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# **CORPORATE GOVERNANCE IN MERGERS AND ACQUISITIONS: UNLOCKING LEGAL INTRICACIES**

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## **Abstract**

In mergers and acquisitions (M&A), corporate governance is crucial because it shapes the strategic, financial, and legal foundation for corporate restructuring. It guarantees openness, responsibility, and equity amongst parties involved, particularly in intricate M&A deals when conflicting interests come together. This paper explores how governance structures impact decision-making, compliance, and transaction execution as it dives into the complex legal nuances of corporate governance in M&A. Significant regulatory scrutiny is frequently associated with M&A transactions, necessitating stringent adherence to corporate governance guidelines in order to prevent conflicts of interest, guarantee accurate disclosures, and protect shareholder interests. The paper also deals with hostile takeovers that, unlike friendly mergers & acquisitions, avoid the target company's leadership and grab control of the business by appealing to the shareholders or by attempting to replace management. In addition to good risk management, sustaining the company's long-term sustainability, and cultivating an ethical culture are all important components of effective corporate governance in M&A which is discussed in this paper. This paper highlights that a successful merger or acquisition must balance the interests of shareholders, employees, and other stakeholders while guaranteeing legal compliance. A well-structured M&A deal is built on corporate governance, which reduces risks and guarantees compliance with laws and regulations. The success or failure of M&A transactions is determined by the intricate interaction of legal requirements, governance structures, and strategic goals. As such, this is a complex legal landscape that requires careful navigating.

**Keywords:** Mergers & Acquisitions, Corporate Governance, Legal Frameworks, Company, Takeovers.

## Introduction

*“The lower the efficiency of corporate management, the greater the possibility that a successful takeover bid will be made.”*

Businesses in India are using Mergers, Acquisitions, and Combinations more frequently as a way to achieve growth and scale economies. However, a complicated legal structure that encompasses both company law and competition law governs the application of these methods. This paper tends to give a general review of the legal elements of mergers, acquisitions, and combinations in India. In addition to the same this paper also covers the regulatory framework, important legal requirements, required procedures, and penalties for noncompliance. The Indian economy's liberalization, globalization, and the necessity for diversification and consolidation have all contributed to the recent boom in mergers and acquisitions (M&A) activity. It can't be denied that carrying out mergers, acquisitions, and combinations involves complex legalities that need to be understood to guarantee a profitable transaction. It is evident to note that the transactions pertaining to mergers and acquisitions have triumphantly increased recently due to the liberalization and globalization of the Indian economy and the necessity for consolidation and diversification. Furthermore, in order to guarantee a successful transaction, mergers, acquisitions, and combinations must be executed efficiently, which in turn, involves complex legalities. According to studies, there is always a conflict of interest between a company's managers and its shareholders, namely between the majority and minority owners. Corporate governance aims to address these conflicts. Financial and Operational Transparency are two pertinent components of corporate governance disclosures, which are of utmost importance. According to information asymmetry, companies with poor corporate governance standards are typically associated with low levels of financial and operational openness as well as poor information disclosure quality. According to the theory of agency, companies that follow better corporate governance practices accomplish more since their monitoring systems and agency costs are reduced. Stronger forms of transparency and greater values of disclosure are associated with lower information risk. Global corporate governance relies on norms that are under the jurisdiction of laws, rules, regulations, and recommendations. India's corporate governance is situated in a comparable framework to that of other countries worldwide. M&A and corporate governance have a synergistic and mutually beneficial relationship. First, M&A gives businesses the motivation they need to improve their governance procedures. According to the theory of a market for corporate control, companies with inadequate governance would inevitably be acquired, especially in efficient markets where this would result in a reduction in

