



EVERYTHING MATTERS

Indo-European cross-border M&A: recent developments and challenges

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1. Cross-border M&A: Introduction
2. M&A in India: the most important legal changes
3. M&A in Europe: recent trends

1. Introduction



- Increasing interest of European companies in investments in India
- Increasing interest and capability of Indian investors to do acquisitions in Europe
- Sectors: renewable energy, infrastructure, pharmaceuticals, automotive, defence
- M&A Volumes - recovered from the crisis:
 - 2007: USD 50bn
 - 2008: USD 25bn
 - 2009: USD 10bn
 - 2010: USD 40bn

2. M&A in India - the FDI Framework



- India remains one of the most important destinations for international expansion through M&A
- Relatively open economy, although not fully liberalised
- FDI Policy: 1 April 2010 - consolidation in Circular 1 of 2010, substance almost, but not entirely, unchanged. Update every six months (Circular 2 of 2010 in force since 1 October 2010)
- Pricing Guidelines: Transfer from Resident to Non-Resident not below fair value determined in accordance with DFC method; Transfer from Non-Resident to Resident not above minimum price
- Various discussion papers on the opening up of additional industry sectors, including retail and defence

2. M&A in India - Tax



- Taxation of off-shore transactions: new approach by the Indian tax authorities
- Direct Tax Code: potential impact on foreign investors
- New tax rates
- Capital gains tax

2. M&A in India - Public M&A



- New takeover regulations under discussion
 - Key changes, potentially:
 - threshold for open offers: 25% (as against 15%)
 - open offer to be made for 100% of the public float (as against 20% of issued capital)
 - no premium payable to promoters for change in management
 - Impact on buyers: acquisitions will become more expensive
- New Securities Contracts Regulations Rules: 25% minimum free float for all listed companies

2. M&A in India - Competition Law/Merger Control



- Competition Act, 2002 replaces MRTP Act
 - Modern competition law; first decision issued by the Competition Commission of India
 - Provisions concerning anti-competitive agreements and abuse of dominant position in force
 - merger control rules not yet in force but expected to come soon - important changes required in terms of timing/structuring of transactions if subject to merger control

2. M&A in India - Dispute Resolution



- Arbitration in relation to India transactions: concerns of international businesses and arbitration experts
- New proposals to reform the Indian arbitration framework
- Careful drafting of arbitration clauses required

3. M&A in Europe - Recent trends



- No uniform law governing M&A transactions - 27 EU Member States
- Increase in M&A activity by Indian companies; sectors: renewable energy, technology based businesses, IT services
- Increased interest in PIPE transactions
- Public awareness regarding acquisitions by foreign state-owned funds of European companies with strategic value
- Subsidies (*e.g.*, in the renewable sector) being revised due to cuts in public spending post-crisis.

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