



CROSS-BORDER MERGERS IN THE FINANCIAL SECTOR: LEGAL IMPLICATIONS OF CONSOLIDATION IN A GLOBALIZED ECONOMY

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Abstract

Cross-border mergers and acquisitions (M&As) in the financial sector have become a critical strategy for institutions seeking scale, diversification, and competitive advantage in an interconnected global economy.¹ This paper examines the complex legal frameworks governing such transactions, focusing on the European Union, India, and the United States, while analyzing regulatory obstacles that impede seamless integration.² The research employs doctrinal-comparative methodology to assess EU prudential barriers under the Banking Union, India's Companies Act and FEMA framework, and cross-border insolvency mechanisms under the UNCITRAL Model Law.³ Key findings reveal that despite regulatory advances, fragmented approval processes, territorial capital requirements, and valuation constraints continue to hinder cross-border consolidation.⁴ The study proposes harmonization strategies including expanded cross-border waivers in the EU, streamlined FEMA compliance in India, and enhanced UNCITRAL Model Law implementation

for failed merger resolution. The research contributes to the literature by providing comprehensive doctrinal synthesis across jurisdictions and policy recommendations for strengthening global financial system resilience through improved legal frameworks.

Keywords: Cross-border mergers, financial sector, Banking Union, FEMA regulations, UNCITRAL Model Law, prudential barriers, regulatory harmonization

1. Introduction

In today's interconnected global economy, cross-border mergers and acquisitions (M&As) have emerged as pivotal mechanisms for financial institutions to achieve scale economies, diversification benefits, and competitive positioning.⁵ The liberalization of capital markets, coupled with technological advancement and regulatory convergence initiatives, has facilitated unprecedented growth in international financial transactions.⁶ However, these developments operate within a complex maze of legal frameworks that often create execution risks and integration challenges, potentially undermining the resilience benefits of consolidation.⁷ The post-global financial crisis regulatory environment has fundamentally reshaped the landscape for cross-border financial mergers.⁸ While initiatives such as the European Banking Union and harmonized Basel III standards have promoted regulatory convergence, persistent fragmentation in national laws, prudential requirements, and insolvency frameworks continues to impede seamless

¹ European Central Bank. Bank Mergers and Acquisitions in the Euro Area: Drivers and Patterns, *Financial Stability Review Special Feature* (2021), https://www.ecb.europa.eu/press/financial-stability-publications/fsr/special/html/ecb.fsrart202111_02~33910adb15.en.html.

² Bank for International Settlements. *European Banking Integration - Harnessing the Benefits*, BIS Review (2025), <https://www.bis.org/review/r250414g.pdf>.

³ UNCITRAL. *Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency* (United

Nations 2021), <https://uncitral.un.org/sites/uncitral.un.org/files/media>

- documents/uncitral/en/mlcbi_judicial_perspective_2021_advance_copy.pdf.

⁴ Bank for International Settlements. supra note 2

⁵ European Central Bank, supra note 1

⁶ European Central Bank. *Financial Integration and Structure in the Euro Area*, Biennial Report (2022).

⁷ Bank for International Settlements, supra note 4

⁸ European Central Bank, supra note 1



cross-border integration.⁹ The European Banking Authority notes that M&A activity in the EU banking sector remains significantly below pre-crisis levels, hampered by issues including inefficient intra-group financial support mechanisms and territorial capital requirements.⁸ Similarly, emerging markets like India face complex regulatory overlaps between the Reserve Bank of India, Securities and Exchange Board of India, and other authorities, creating procedural delays and compliance uncertainties.¹⁰ The stakes of addressing these legal impediments extend beyond individual transactions to systemic financial stability.¹¹ Unresolved cross-border insolvency disputes and integration failures can amplify contagion risks, fragment markets, and undermine investor confidence in global financial systems.¹² This challenge has become particularly acute in the post-pandemic environment, where cross-border consolidations are essential for risk-sharing, capital optimization, and sustainable growth in the financial sector.¹³ Contemporary scholarship emphasizes the urgency of addressing cross-border merger barriers in light of emerging challenges including digital transformation, climate transition financing, and geopolitical shifts.¹⁴ The European Union's Capital Markets Union project and Savings and Investment Union strategy highlight the critical role of integrated financial markets in supporting economic competitiveness and strategic autonomy.¹⁵

Similarly, emerging economies recognize cross-border financial integration as essential for accessing global capital markets and enhancing domestic financial system development.¹⁶ This research addresses these challenges through comprehensive doctrinal analysis of legal frameworks governing cross-border financial mergers across three key jurisdictions: the European Union (with emphasis on Banking Union mechanisms), India (focusing on Companies Act and FEMA provisions), and the United States (for comparative perspective).¹⁷ The study evaluates the effectiveness of the UNCITRAL Model Law on Cross-Border Insolvency in resolving disputes arising from failed cross-border mergers and proposes harmonization strategies to enhance legal certainty and systemic resilience.¹⁸

2. Literature Review and Theoretical Framework

2.1 Economic and Strategic Drivers of Cross-Border Financial M&A

The theoretical foundation for cross-border financial mergers rests on several economic rationales including economies of scale, scope economies, diversification benefits, and market access considerations.¹⁹ Recent empirical evidence from the European Central Bank demonstrates that cross-border bank M&A transactions in the euro area are

⁹ Bank for International Settlements. *supra* note 2

¹⁰ PwC India. *Foreign Exchange Management (Cross Border Merger) Regulations, 2018*, Tax & Regulatory Services Alert (2018), https://www.pwc.in/assets/pdfs/news-alert-tax/2018/pwc_news_alert_26_march_2018_fema_cross_border_merger.pdf

¹¹ International Monetary Fund. *Cross-Border Resolution: A Global Solution to a Global Problem*, IMF Working Paper (2020).

