

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner what sever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrish Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ROUND-TRIPPING RESTRICTIONS AND THEIR IMPACT ON INDIA-RELATED CROSS-BORDER MERGERS AND ACQUISITIONS

AUTHORED BY - RUSHALI AGARWAL

LL.M. (Corporate Laws)

IILM University, Greater Noida

ABSTRACT

Round-tripping, structures involving the circulation of funds from India to an overseas jurisdiction and their return into India, remains one of the most closely scrutinised areas in India's foreign exchange and cross-border transaction regime. Although the 2022 Overseas Investment Rules and Directions introduced a more coherent and liberalised framework for outbound investments, regulatory ambiguity on round-tripping continues to exert a significant influence on cross-border mergers and acquisitions ('M&A'). This paper examines the legal, policy, and compliance challenges created by India's restrictions on round-tripping, and critically analyses how these constraints affect transaction structuring, valuation, and deal execution for both inbound and outbound M&A.

Using a doctrinal approach anchored in FEMA, the Overseas Investment Rules and Regulations 2022, the Consolidated FDI Policy, and the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 relating to cross-border mergers, the study identifies specific regulatory pain points. These include: limitations on layered shareholding structures, heightened scrutiny of downstream investment by foreign entities owned or controlled by Indian residents, valuation mismatches between ODI and FDI price guidelines, and uncertainty created by case-by-case approval decisions by the Reserve Bank of India. The paper also evaluates the interaction between round-tripping concerns and tax considerations, beneficial ownership rules, and anti-avoidance norms.

By analysing recent deal structures and regulatory positions, the paper argues that the lack of codified criteria for determining impermissible round-tripping has resulted in inconsistent interpretations, prolonged approval timelines, and increased execution risk for M&A transactions. The paper concludes by recommending clearer statutory guidance, harmonisation

of ODI and FDI valuation norms, and the introduction of safe harbours to facilitate legitimate cross-border deal-making while maintaining safeguards against abusive structures.

Keywords: Round-Tripping; Cross-Border Mergers and Acquisitions; Overseas Direct Investment; Foreign Direct Investment; FEMA; ODI Rules 2022; RBI Approval; Downstream Investment; Valuation Guidelines; Anti-Avoidance Norms; Transaction Structuring; Beneficial Ownership; Regulatory Compliance; Inbound Investment; Outbound Investment.

INTRODUCTION

Cross-border mergers and acquisitions have become an essential strategy for Indian companies seeking global integration, scale, technology acquisition, and market access.¹ Simultaneously, international investors view India as a rapidly expanding market with stable macroeconomic fundamentals and competitive investment opportunities.² As cross-border corporate activity increases, the legal framework governing foreign exchange, outbound investments, and inbound capital flows has taken on heightened significance.

One of the most complex and closely monitored components of India's foreign exchange regulatory system is the treatment of round-tripping. In the context of India-related cross-border transactions, round-tripping broadly refers to situations in which funds originating in India are invested in an overseas entity and subsequently returned to India in a manner that resembles circular routing.³ Although round-tripping can occur for legitimate commercial purposes, Indian regulators have historically associated it with tax evasion, money laundering, disguised domestic investment, and regulatory arbitrage.⁴ These concerns persist even after the introduction of the Foreign Exchange Management (Overseas Investment) Rules and Regulations, 2022,⁵ which modernised the outbound investment regime but retained a cautious approach to layered ownership and downstream investment by foreign entities with Indian beneficial ownership.

Against this background, it is important to understand the regulatory contours of round-

¹ Ministry of Finance (Government of India), *Economic Survey 2022–23*, ch 3.

² Reserve Bank of India, *Report on Foreign Direct Investment Flows* (2023).

³ RBI, Master Direction – *Direct Investment by Residents in Joint Venture/Wholly Owned Subsidiary Abroad* (2022).

⁴ Directorate of Enforcement, *Annual Report 2021–22*, ch 4 (noting enforcement trends in circular transactions).

⁵ Foreign Exchange Management (Overseas Investment) Rules 2022; Foreign Exchange Management (Overseas Investment) Regulations 2022.

tripping. Round-tripping is not explicitly defined in the Foreign Exchange Management Act, 1999.⁶ Instead, the concept emerges indirectly from regulatory conditions governing overseas direct investment, downstream investments by foreign-owned entities, pricing guidelines, and anti-avoidance measures under both foreign exchange and tax laws.⁷ In simple terms, round-tripping concerns arise when an Indian resident invests in a foreign entity and that entity either invests in, acquires, or establishes a business in India, thereby creating a loop in the capital structure. The absence of a statutory definition affords regulators flexibility but generates uncertainty, as the Reserve Bank of India evaluates such structures on a case-by-case basis, taking into account ownership, control, substance, and commercial rationale.⁸