the stock's market price. Companies will be compelled to improve their governance structures and processes just by virtue of the prospect of being taken over. An infamous simile goes something like this: "It's like being a tiger rider and not knowing how to get off without getting eaten." The evidence that is currently available suggests that, even in a global setting, corporate governance regimes in cross-border M&A tend to be elevated to reflect the standards of the company with the highest standards, especially if that company was the acquirer or the resultant company from the M&A transaction. Second, the causal factors also work in the other way, increasing the deal's value to the companies' shareholders and other stakeholders when improved corporate governance standards are used in M&A deals. Additionally, corporate governance serves as a system of checks and balances to keep businesses from making deals that devalue their assets. A brief discussion of this collection of processes will also be covered in this paper before some legislative developments in India are discussed. Purchasing and disposing of businesses and divisions involves a series of decisions that are arguably the most significant in a company's history since they have an impact on nearly every facet of the organization's operations and strategy. Over the last twenty years, M&A has likely emerged as the primary method used by companies all over the world to execute strategies aimed at expanding their operations. Around 70,000 M&A deals were executed globally between January 1980 and January 2000, with a total US\$ value that approached \$9 trillion, not including the transaction's inception. More than half of all deals during this period featured only one U.S. company, either as the target or the acquirer. The various methods that firms are joined are through mergers and acquisitions (M&As). Financial transactions between two or more corporations can consolidate entire companies or their primary commercial assets. A business may buy out and fully absorb another business, merge with it to form a new business, obtain most or all of its significant assets, submit a tender offer for its stock, and stage a hostile takeover. These are all examples of mergers and acquisitions (M&A) activity. Additionally, the divisions of financial institutions that oversee or support these kinds of activity are referred to as M&A. When two businesses merge, their boards of directors authorize the union and ask the shareholders for their consent. This kind of M&A activity is intended to strengthen both brands by enabling both to contribute their current strengths to a new business and increase the new company's share of the market. For instance, HBC declared in 2024 that it was purchasing the Neiman Marcus Group and combining it with Saks Fifth Avenue, another brand it controlled. Saks and NMG, which owns Bergdorf Goodman and Neiman Marcus, are also luxury stores; however, as internet shopping has grown and brick-and-mortar retail has decreased, their respective retail sales shares have decreased. Through the merger, Saks,

Neiman Marcus, and Bergdorf Goodman will become one premium retail brand under the new name Saks Global. In a straightforward acquisition, the acquiring business buys the bulk of the acquired company, which keeps its original name and organizational structure. The target business may occasionally demand that the purchasers guarantee that it will continue to operate profitably through the employment of a whitewash resolution for a certain amount of time following the acquisition. By utilizing the acquired company's current clientele and service portfolio, an acquisition frequently enables the acquiring business to enter a new or adjacent market and broaden its product offerings. The 2017 purchase of Whole Foods by Amazon is an illustration of this kind of deal. With food taking up a significant amount of many people's budgets, the acquisition allowed Amazon to enter the market for health-conscious consumers as well as grow into the grocery delivery business. Amazon's large customer base and ease of interacting with customers helped Whole Foods, which had been losing market share to customers who could obtain similar products at lower prices in rival grocery chains.

### **Classification of Combinations**

Combinations can take many different forms, such as conglomerate mergers, vertical mergers, and horizontal mergers.

**(A): Horizontal Mergers:** A Horizontal Merger refers to the combination of two or more businesses that are direct competitors and operate in the same industry. The primary objective of this kind of merger is to pool the resources and competencies of the merging businesses to form a bigger organization that can expand market share, obtain a competitive edge over its rivals, and realize greater economies of scale and scope. The companies aim to obtain a bigger market presence and a wider consumer base through their merger, which could result in increased profitability and market strength. Mergers of this kind, nevertheless, may also lessen competition and raise the possibility of monopolistic actions, such as price-fixing or other anti-competitive actions that hurt customers.

**(B): Vertical Mergers:** When two or more businesses that operate at various phases of the production process come together, it's known as a vertical merger. This indicates that a business engaged in the production of a certain good or service combines with another business engaged in the supply of the raw materials or other inputs required to manufacture that good or service. For instance, a vehicle manufacturer and a company that makes the steel needed to create cars might merge. Alternatively, a pharmaceutical manufacturing business may combine with a company that makes the chemicals needed to produce such drugs. Reducing expenses and boosting efficiency are common goals of vertical mergers.

