

## ***Changes in Indian Corporate and Tax Laws Concerning Cross-border Mergers and Acquisitions***

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### **Summary:**

The working paper addresses regulatory changes in company law and tax law in India, which may have an effect on cross-border mergers and acquisitions. In the last few years the Indian Government has instituted several initiatives, regulatory changes and liberalization processes to encourage Foreign Direct Investment (FDI), such as the increase of sectoral caps for FDI. The increase of sectoral caps opens Indian markets to foreign producers and service providers. This paper looks to analyse the increase in FDI caps and the various concerns associated with such changes.

Furthermore, with the recent notification of Section 234 of the Companies Act 2013, Indian companies may now be able to consider M&As with companies of jurisdictions outside India. This paper looks to analyse these new notifications and the provisions of the Companies Rules 2016 along with the corresponding consequences to FDI. The provisions also increase the involvement of the Reserve Bank of India (RBI), because of which the paper discusses the initial intention of streamlining company law, and the increased procedural layers of the final regulations, which may be seen as a hindrance to the original intention.

The paper then looks at the tax regulations affecting cross border M&As. Treaty advantages accruing out of Double Taxation Avoidance Agreements (DTAAs) have been severely curtailed in recent amendments. Cases such as the *Azadi Bachao Andolan* and *Vodafone* have highlighted the issue of the avoidance of capital gains tax through avoidance agreements using cross border M&As and treaty shopping. This has led to the implementation of Specific Anti Avoidance Regulations (SAAR) such as Limitation of Benefit (LoB) clauses in DTAAs with Mauritius and Singapore. Subsequently, General Anti Avoidance Regulations (GAAR) within the IT Act 1961 have supplemented these SAAR clauses in specific tax treaties. The paper differentiates between SAAR and GAAR and looks at whether the strict application of anti avoidance regulations may be counter productive to an investor friendly image of the Indian market. Moreover, regulations such as GAAR have been implemented to enhance the control and prevention of tax avoidance through treaty shopping, and the paper briefly discusses these cross border dynamics as well.