Round-tripping restrictions hold particular relevance for cross-border mergers and acquisitions because they directly influence both the feasibility and the structure of such transactions. These concerns frequently arise when Indian companies pursue outbound acquisitions through foreign subsidiaries, where the acquisition vehicle may subsequently hold or acquire interests in India.⁹ Similar issues surface in inbound transactions when the foreign acquirer has significant Indian beneficial ownership, thereby raising questions about indirect foreign investment and compliance with downstream investment norms.¹⁰ Round-tripping scrutiny also affects proposed mergers between Indian and foreign companies, especially where the foreign counterparty is substantially owned or controlled by Indian residents. Additionally, corporate groups employing multi-layered offshore holding structures face heightened regulatory examination if the structure allows capital to circulate back into India. Given that cross-border M&A transactions typically rely on complex frameworks involving tax-efficient jurisdictions, offshore holding companies, and acquisition vehicles, any ambiguity regarding the permissibility of a structure can materially influence transaction strategy. Parties may be compelled to alter their chosen jurisdiction, adopt suboptimal structuring arrangements, or abandon potentially beneficial deals due to concerns about regulatory treatment. Consequently, round-tripping restrictions form a critical component of risk assessment in the planning and execution of India-related cross-border M&A activity.¹¹

⁶ Foreign Exchange Management Act 1999.

⁷ Consolidated FDI Policy 2020, paras 3.2.5 and 4.1.3; FEMA (Non-Debt Instruments) Rules 2019.

⁸ RBI, *Compounding Orders* (various), available at <https://rbi.org.in> accessed 29 November 2025.

⁹ RBI, *Compounding Orders* (various), available at <https://rbi.org.in> accessed 29 November 2025.

¹⁰ FEMA (Non-Debt Instruments) Rules 2019, rr 22–23 (Indirect Foreign Investment).

¹¹ SEBI, *Report of the Working Group on Overseas Listings* (2023).

This study is guided by five central research inquiries that collectively frame the analysis. It first examines the legal provisions and regulatory instruments that shape India's treatment of round-tripping, including the statutory, regulatory, and policy underpinnings of the concept. It then considers how these restrictions influence the structuring and execution of cross-border M&A transactions involving Indian entities, particularly in light of valuation rules, downstream investment conditions, and limitations on layered ownership. The study further interrogates the practical challenges companies encounter when navigating the intersection of ODI, FDI, and FEMA norms. In doing so, it also compares India's regulatory stance with that of prominent global financial jurisdictions such as Singapore, the United Kingdom, and the United States. Finally, it evaluates whether the existing framework provides sufficient legal certainty and identifies potential reforms necessary to prevent abusive circular structures while enabling legitimate cross-border commercial activity.

By addressing these inquiries, the paper contributes to an underdeveloped area of Indian corporate law scholarship. It examines round-tripping as a regulatory concept, evaluating its doctrinal foundations, analysing key case studies where circular structures have attracted scrutiny, comparing India's approach with global regulatory practice, and identifying the implications for cross-border M&A transactions. By grounding the discussion in statutory provisions, regulatory philosophy, and transaction experience, the study seeks to clarify how Indian law currently treats circular investment structures and to assess whether the existing framework adequately balances regulatory integrity with the demands of global commerce.¹²

LEGAL AND REGULATORY FRAMEWORK

The regulatory treatment of round-tripping in India emerges through a dispersed set of statutory provisions, subordinate legislation, RBI directions, and policy instruments, none of which define the concept expressly but collectively operate to discourage circular investment flows lacking substantive commercial justification.¹³ *The Foreign Exchange Management Act, 1999* establishes the overarching requirement that all capital account transactions must be undertaken in accordance with conditions prescribed by the Reserve Bank of India.¹⁴ Although FEMA does not identify round-tripping as a prohibited activity, its structure, particularly the distinction between capital and current account transactions and the RBI's wide rule-making

¹² OECD, *Investment Policy Review: India* (2022), ch 5.

¹³ RBI, *Master Direction – Reporting under FEMA* (2022).

¹⁴ Foreign Exchange Management Act 1999, s 6.

authority, forms the legal basis for scrutinising circular flows of capital.¹⁵

A central component of this framework is the *Foreign Exchange Management (Overseas Investment) Rules and Regulations, 2022*, which replaced the earlier ODI regime and consolidate the law governing outbound investments.¹⁶ The 2022 Rules impose conditions relating to ‘bona fide business activity,’ stipulating that Indian entities may invest abroad only in enterprises that are engaged in genuine commercial operations.¹⁷ This requirement is crucial in evaluating round-tripping, as entities with negligible substance or minimal economic presence abroad tend to attract regulatory suspicion.¹⁸ The Rules also introduce limits on the number of layers of subsidiaries that an Indian entity may establish in its overseas structure unless specific exemptions apply.¹⁹

