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INDIA'S OUTBOUND CROSS-BORDER REGIME: A CRITICAL ANALYSIS OF SECTION 234 OF THE COMPANIES ACT, 2013

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Abstract

Cross-border mergers and acquisitions have become central instruments of corporate expansion in an increasingly interconnected global economy, and India's regulatory response has evolved considerably since the 1991 liberalisation reforms.[3] Section 234 of the Companies Act, 2013, read with Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, was designed to create a bidirectional statutory pathway for both inbound and outbound mergers between Indian and foreign companies.[4] Nearly a decade after Section 234 was notified into force, however, outbound mergers remain effectively unused in practice, while inbound transactions have been progressively streamlined through two consecutive fast-track amendments in 2024 and 2025. This paper undertakes a doctrinal examination of this asymmetry, tracing its origins from the Companies Act, 1956 through the unrealised recommendations of the J.J. Irani Committee to the contradictory National Company Law Tribunal orders in the Sun Pharmaceutical Industries matters of 2018 and 2019. It argues that the dormancy surrounding outbound restructuring is not an isolated legislative oversight but reflects a recurring institutional habit, visible most recently in the Insolvency and Bankruptcy Code's own newly inserted, yet unactivated, cross-border insolvency provision, of enacting enabling powers while indefinitely deferring their operationalisation through subordinate rule-

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[4]Companies Act, 2013, § 234, No. 18, Acts of Parliament, 2013 (India).

making. Through a corrected comparative assessment of the United Kingdom's post-Brexit loss of its statutory cross-border merger regime and Singapore's inbound-only redomiciliation framework, the paper contends that India's caution is not unique among major commercial jurisdictions, but that the absence of functional alternatives to the Section 234 route leaves Indian companies with no viable statutory outbound restructuring mechanism at all. The paper concludes with proposals for phased jurisdictional notification, tax neutrality for outbound structures, legislative correction of the demerger gap exposed in the Sun Pharma orders, and binding timelines for subordinate rule-making.

Keywords: *Outbound Cross-Border Mergers; Section 234; Companies Act, 2013; Corporate Restructuring; Regulatory Framework*

I. INTRODUCTION

A. Background

India's economic liberalisation since 1991 transformed the country from a closed, licence-driven economy into one of the world's most active destinations for foreign direct investment, with cross-border mergers and acquisitions emerging as a principal vehicle for that integration.[5] The Companies Act, 2013 sought to consolidate this shift by introducing, for the first time, an express statutory mechanism for mergers between Indian and foreign companies under Section 234, a provision absent from its 1956 predecessor.[6] Read together with Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Reserve Bank of India's Foreign Exchange Management (Cross Border Merger) Regulations, 2018, Section 234 was intended to operate bidirectionally: permitting both inbound mergers, where a foreign company merges into an Indian company, and outbound mergers, where an Indian company merges into a foreign company.[7]

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[5]United Nations Conference on Trade and Development (UNCTAD), *World Investment Report 2024: Investment Facilitation and Digital Government* (2024); Reserve Bank of India, *Handbook of Statistics on the Indian Economy* (2024).

[6]Companies Act, 2013, § 234, No. 18, Acts of Parliament, 2013 (India); Ministry of Corporate Affairs, Notification No. S.O. 1182(E) (Apr. 13, 2017); Umakanth Varottil, *The Evolution of Cross-Border Mergers in India*, 6 NUJS L. Rev. 1 (2017).

[7]Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, R. 25A (India); Foreign Exchange Management (Cross Border Merger) Regulations, 2018, RBI Notification No. FEMA.389/2018-RB (Mar. 20, 2018) (India).

In practice, only one half of that bidirectional promise has materialised. Since the Ministry of Corporate Affairs notified Section 234 into force in April 2017, every reported instance of its use has been inbound.[8] No Indian company has successfully completed an outbound merger under this provision, and the one serious judicial attempt to test its outer boundaryin the Sun Pharmaceutical Industries demerger matters of 2018 and 2019 produced National Company Law Tribunal orders that narrowed rather than expanded the provision's scope.[9] Meanwhile, the Ministry of Corporate Affairs has twice amended the rules governing cross-border mergers in the past two years, in September 2024 and again in September 2025, and on both occasions confined the benefit of fast-track approval exclusively to inbound structures.[10]

B. Research Questions

Research Questions

1. What is the scope and legislative intent of Section 234 of the Companies Act, 2013 in regulating outbound cross-border mergers?
2. What legal and regulatory challenges have limited the practical implementation of outbound cross-border mergers in India?
3. How have the decisions of the National Company Law Tribunal, particularly in the *Sun Pharmaceutical Industries* cases, influenced the interpretation and application of Section 234?
4. To what extent do the existing regulatory framework and recent amendments favour inbound mergers over outbound mergers, and are such distinctions legally and economically justified?
5. What lessons can India draw from the legal frameworks of the United Kingdom and Singapore to strengthen its outbound cross-border merger regime?