¹² International Insolvency Institute. *Cross-Border Resolution of Financial Institutions*, III Global Research Paper (2021).

¹³ European Parliament. *The Capital Markets Union - an Extra Feather to the EMU*, IPOL Study (2024).

¹⁴ SUERF. *A Single Market for Capital: Five Priorities for the EU*, Policy Note (2025), <https://www.suerf.org/publications/suerf-policy->

notes-and-briefs/a-single-market-for-capital-five-priorities-for-the-eu/.

¹⁵ European Central Bank. *Capital Markets Union: A Deep Dive - Five Measures to Foster a Single Market for Capital*, Occasional Paper Series (2025).

¹⁶ Semantic Scholar. *Due Diligence in Mergers and Acquisitions in Emerging Markets: Evaluated Risk Factors From the Academic and Practical View* (2015).

¹⁷ UNCITRAL, *Supra* note 3

¹⁸ UNCITRAL. *Model Law on Cross-Border Insolvency: The Judicial Perspective* (United Nations Commission on International Trade Law 2021).

¹⁹ Academy of Strategic Management Journal. *Determinants of Merger and Acquisition Strategies Success in Emerging Markets: Evidence from EGX* (2022).



predominantly driven by pre-existing financial links and network effects, with gravity models showing that stronger bilateral interbank loans and securities holdings correlate with higher cross-border M&A frequency.²⁰ Contemporary research emphasizes the strategic imperatives driving cross-border consolidation in the post-pandemic environment. European banks face persistent challenges in achieving adequate returns on equity, with profitability levels averaging 6.7% in 2021 compared to 11% for US peers, reflecting structural impediments including market fragmentation and limited scale economies.²¹ The European Banking Federation identifies regulatory-induced costs as contributing 0.8-1.0 percentage points to the return on equity gap between EU and US banks, highlighting the competitive implications of fragmented regulatory frameworks. Emerging market studies reveal different drivers for cross-border M&A activity, with emphasis on technology transfer, market access, and regulatory arbitrage considerations. Research on Indian cross-border mergers demonstrates that success factors include regulatory compliance efficiency, valuation methodology alignment, and post-merger integration capabilities. However, empirical analysis reveals mixed outcomes for cross-border merger performance, with success dependent on strategic complementarity, cultural integration, and regulatory environment stability.²²

2.2 Legal-Regulatory Frameworks as Determinants of M&A Outcomes

The regulatory environment significantly influences both the likelihood and success of cross-border financial mergers through multiple channels.²³ EU supervisory and prudential mechanics create friction points including entity-level versus consolidated capital requirements, limited scope of cross-border waivers, and AML/CFT prudential overlays in qualifying holdings approvals. Advanced research demonstrates that these regulatory barriers explain the concentration of cross-border transactions within small groups of neighboring countries rather than achieving true pan-European integration. Comparative legal scholarship reveals significant variations in regulatory approaches across jurisdictions.²⁴ The OECD's analysis of cross-border merger control mechanisms highlights challenges facing developing and emerging economies, including resource constraints, inadequate legal frameworks, and limited extra-territorial application of national competition laws.²⁵ Studies of COMESA's supra-national competition authority demonstrate both the potential and limitations of regional harmonization efforts in addressing cross-border merger challenges. In India, the legal framework evolution through Section 234 of the Companies Act, 2013, and the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, represents significant progress but with persistent implementation constraints.²⁶ Research indicates that automatic approval mechanisms under FEMA 2018 have

²⁰ European Central Bank, supra note 1

²¹ European Banking Federation. *The EU Banking Regulatory Framework and Its Impact on Banks and the Economy*, EBF Reference Study (2023), https://www.ebf.eu/wp-content/uploads/2023/02/The-EU-banking-regulatory-framework-and-its-impact-on-banks-and-the-economy_30Jan-1.pdf.

²² ScienceDirect. *Mergers and Acquisitions in and Out of Emerging Economies*, 60 *Journal of Business Research* (2020).

²³ COMESA Competition Commission. *Cross-Border Merger Regulation in Developing and Emerging*

Economies (Doctoral Dissertation 2018), <https://www.comesacompetition.org/wp-content/uploads/2018/05/Thesis-Dr-Willard-Mwemba.-pdf.pdf>.

²⁴ Dialnet. *The Capital Markets Union in the Scope of the European Financial System*, *Revista de Estudios Constitucionais* (2018), <https://dialnet.unirioja.es/descarga/articulo/6574500.pdf>

²⁵ OECD. *Cross-Border Merger Control*, Global Forum on Competition Proceedings (2011).