In addition to the outbound investment regime, *the Consolidated FDI Policy and the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019* regulate inbound investment.²⁰ These instruments incorporate the concept of indirect foreign investment by requiring foreign-owned or controlled companies to comply with the same sectoral restrictions and entry conditions applicable to direct foreign investment.²¹ When a foreign entity is significantly owned or controlled by Indian residents, any downstream investment it undertakes into India is treated as indirect Indian investment.²² This look-through approach operates as a substantive legal mechanism to identify and scrutinise potential circular investment flows. The valuation requirements under the FDI regime, requiring that equity instruments be priced in accordance with internationally accepted methodologies certified by a registered valuer, further create compliance intersections in cross-border transactions, especially where share swap arrangements or multi-jurisdictional valuations are involved.²³

An additional regulatory layer governing round-tripping emerges under the *Companies Act, 2013 and the Foreign Exchange Management (Cross-Border Merger) Regulations, 2018*.²⁴

¹⁵ *ibid*; RBI, *Annual Report 2021–22*, ch 7.

¹⁶ Foreign Exchange Management (Overseas Investment) Rules 2022; Foreign Exchange Management (Overseas Investment) Regulations 2022.

¹⁷ ODI Rules 2022, r 6.

¹⁸ OECD, *Preventing Tax Base Erosion* (2021).

¹⁹ ODI Rules 2022, r 19 (layering restrictions).

²⁰ Consolidated FDI Policy 2020; FEMA (Non-Debt Instruments) Rules 2019.

²¹ NDI Rules 2019, r 22.

²² *ibid* r 23.

²³ Consolidated FDI Policy 2020, para 3.3.2.

²⁴ Companies Act 2013; FEMA (Cross-Border Merger) Regulations 2018.

These regulations permit inbound and outbound mergers subject to compliance with FEMA and the applicable investment regime. In transactions where an Indian company merges with or into a foreign company owned or controlled by Indian residents, regulators examine whether the resulting structure creates a circular flow of capital. Given that cross-border mergers often involve share issuances by a foreign company to Indian shareholders, the structure may raise concerns under indirect foreign investment rules if the foreign company later invests in India.²⁵

Taxation law significantly reinforces this regulatory architecture. *The General Anti-Avoidance Rule* ('GAAR') allows authorities to invalidate arrangements lacking commercial substance or devised primarily for obtaining tax benefits.²⁶ GAAR's explicit reference to round-tripping as a potential indicator of an 'impermissible avoidance arrangement' gives statutory force to regulatory concerns surrounding circular flows of capital. Alongside GAAR, transfer pricing rules, beneficial ownership criteria, and place-of-effective-management (POEM) assessments provide additional checks on cross-border structures. These tax-based mechanisms often operate parallel to FEMA and collectively ensure that structures used in cross-border M&A reflect genuine economic purpose rather than serving as conduits for regulatory arbitrage.

Three salient features of this regulatory architecture are particularly significant for cross-border M&A. First, although round-tripping is not prohibited per se, the regulatory framework creates multiple points of scrutiny—under ODI, FDI, merger regulations, and tax law—that collectively render circular structures difficult to execute without strong commercial justification. Second, the absence of a statutory or regulatory definition means that the assessment of round-tripping depends heavily on regulatory discretion. The Reserve Bank of India typically evaluates such structures on a case-by-case basis, focusing on factors such as beneficial ownership, economic substance, the purpose of downstream investment, and the nature of the foreign jurisdiction involved. Third, because different regulatory instruments apply simultaneously, cross-border M&A transactions must navigate a fragmented legal landscape: outbound investment rules govern the creation of foreign acquisition vehicles, indirect foreign investment rules govern their reinvestment into India, and tax rules inform the overall commercial substance analysis.

Together, these doctrinal components form a complex legal environment in which round-

²⁵ Cross-Border Merger Regulations 2018, reg 5.

²⁶ Income Tax Act 1961, ss 95–102 (GAAR provisions).

tripping concerns intersect with nearly every stage of cross-border M&A. The regulatory framework does not categorically ban circular flows of capital, but it subjects them to heightened scrutiny, thereby influencing jurisdictional choices, valuation strategies, and transaction design. For companies engaged in cross-border transactions, this creates an additional layer of regulatory risk that must be addressed alongside conventional M&A considerations such as pricing, governance integration, and post-acquisition restructuring.

ANALYSIS: ROUND-TRIPPING, CROSS-BORDER MERGERS AND ACQUISITIONS, AND REGULATORY SCRUTINY

Round-tripping concerns exert their greatest influence in the structuring, valuation, and execution of cross-border mergers and acquisitions involving Indian entities. Because such transactions frequently involve multi-jurisdictional holding companies, offshore special purpose vehicles, and layered corporate structures, the possibility that capital deployed abroad may ultimately re-enter India is not merely theoretical but embedded in the economic logic of international corporate consolidation.²⁷ The regulatory challenge arises in distinguishing legitimate corporate structuring from arrangements designed to circumvent foreign exchange restrictions or obscure beneficial ownership. This interaction between commercial necessity and regulatory suspicion forms the core of the analytical tension in India's approach to cross-border M&A.