C. Objectives, Scope, and Methodology

The paper adopts a doctrinal methodology, examining primary legislation, delegated rules and regulations, National Company Law Tribunal orders, and Reserve Bank of India notifications,

[8]Sakkcham Singh Parmaar, The Unactivated Gateway: Analysing the Dormancy of Section 234(1) of the Indian Companies Act, 2013 and Its Impact on Outbound Cross-Border Mergers, IND. J.L. & LEGAL RES. 1, 7-8 (2025).
[9]In re Sun Pharmaceutical Indus. Ltd., 2019 SCC OnLine NCLT 737 (NCLT Ahmedabad Dec. 19, 2019); In re Sun Pharmaceutical Indus. Ltd., 2018 SCC OnLine NCLT 28560 (NCLT Ahmedabad Oct. 31, 2018).
[10]Nishith Desai Assocs., Fast Track Merger: Unlocking New Pathway for Inbound Cross-Border Merger (Oct. 9, 2024), https://nishithdesai.com/default.aspx?id=15154(last visited June 19, 2026).

supplemented by comparative analysis of United Kingdom and Singapore law and by secondary scholarly and practitioner commentary. Its scope is confined to corporate mergers and demergers under company law and foreign exchange law; it does not undertake an empirical study of deal volumes or conduct primary interviews, and its comparative analysis of foreign jurisdictions is necessarily selective rather than exhaustive.

D. Significance of the Study

The significance of this inquiry extends beyond Section 234 itself. As India seeks to position its corporate law regime as globally competitive and to encourage Indian enterprises toward overseas expansion through structures more efficient than share or asset acquisition, an outbound merger mechanism that exists in name but not in operative practice represents a missed opportunity with measurable economic consequences. A clearer account of why that mechanism remains dormant, and of how the same legislative habit has now recurred in the insolvency context, is therefore of practical relevance to policymakers, transactional counsel, and scholars of comparative corporate law alike. The paper's contribution lies in identifying that recurrence as a pattern rather than treating each instance as an isolated drafting gap.

II. THE LEGAL ARCHITECTURE OF CROSS-BORDER MERGERS IN INDIA

A. The Companies Act, 1956: A One-Directional Bar

Before 2013, Indian company law had no general statutory mechanism for cross-border mergers at all. The Companies Act, 1956 permitted only one direction of cross-border combination, because its definition of “transferee company”, the surviving entity in a merger was confined to companies incorporated in India.[11] A foreign company could merge into an Indian company under the Act’s general merger provisions, but the reverse was structurally impossible, since the Act offered no mechanism by which an Indian company could be absorbed into a foreign transferee.[12] Indian commentators have since described this arrangement as reflective of an

[11] Dr Krati Rajoria, Cross Border Mergers and Acquisitions under the New Regime: A Review of the Current Position, SSRN 2, 3 (Mar. 16, 2021), https://ssrn.com/abstract=3799136; see also Parmaar, supra note 4, at 3.
[12] Rajoria, supra note 7, at 3.

inward-looking, suspicion-laden posture toward outbound capital movement that long predated any specific concern about Section 234.[13]

This restrictive design was not a peripheral drafting choice; it shaped Indian corporate practice for over five decades and meant that an entire generation of Indian companies pursuing overseas expansion did so exclusively through acquisition vehicles, joint ventures, or wholly-owned subsidiaries, never through a recognised statutory merger. The absence of any judicial or legislative challenge to this restriction during the pre-2013 period suggests that outbound merger capacity was, at the time, simply not perceived as a commercial necessity worth litigating, a perception that changed only as Indian outbound investment accelerated through the 2000s and the legislature began drafting what eventually became Section 234.

B. The Irani Committee, 2005

The Expert Committee on Company Law, chaired by Dr J.J. Irani, recommended reforms in 2005 aimed at bringing Indian merger law closer to international practice, including a single approval forum operating on a deemed-approval basis and provision for Indian shareholders to receive Indian Depository Receipts or foreign securities as merger consideration.[14] Many of these recommendations were only partially absorbed into the eventual statutory text: the “single forum” recommendation, in particular, has not been realised, since the current regime instead requires sequential or concurrent engagement with the National Company Law Tribunal, the Reserve Bank of India, the Securities and Exchange Board of India, and, where thresholds are crossed, the Competition Commission of India.[15]

C. Section 234 and Its Belated Activation

Section 234 of the Companies Act, 2013 was enacted as part of the original Act but required a Central Government notification before it could take legal effect. That notification was not issued until 13 April 2017, a gap of nearly four years between enactment and operation that itself illustrates the pattern this paper traces throughout the rest of the framework.[16] The Ministry of Corporate Affairs simultaneously amended the Companies (Compromises, Arrangements and

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[13]Id.

