simplify the regulatory framework and enhance ease of doing business.

Prior to this amendment, FEMA regulations recognized only the National Company Law Tribunal (NCLT) for approving merger schemes and did not account for fast-track mechanisms introduced under the Companies Act, 2013, which allowed approvals by the Regional Director, thereby leading to uncertainty on RBI approval requirement in cross-border mergers. This has now been addressed by replacing "NCLT" with the broader term "Competent Authority," aligning FEMA with the Companies Act framework, removing ambiguity and enabling smoother implementation of such mergers.

This alert summarizes the amendment and its implications, positioning the reform as a step towards improving regulatory consistency, streamlining processes, and facilitating more efficient cross-border business structuring.

¹ Notification No. FEMA 389(1)/2026-RB dated May 29, 2026

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Background

- The Ministry of Corporate Affairs (MCA) has, over the years, undertaken a series of reforms under the Companies Act, 2013 to simplify cross-border merger processes and enhance the ease of doing business in India.
- The MCA enabled cross-border mergers under the Companies Act, 2013 with effect from 13 April 2017. It also introduced corresponding rules², in consultation with the Reserve Bank of India (RBI), to facilitate such mergers.
- Under the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 (CBM Regulations), transactions undertaken in accordance with the regulations were deemed to have prior approval from the RBI. A compliance certificate from the Managing Director/Whole-time Director and, where applicable, the Company Secretary was required to be submitted to the NCLT along with the merger application.
- In September 2024, the MCA introduced further reforms to permit cross-border merger of foreign holding companies into their wholly owned Indian subsidiaries under the fast-track route. This enabled faster approvals through the Regional Director instead of the NCLT.
- These above developments were aimed at facilitating corporate reorganizations, supporting capital flows, and enhancing India's attractiveness as a destination for global business structures and investments.
- However, notwithstanding these reforms, the CBM Regulations continued to refer only to the NCLT for approvals, resulting in an inconsistency between corporate law and foreign exchange regulations and creating uncertainty about approval requirement for fast-track cross-border mergers.
- In this context, the RBI has introduced amendments to align the FEMA framework with the Companies Act and address this regulatory gap.

Key takeaways

- The current amendment in CBM Regulation, introduces the concept of "Competent Authority," defined as any authority empowered under the Companies Act, 2013 or its subordinate legislation to approve a merger or amalgamation scheme.
- Accordingly, references to "NCLT" have been replaced with "Competent Authority," thereby recognizing approvals granted by both:
 - the NCLT (traditional route), and
 - the Regional Director (fast-track route under Section 233).
- This effectively harmonizes foreign exchange regulations with the Companies Act

Comments

- a. The amendment addresses the earlier inconsistency between India's corporate and foreign exchange law frameworks.
- b. By moving away from an NCLT-specific construct to a principle-based "Competent Authority" framework, the RBI has enabled seamless operationalization of fast-track cross-border mergers, thereby removing ambiguity regarding approval requirements.
- c. The amendment is expected to act as a key enabler for reverse flipping transactions, enhancing India's attractiveness as a jurisdiction for holding structures and capital market listings.

² Companies (Compromises, Arrangements and Amalgamations) Rules

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