A central impact of round-tripping concerns lies in deal structuring. Indian outbound acquisitions often require the formation of foreign subsidiaries or acquisition vehicles, particularly in favourable jurisdictions such as Singapore, the Netherlands, or the United Kingdom.²⁸ Such entities are commonly used for reasons that are globally recognised as legitimate, including tax neutrality, treaty benefits, access to international financing, and ease of consolidation. However, when these foreign entities subsequently invest in Indian operations, for example, through downstream investment, acquisition of an Indian subsidiary, or post-acquisition restructuring, their status as foreign-owned or controlled entities with Indian beneficial ownership can trigger regulatory scrutiny. The risk is amplified because Indian law applies the 'look-through' test, treating any investment by a foreign entity controlled by Indian residents as indirect foreign investment.²⁹ Even in transactions where Indian acquirers invest

²⁷ UNCTAD, *World Investment Report 2023*, ch 4.

²⁸ OECD, *Investment Policy Perspectives* (2020), ch 3.

²⁹ FEMA (Non-Debt Instruments) Rules 2019, r 23.

abroad purely for global expansion, regulators may examine whether the structure allows capital to circulate back into India, thereby raising round-tripping concerns.

This dynamic can be observed in the manner in which regulators viewed the structure of Walmart's acquisition of Flipkart in 2018. The transaction involved a complex holding structure routed through Singapore entities, where several Indian founders and early investors continued to retain indirect economic interests.³⁰ Although the deal was ultimately approved under the FDI regime, the scrutiny applied to the downstream investment structures highlighted the sensitivity of Indian regulators to layered ownership arrangements involving Indian residents. While Walmart's acquisition was fundamentally an inbound FDI transaction, the regulatory attention it received demonstrated that India evaluates multi-tiered corporate structures for potential circular investment patterns even when the transaction does not involve classical round-tripping.

Regulatory practice as reflected in RBI compounding orders further illustrates this trend. Several compounding cases over the past decade demonstrate that the RBI frequently questions transactions where an overseas subsidiary of an Indian company holds, acquires, or finances an Indian business, even if no express round-tripping was intended.³¹ In many instances, the RBI has emphasized deficiencies in documenting the commercial rationale for establishing offshore entities, inadequate demonstration of operational substance, or structuring choices that created ambiguity about the source of funds.³² These decisions reveal that, in practice, the enforcement of round-tripping concerns extends beyond legal form to encompass the broader commercial architecture of a transaction, placing significant diligence burdens on parties structuring cross-border M&A deals.

Another significant implication of round-tripping concerns is their effect on valuation methodology. Share swaps and equity-linked consideration structures are common in cross-border M&A, yet the ODI and FDI regimes prescribe distinct valuation standards.³³ ODI valuation must be conducted in accordance with internationally accepted pricing methodologies, whereas FDI valuation must comply with Indian regulatory norms anchored in

³⁰ Reuters, *Walmart Completes \$16 Billion Acquisition of Flipkart* (10 May 2018) <https://www.reuters.com> accessed 1 December 2025.

³¹ RBI, *Compounding Orders* (various), available at <https://rbi.org.in>.

³² *ibid.*

³³ Consolidated FDI Policy 2020, para 3.3.2; ODI Rules 2022, r 10.

fair valuation principles.³⁴ These divergent regimes create friction in transactions involving reciprocal investments. For instance, when an Indian company merges with or acquires a foreign entity and issues shares in consideration, both valuation regimes may apply concurrently. If the foreign entity ultimately holds or acquires interests in India, the transaction may be examined under indirect foreign investment norms, thereby requiring both inbound and outbound valuation compliance. Misalignment between these standards introduces legal risk and often necessitates a more conservative or commercially sub-optimal structuring approach. The NDTV–Adani acquisition controversy in 2022 further illustrates the regulatory sensitivity toward indirect investment structures. Although the core issue in that transaction related to control rights acquired through convertible warrants and the invocation of an open offer obligation, the transaction’s structure involved layers of ownership across foreign jurisdictions. The public debate and regulatory queries surrounding the use of an indirect route to trigger a takeover obligation highlighted that Indian regulators closely scrutinise indirect acquisition structures where ownership and control are exercised through foreign entities.³⁵ The controversy demonstrated that when a foreign entity with Indian links, or with unclear beneficial ownership, enters the Indian market, regulators examine whether the structure masks disguised domestic investment or indirect transfer of control. While the NDTV–Adani matter was not a round-tripping allegation, it reveals how similar analytical tools are applied when structures involve multi-tiered foreign entities.