**(C): Conglomerate Mergers:** Conglomerate mergers are a particular kind of merger in which two or more businesses that are engaged in distinct markets or industries come together. The goal of this kind of merger is to build a bigger, more diversified corporation that can spread its risks over several industries and become less dependent on any one product or market. Consider the following scenario: a consumer electronics manufacturer joins with a healthcare provider. The resulting conglomerate would then be less susceptible to changes in the economy or the market in any one industry since it would offer a wider variety of goods and services. There are two types of conglomerate mergers: pure and hybrid conglomerate mergers. There are no shared business interests between the companies engaged in a pure conglomerate merger, but there may be some business interests that overlap in a hybrid conglomerate merger. Since pure conglomerate mergers include businesses from entirely separate industries with no shared interests, they are less common than mixed conglomerate mergers. Both kinds of mergers, though, can build a more robust and varied business.

### **Process for Acquisitions, Combinations, and Mergers**

Combinations, acquisitions, and mergers are intricate corporate transactions that need to be carefully planned, carried out, and assessed. Here is a broad rundown of the steps involved:-

- 1. Pre-Transaction Planning:** Both businesses should carefully examine their own and their potential partner's strengths and shortcomings before the deal. They should also assess the transaction's strategic fit and look for areas of overlap.
- 2. Valuation:** To establish a fair exchange ratio or pricing, both businesses should ascertain the fair value of their assets and obligations. Typically, this method entails engaging an impartial appraiser from outside the company to conduct an assessment.
- 3. Due Diligence:** To detect any potential risks or liabilities, the purchasing business should thoroughly examine the financial accounts, contracts, legal documents, and operational procedures of the target company.
- 4. Negotiate:** Following the completion of the due diligence procedure, the two businesses should negotiate to determine the details of the deal, including the exchange rate or price, the transaction's structure, and any terms that may apply.
- 5. Transactional Delay:** The Conclusion of the transaction may be delayed if the legal conditions are not met. This may result in more expenses and more uncertainty for the participating companies.

In conclusion, the companies involved in a merger, acquisition, or combination may suffer serious repercussions if the legal conditions are not met. To guarantee a successful and

seamless transaction, it is crucial for enterprises to adhere to the provisions of the Enterprises Act, the Competition Act, 2002, and other statutes.

### **Corporate Governance Mechanism: Role in M&A Transactions**

Increased globalization and complexities in the business world demand a rigid and specific set of rules and regulations that should aim at monitoring the conduct of business and its people. With the changing times and circumstances, companies adopt various practices to show themselves better than other companies, increasing market competition. To operate and control these practices, 'Corporate Governance' comes into the picture which ensures the survival, success and growth of an organization. Various components are associated with a company or organization whose interests need to be safeguarded to avoid legal complexities. Corporate Governance also helps to achieve the same by ensuring the interests of shareholders, the board of directors, etc. So, it is best said, *"Governance is no longer the luxury of Compliance, it's an expectation of the regulator and the stakeholders of the Company."*

There are several circumstances when one might observe how M&A transactions affect corporate governance processes, or vice versa. It could be any M&A transaction that makes the business follow better corporate governance procedures, or it could just be sound corporate governance behaviours that a business uses to persuade other companies to buy it out or combine with it. Or there can be situations where businesses follow sound corporate governance guidelines to stay out of acquisition talks. Companies that intend to engage in mergers and acquisitions (M&A) typically have strong corporate governance procedures in place to guarantee the transaction's success. Every corporation has a conflict of interest between its managers and shareholders, particularly between majority and minority owners. Corporate governance aims to address these conflicts. Financial and operational transparency are two pertinent components of corporate governance disclosures, which are of utmost importance.

The structure and function of the boards, the CEO's position concerning the board, the nature of employment practices, the internal control mechanisms in place, and the incentive programs designed to assess and recognize staff performance are the most significant internal mechanisms of corporate governance. The two main categories of governance systems are external to the company and internal to it. Even though both sets of processes are frequently found, we can think of them as alternatives: External mechanisms likely need to take a backseat if internal mechanisms guarantee the corporation is well-governed. When internal processes

malfunction or are insufficient, the role of external mechanisms increases.