[14]Report on Company Law, Jamshed J. Irani Committee Report (2005); Nishith Desai Assocs., Cross-Border Mergers: Regulatory Overview and Deal Making in India 4 (2020).

[15]Parmaar, supra note 4, at 9.

[16]Ministry of Corporate Affairs, Notification No. S.O. 1182(E) (Apr. 13, 2017) (India).

Amalgamations) Rules, 2016 to insert Rule 25A, which lays down the procedural conditions governing both inbound and outbound mergers.[17]

D. Rule 25A and the Inbound-Outbound Distinction

Rule 25A does not, on its face, distinguish sharply between inbound and outbound mergers in terms of eligibility; both are subject to a jurisdictional criterion requiring the foreign company to be incorporated in a country whose securities market regulator is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding, or whose central bank is a member of the Bank for International Settlements, and which is not identified as a non-cooperative jurisdiction by the Financial Action Task Force.[18] This raises an important and underexamined doctrinal question: Section 234(1) itself speaks of mergers with companies "incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government", the language that, read literally, contemplates a specific, identifiable notification naming eligible countries.[19] What Rule 25A actually supplies is not a list of named countries but a generic, criterion-based eligibility test. Whether a criterion-based subordinate rule of this kind satisfies the statutory command that the Central Government "notify" particular jurisdictions is a question that has received remarkably little sustained doctrinal attention, despite its centrality to the practical operability of outbound mergers.

E. The FEMA (Cross Border Merger) Regulations, 2018 and the Reserve Bank of India

The Reserve Bank of India's regulations distinguish explicitly between inbound mergers, governed primarily by Regulation 4, and outbound mergers, governed by Regulation 5.[20] Both categories benefit, in principle, from a deemed-approval mechanism under Regulation 9, by which compliance with the prescribed conditions is treated as constituting regulatory approval without a separate application.[21] This mechanism appears, on the available record, to function as intended for inbound transactions, where compliance certificates from a managing or whole-time

[17]Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017, Notification No. G.S.R. 368(E) (Apr. 13, 2017) (India).
[18]Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, R. 25A (India); Suvira Agarwal & Parul Ahuja, Cross Border Mergers & Demergers in India – Finer Aspects, GRANT THORNTON BHARAT (Mar. 4, 2022), https://www.grantthornton.in/insights/blogs/cross-border-mergers-demergers-in-india-finer-aspects/.
[19]Companies Act, 2013, § 234(1), No. 18, Acts of Parliament, 2013 (India).
[20]Foreign Exchange Management (Cross Border Merger) Regulations, 2018, regs. 4–5, RBI Notification No. FEMA.389/2018-RB (Mar. 20, 2018) (India).
[21]Id. reg. 9.

director have been accepted as sufficient.[22] No reported instance reflects equivalent reliance on Regulation 9 in an outbound context, consistent with the broader pattern of inbound-only operability traced throughout this paper. In practice, outbound transactions face additional friction: Regulation 5 requires the resultant foreign company to comply with sectoral restrictions under the Liberalised Remittance Scheme and, more significantly, to dispose of any assets it cannot lawfully hold under the Foreign Exchange Management Act, 1999 within a two-year transition period, with proceeds repatriated through banking channels.[23] Pricing and valuation must also conform to the Reserve Bank of India's fair-value norms, which do not always track the commercially negotiated valuation underlying a transaction, creating a further source of friction specific to outbound structuring.[24]

F. Taxation: Neutrality for Inbound, Exposure for Outbound

The Income Tax Act, 1961 compounds this asymmetry. Section 47, read with the definition of amalgamation in Section 2(1B), exempts qualifying inbound mergers from capital gains tax, provided the resulting company is Indian and at least three-quarters of the shareholding in the amalgamated company is held by shareholders of the amalgamating company.[25] No equivalent exemption exists for outbound mergers; a transaction in which an Indian company's shareholders receive shares of a foreign resultant company will ordinarily attract capital gains exposure, and the indirect-transfer provision inserted into Section 9(1)(i) following ***Vodafone International Holdings B.V. v. Union of India*** adds a further layer of potential tax liability wherever shares derive substantial value from assets located in India.[26] The General Anti-Avoidance Rule, operative since 2017, gives tax authorities additional latitude to disregard outbound restructurings considered to lack independent commercial substance.[27]

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[22]M. Govindarajan, Foreign Exchange Management (Cross Border Merger) Regulations, 2018, TAXMANAGEMENTINDIA.COM (July 6, 2020), https://www.taxmanagementindia.com (last visited June 19, 2026)

[23]Foreign Exchange Management (Cross Border Merger) Regulations, 2018, reg. 5, RBI Notification No. FEMA.389/2018-RB (Mar. 20, 2018) (India); Nandini Surendra Admane, Cross-Border Mergers and Acquisitions: Challenges under Indian Corporate Law, 1 DE FACTO L.J. 2, 9-10 (2025).