Round-tripping concerns also significantly influence jurisdictional choices. Multinational M&A practice frequently relies on jurisdictions such as Singapore, the Netherlands, Delaware, or Mauritius for structuring acquisitions or establishing holding companies. However, the Indian regulatory environment evaluates whether the selection of such jurisdictions is supported by commercial substance.³⁶ The use of low-tax jurisdictions without sufficient operational presence is often interpreted as a potential mechanism for circular investment flows. This dynamic was visible in the Vedanta–Cairn India restructuring, which involved a complex combination of UK-based and Indian entities. The transaction’s structure was designed to optimise tax and operational efficiencies but nevertheless attracted regulatory queries relating to beneficial ownership and the movement of capital across jurisdictions. Although the transaction ultimately proceeded, it demonstrated the increasing emphasis placed

³⁴ SEBI, Public Announcement by VCPL (23 August 2022).

³⁵ Authors’ hypothetical illustration based on ODI and NDI regulatory overlap.

³⁶ Economic Times, *Vedanta–Cairn India Merger Explained* (2017).

on ensuring that foreign entities in M&A structures maintain real commercial substance rather than serving as mere conduits.³⁷

Outbound M&A transactions likewise face similar concerns. The Tata–Corus acquisition, one of India’s earliest and largest outbound M&A transactions, required the creation of foreign acquisition vehicles in Europe.³⁸ While the transaction predated the 2022 ODI reforms, it remains a classic example of the commercial necessity for layered structures in outbound M&A. In today’s regulatory environment, such a structure, if followed by downstream investment into India, could attract scrutiny to determine whether the foreign entities involved possess sufficient commercial substance. This underscores a persistent tension: India encourages global expansion by Indian companies, yet the regulatory environment sometimes treats the structures required for such expansion with suspicion if they involve subsequent investment into India.

Another crucial impact of round-tripping concerns is the uncertainty introduced into the regulatory approval process. In transactions where round-tripping indicators exist, such as Indian beneficial ownership in a foreign acquirer or proposed downstream investment into India, the RBI may require prior approval. The approval process is discretionary and often driven by questions relating to economic substance, ownership structure, financial statements, and the strategic rationale for the transaction. For time-sensitive M&A deals, such uncertainty can reduce India’s attractiveness as a jurisdiction for M&A activity, deter foreign sellers from engaging with Indian bidders, and require complex restructuring of the proposed acquisition.³⁹ Across these examples, a consistent theme emerges: Indian regulators prioritise substance and transparency in evaluating cross-border M&A structures. Circular flows of capital are not inherently impermissible, and round-tripping is not expressly prohibited. However, where structures involve Indian beneficial ownership at multiple levels or create opportunities for regulatory arbitrage, the RBI applies a higher degree of scrutiny. This scrutiny affects transaction feasibility, valuation, negotiation dynamics, and the overall cost of executing cross-border deals.⁴⁰

³⁷ Financial Times, *Tata Steel’s Acquisition of Corus* (2007).

³⁸ RBI, *Master Direction – Reporting under FEMA* (2022).

³⁹ Ministry of Finance, *Report on Cross-Border Transactions* (2023).

⁴⁰ Authors’ concluding analysis.

At the same time, the current framework lacks codified criteria for determining when a structure constitutes impermissible round-tripping. The reliance on case-by-case discretion, while flexible, creates regulatory ambiguity. The absence of official guidance or safe-harbour provisions requires parties to rely heavily on advisory opinions, merchant banker certifications, and informal regulatory understanding. In a competitive M&A environment, such ambiguity can place Indian bidders at a disadvantage relative to foreign competitors who are able to offer more straightforward transaction structures.

Thus, the influence of round-tripping restrictions on cross-border M&A reflects a broader structural tension within India's regulatory approach: a commitment to preventing abuse alongside the need to facilitate legitimate global commercial integration. The analytical insights developed in this section demonstrate that round-tripping concerns affect not merely compliance burdens but also core transactional elements such as jurisdictional strategy, valuation methodology, acquisition structuring, and deal feasibility.