Despite how important M&A transactions are to a business, impartial oversight is required. This is where the independence of the board of directors comes into play. The requirement for independent directors (or “ID”) to serve as an “oversight committee” stems from the possibility that controlling shareholders and management will have a financial or emotional stake in the deal. The presence of independent directors is considerably more crucial in M&A deals involving related parties. There is undoubtedly a chance that the combined entity will have excess knowledge and that board members’ areas of competence in the various responsibilities will differ significantly. Consequently, in the event of a merger, boards would have to decide which members and experience to retain.

### **Ethical Considerations and Corporate Governance Standards in M & A Transactions**

Corporate governance is heavily reliant on ethics, especially when it comes to mergers and acquisitions. Throughout the M&A process, from the original choice to pursue a transaction to the post-merger integration phase, ethical issues must be at the forefront of decision-making. Taking employee treatment into account is one of the most important ethical factors in M&A. The workforce is frequently significantly altered as a result of mergers and acquisitions, including restructuring, layoffs, and adjustments to benefits and compensation. These changes must be implemented with transparency, equity, and respect for the rights and dignity of employees if effective governance is to be carried out. This entails keeping staff members informed of developments clearly and concisely, helping those impacted by the changes with resources and assistance, and making sure that the business operates in accordance with its ethical standards and core values. Acquisitions and mergers include more than just money exchanges. They require integrating operations, values, cultures, and responsibilities. When two or more entities merge, ethical issues arise that typically affect stakeholders, suppliers, customers, and employees.

A major event in a company's life is an M&A transaction. Concerns have been raised regarding problems like managerial hubris, overconfidence, and the winner's curse that may encourage businesses to enter into M&A deals that they should have avoided, or where they shouldn't have paid such a handsome price. This is true even though there are many economic and

business drivers for why companies would engage in M&A pertaining activities. These problems are exacerbated in scenarios involving competitive bids or auctions, where the CEO of the acquirer is likely to show an excessive amount of confidence in the deal's worth. When speed constraints and confidentiality issues impede broader stakeholder participation, the situation takes a more serious turn, forcing the stakeholders to accept the CEO's and the senior management team's decision. The likelihood of unsuccessful M&As would be reduced if these businesses had an advanced and well-developed governance structure. Several established governance systems, both domestic and international, function within the framework of mergers and acquisitions.

The term "corporate governance" describes the internal frameworks and procedures that control an organization, encompassing anything from moral standards to decision-making procedures. Making sure that every new organization formed as a result of a merger or acquisition complies with competencies, policies, and procedures is becoming more and more crucial in mergers and acquisitions. One of corporate governance's main objectives is to assist in risk management. Corporate governance aids in the creation of comprehensive strategies for the effective merger of two businesses while also taking possible hazards related to such transition into account, from risk management to HR management. Along with regulatory compliance, operational performance, and shareholder value are prioritized in order to guarantee successful outcomes and preserve continuity between the two merging organizations. Acquisitions and mergers are crucial periods for all the participating organizations. They entail the amalgamation of persons, resources, and assets from many entities. Mergers and acquisitions must take into account the needs of all parties involved, even though there may be many advantages to this strategy. This is made possible by good governance methods, which promote risk management, ownership accountability, communication, and openness. By establishing an open forum where all stakeholders may engage in candid discussions and decision-making regarding matters that will affect the organization's performance going forward, these practices lessen the likelihood of errors or financial losses brought on by poor judgment or incomplete information. A strong basis for mergers and acquisitions is also provided by good governance standards, which guarantee that all parties are in agreement during a time of fast development.

Acquisitions and mergers are essential to the expansion and reorganization of businesses, but they can also provide particular governance issues. Selecting the right governance structure for the new business involves thorough and efficient planning for a merger or acquisition to be

successful. A few suggestions to think about are controlling numerous rules on a detailed level and preserving equity among all stockholders. Investing in digital collaboration tools and communication technologies is another suggestion for maximizing productivity and streamlining decision-making procedures. Use a committee-based management style, for instance, to ensure that all interested parties are heard and included in the process. During mergers and acquisitions, directors and executives of a company can make sure they are upholding their fiduciary obligation by putting in place procedures that guarantee every choice they make will be advantageous to the company. When making choices, directors might use these technologies to analyse data and do research.