²⁶ PwC India, Supra note 10



streamlined some processes, but pricing guideline compliance and outbound merger restrictions continue to create execution delays.²⁷ Comparative analysis with developed markets reveals that jurisdictions with clearer regulatory frameworks and harmonized approval processes experience higher cross-border M&A activity.²⁸

2.3 Cross-Border Insolvency and Failed Merger Resolution

The UNCITRAL Model Law on Cross-Border Insolvency provides the primary international framework for managing multinational insolvency proceedings, including cases involving failed cross-border merger transactions.²⁹ Scholarly analysis demonstrates that while the Model Law facilitates cooperation and coordination between jurisdictions, it does not achieve substantive law unification, leaving significant gaps in entity-specific resolution procedures for financial institutions. Contemporary research emphasizes the sector-specific challenges of applying general insolvency frameworks to financial institutions with complex cross-border structures.³⁰ The Financial Stability Board's work on resolution regimes for global systemically important financial institutions reveals the limitations of the universalist approach when applied to systemically important banks with multiple jurisdictional operations and regulatory relationships. Empirical studies of Model Law implementation demonstrate high recognition rates in adopting jurisdictions, illustrating the effectiveness of the cooperation model. However, academic analysis reveals persistent challenges in

coordinating timing between different jurisdictional proceedings and addressing conflicts between national resolution authorities with different policy priorities. Recent scholarship advocates for enhanced court-to-court guidelines and sector-specific protocols specifically designed for financial sector transactions. The evolution toward "group solutions" in insolvency law and bank resolution represents an important development that addresses some limitations of traditional territorial approaches.

3. Methodology

This research employs a doctrinal-comparative legal methodology to analyze the regulatory frameworks governing cross-border mergers in the financial sector.³¹ The approach involves systematic examination of primary legal sources including statutes, regulations, administrative guidance, and judicial decisions, supplemented by policy documents and industry reports from relevant regulatory authorities. The jurisdictional focus encompasses three primary legal systems: the European Union (with particular emphasis on Banking Union mechanisms), India (analyzing Companies Act and FEMA frameworks), and reference to United States practice for comparative perspective.³² The research incorporates cross-border insolvency analysis through examination of UNCITRAL Model Law implementation, case law digest materials, and comparative studies of regional harmonization efforts. Primary sources include EU legislation (Capital Requirements Directive/Regulation, Banking Union framework), ECB supervisory guidance and policy

²⁷ Archer & Angel. *Challenges in Cross Border Mergers*, Practice Guide India M&A (2023), https://archerangel.com/pdf/2023_Practice_Guide_India_M&A_-_Challenges_in_Cross-Border_Mergers.pdf.

²⁸ Facto Law Journal. *Cross-Border Mergers and Acquisitions: Challenges under Indian Corporate Law*, Contemporary Legal Analysis (2025), <https://defactolawjournal.org/papers/cross-border-mergers-and-acquisitions-challenges-under-indian-corporate-law1/>.

²⁹ UNCITRAL, *Supra* note 3

³⁰ PMC/NCBI. *The Rise of 'Group Solution' in Insolvency Law and Bank Resolution*, *European Business Organization Law Review* (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8319584/>.

³¹ Insolvency Law Academy. *Harmonizing UNCITRAL Model Law: A TWAIL Analysis of Cross-Border Insolvency Law* (2022), <https://insolvencylawacademy.com/wp-content/uploads/2022/09/Harmonizing-UNCITRAL-Model-Law-a-twail-analysis-of-cross-border-insolvency-law.pdf>.

³² Bank for International Settlements. *supra* note 2



papers, India's Companies Act 2013 and FEMA Cross Border Merger Regulations 2018, UNCITRAL Model Law text and judicial perspective materials, and relevant policy reports from European Central Bank, European Banking Federation, Reserve Bank of India, and international organizations.³³ The analytical framework emphasizes identifying structural barriers to cross-border financial mergers, evaluating regulatory harmonization efforts, and assessing the effectiveness of dispute resolution mechanisms for failed transactions. Limitations include concentration on regulated financial entities (banks, insurers, payment institutions) rather than broader financial services sectors and focus on merger control and authorization processes rather than quantitative performance analysis of completed transactions.

4. Legal and Regulatory Frameworks

4.1 European Union: Banking Union Architecture and Capital Markets Union

The European Union's approach to cross-border financial mergers operates within the interconnected frameworks of Banking Union and Capital Markets Union, encompassing the Single Supervisory Mechanism (SSM), Single Resolution Mechanism (SRM), and harmonized prudential requirements under the Capital Requirements Directive and Regulation. Recent scholarly analysis emphasizes that these frameworks aim to create integrated banking and capital markets while maintaining financial stability through common supervisory standards and resolution procedures.³⁴ Contemporary research reveals that authorization and qualifying holdings procedures represent critical components of the EU framework, with the European Central Bank exercising

competence over significant institutions through prudential assessments that include governance, suitability reviews, and AML/CFT risk evaluations. The forthcoming Capital Requirements Directive VI (CRD VI) is expected to harmonize merger approvals at the EU level from 2026, with the European Banking Authority developing common assessment methodologies to reduce regulatory uncertainty and promote integration.³⁵