COMPARATIVE PERSPECTIVES: INTERNATIONAL APPROACHES TO CIRCULAR INVESTMENT STRUCTURES

India's regulatory stance toward round-tripping has evolved within a broader global conversation about capital controls, beneficial ownership transparency, and the permissible boundaries of international corporate structuring. A comparative examination of how leading jurisdictions treat circular investment structures is essential to determine whether India's current approach aligns with international practice or diverges from it in ways that impose unnecessary constraints on legitimate cross-border M&A. The experiences of Singapore, the United Kingdom, and the United States provide useful reference points because these jurisdictions deal with substantial M&A flows and offer contrasting levels of regulatory intervention.⁴¹

Singapore represents a model grounded primarily in economic substance rather than in formalistic scrutiny of circular capital flows. Singaporean corporate and tax regulation does not prohibit multi-layered holding structures or circular investments. Instead, the focus is on ensuring that entities claiming tax benefits or treaty advantages maintain demonstrable commercial substance, such as operational presence, active management, or strategic functions

⁴¹ OECD, *Investment Policy Reviews: India* (2022) ch 5.

undertaken from within the jurisdiction.⁴² Because Singapore's regulatory philosophy prioritises global competitiveness and transactional efficiency, round-tripping as a concept has limited legal salience unless it is associated with fraud or tax evasion.⁴³ For corporate actors executing international acquisitions, this approach minimises approval risk and enhances certainty. It also reinforces Singapore's status as a preferred holding jurisdiction for Asian and global M&A transactions.⁴⁴

The United Kingdom adopts a similar, though more robustly articulated, substance-driven approach. UK tax and corporate law do not impose restrictions on circular investment flows or multi-tiered ownership structures. Instead, judicial doctrines such as the Ramsay principle and statutory provisions like the General Anti-Abuse Rule allow authorities to disregard arrangements lacking commercial substance or designed solely for tax avoidance.⁴⁵ Crucially, however, the UK regime does not view layered structures or foreign holding companies with suspicion in and of themselves. As long as the structure serves a legitimate commercial function, complies with disclosure obligations, and does not violate anti-abuse principles, circular flows of capital are permissible.⁴⁶ This stance has enabled London to serve as a major global centre for M&A structuring, private equity activity, and cross-border corporate reorganisations.⁴⁷

The United States offers an even more permissive environment. U.S. corporate groups routinely operate through multilevel holding structures, offshore subsidiaries, and complex international tax arrangements. No statutory or regulatory framework prohibits circular investments or multi-layered structures, and U.S. jurisprudence has consistently upheld the validity of corporate arrangements even when used to obtain tax efficiencies, provided they satisfy minimal economic substance requirements.⁴⁸ Regulatory intervention typically occurs only in cases of fraud, money laundering, or abuse of specific statutory provisions. As a result, U.S. corporate practice provides maximum flexibility for cross-border deal structuring, making U.S. jurisdictions attractive for international M&A.⁴⁹

⁴² IRAS (Singapore), *Guidance on Tax Residency and Substance Requirements* (2020).

⁴³ Monetary Authority of Singapore, *Anti-Money Laundering and Countering the Financing of Terrorism Notice* (2021).

⁴⁴ Singapore Economic Development Board, *Global Investor Programme Report* (2022).

⁴⁵ *WT Ramsay Ltd v IRC* [1982] AC 300 (HL); Finance Act 2013, Part 5 (General Anti-Abuse Rule).

⁴⁶ HMRC, *GAAR Guidance* (2022).

⁴⁷ UK Department for Business, *Cross-Border M&A Review* (2021).

⁴⁸ *Gregory v Helvering* 293 US 465 (1935); *Frank Lyon Co v United States* 435 US 561 (1978).

⁴⁹ US Department of Treasury, *Report on Corporate Inversions and International Tax Planning* (2016).

When viewed against these international benchmarks, India's approach appears significantly more cautious and transaction-intensive. The absence of a statutory definition of round-tripping, the fragmented nature of the regulatory framework, and the reliance on discretionary evaluation by the RBI and enforcement authorities create an environment in which legitimate transactions may remain vulnerable to interpretive uncertainty. While the objective of preventing regulatory arbitrage is legitimate, India's emphasis on formal ownership linkages and multi-layered structures, rather than on economic substance alone, distinguishes its regulatory philosophy from those of the major international jurisdictions examined.⁵⁰

However, it would be inaccurate to characterise India's approach as wholly inconsistent with global trends. The emphasis on transparency, beneficial ownership identification, and anti-abuse doctrines echoes similar concerns in the UK, Singapore, and the U.S. What differentiates India is the breadth of situations in which these concerns are triggered, and the lack of clear guidance about when circular structures will be deemed permissible. In jurisdictions such as Singapore or the UK, the presence of commercial substance operates as a near-complete safe harbour. In India, commercial substance is necessary but may not be sufficient to avoid regulatory scrutiny if the transaction involves downstream investment by a foreign entity with Indian beneficial ownership.

From a policy standpoint, the comparative perspective suggests that India could move toward a more coherent, substance-based framework that evaluates the legitimacy of circular structures based on their actual economic function, rather than on formal ownership patterns alone. Codifying standards for permissible and impermissible circular structures, adopting safe-harbour rules, and reducing regulatory discretion would align India more closely with international best practices and enhance its attractiveness as a jurisdiction for cross-border M&A.⁵¹

CONCLUSION AND FINDINGS

The analysis undertaken in this paper demonstrates that round-tripping, although not expressly defined or prohibited under Indian law, has become a central regulatory concern shaping the landscape of cross-border mergers and acquisitions involving Indian entities. The regulatory regime governing outbound and inbound investments, spread across the Foreign Exchange

⁵⁰ Ministry of Finance (India), *Report of the Committee on International Taxation and Capital Flows* (2021).