Additionally, to recognize possible conflicts of interest, establish transparency throughout the process, comprehend the risks associated with merger or acquisition chances, and take into account elements like Fair Market Value (FMV). When done correctly and in accordance with corporate governance principles, mergers and acquisitions may be highly successful business transactions despite their complexity and management challenges. Companies that successfully combine acknowledge the benefits that they may provide to one another by uniting and defining specific goals before the process is finished. Acquisitions and mergers are intricate business transactions requiring not only operational and financial integration but also alignment with culture and governance. It is impossible to exaggerate the significance of corporate governance in these endeavours. The basis for making well-informed decisions, controlling risks, and guaranteeing that the interests of all stakeholders are taken into account is a strong governance framework.

A key function of corporate governance in mergers and acquisitions is to guarantee that the deal is in line with the strategic goals of the business. The board of directors must carefully consider whether a transaction would support the company's overall business plan and increase its long-term worth before moving forward with an acquisition or merger. This necessitates a detailed examination of the target company's market position, financial standing, and any synergies. Furthermore, determining whether the target company's values, culture, and governance processes are comparable must be included in the governance considerations. Transparency and accountability in the M&A process are further benefits of effective corporate governance.

In order to guarantee the disclosure of all relevant information and the identification and

mitigation of any potential risks, the board is required to supervise the due diligence procedure. Maintaining the trust of stakeholders and shareholders alike, in addition to complying with regulations, depends on this openness. In order to supervise mergers and acquisitions (M&A) and guarantee that they are carried out in accordance with good governance practices, the board of directors is essential. To protect the interests of shareholders and other stakeholders, the board's involvement is crucial from the moment a deal is decided to proceed through the post-merger integration phase. Making sure the deal is in the best interests of the business and its shareholders is one of the board's main duties in M&A. This entails a meticulous assessment of the transaction's strategic justification as well as a detailed examination of its possible risks and rewards.

The transaction's financial effects on the company's balance sheet, cash flow, and general financial health must also be taken into account by the board. Supervising the integration process following a merger is one of the board's other key responsibilities in M&A. This entails making certain that the combined entity's governance structure adheres to best practices, that appropriate candidates are appointed to important management positions, and that any operational or cultural problems are resolved. In order to make sure the combined business is creating value for shareholders and reaching the anticipated synergies, the board must also keep an eye on its performance. In the context of M&A, risk management is an essential part of corporate governance.

There is always a considerable amount of risk associated with mergers and acquisitions, including risks related to finances, operations, law, and reputation. Throughout the M&A process, these risks must be recognized, evaluated, and controlled for effective governance to occur. The identification and mitigation of financial hazards is a crucial aspect of risk management governance. This entails determining the target company's financial standing, analysing the possible effects of the deal on the balance sheet and cash flow of the acquiring business, and making sure the deal is set up to minimize financial risk. Therefore, the ideal standard of corporate governance includes a robust board of directors, efficient risk management and duly handling the post-merger integration and governance.

### **Considering Governance Amidst the Due Diligence Procedure**

In any M&A transaction, one of the most important phases is the due diligence process. During this stage, the purchasing company thoroughly assesses the target business to find any possible

risks, liabilities, or problems that might affect the transaction's outcome. In order to guarantee that the due diligence is comprehensive, impartial, and in line with the company's strategic objectives, corporate governance considerations play a crucial role in this process. Examining the governance structure and procedures of the target firm is one of the most important governance factors to take into account while conducting due diligence. This entails evaluating the strength of management, the makeup and efficacy of the board of directors, and the presence of any governance policies or procedures that may have an impact on the transaction. For instance, if the target business has a track record of lax governance—that is, inadequate supervision of management or a dearth of independent directors—this may indicate possible risks that should be resolved before the transaction closing.