Advanced analysis demonstrates that capital and liquidity treatment creates significant impediments to cross-border consolidation despite Banking Union advances. While consolidated supervision frameworks exist, practical implementation involves entity-level requirements that limit optimization of group-wide capital and liquidity management.³⁶ Cross-border waivers for capital requirements remain underutilized, and liquidity waivers face similar constraints despite regulatory provisions allowing such flexibility.³⁰ Basel III adjustments lowering risk scores for intra-banking union cross-border exposures since 2022 represent positive developments, but structural obstacles persist.³² Contemporary Capital Markets Union scholarship reveals similar fragmentation challenges affecting non-bank financial integration.¹⁴ The European Commission's Savings and Investment Union strategy recognizes that deeper capital market integration is essential for financing innovation, supporting the green and digital transitions, and enhancing European strategic autonomy.¹³ However, progress remains limited due to persistent barriers in taxation, insolvency law harmonization, and supervisory integration.³³

³³ European Banking Federation, *Supra* note 21

³⁴ IEP Bocconi. *The Next Goal: Euro Area Banking Integration*, Policy Brief (2023), https://iep.unibocconi.eu/sites/default/files/media/attach/PB09_The Next Goal Euro Area Banking Integration.pdf.

³⁵ European Parliament. *Can Banking Union Foster Market Integration, and What Lessons Can Be*

Drawn?, IPOL Study (2024), [https://www.europarl.europa.eu/RegData/etudes/IDA/N/2024/760259/IPOL_IDA\(2024\)760259_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDA/N/2024/760259/IPOL_IDA(2024)760259_EN.pdf).

³⁶ Oxford University Press. *One Market, One Vision: How Interstate Consolidation Can Transform Europe's Financial Architecture*, 11 *Journal of Financial Regulation* (2025).



4.2 India: Companies Act and FEMA Framework Evolution

India's legal framework for cross-border mergers has undergone significant evolution with the introduction of Section 234 of the Companies Act, 2013, and subsequent operationalization through the Foreign Exchange Management (Cross Border Merger) Regulations, 2018.³⁴ Contemporary legal scholarship emphasizes that this framework represents a paradigm shift from the restrictive approach of the Companies Act, 1956, which only permitted mergers where the transferee company was registered in India.³⁵ Section 234 provides foundational legal authority for both inbound and outbound cross-border mergers, requiring approval from the National Company Law Tribunal (NCLT) and compliance with multiple regulatory clearances. However, recent analysis reveals that practical implementation remains constrained by the restricted list of eligible jurisdictions and complex multi-authority approval processes.³⁷

The FEMA Cross Border Merger Regulations 2018 establish a bifurcated approach distinguishing between transactions eligible for automatic approval and those requiring prior RBI clearance.³⁸ Contemporary research demonstrates that the regulations require valuation of both Indian and foreign companies in accordance with internationally accepted pricing methods certified by Category I Merchant Bankers or Chartered Accountants, ensuring compliance with fair market value norms. Recent scholarly analysis reveals persistent constraints under the Indian framework, particularly regarding pricing and valuation alignment requirements that may conflict with commercial deal terms. Outbound merger restrictions through

jurisdiction eligibility requirements and FATF compliance prerequisites limit transaction structures, particularly affecting Indian companies seeking to merge with entities in non-recognized jurisdictions. The requirement for multiple regulatory approvals from RBI, SEBI, Competition Commission of India, and NCLT creates procedural complexity and extends transaction timelines compared to more integrated supervisory frameworks found in developed markets.³⁹

4.3 United States: Comparative Framework Elements and International Standards

The United States provides instructive comparative benchmarks for cross-border merger regulation through its integrated approach to bank holding company regulation, foreign bank supervision, and insolvency recognition under Chapter 15 of the Bankruptcy Code. Contemporary analysis demonstrates that the US framework benefits from more unified supervisory approaches compared to EU and Indian systems, with clearer authority allocation and established precedents for cross-border financial institution resolution.⁴⁰ International standard-setting initiatives, particularly through the Financial Stability Board's work on resolution regimes for global systemically important financial institutions, provide frameworks that transcend individual jurisdictional approaches. These standards emphasize the importance of home-host coordination, mutual recognition of resolution actions, and maintenance of critical functions across borders during resolution proceedings.⁴¹

³⁷ Archer & Angel. *Supra* note 27

³⁸ IBBI. *Cross Border Insolvency: A Case to Cross the Border Beyond the UNCITRAL*, Insolvency and Bankruptcy Board of India (2018), <https://ibbi.gov.in/uploads/resources/c3593c9f41984c6f31f278974de3cf37.pdf>.

³⁹ International Journal of Independent Research and Technology. *A Study on Mergers and Acquisitions in Indian Banking Sector* (2024).

⁴⁰ International Monetary Fund, *supra* note 11

⁴¹ Centre for International Governance Innovation. *Cross-Border Resolution of Financial Firms Policy*, CIGI Policy Brief (2020).



5. Regulatory Obstacles and Integration Challenges

5.1 EU Prudential Impediments and Banking Union Limitations

Contemporary analysis reveals that the European Union's regulatory framework creates several specific impediments to successful post-merger integration in cross-border financial transactions. Territorial capital and liquidity requirements represent the most significant structural barriers, preventing optimal allocation of capital and liquidity resources within merged banking groups across national borders.⁴² These requirements effectively create ring-fencing mechanisms that limit the scale economies and synergy benefits that justify cross-border mergers. Recent scholarly research demonstrates that limited utilization of cross-border waivers compounds integration challenges. While regulatory provisions exist for capital and liquidity waivers within banking groups, practical implementation remains constrained by supervisory conservatism, complex application procedures, and inconsistent interpretation across national competent authorities.⁴³ Multi-authority coordination costs further dampen integration prospects, as merged entities must navigate different national supervisory approaches and regulatory interpretations despite harmonized EU-level standards.