[24]Admane, supra note 19, at 9–10 (discussing RBI fair-value pricing norms under the Master Direction – Foreign Investment in India).

[25]Income Tax Act, 1961, §§ 2(1B), 47, No. 43, Acts of Parliament, 1961 (India).

[26]Vodafone Int'l Holdings B.V. v. Union of India, (2012) 341 ITR 1 (SC); Income Tax Act, 1961, Explanation 5 to § 9(1)(i), No. 43, Acts of Parliament, 1961 (India).

[27]Admane, supra note 19, at 11 (discussing the General Anti-Avoidance Rule and the Principal Purpose Test).

G. Overlapping Regulatory Touchpoints: SEBI and the Competition Commission of India

Where the Indian company involved in a cross-border merger is listed, the transaction additionally attracts the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, which impose open-offer obligations once an acquirer's shareholding crosses prescribed thresholds, and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which govern continuous disclosure.[28] Where the combined assets or turnover of the merging entities exceed the thresholds prescribed under Section 5 of the Competition Act, 2002, which apply to combinations occurring outside India where they have an appreciable adverse effect on competition within the relevant Indian market, the transaction must additionally be notified to the Competition Commission of India under Section 6, triggering a review period of up to 210 days.[29] Neither requirement distinguishes between inbound and outbound mergers; their burden falls equally on both. The asymmetry traced in this paper, in other words, is not a function of securities or competition law, which are direction-neutral, but is concentrated specifically in the company-law notification mechanism, the foreign exchange regulations, and the tax treatment examined above, a point of some importance for the reform proposals advanced in Chapter V, since it indicates that reform need not touch the entire regulatory architecture but can be targeted precisely at the provisions actually responsible for the imbalance.

III. REGULATORY INERTIA IN PRACTICE: DORMANCY, JUDICIAL TREATMENT, AND THE RECURRING LEGISLATIVE PATTERN

A. The Practical Non-Use of Outbound Mergers Since 2017

More than eight years have elapsed since Section 234 was notified into force, yet no Indian company has completed an outbound merger under its provisions.[30] This is not for want of commercial appetite: Indian conglomerates have pursued extensive outbound expansion, of which Tata Steel's 2007 acquisition of Corus Group is among the most cited examples, but these transactions have invariably proceeded through share or asset acquisition structures rather than

[28]SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
[29]Competition Act, 2002, §§ 5–6, No. 12, Acts of Parliament, 2003 (India).
[30]Parmaar, supra note 4, at 8 ("no merger of an Indian company into or with a foreign entity has been sought so far with the approval of the National Company Law Tribunal").

statutory mergers, precisely because the merger route under Section 234 has offered no tested, reliable pathway.[31]

The contrast with inbound activity is instructive. Reported inbound mergers under Section 234, together with the broader category of inbound fast-track mergers introduced from September 2024 onward, span sectors ranging from pharmaceuticals to technology holding structures, and have continued steadily since notification. No comparable body of outbound precedent exists, and the absence is conspicuous precisely because the underlying commercial demand, Indian companies seeking efficient overseas restructuring is demonstrably present, as evidenced by the volume of outbound acquisition activity that continues to proceed through non-merger structures instead.

B. Judicial Boundaries: The Sun Pharma Orders

The clearest judicial engagement with the outer limits of Section 234 arose not from a merger application at all, but from two related demerger applications brought by Sun Pharmaceutical Industries Limited before the Ahmedabad Bench of the National Company Law Tribunal. In the first, decided on 31 October 2018, the Tribunal sanctioned the demerger of a specified undertaking of Sun Pharma Global FZE, a UAE-incorporated indirect wholly-owned subsidiary, into Sun Pharmaceutical Industries Limited, an inbound transaction.[32] Although the Regional Director had objected that Section 234 refers only to "merger" and "amalgamation" and does not mention "demerger," the Tribunal accepted the company's submission that Sections 230 to 232, which Section 234 applies mutatis mutandis, themselves use the broader language of "compromise" and "arrangement," within which a demerger could be accommodated.[33]

Fourteen months later, on 19 December 2019, the same Bench reached the opposite conclusion when Sun Pharmaceutical Industries Limited sought to demerge two specified investment undertakings into two wholly-owned overseas subsidiaries, Sun Pharma (Netherlands) B.V. and

[31]Ankita Roy, A Critical Analysis of the Legislative Framework Governing Cross-Border Mergers and Acquisitions in India, 2 INT'L J. LEGAL RES. & ANALYSIS 5, 7 (2025) (discussing Tata Steel's acquisition of Corus as an outbound transaction structured through share acquisition rather than statutory merger).
[32]In re Sun Pharmaceutical Indus. Ltd., 2018 SCC OnLine NCLT 28560 (NCLT Ahmedabad Oct. 31, 2018).
[33]Shinoj Koshy & Mayank Labh, The Sun Pharma Orders: NCLT Confounds the Law on Cross-Border Demergers?, INDIACORPLAW (Jan. 15, 2020), https://indiacorplaw.in/2020/01/15/sun-pharma-orders-nclt-confounds-law-cross-border-demergers/ (last visited June 19, 2026).