Apart from assessing the governance practices of the target company, the acquiring company also needs to take into account the integration of the governance structure after the merger. This involves choosing the new board of directors' makeup, picking important executives, and coordinating the governance practices of the merged company. These factors are essential to making sure the combined business runs efficiently and adheres to best practices in corporate governance. Examining the target company's compliance with applicable laws and regulations, as well as any current or prospective litigation that may present a risk, is another crucial part of governance during due diligence. Governance also includes evaluating the target company's environmental, social, and governance (ESG) practices, which are becoming more and more significant to regulators and investors.

### **Regulatory and Legal Framework pertaining to Merger & Acquisition in India**

The Companies Act, 2013 and the regulations enacted thereunder (henceforth referred to as the "Companies Act") constitute the primary legal framework in India that governs mergers, acquisitions, and combinations. Combinations can be of two types: demergers and mergers and amalgamations. In the former, two or more firms are combined into one, whereas in the latter, a company's endeavours are transferred to one or more other companies. The Companies Act serves as the main framework for the procedures involved in mergers, acquisitions, and combinations. The board of directors, shareholders, and regulatory bodies such as the Competition Commission of India (CCI), the Securities and Exchange Board of India (SEBI), and the National Company Law Tribunal (NCLT) must all provide their consent. Furthermore,

the Companies Act delineates the entitlements of shareholders, creditors, and workers of the merging companies. All things considered, India's legal system for mergers, acquisitions, and combinations is well-established and closely governs these business dealings. The legislation governing the legal framework for Mergers & Acquisition in India is entailed as follows:-

**(A): The Companies Act, 2013:** The main piece of legislation in India that regulates the formation, administration, and functioning of companies is the Companies Act. It offers a legal foundation for combinations, mergers, and acquisitions in India, which are frequently employed as corporate growth or restructuring strategies. A merger, as defined by the Companies Act, is the combination of two or more companies to form a single new or existing firm, whereas an acquisition is the buying of one company by another. Mergers and acquisitions are also referred to as combinations. The Companies Act lays out the steps involved in mergers and acquisitions, including getting regulatory and shareholder approval, valuing shares, and handling minority shareholders. The Companies Act also sets out rules for the valuation of shares, which is necessary for determining the share exchange ratio between the companies involved in the merger or acquisition. The valuation must be done by an independent valuer appointed by the company's board of directors. In order to ascertain the share exchange ratio between the companies engaged in the merger or acquisition, the Companies Act also establishes guidelines for share valuation. The company's board of directors must appoint an independent valuer to complete the valuation.

**(B): The Competition Act, 2002:** The Competition Act, 2002, sometimes known as the "Competition Act," is a significant piece of legislation in India that governs market competition by prohibiting anti-competitive agreements, abuses of dominance, and mergers and acquisitions that could negatively affect market competition. Some of the Competition Act's significant and noteworthy purposes are as follows: Anti-competitive Agreement Prohibition: Agreements that significantly reduce market competition are forbidden by the Competition Act.

These agreements could be between rival businesses to share markets, set production caps, or control prices, among other things. Vertical agreements between businesses that can harm competition in the relevant market are likewise prohibited by the Competition Act. Abuse of dominating Position: Businesses are not allowed to abuse their dominating positions in the market under the Competition Act. This could involve, among other things, demanding exorbitant charges, refusing to work with specific clients or suppliers, or putting unfair terms on them. Regulation of Acquisitions and Mergers: Mergers, acquisitions, and combinations that can negatively affect market competition are subject to regulations under the Competition

Act. The CCI is in charge of determining whether a proposed merger or acquisition would negatively affect market competition. If the CCI concludes that the merger or acquisition would materially harm market competition, it may decide to prohibit it or accept it subject to specific requirements. The Competition Act seeks to safeguard consumer interests, encourage and maintain market competition, and maintain commercial freedom in India. Penalties and other repercussions for breaking the Competition Act's restrictions are also stipulated.

**(C): The SEBI Regulations:** The main regulating agency for the Indian securities market is the Securities and Exchange Board of India (SEBI). Its goals are to safeguard the interests of securities investors and encourage the growth of the Indian securities industry. Regulating M&A activity in the Indian securities market is one method SEBI accomplishes. Companies must notify stock exchanges and shareholders about M&A transactions in accordance with SEBI laws. This is to guarantee that investors have access to all pertinent information so they can choose wisely what to invest in. The terms and conditions of the proposed merger or acquisition, the companies' valuations, and any possible risks or rewards connected to the deal are among the details that need to be made public. The processes for getting stock market approval for mergers and acquisitions are also outlined by SEBI.