Advanced analysis reveals that AML/CFT prudential implications introduce additional transaction approval risks that can prolong merger timelines and introduce conditionalities affecting deal structures. These compliance overlays often require extensive due diligence and regulatory engagement that increases transaction costs and execution uncertainty.⁴⁴ Contemporary scholarship emphasizes that European

banks consequently operate at suboptimal scale compared to international peers, limiting their ability to compete effectively and generate adequate returns on invested capital. The persistence of these barriers undermines the Banking Union's fundamental objective of creating a truly integrated European banking market.

5.2 India's FEMA and Companies Act Pathway Frictions

Contemporary analysis of India's regulatory framework reveals specific frictions in cross-border merger execution through valuation and pricing guideline requirements that may conflict with commercial deal terms.⁴⁵ Recent scholarly research demonstrates that outbound merger constraints present additional structural barriers through jurisdiction eligibility requirements and compliance prerequisites that limit transaction structures.

Advanced analysis reveals that procedural complexity arising from multiple regulatory approval requirements creates execution uncertainty and extended timelines. Companies must obtain clearances from RBI, SEBI (for listed entities), Competition Commission of India, and NCLT, each operating under different timelines and assessment criteria.⁴⁶ This fragmented approach increases compliance costs and regulatory risk compared to more integrated supervisory frameworks found in developed markets. Contemporary legal scholarship emphasizes that certification and NCLT process management requirements add further procedural complexity, particularly in ensuring compliance documentation meets varied regulatory standards across multiple authorities. Recent practitioner studies reveal that while automatic approval mechanisms under FEMA 2018 have reduced some regulatory

⁴² Oxford University Press, *Supra* note 36

⁴³ Bruegel, *Completing Europe's Banking Union: Economic Requirements and Legal Conditions*, Policy Contribution (2022), https://www.bruegel.org/system/files/2022-11/PC_2022_5.pdf.

⁴⁴ European Banking Federation, *Supra* note 21

⁴⁵ Archer & Angel, *Supra* note 27

⁴⁶ International Journal of Independent Research and Technology, *Supra* note 39



burdens, the overall compliance framework remains more complex than many international alternatives.⁴⁷

5.3 Emerging Market Challenges and Comparative Perspectives

Comparative analysis of emerging market approaches to cross-border merger regulation reveals common challenges including resource constraints, inadequate legal frameworks, and limited experience in enforcement of merger laws.⁴⁸ The OECD's comprehensive study demonstrates that developing and emerging economies face particular difficulties in regulating cross-border mergers due to exposure to different national competition laws and lack of extra-territorial application provisions. Contemporary research on ASEAN's approach to cross-border M&A regulation highlights the absence of comprehensive regional instruments for addressing competition impacts of cross-border transactions.⁴⁹ Despite the ASEAN Economic Community's commitment to effective competition policies, member countries lack harmonized approaches to merger control, creating potential for anti-competitive activities by multinational corporations.⁵⁰ Advanced scholarship on emerging market due diligence requirements reveals additional complexities in cross-border transactions involving developing economies. The evolution of supra-national competition authorities in developing regions, exemplified by COMESA's experience, provides insights into both opportunities and limitations of regional harmonization efforts.

6. Cross-Border Insolvency Interface in Failed Mergers

6.1 UNCITRAL Model Law Framework and Implementation Challenges

The UNCITRAL Model Law on Cross-Border Insolvency provides the primary international framework for managing insolvency proceedings that span multiple jurisdictions, including cases involving failed cross-border merger transactions.⁵¹ Contemporary scholarly analysis emphasizes that the Model Law's architecture centers on facilitating cooperation and coordination between courts and insolvency representatives across borders while respecting differences in national substantive insolvency laws.⁵² Recognition procedures under the Model Law establish presumptions for identifying the debtor's center of main interests (COMI) and enable courts to recognize main proceedings, non-main proceedings, and foreign representatives. However, advanced research reveals that this recognition framework, while facilitating cross-border relief and coordination, leaves choice-of-law and entity-specific resolution complexities unresolved, particularly for financial institutions with multiple jurisdictional operations and complex regulatory relationships.⁵³

Contemporary empirical analysis demonstrates high recognition rates in adopting jurisdictions, with 47 states in 50 jurisdictions having adopted the Model Law, illustrating the effectiveness of the cooperation model in facilitating cross-border insolvency proceedings. However, scholarly research reveals that sector-specific regimes for banks and other financial institutions can limit Model Law application, as financial institution insolvency often involves specialized resolution procedures and regulatory

⁴⁷ IBBI, Supra note 38

⁴⁸ COMESA, Supra note 23

⁴⁹ University of Indonesia. *Cross-Border Merger and Acquisition In ASEAN: A Comparative Study To The Merger Control Regulation*, Journal UII (2023).

⁵⁰ Id.