Sun Pharmaceutical Holdings USA Inc., an outbound transaction.[34] The Tribunal held that Section 234, unlike Sections 230 and 232, uses only the words "merger" and "amalgamation," and does not extend to "compromise," "arrangement," or "demerger," and on that basis rejected the scheme.[35]

Two points deserve emphasis. First, the Tribunal's holding is narrower than it is sometimes characterised in subsequent commentary: it did not hold that outbound mergers as such are impermissible, only that outbound demergers fall outside Section 234's specific textual reference to "merger or amalgamation."[36] A straightforward outbound merger as opposed to a demerger has, accordingly, never actually been tested before the Tribunal, leaving genuine doctrinal uncertainty rather than a settled negative precedent. Second, and more troublingly, the same Bench reached opposite interpretive conclusions on substantially the same statutory language within little more than a year, applying an expansive reading when the transaction ran inbound and a textualist reading when it ran outbound.[37] Whether or not this reflects conscious policy calibration, it has had the practical effect of reinforcing exactly the asymmetry this paper traces at the legislative and regulatory levels.

C. Explaining the Inertia

The reluctance to operationalise outbound mergers more fully is generally attributed to four overlapping concerns. The first is a fear of capital flight and erosion of the domestic tax base, echoing international concern over base erosion and profit shifting, particularly where outbound structuring could be used to relocate intellectual property, profits, or assets to lower-tax jurisdictions.[38] The second is the absence of any reciprocal arrangement for the recognition and enforcement of Indian tribunal orders, or foreign court orders sanctioning a merger scheme, in the partner jurisdiction, a gap compounded by the fact that India's list of reciprocating territories under Section 13 of the Code of Civil Procedure, 1908 excludes several jurisdictions commonly

[34]In re Sun Pharmaceutical Indus. Ltd., 2019 SCC OnLine NCLT 737 (NCLT Ahmedabad Dec. 19, 2019).
[35]Koshy & Labh, supra note 29.
[36]Cross Border Demergers InThe Light OfThe Sun Pharmaceuticals Case, LEGAL SERV. INDIA, https://www.legalserviceindia.com/legal/article-2158-cross-border-demergers-in-the-light-of-the-sun-pharmaceuticals-case.html (last visited June 19, 2026).
[37]Cyril Amarchand Mangaldas, Cross-Border Demergers: Navigating Muddy Waters, INDIA CORP. L. (Apr. 14, 2023), https://corporate.cyrilamarchandblogs.com/2023/04/cross-border-demergers-navigating-muddy-waters/ (last visited June 19, 2026).
[38]Parmaar, supra note 4, at 5.

used for international corporate structuring.[39] The third concern relates to compliance with Financial Action Task Force standards on anti-money laundering, given the potential for outbound restructuring to be misused for illicit capital movement.[40] The fourth is a political-economy concern specific to strategic sectors, where outbound re-domiciliation of Indian corporate assets could be perceived as conflicting with industrial policy objectives.[41] None of these concerns is irrational, but none of them, individually or collectively, explains why the Ministry of Corporate Affairs has had two recent opportunities to address the imbalance and, on both occasions, chosen only to deepen it.

D. The 2024–2025 Fast-Track Amendments: Entrenching the Inbound Bias

By notification effective from 17 September 2024, the Ministry of Corporate Affairs extended the fast-track merger route under Section 233 of the Companies Act, 2013, which permits Regional Director approval in place of a full National Company Law Tribunal process to a specific category of cross-border merger: a foreign holding company merging into its wholly-owned Indian subsidiary.[42] This reform was a genuine and welcome improvement, cutting what had previously been a six-to-twelve-month NCLT timeline to a substantially shorter Regional Director process.[43] A year later, on 4 September 2025, the Ministry consolidated and broadened this fast-track eligibility through further amendments to Rules 25 and 25A.[44]

Both reforms share the same structural feature: each applies exclusively to a foreign company merging into an Indian subsidiarythat is, an inbound merger. Neither touches the converse case of an Indian company merging into a foreign entity. Two consecutive amendment cycles, in successive years, addressing the same general subject matter, have each independently chosen to streamline only the direction of cross-border merger that was already functioning. This is not incidental. It indicates that the Ministry's institutional attention to cross-border merger reform, when it occurs, defaults to the inbound case, leaving the outbound case undisturbed not through

[39]Admane, supra note 19, at 12–13 (discussing Section 13 of the Code of Civil Procedure, 1908 and the limited list of reciprocating territories).
[40]Parmaar, supra note 4, at 6.
[41]Id. at 6–7.
[42]Nishith Desai Assocs., supra note 6.
[43]Id.
[44]Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025 (Sept. 4, 2025) (India).

oversight in any single amendment but through a now-repeated pattern of deliberate scope-limitation.