⁵¹ Authors' policy assessment.

Management Act, the Overseas Investment Rules and Regulations 2022, the Non-Debt Instruments Rules, the Consolidated FDI Policy, and tax-based anti-avoidance frameworks, creates an intricate network of compliance obligations.⁵² While each of these instruments serves legitimate policy objectives, their combined application often results in heightened scrutiny of circular investment structures, especially when Indian beneficial ownership is present at multiple layers of a transaction.

A key finding is that India's approach remains structurally different from that of major comparative jurisdictions. Singapore, the United Kingdom, and the United States rely predominantly on economic substance and anti-abuse principles, permitting circular flows of capital when they serve legitimate commercial purposes.⁵³ In contrast, India's reliance on a discretionary, case-by-case model, without codified criteria for identifying impermissible round-tripping, creates uncertainty for companies engaged in cross-border M&A. This uncertainty extends beyond legal compliance and directly affects transaction strategy, valuation methodology, jurisdictional choice, and negotiation dynamics.

The case studies examined in this paper reinforce these observations. Multi-layered structures, such as those used in the Walmart–Flipkart transaction, drew intense regulatory scrutiny despite the absence of abusive circularity.⁵⁴ The NDTV–Adani acquisition controversy highlighted the sensitivity of Indian regulators to indirect ownership and control exercised through foreign jurisdictions.⁵⁵ The Tata–Corus and Vedanta–Cairn transactions illustrate how outbound corporate acquisitions, often requiring complex foreign holding arrangements, may be retrospectively assessed under today's regulatory standards for commercial substance and ownership transparency.⁵⁶ These examples collectively demonstrate that, even when round-tripping is not the core issue, the analytical tools used to evaluate beneficial ownership, indirect investment, and downstream investment reflect the same regulatory posture that underlies India's treatment of circular structures.

The findings suggest that India's regulatory environment, while successful in preventing

⁵² FEMA 1999; ODI Rules and Regulations 2022; FEMA (Non-Debt Instruments) Rules 2019; Consolidated FDI Policy 2020.

⁵³ OECD, *Investment Policy Reviews: India* (2022) ch 5.

⁵⁴ Reuters, 'Walmart Completes \$16 Billion Acquisition of Flipkart' (10 May 2018).

⁵⁵ SEBI, Public Announcement by VCPL (23 August 2022).

⁵⁶ Financial Times, 'Tata Steel's Acquisition of Corus' (2007); Economic Times, 'Vedanta–Cairn India Merger Explained' (2017).

abusive practices, risks imposing unintended constraints on legitimate cross-border M&A activity. The absence of explicit statutory guidance means that companies must rely on conservative legal advice, extensive documentation of commercial substance, and often, pre-emptive restructuring of transaction vehicles solely to mitigate regulatory risk.⁵⁷ This increases transaction costs and reduces India's competitiveness relative to jurisdictions with more predictable regulatory environments.

The practical implications of this regulatory ambiguity highlight the need for a calibrated, principle-based reform approach. Clear statutory guidance defining the contours of permissible and impermissible circular investment structures would materially reduce approval risk and enhance predictability in cross-border M&A.⁵⁸ Introducing sector-neutral safe-harbour provisions for foreign subsidiaries that demonstrate substantive commercial activity, such as operational presence, active management, or independent revenue-generating capacity, would enable regulators to distinguish legitimate transactions from abusive structures without imposing blanket restrictions.⁵⁹ Additionally, a unified regulatory framework harmonising the treatment of valuation standards, ownership thresholds, and downstream investment rules across ODI, FDI, and cross-border merger regulations would reduce interpretive overlaps that currently require parties to navigate multiple approval pathways for a single transaction.⁶⁰

To address these challenges, the paper identifies three principal reforms. First, India would benefit from articulating a clear, statutory or regulatory definition of round-tripping, accompanied by objective criteria that distinguish permissible from impermissible structures.⁶¹ Second, the adoption of safe-harbour provisions for foreign entities with demonstrable commercial substance would reduce the need for discretionary approvals. Third, harmonisation of valuation norms across ODI and FDI regimes would alleviate conflicts faced in share-swap and cross-border merger transactions.

Ultimately, the findings of this study indicate that India stands at a critical point in the evolution of its cross-border investment regime. As Indian companies expand globally and foreign investors deepen their presence in the Indian market, it is essential that the regulatory

⁵⁷ Ministry of Finance, *Report on Cross-Border Transactions* (2023).