⁵¹ UNCITRAL, Supra note 3

⁵² Indian Journal of New Dimensions in Research. *Comparative Analysis of Cross Border Insolvency Laws*, IJNRD Publication (2025).

⁵³ Sage Publications. *The Need for Implementing a Cross-Border Insolvency Regime in India*, Vivekananda Journal of Research (2020).



considerations that fall outside general insolvency frameworks.⁵⁴ The Indian experience with cross-border insolvency reform demonstrates both opportunities and challenges in Model Law adoption.⁴² Research reveals that Indian courts have historically addressed cross-border insolvency cases through judicial cooperation and private international law principles, but lack of statutory framework creates uncertainty.⁴

6.2 Financial Institution Resolution and Sectoral Challenges

Advanced scholarship on cross-border financial institution resolution reveals significant gaps between general insolvency frameworks and specialized bank resolution regimes.²⁶ The Financial Stability Board's work on Key Attributes of Effective Resolution Regimes demonstrates that financial institution failures create unique challenges requiring rapid resolution to prevent contagion while maintaining critical functions.⁵⁵ Contemporary research emphasizes that coordination challenges are particularly acute for failed cross-border financial mergers, where regulatory authorities in multiple jurisdictions may have conflicting interests regarding asset preservation, creditor protection, and systemic stability concerns. The evolution toward "group solutions" in bank resolution represents an important development that addresses some limitations of traditional territorial approaches to financial institution insolvency.²⁷ Recent scholarship advocates for sector-specific protocols that complement the UNCITRAL Model Law framework while addressing the unique characteristics of financial institution operations and regulatory relationships.

6.3 Regional Approaches and Harmonization Efforts

Contemporary analysis of regional approaches to cross-border insolvency reveals varying levels of

integration and cooperation. The European Union's approach through the Insolvency Regulation provides more extensive harmonization than the Model Law, with direct applicability and unified jurisdiction rules. The ASEAN region's experience demonstrates both opportunities and challenges in developing regional cooperation mechanisms for cross-border insolvency. Advanced scholarship emphasizes that effective cross-border insolvency regimes require not only legislative frameworks but also institutional capacity, judicial training, and practical cooperation mechanisms between courts and insolvency professionals.⁵⁶

7. Comparative Analysis and Emerging Trends

7.1 Cross-border M&A Activity Patterns and Market Integration

Contemporary analysis of cross-border M&A trends in the financial sector reveals significant variation across jurisdictions, transaction types, and regulatory environments.¹ Euro area M&A flows demonstrate strong correlation with financial linkages between countries, but overall volumes remain subdued compared to pre-crisis levels, highlighting persistent structural impediments despite Banking Union advances. The European Parliament's recent analysis demonstrates that EU policy evolution toward CRD VI merger-approval harmonization, expected to take effect from 2026, represents a significant development that may reduce regulatory uncertainty and promote integration.³⁰ Contemporary research on India's operational experience since FEMA 2018 implementation reveals that while automatic approval pathways have facilitated some transactions, pricing and valuation constraints, along with outbound jurisdictional restrictions, remain significant pain points for market participants.⁵⁷

⁵⁴ PMC/NCBI, *Supra* note 30

⁵⁵ Centre for International Governance Innovation, *Supra* note 41

⁵⁶ Indian Journal of New Dimensions in Research, *Supra* note 52

⁵⁷ Archer & Angel, *Supra* note 27



7.2 Regulatory Cost Differentials and Competitive Implications

Advanced comparative analysis reveals significant regulatory cost differentials between jurisdictions that affect cross-border merger attractiveness and execution. The European Banking Federation's comprehensive study demonstrates that EU banks face higher capital requirements on average compared to US peers, with total requirements approximately 1.3 percentage points higher due to different business models, regulatory approaches, and buffer frameworks. Additionally, contributions to deposit and resolution funds are almost twice as high for EU banks, while bail-in capacity requirements exceed US levels by approximately 3.9 percentage points.⁵⁸ Contemporary research reveals that these regulatory cost differentials translate to meaningful impacts on return on equity, with incremental regulatory-induced costs explaining 0.8-1.0 percentage points of the RoE gap between EU and US banks. The Copenhagen Economics analysis of Final Basel III implementation demonstrates that higher capital requirements will translate into increased costs for banks, with estimated annual increases in lending costs of EUR 25-30 billion for the European economy. These costs will eventually be passed onto customers, resulting in higher borrowing costs and potential deleveraging effects. India's regulatory framework presents different cost structures through multiple authority approvals, valuation certification requirements, and extended timelines that increase transaction execution costs.

7.3 Technology, Innovation, and Digital Transformation Impacts

Contemporary research reveals that digital transformation and financial technology innovation are creating new drivers and challenges for cross-border financial mergers. The European Central

Bank's analysis emphasizes that financing innovation and supporting digital transition are critical objectives for capital market integration and financial sector consolidation.⁵⁹ Advanced scholarship on emerging market fintech development demonstrates that cross-border partnerships and acquisitions are increasingly important for technology transfer and market expansion. However, regulatory uncertainty regarding digital assets, data protection, and cross-border technology transfers creates additional complexity for cross-border merger transactions.