E. The Structural Parallel: Section 234(1) and the New Section 240C of the Insolvency and Bankruptcy Code

The clearest evidence that this pattern is not unique to Section 234 comes from outside company law altogether. The Insolvency Law Committee recommended as early as October 2018 that India adopt a framework modelled on the UNCITRAL Model Law on Cross-Border Insolvency, and a dedicated Cross-Border Insolvency Rules Committee submitted a detailed report to that effect in November 2021.[45] The UNCITRAL Model Law, on which both reports were based, provides a framework for recognising foreign insolvency proceedings, granting relief to foreign representatives, and coordinating concurrent proceedings across jurisdictions precisely the kind of reciprocal recognition mechanism whose absence this paper has already identified as one driver of caution around outbound mergers. More than four years after the 2021 report, the Insolvency and Bankruptcy Code (Amendment) Act, 2026 finally inserted a new Section 240C, empowering the Central Government to frame rules governing the recognition of foreign insolvency proceedings, judicial cooperation, and coordination with foreign courts and insolvency representatives.[46] As of the time of writing, however, Section 240C remains an enabling provision only: no rules have been notified under it, and no operative timeline has been prescribed.[47]

The parallel with Section 234(1) is precise.[48] In both instances, Parliament or the Ministry created a broad rule-making power addressing cross-border corporate mobility merger in one case, insolvency recognition in the other and in both instances, the actual content needed to make that power operative has been deferred without any statutory deadline. Read together, Section 234(1)'s notification gap and Section 240C's rule-making gap suggest that India's legislative architecture for cross-border corporate restructuring has developed a structural habit: enact the gesture of openness, and defer the substance of it indefinitely. A reform agenda addressed only

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[45]Insolvency Law Committee, Report (Oct. 2018); Cross-Border Insolvency Rules/Regulations Committee, Report (Nov. 2021), discussed in Parmaar, supra note 4, at 4 n.13.
[46]Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 240C (India) (inserted provision empowering the Central Government to frame rules on recognition of foreign insolvency proceedings, modelled on the UNCITRAL Model Law on Cross-Border Insolvency).
[47]As of the date of writing, no rules have been notified under Section 240C.
[48]See discussion supra Section III(E).

to Section 234 in isolation, without recognising this broader pattern, is unlikely to succeed, because the underlying institutional reflex that produced the dormancy in company law is fully capable of reproducing itself in insolvency law, and evidently has.

IV. COMPARATIVE PERSPECTIVES

Existing Indian scholarship on this subject routinely cites the United Kingdom and Singapore as exemplars of “liberal” cross-border merger regimes against which India's restrictive posture should be measured.[49] This comparison, while well-intentioned, rests on an inaccurate premise in both cases, and a corrected version of it yields a more useful, if less flattering, lesson for Indian reform.

A. The United Kingdom: A Regime That No Longer Exists

The United Kingdom's statutory cross-border merger mechanism was never a feature of the Companies Act 2006 itself. It derived from the Companies (Cross-Border Mergers) Regulations 2007, which implemented the European Union's Cross-Border Mergers Directive and permitted a UK company to merge by absorption or by formation of a new company with a counterpart incorporated elsewhere in the European Economic Area, subject to High Court sanction.[50] Following the end of the Brexit transition period on 31 December 2020, those Regulations were revoked in their entirety, and the statutory cross-border merger route has not been available to UK companies since, save for transactions already underway before that date.[51] The frequently cited reference to “Part 26 of the Companies Act 2006” in Indian secondary literature conflates the general domestic scheme-of-arrangement mechanism which remains available and is now used as a practical substitute with the distinct, EU-derived statutory merger regime that has been lost.[52] In present-day UK practice, a transaction that would once have proceeded as a cross-border statutory merger is now structured through a scheme of arrangement, an asset or business

[49]See, e.g., Samantara, supra note 1, at b988; Admane, supra note 19, at 14.
[50]The Companies (Cross-Border Mergers) Regulations 2007, SI 2007/2974 (UK) (revoked), implementing Council Directive 2005/56/EC.
[51]Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/348 (UK); Cross-Border Mergers Regulations, LEXISNEXIS UK GLOSSARY, https://www.lexisnexis.com/en-gb/legal/glossary/cross-border-mergers-regulations (last visited June 19, 2026).
[52]Cf. Admane, supra note 19, at 14 (referring generally to “Part 26 of the UK Companies Act 2006” as the comparator, without distinguishing the domestic scheme-of-arrangement mechanism from the now-revoked EU-derived merger regime).

transfer, or a share-for-share exchange, none of which achieves universal succession of assets and liabilities in the same automatic manner as a true statutory merger.[53]