A draft merger or acquisition plan must be submitted by the companies involved in the deal to the stock exchanges for approval. The plan needs to include information about the participating companies, the share exchange ratio, and the transaction's advantages and disadvantages. After reviewing the plan, the stock exchanges will decide whether or not to approve it based on whether or not it complies with SEBI standards. The overall goal of SEBI laws is to guarantee that M&A deals in the Indian securities market are carried out fairly, transparently, and with the consent of stock exchanges and shareholders. All pertinent information has to be made available to investors.

### **Consequences of failure to comply with the legal compliances pertaining to Acquisition, Merger, and Combinations**

The Competition Act and the Companies Act govern mergers, acquisitions, and combinations in India. Many legal repercussions might arise from failing to follow these standards, including:-

- 1. Fines:** The authorities under the Competition Act, 2002 have the authority to impose fines for failure to comply with the legal requirements. If the Competition Act's provisions are violated, the CCI has the authority to fine the offending party up to 1%

of the company's total turnover or assets, whichever is higher.

2. **Rejection of the merger or acquisition:** If the legal conditions are not followed, the regulatory bodies may reject the merger or acquisition. For example, if the CCI determines that a merger or acquisition is likely to negatively impact competition in the relevant market, it may reject the proposal.
3. **Legal action:** If the companies in question fail to comply with the legal obligations, legal action may also be initiated against them. Legal action against the firm and its officers is provided under the Companies Act if the terms of the Act are not followed.
4. **Reputational Harm:** Failure to comply with legal obligations may result in harm to the companies' respective reputations. Their brand's reputation and consumer loyalty may suffer as a result.

### Corporate Governance in Hostile Takeovers

A takeover occurs when one Acquirer purchases a controlling stake in another, typically the Target company. This could be a cordial or antagonistic process. Both the acquirer and the target company view a transaction as a win-win when the target company's management is on board. On the other hand, a hostile takeover happens when an acquisition goes against the wishes of the target business or when steps are taken to prevent the acquirer from acquiring the business.

A hostile takeover is a form of business acquisition in which a firm is purchased by another without the target company's management's knowledge or agreement. This frequently occurs when an aggressive takeover strategy is employed by the acquiring business, or when it skips the board of directors and goes straight to the shareholders.

In corporate governance, hostile takeovers operate as follows:

#### 1. Direct Bidding with Stockholders

The target business's shareholders may get a tender offer from the acquiring company, seeking to purchase their shares at a price above the going rate in the market. The purchasing business can take over the target if a sufficient number of shareholders decide to sell.

#### 2. Fights by Proxy

In a proxy battle, the acquiring business tries to encourage the shareholders to cast their votes in favour of replacing the target company's board of directors with people who are more

supportive of the purchase. One way to accomplish this is by asking shareholders for proxies, or votes.

### 3. Buying Stock on the Public Exchange

Occasionally, the acquiring business purchases a sizable number of shares on the open market to obtain control without submitting a formal tender offer.

Further, in the context of takeovers, the link (interest) between management bodies and shareholder interests (risks) is crucial. The interests of the voting capital indicate that the shareholders are the company's primary interest. As a result, the increasing value of the stock shows how interested other stakeholders are in the business. In contrast, management is motivated to uphold its position and raise fees because they have signed management contracts. This is not always connected to successful business outcomes. Open joint-stock businesses have a separation of ownership and management. For example, the management of the company is housed in a separate advocacy position from the equity holders. Consequently, there is a chance of a conflict of interest, which usually results in subpar corporate governance.