8. Doctrinal Gaps and Harmonization Strategies

8.1 Identified Legal and Regulatory Gaps

Comprehensive analysis across jurisdictions reveals several critical gaps that impede effective cross-border financial mergers. In the EU context, scholarly research demonstrates that uneven application of capital and liquidity waivers across borders creates structural impediments to integration, while AML/CFT prudential overlays vary in practice despite harmonized regulatory standards.⁶⁰ Contemporary analysis of India's framework reveals gaps in pricing and valuation convergence mechanisms that can conflict with commercial deal terms, constraining transaction structures and creating execution uncertainty. Advanced scholarship on cross-border insolvency frameworks demonstrates gaps in sector-specific applications for financial institutions, where the UNCITRAL Model Law's general cooperation mechanisms may not adequately address the specialized requirements of financial institution resolution. Comparative analysis reveals that these gaps are not merely technical deficiencies but reflect deeper challenges in balancing national sovereignty

⁵⁸ Copenhagen Economics. *EU Implementation of the Final Basel III Standard*, Economic Impact Assessment (2021), <https://copenhagoneconomics.com/wp->

[content/uploads/2021/12/copenhagen-economics_eu-implementation-of-the-final-basel-iii.pdf](https://www.supremoamicus.org/content/uploads/2021/12/copenhagen-economics_eu-implementation-of-the-final-basel-iii.pdf).

⁵⁹ IEP Bocconi, *Supra* note 34

⁶⁰ Bank for International Settlements. *supra* note 2



concerns with the imperatives of global financial integration.⁶¹

8.2 Proposed Harmonization Strategies and Reform Directions

Contemporary scholarship emphasizes that effective harmonization strategies must address both structural and procedural impediments to cross-border financial mergers through coordinated reforms across multiple regulatory domains. For the EU, advanced research demonstrates that expanded practical utilization of cross-border waivers with clear supervisory cooperation protocols could significantly reduce integration barriers while maintaining financial stability safeguards. Implementation of CRD VI merger-approval harmonization alongside EBA's common assessment methodology should provide greater certainty and reduce regulatory fragmentation. Enhanced coordination mechanisms between national supervisory authorities and the ECB could streamline approval processes and reduce compliance costs for cross-border transactions. Contemporary research on India's framework suggests that clarified valuation and pricing convergence mechanisms that balance regulatory requirements with commercial flexibility would significantly enhance transaction viability. Streamlined approval processes for compliant transactions, expanded eligible jurisdictions for Section 234 purposes, and enhanced coordination between regulatory authorities could significantly improve the framework's effectiveness.⁶²

8.3 Regional Integration and Multilateral Approaches

Advanced scholarship emphasizes that regional integration approaches offer promising pathways for addressing cross-border merger barriers while respecting national differences and sovereignty concerns. The European experience with Banking Union, despite its limitations, demonstrates that

substantial progress is possible through graduated integration with appropriate institutional frameworks. Contemporary research on ASEAN integration reveals potential for enhanced cooperation in cross-border merger regulation, despite current limitations. Advanced research suggests that multilateral approaches through international organizations and standard-setting bodies could complement regional efforts.

9. Policy Recommendations

9.1 EU Banking Union and Capital Markets Union Enhancements

Contemporary scholarship emphasizes that completion of Banking Union objectives requires specific, coordinated policy interventions to address persistent cross-border integration barriers. Advanced research demonstrates that operationalizing CRD VI merger approval with transparent assessment criteria should reduce regulatory uncertainty and promote cross-border consolidation.⁶³ Enhanced intragroup support frameworks that facilitate capital and liquidity mobility within banking groups across EU borders represent critical reforms for achieving true market integration. Contemporary research suggests that monitoring Basel risk-score treatment to maintain neutrality for intra-union cross-border exposures will be essential for preserving competitive balance as international regulatory frameworks evolve. Capital Markets Union advancement requires more ambitious reforms than currently contemplated in existing action plans.

9.2 India's Regulatory Framework Optimization and Modernization

Advanced analysis demonstrates that India's cross-border merger framework could be significantly enhanced through several targeted reforms that balance regulatory oversight with transaction

⁶¹ OECD. *Cross-Border Merger Control*, Global Forum on Competition Proceedings (2011).

⁶² IBBI, *supra* note 38

⁶³ European Parliament. *Supra* note 35



efficiency. Contemporary scholarship emphasizes that institutionalizing expedited approval tracks for compliant inbound and outbound mergers would reduce transaction timelines and execution uncertainty while maintaining appropriate safeguards. Recent research suggests that expanding automatic approval scope under FEMA 2018 where appropriate safeguards are met would reduce regulatory burden while maintaining oversight for high-risk transactions. Enhanced coordination mechanisms between RBI, SEBI, CCI, and NCLT through integrated timelines, information sharing protocols, and unified case management systems could streamline approval processes and reduce compliance costs.⁶⁴

9.3 Global Cross-Border Insolvency Framework Development

Contemporary scholarship emphasizes that strengthening cross-border insolvency frameworks requires coordinated international efforts to address financial sector-specific challenges while building on existing UNCITRAL Model Law foundations. Advanced research demonstrates that encouraging broader adoption of the Model Law with sector-specific implementation guidance for financial institutions could improve coordination capabilities. Recent analysis emphasizes that enhanced court-to-court guidelines addressing timing coordination, asset preservation, and regulatory notification requirements could significantly improve resolution outcomes. Creating specialized judicial training programs focused on cross-border financial institution insolvency would build institutional capacity for effective case management.⁶⁵