B. Singapore: An Inbound-Only Redomiciliation Regime, Not a Merger Statute

Singapore presents a related but distinct inaccuracy. The Companies (Amendment) Act 2017 did not introduce a cross-border merger framework at all; it inserted a new Division 2 of Part 10A into the Companies Act 1967, establishing an inward redomiciliation regime administered by the Accounting and Corporate Regulatory Authority.[54] This regime allows a foreign corporate entity to transfer its registration to Singapore, preserving its corporate history and existing obligations, but it operates in one direction only: Singapore has no corresponding outward redomiciliation mechanism permitting a Singapore-incorporated company to transfer its registration abroad.[55] Singapore's general approach to mergers and acquisitions, cross-border or otherwise, instead proceeds through the scheme-of-arrangement provisions of its own Companies Act or through ordinary contractual acquisition structures.[56]

C. Lesson for India

Once the inaccuracy in the conventional comparison is corrected, the lesson for Indian reform shifts. Neither the United Kingdom nor Singapore offers India a ready-made statutory template for outbound mergers, because neither currently operates one. It is worth noting that the broader European Union framework underlying the UK's former regime has not disappeared; it survives, consolidated, as Directive (EU) 2017/1132, and continues to govern statutory cross-border mergers among remaining EU member states, several of which, including Ireland, retain a fully operative statutory cross-border merger procedure for EEA limited liability companies.[57] The

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[53]Lewis Silkin, Brexit Has Happened: What Does It Mean for Company Law and M&A Transactions?, (Feb. 11, 2021), https://www.lewissilkin.com/en/insights/brexit-has-happened-what-does-it-mean-for-company-law-and-m-and-a-transactions (last visited June 19, 2026).

[54]Companies (Amendment) Act 2017, inserting pt. 10A, div. 2, Companies Act 1967 (Singapore); Inward Re-domiciliation Regime in Singapore, ACCT. & CORP. REGUL. AUTH. SING., https://www.acra.gov.sg/legislation/legislative-reform/companies-act-reform/companies-amendment-act-2017/inward-re-domiciliation-regime-in-singapore (last visited June 19, 2026).

[55]Redomiciling a Foreign Company to Singapore: A Complete Guide, RAFFLES CORP. SERVS. (2026), https://rafflescorporateservices.com/redomiciling-a-foreign-company-to-singapore-a-complete-guide-2026/ (last visited June 19, 2026) (noting the regime is confined to inward redomiciliation).

[56]Companies Act 1967, § 210 (Singapore).

[57]Council Directive 2017/1132, 2017 O.J. (L 169) 46 (EU); see also Cross-border merger Meaning, LEXISNEXIS UK GLOSSARY, https://www.lexisnexis.com/en-gb/legal/glossary/cross-border-merger (last visited June 19, 2026) (noting Ireland's continuing statutory cross-border merger procedure under the Companies Act 2014).

more accurate comparator for India, then, is not the United Kingdom or Singapore, but a continuing EU member state such as Ireland, which combines a working statutory cross-border merger gateway with judicial institutions accustomed to applying it without the textualist hesitation evident in the Sun Pharma orders.

What the United Kingdom and Singapore do offer, and what India currently lacks, is a functioning alternative pathway for cross-border restructuring that does not depend on a single, narrowly interpreted merger provision. United Kingdom companies losing access to the EU merger regime did not lose the ability to restructure cross-border; they simply shifted to schemes of arrangement and asset transfers, instruments long recognised and liberally applied by the English courts. India's equivalent domestic instrument, the scheme of arrangement under Sections 230 to 232 of the Companies Act, 2013 exists in principle, but the Sun Pharma orders demonstrate that the National Company Law Tribunal has been markedly less willing to extend it flexibly to outbound cross-border fact patterns than English courts have been willing to extend their domestic equivalent.[58] The reform priority emerging from this corrected comparison is therefore not jurisdictional imitation, but the cultivation of judicial and administrative flexibility around India's own existing scheme-of-arrangement architecture, informed by the European Union's surviving cross-border merger framework, which remains the most direct surviving statutory model of the kind India's Section 234 was originally intended to resemble.

A further, more general lesson follows from this corrected comparison: regulatory liberalism in cross-border merger law is rarely a permanent or unconditional feature of any jurisdiction. The United Kingdom's experience demonstrates that even a well-established statutory regime can be lost entirely through a change in international alignment, while Singapore's experience demonstrates that an apparently progressive reform can, on closer inspection, be considerably narrower in scope than secondary commentary suggests. India's reform agenda should therefore be calibrated to its own institutional realities, a scheme-of-arrangement mechanism centred on the National Company Law Tribunal, a cautious foreign exchange regulator, and a revenue administration wary of outbound capital movement, rather than to an idealised foreign model that, on close examination, does not exist in the form usually described in the secondary literature.

[58]Koshy & Labh, supra note 29.

