



Reverse Flipping: Bringing Indian Companies Back Home

Reverse flipping is an intriguing trend gaining traction among Indian companies that had previously relocated their domiciles overseas. This process involves shifting the headquarters of a company back to India, effectively “reverse flipping” its domicile.

Understanding Reverse Flipping

Reverse flipping is fundamentally about bringing an Indian company that had moved its domicile abroad back to India. The phenomenon is rooted in the initial decision of companies to relocate their headquarters to foreign jurisdictions, often driven by considerations such as favourable tax regimes, access to global markets, and regulatory ease. However, changing dynamics in the business environment, coupled with supportive policy frameworks in India, are now encouraging companies to reconsider their overseas domiciles and return to their homeland.

For instance: PhonePe

A notable example of reverse flipping is PhonePe, a leading digital payments platform in India. PhonePe, established in 2015, initially operated from India. In 2016, Flipkart acquired PhonePe, prompting a structural shift to Singapore as part of the acquisition strategy. When Walmart took over Flipkart in 2018, PhonePe remained under the Singaporean jurisdiction. However, in a significant move in October 2022, PhonePe announced its decision to relocate its domicile back to India. This strategic shift underscores the growing appeal of India as a base for technology companies and the supportive regulatory environment that facilitates such transitions.

Methods of Reverse Flipping

There are primarily two methods through which reverse flipping can occur:

1. **Inbound Merger:** In this method, a foreign entity merges with an Indian entity. Post-merger, the assets and operations of the foreign entity are owned and controlled by the Indian entity. Shareholders of the foreign entity receive shares in the Indian entity as consideration, aligning their interests with the domestic company.
2. **Share Swap Arrangement:** This involves the shareholders of the foreign entity exchanging their shares in the foreign company for shares in the Indian entity. This method facilitates a smooth transition of ownership and aligns the corporate structure with Indian regulatory requirements.

Process of Reverse Flipping

The reverse flipping process involves several critical steps and regulatory approvals to ensure compliance with Indian laws and seamless integration of the company's operations.

1. Scheme of Merger Submission to NCLT:

According to Section 234 read with Section 230 of the Companies Act, 2013, a scheme of merger must be filed with the National Company Law Tribunal (NCLT). This scheme must include all material facts relating to the merger. During the review process, the NCLT may call for meetings of members and creditors of the entity and notify other regulators like the Registrar of Companies and the Regional Director. Upon receiving objections or representations from these regulators and authorities, the NCLT will analyse the scheme and decide on its approval.

The entities involved must obtain board, shareholder, and creditor approvals, and prepare necessary documentation, including valuation reports and financial statements, to file with the NCLT. The scheme requires approval from a stipulated majority of the shareholders and creditors in India. The NCLT will usually direct notices to be given to various government agencies, including income tax authorities, the Reserve Bank of India (RBI), and the Competition Commission of India, allowing them to make representations and raise objections if any.

2. Deemed Prior Approval of RBI:

Under Rule 9 of the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, any transaction resulting from a cross-border merger complying with these regulations is deemed to have prior approval from the RBI. This regulation simplifies the approval process, reducing the administrative burden on companies.

Additionally, a certificate from the Managing Director/Whole Time Director and Company Secretary, if available, of the concerned companies, ensuring compliance with these regulations, must be submitted along with the application to the NCLT.

3. Amendment to Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 allows foreign companies to merge with Indian firms by obtaining prior approval from the Reserve Bank of India (RBI) and the National Company Law Tribunal (NCLT). However, the process of securing NCLT approval has often been lengthy due to case backlogs, causing delays in mergers. The recent amendment introduces Rule 25A(5), which enables the merger or amalgamation of a foreign holding company with a wholly-owned Indian subsidiary to proceed through a fast-track merger scheme as outlined in Section 233 of the Companies Act, 2013. This fast-track process eliminates the need for NCLT approval, thereby simplifying the procedure and significantly reducing both time and costs associated with mergers.

However, RBI's approval will not be required if the transaction is being undertaken in accordance with the Foreign Exchange Management (Cross Border Merger) Regulations, 2018.

4. Press Note 3 (2020 Series) Compliance:

According to Press Note 3 (2020 Series), prior approval is necessary when the investing entity is located in a country sharing land borders with India, or where the beneficial owner of an investment into India is from such a neighbouring country. This regulation aims to ensure that investments are in line with national security and economic interests.

Relevant Regulations Governing Reverse Flipping

Several key regulations govern the reverse flipping process to ensure it aligns with Indian laws and maintains the integrity of the financial system.

1. Issue or Transfer of Securities:

According to the Cross Border Merger Regulations, the resultant company can issue or transfer any security, including foreign securities, to a person resident outside India, adhering to pricing guidelines, entry routes, sectoral caps, conditions, and reporting requirements for foreign investment as outlined in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

Specific conditions apply if the foreign company is a joint venture (JV) or wholly-owned subsidiary (WOS) of the Indian company. It must comply with the conditions prescribed for the transfer of shares of such JV/WOS by the Indian party as laid down in the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004. Additionally, if the inbound merger results in the acquisition of a step-down subsidiary of the JV/WOS by the resultant company, such acquisition must comply with Regulation 6 and 7 of TIFS, which govern direct investments in certain cases and investments by Indian parties engaged in the financial services sector.

2. Holding of Foreign Assets:

The Cross Border Merger Regulations permit the resultant company to acquire and hold foreign assets as allowed by Indian laws and to transfer them for permissible transactions. Non-permissible foreign assets or securities must be sold within two years from the date of sanction of the scheme by NCLT, with proceeds repatriated to India, and liabilities settled from these sales.

Strategic Implications of Reverse Flipping

Reverse flipping holds significant strategic implications for Indian companies and the broader economy. By returning to India, companies can leverage the growing domestic market, benefit from favourable government policies, and align more closely with the regulatory framework. This shift can also enhance their reputation and acceptance among Indian consumers and stakeholders, providing a competitive edge in a rapidly evolving market.

Furthermore, reverse flipping can contribute to the country's economic growth by bringing back capital, technology, and expertise that had previously moved overseas. This inflow can spur innovation, create jobs, and strengthen the overall business ecosystem in India.

Conclusion

Reverse flipping represents a strategic recalibration for Indian companies, reflecting their renewed confidence in the domestic market and regulatory environment. As seen in the case of PhonePe and Groww, this trend underscores the dynamic nature of corporate strategies and the evolving landscape of global business operations. By facilitating smooth transitions through regulatory frameworks and supportive policies, India can continue to attract and retain companies that contribute to its economic growth and development. As more companies consider reverse flipping, this trend is likely to reshape the corporate landscape, fostering a more robust and resilient economy.

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