10. Implications and Future Research Directions

10.1 Systemic Risk Implications and Financial Stability Considerations

Contemporary scholarship reveals that the persistence of cross-border merger barriers in the financial sector has profound implications for systemic risk management and global financial stability.⁶⁶ Advanced research demonstrates that fragmented markets with limited cross-border integration may be more vulnerable to localized shocks and contagion effects, as diversification benefits remain unrealized and risk concentration persists at national levels. The Financial Stability Board's analysis emphasizes that enhanced cross-border integration through improved merger frameworks could strengthen systemic stability through better risk distribution, enhanced capital efficiency, and improved operational resilience. Recent scholarship emphasizes that climate change and green transition financing create additional imperatives for cross-border financial integration.

10.2 Implications for Economic Development and Financial System Evolution

Advanced scholarship demonstrates that legal and regulatory barriers to cross-border financial mergers have broader implications for economic development, financial system evolution, and global competitiveness.⁶⁷ Limited cross-border merger activity may constrain financial sector efficiency, reduce competitive pressure, and limit innovation diffusion across borders. The Capital Markets Union project's analysis demonstrates that deeper, more integrated capital markets are essential for supporting innovation financing, pension savings adequacy, and economic convergence across European regions. Emerging market research reveals that cross-border financial integration can provide significant benefits

⁶⁴ International Journal of Independent Research and Technology, supra note 39

⁶⁵ Indian Journal of New Dimensions in Research, supra note 52

⁶⁶ International Monetary Fund, supra note 11

⁶⁷ Semantic Scholar, supra note 16



for economic development, including technology transfer, institutional capacity building, and access to global capital markets.

10.3 Future Research Priorities and Methodological Considerations

Contemporary scholarship identifies several critical research directions that emerge from current analysis and could inform future policy development. Empirical assessment of post-2026 CRD VI merger-approval impacts on EU cross-border M&A activity represents a high priority for understanding harmonization effectiveness and identifying remaining barriers.⁶⁸ Advanced research priorities include tracking Indian outbound mergers to FATF-compliant jurisdictions under the expanded FEMA framework to illuminate practical implementation challenges and success factors. The compilation and analysis of UNCITRAL Model Law case developments intersecting with financial sector combinations could inform protocol development for sector-specific applications.

11. Conclusion

This comprehensive research has examined the intricate legal and regulatory landscape governing cross-border mergers in the financial sector, with particular focus on the European Union, India, and comparative elements from the United States and other jurisdictions. The analysis reveals persistent and multifaceted structural barriers that continue to impede seamless cross-border integration despite significant regulatory reform efforts and policy initiatives across jurisdictions over the past decade. The findings demonstrate that while frameworks such as the EU Banking Union, India's FEMA Cross Border Merger Regulations, and international standards like the UNCITRAL Model Law represent substantial progress in enabling international financial consolidation, practical implementation remains severely constrained by territorial requirements,

procedural complexity, and coordination challenges between multiple regulatory authorities.

In the European Union context, despite ambitious Banking Union and Capital Markets Union initiatives, territorial capital and liquidity requirements, limited cross-border waiver utilization, and multi-authority coordination costs continue to fragment markets and prevent realization of integration benefits. The forthcoming CRD VI merger-approval harmonization and proposed supervisory integration represent critical opportunities to address structural impediments, but success requires comprehensive reforms extending beyond approval processes to include fundamental changes in capital mobility frameworks and supervisory cooperation mechanisms.

India's regulatory framework evolution demonstrates both the opportunities and challenges facing emerging markets in developing effective cross-border merger regimes. While automatic approval mechanisms under FEMA 2018 and Section 234 provisions have created new pathways for international transactions, persistent constraints including pricing and valuation requirements, limited jurisdictional eligibility, and fragmented regulatory approval processes continue to create significant execution barriers. The analysis of cross-border insolvency frameworks reveals critical gaps in addressing failed cross-border mergers, particularly for financial institutions subject to specialized resolution regimes. While the UNCITRAL Model Law provides valuable foundations for international cooperation, practical application requires sector-specific protocols, enhanced court-to-court coordination mechanisms, and institutional capacity building specifically tailored to financial sector characteristics.

Contemporary research demonstrates that regulatory cost differentials between jurisdictions significantly affect cross-border merger attractiveness and contribute to persistent fragmentation in global financial markets. These differentials not only affect

⁶⁸ European Parliament, *Supra* note 35



individual transaction economics but also influence broader patterns of financial sector consolidation and competitive dynamics. The proposed harmonization strategies emphasize comprehensive approaches that address both structural and procedural impediments to cross-border integration. The persistence of cross-border barriers may limit the financial sector's ability to support economic growth, manage systemic risks, and adapt to evolving challenges including digital transformation and climate change. By addressing these multifaceted challenges through coordinated policy reforms, policymakers can enhance the contribution of cross-border mergers to financial sector resilience, economic development, and global financial stability. The research demonstrates that successful cross-border financial integration requires not merely technical regulatory changes but fundamental shifts in approach toward greater coordination, mutual recognition, and shared responsibility for global financial stability.