V. TOWARDS ACTIVATION: POLICY RECOMMENDATIONS

A. Phased, Express Notification Under Section 234(1)

The Central Government should issue an express notification under Section 234(1) naming specific eligible jurisdictions, beginning with a limited set of FATF and OECD member states with which India already maintains close regulatory cooperation, rather than continuing to rely on Rule 25A's criterion-based test as an implicit substitute for the statutorily required notification.[59] This would resolve the doctrinal ambiguity identified in Chapter II and provide the legal certainty that outbound transactions currently lack.

B. Statutory Correction of the Demerger Gap

Parliament should amend Section 234 to expressly include “demerger,” “compromise,” and “arrangement” alongside “merger” and “amalgamation,” removing the textual basis on which the Sun Pharma outbound application was rejected and aligning Section 234's language with the broader terminology already used in Sections 230 to 232.[60]

C. Tax Neutrality for Outbound Structures

The Income Tax Act, 1961 should be amended to extend an equivalent of the Section 47 capital gains exemption to outbound mergers meeting comparable shareholding-continuity conditions, removing the present fiscal disincentive that exists even where the corporate law and foreign exchange requirements are satisfied.[61]

D. Bilateral Recognition and Enforcement Arrangements

India should pursue bilateral or plurilateral arrangements for the mutual recognition of merger-sanctioning orders with key trading partners, and expand the list of reciprocating territories under Section 13 of the Code of Civil Procedure, 1908 to include jurisdictions commonly used in international corporate structuring.[62]

E. A Time-Bound, Single-Window Coordination Mechanism

[59] Parmaar, supra note 4, at 11–12.
[60] Koshy & Labh, supra note 29; Cyril Amarchand Mangaldas, supra note 33.
[61] Admane, supra note 19, at 16.
[62] Id. at 13.

Beyond the merger-specific reforms above, the Ministry of Corporate Affairs should consider establishing a coordinating mechanism, whether a standing inter-regulatory committee or a designated single-window portal through which the National Company Law Tribunal, the Reserve Bank of India, the Securities and Exchange Board of India, and the Competition Commission of India can process a cross-border merger application within a statutorily fixed overall timeline, rather than the current sequential and open-ended engagement with each regulator individually.[63]Such a mechanism would not alter the substantive eligibility criteria discussed above but would address the procedural friction that compounds, even if it does not cause, the underlying dormancy this paper has traced.

F. Binding Timelines for Subordinate Rule-Making

Finally, and most broadly, future enabling provisions of this kind including Section 240C of the Insolvency and Bankruptcy Codeshould carry a statutory deadline for the framing of implementing rules, whether through a sunset clause or a mandatory reporting obligation to Parliament, so that the pattern of what one commentator has termed “prudential inertia” does not continue to reproduce itself in future cross-border legislation.[64]

VI. CONCLUSION

This paper set out to test the grounded statement that the regulatory framework governing outbound cross-border mergers in India is not merely underdeveloped but structurally inert, and that this inertia recurs across Indian legislation rather than being confined to Section 234 of the Companies Act, 2013. Section 234(1) has never been activated through an express, country-specific notification in the nine years since its enactment; the National Company Law Tribunal's only sustained engagement with the provision's outbound application, in the Sun Pharma matters, narrowed rather than clarified its scope; and two consecutive amendment cycles in 2024 and 2025, each a genuine opportunity to extend fast-track treatment to outbound mergers, instead confined that benefit to inbound structures alone. Most tellingly, the same legislative habit has

[63]Roy, supra note 27, at 13; Rohitkumar Ramesh Ohal, Legal and Regulatory Framework Governing Cross-Border Mergers and Acquisitions in India: Challenges and Reforms, 6 INT'L J. RES. PUBLICATION & REVIEWS 805, 807 (2025).

now reproduced itself outside company law altogether, in the Insolvency and Bankruptcy Code's own newly enacted but unactivated Section 240C.

The corrected comparative analysis undertaken in this paper further suggests that India's predicament should not be read as straightforward backwardness relative to supposedly liberal foreign models. The United Kingdom has itself lost its statutory cross-border merger mechanism since Brexit, and Singapore's celebrated 2017 reform was never a merger framework at all but an inbound-only redomiciliation regime. What distinguishes India is not the absence of a perfect foreign template to copy, but the absence of a flexible domestic alternative, the kind of liberally applied scheme of arrangement that has allowed UK companies to restructure cross-border even after losing their EU-derived merger regime.

India's ambition to position itself as a hub for global corporate restructuring cannot be realised by enabling provisions that exist only on the statute book. Until the Ministry of Corporate Affairs issues an express notification under Section 234(1), corrects the textual gap exposed by the Sun Pharma orders, and extends to outbound mergers the same urgency it has twice now extended to inbound ones, Section 234 will remain what its history suggests it has always been: a gateway built but never opened.