## Conclusion

An important factor in determining how mergers and acquisitions (M&A) turn out is corporate governance, especially when hostile takeovers are involved. Sturdy governance frameworks guarantee that businesses uphold ethical standards, accountability, and transparency—all of which are critical for safeguarding the interests of stakeholders and shareholders in these kinds of deals. Governance techniques such as staggered boards, shareholder rights plans, and poison pills are frequently used in hostile takeovers to either negotiate better terms for the target firm or to dissuade it. Corporate governance has a significant effect on hostile takeovers. By enabling the board to act in the company's best interest rather than caving in to pressure from the market in the near term, effective governance can serve as a defence against unsolicited bids. On the other hand, ineffective governance could leave a business more open to hostile takeovers, which could be detrimental to long-term strategic objectives. Legal frameworks that control fiduciary duties, antitrust legislation, and disclosure requirements help to further enhance governance in hostile takeovers. To ensure compliance with corporate and securities laws and safeguard the integrity of both the target and acquiring company, jurisdictions frequently have particular regulations in place. The dynamics of hostile takeovers are significantly influenced by corporate governance, and legal frameworks provide crucial

protections. In addition to protecting businesses from hostile takeovers, a robust governance framework guarantees that any M&A transaction is carried out in a way that is just, moral, and consistent with long-term shareholder value.

## References

1. Anant K. Sundaram, “*Mergers and Acquisitions and Corporate Governance*”, 3, AMA, 197, 200, (2021).
2. Arturo Bris, Neil Brisley & Christos Cabolis, Adopting Better Corporate Governance: Evidence from Cross-Border Mergers, 14 J. Corp. Fin. 224 (2008); Marina Martynova & Luc Renneboog, Spillover of Corporate Governance Standards in Cross-Border Mergers and Acquisitions, 14 J. Corp. Fin. 200 (2008); Cong Wang & Fei Xie, Corporate Governance Transfer and Synergistic Gains from Mergers and Acquisitions, 22(2) Rev. Finan. Stud. 829 (2009).
3. Elijah Brewer III, William E. Jackson III & Julapa A. Jagtiani, Corporate Governance Structure and Mergers (Fed. Rsrv. Bank of Phila., Working Paper No. 10-26, 2010), <https://ssrn.com/abstract=1666238>.
4. Emmanuel Junior Tenakwah, “*Corporate Governance and Mergers and Acquisitions in Ghana: the Example of Ecobank & the Trust Bank*”, 5, IJBM, 121, 121, (2017).
5. Henry G. Manne, Mergers and the Market for Corporate Control, 73, J. Pol. Econ. 110 (1965); Frank H. Easterbrook & Daniel R. Fischel, The Proper Role of a Target's Management in Responding to a Tender Offer, 94 Harv. L. Rev. 1161 (1980-1981).
6. Importance of Compliance Risk Management in M&A Transactions, iPleaders, <https://blog.ipleaders.in/importance-compliance-risk-management-ma-transactions/> (last visited Oct. 11, 2024).
7. Jhalak Nandwani, Ayush Tandon, “*Corporate Governance: A Game Changer for M&A*”, 9, JLSR, 181, 183, (2023).
8. Letter from B. Ramalinga Raju, Chairman, Satyam Computer Servs. Ltd., to Bd. of Directors, Satyam Computer Servs. Ltd. (Jan. 7, 2009).
9. Merger And The Role of Competition Commission of India, <https://www.legalservicesindia.com/article/2244/Merger-And-The-Role-of-Competition-Commission-of-India.html> (last visited Oct. 11, 2024).
10. Mergers and Acquisitions (M & A): Process & Judicial Response, <https://www.amity.edu/UserFiles/Journal/atal.pdf> (last visited Oct. 11, 2024).
11. Omkar M. Dindorkar, “*Governance in Mergers & Amalgamations*”, 55, 56, (2023).

12. Reasons and Motives for Amalgamation, Merger and Acquisitions, [https://www.rajmr.com/ijrmp/wp-content/uploads/2017/11/IJRMP\\_2014\\_vol03\\_issue\\_05\\_05.pdf](https://www.rajmr.com/ijrmp/wp-content/uploads/2017/11/IJRMP_2014_vol03_issue_05_05.pdf) (last visited Oct. 11, 2024).
13. Simran Bais, “*Mergers and Acquisitions vis-à-vis Corporate Governance: Analysis from India’s Perspective*”, (2023).