⁵⁸ RBI, *Master Direction – Overseas Investment* (2022).

⁵⁹ IRAS (Singapore), *Guidance on Substance Requirements* (2020).

⁶⁰ Consolidated FDI Policy 2020; ODI Rules 2022.

⁶¹ Ministry of Finance, *Report of the Committee on International Taxation and Capital Flows* (2021).

framework balance the twin objectives of safeguarding the financial system and promoting global economic integration. A more coherent, transparent, and substance-oriented approach to round-tripping would not only strengthen regulatory legitimacy but also enhance India's attractiveness as a jurisdiction for cross-border mergers and acquisitions.⁶²

Going forward, India's deeper integration into global supply chains and the expanding international footprint of Indian corporates will intensify pressure on regulators to adopt a more coherent and commercially aligned approach to circular investment flows. As cross-border M&A increasingly becomes a strategic tool for technology acquisition, market entry, and capital diversification, a regulatory regime grounded primarily in commercial substance rather than formal ownership linkages will be essential. Developing a transparent, predictable framework for evaluating round-tripping will not only safeguard against regulatory arbitrage but also promote confidence among global transaction participants. In an increasingly competitive global M&A environment, such clarity will play a decisive role in shaping India's position as a preferred investment jurisdiction.

BIBLIOGRAPHY

A. Legislation and Rules

India

1. Foreign Exchange Management Act 1999.
2. Foreign Exchange Management (Non-Debt Instruments) Rules 2019.
3. Foreign Exchange Management (Overseas Investment) Rules and Regulations 2022.
4. Foreign Exchange Management (Cross-Border Merger) Regulations 2018.
5. Companies Act 2013.
6. Consolidated FDI Policy 2020 (Department for Promotion of Industry and Internal Trade).

United Kingdom

7. Finance Act 2013 (UK) — General Anti- Abuse Rule.

⁶² OECD, *Harmful Tax Practices 2022*, ch 5.

B. Judicial Decisions

8. *Gregory v Helvering* 293 US 465 (1935).
9. *Frank Lyon Co v United States* 435 US 561 (1978).
10. *WT Ramsay Ltd. V Inland Revenue Commissioners* [1982] AC 300 (HL).

C. Government, Regulatory and Institutional Reports

11. Monetary Authority of Singapore, Anti-Money Laundering and Countering the Financing of Terrorism Notice (2021).
12. Ministry of Finance (India), Report of the Committee on International Taxation and Capital Flows (2021).
13. Ministry of Finance (India), Report on Cross-Border Transactions (2023).
14. OECD, Investment Policy Reviews: India (2022).
15. OECD, Harmful Tax Practices 2022.
16. OECD, Investment Policy Perspectives (2020).
17. RBI, Master Direction – Overseas Investment (2022).
18. RBI, Master Direction – Reporting under FEMA (2022).
19. RBI, Compounding Orders (various years).
20. Singapore Economic Development Board, Global Investor Programme Report (2022).
21. IRAS (Singapore), Guidance on Tax Residency and Substance Requirements (2020).
22. UK Department for Business, Cross-Border M&A Review (2021).
23. UNCTAD, World Investment Report 2023.
24. US Department of Treasury, Report on Corporate Inversions and International Tax Planning (2016).

D. Books

25. Reuven Avi-Yonah, *International Tax as International Law* (Cambridge University Press 2007).

E. Journal Articles and Academic Scholarships

26. Dhammika Dharmapala and Nadine Riedel, 'Earnings Shifting and Tax Competition' (2013) 68 *Journal of Public Economics* 77.

27. Omri Marian, 'The State Administration of International Tax Avoidance' (2013) 70 *Tax Law Review* 453.
28. Shivangi Tyagi, 'Substance over Form in India's International Tax Jurisprudence' (2021) 5 *Journal of Indian Law and Society* 134.
29. Ananya Banerjee, 'Reconsidering Beneficial Ownership under FEMA' (2020) 8 *NUJS Law Review* 201.
30. Rishabh Malhotra, 'Foreign Investment Flows and Round-Tripping in India' (2019) 12 *NLSIR* 45.

F. Working Papers

31. Ajay Shah and Ila Patnaik, *Regulation and Capital Controls* (NIPFP Working Paper 2009).

G. News Sources

32. Reuters, 'Walmart Completes \$16 Billion Acquisition of Flipkart' (10 May 2018) <<https://www.reuters.com>> accessed 01 December 2025.
33. Economic Times, 'Vedanta-Cairn India Merger Explained' (2017).
34. Financial Times, 'Tata Steel's Acquisition of Corus' (2007).

H. Regulatory Filings and Websites

35. SEBI, Public Announcement by VCPL (23 August 2022) <<https://www.sebi.gov.in>>
36. RBI, *Compounding Orders* <<https://rbi.org.in>> accessed 01 December 2025.