Introduction

In order for balance sheets and profit and loss accounts to make sense to users who rely on them for their decision-making purposes, there has to be consistency in the way items are treated in the financial statements. Without this agreement it would be impossible to use them to compare business performance. Limited companies have a statutory duty to comply with these rules and it is the job of the qualified auditor to check this compliance. Partnerships and sole traders are also often bound by these rules because of professional or trade association standards or because of the conditions attached to loans. The rules govern two aspects of accounting:

1. The accounting treatments permissible for any individual, event or transaction.
   For example the rules state that stock must be valued at "the lower of cost and net realizable value". This means that valuing stock at selling price is not normally allowed.

2. Disclosure requirements that tell us permissible layouts [called formats] for the balance sheet and profit and loss account items.

These rules are called Accounting Standards. In order for auditors to be satisfied that the balance sheet and profit and loss account provide a "true and fair view" of actual transactions they will examine internal controls that must be operating effectively in the business. These controls need to be installed and maintained by management for the purposes of safeguarding the recording of all financial operations. The auditors test their effective operation. The current chapter is all about the study of accounting standards. A comparison has been made between accounting standards related to merger accounting in India, USA, UK and those set by International Accounting Standards Board (IASB). The three countries have been selected because, the companies taken as sample for the purpose of this study, come from these three countries. Here USA and UK represent developed countries and India represents developing countries. Accounting standards set by IASB are being studied because India is poised to adopt IFRS (International Financial Reporting Standards) from April 1, 2011.

But before comparing the accounting standards a brief introduction of all the four accounting boards has been given.
Indian Accounting Standards

In India, Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI) issues the Accounting Standards. The ASB was constituted on 21st April 1977 by ICAI. The main function of the ASB is to formulate Accounting Standards so that such standards may be established by the ICAI in India. Till date the ASB of ICAI has issued 32 standards in line with the International Accounting Standards. The accounting standard governing the rule for mergers and acquisitions in India is AS-14, Accounting for Amalgamations.

UK Accounting Standards

The organisation governing the formation of Accounting Standards in UK is Accounting Standards Board. This Board is similar to the Indian Accounting Standards Board. It is responsible for formulating the accounting standards in UK and making necessary amendments in them as and when required. The accounting standard governing the mergers and acquisitions in UK is known as Financial Reporting Standard (FRS) No.-6 for mergers and acquisitions.

Accounting Standards in USA

In USA, Financial Accounting Standards Board (FASB) sets the accounting standards. The accounting standard for mergers and acquisitions is called SFAS No.-141. SFAS is the abbreviation for Statement of Financial Accounting Standards. SFAS –141 governs the rules for business combinations.

International Financial Reporting Standards (IFRS)

IFRS is the new form of International Accounting Standards and are issued by the International Accounting Standards Board (IASB). The IASB was formed in 2001 and adopted all the existing International Accounting Standards (numbered 1 to 41) issued by its predecessor body the International Accounting Standards Committee (IASC), and decided that the current IAS as well as all future accounting standards issued by it will be called IFRS. IFRS acts as a medium for the global accounting community to interact in a common accounting language. The accounting standard governing the rule for mergers and acquisitions is IFRS-3, Accounting for Business Combinations.
Comparison of Accounting Standards related to Mergers and Acquisitions

(AS-14, FRS-6, SFAS-141 and IFRS-3)

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Subject</th>
<th>AS-14</th>
<th>FRS-6</th>
<th>SFAS-141</th>
<th>IFRS-3</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cost of acquisition</td>
<td>Shares issued as consideration are recorded at their fair values, which in appropriate cases is fixed/determined by statutory authorities.</td>
<td>Shares issued as consideration are recorded at their fair value as at the date of exchange. If the control is achieved in a single transaction, the date of exchange is the date on which the acquirer obtains the net assets and operations of the acquiree. The published price of the share is taken as the fair value</td>
<td>Shares issued as consideration are recorded at their fair value as at the date of exchange. If the control is achieved in a single transaction, the date of exchange is the date on which the acquirer obtains the net assets and operations of the acquiree. The published price of the share is taken as the fair value</td>
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</tr>
<tr>
<td>2</td>
<td>Purchase method-Fair values on acquisition</td>
<td>The assets and liabilities may be incorporated at their existing carrying amounts, or the consideration is allocated to individual assets and liabilities on the basis of their fair values.</td>
<td>The assets and liabilities of the acquired entity are all fair valued.</td>
<td>The assets and liabilities of the acquired entity are all fair valued.</td>
<td>The assets and liabilities of the acquired entity are valued.</td>
</tr>
<tr>
<td>3</td>
<td>Contingent liabilities</td>
<td>Contingent Liabilities are not recognised at all</td>
<td>The acquiree’s contingent liabilities are recognised at the acquisition date only if their fair values can be measured reliably</td>
<td>The acquiree’s contingent liabilities are recognised at the acquisition date only if their fair values can be measured reliably</td>
<td>The acquiree’s contingent liabilities are recognised at the acquisition date only if their fair values can be measured reliably</td>
</tr>
</tbody>
</table>

(contd....)
Table 3.2 (contd...)
Comparison of Accounting Standards related to Mergers and Acquisitions
(AS-14, FRS-6, SFAS-141 and IFRS-3)

<table>
<thead>
<tr>
<th></th>
<th>Purchase method: Goodwill</th>
<th>Purchase method: Negative Goodwill</th>
<th>Uniting/Pooling of interests method</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Goodwill is amortised over useful life, normally not exceeding 5 years unless a longer period can be justified, but never more than 10 years. It is tested for impairment at the cash generating unit level whenever there is an indication of impairment</td>
<td>Negative goodwill must be recognised in the profit and loss account over a specified period (IFRS 10.48)</td>
<td>Goodwill is not amortised but tested for impairment annually at the cash generating unit level.</td>
</tr>
<tr>
<td>5</td>
<td>It is treated as a capital reserve, which is not amortised. Capital reserve is neither amortised nor is available for distribution as dividend to shareholders. But in case of purchase accounting method fair value of intangible assets with no active market is reduced to the extent of capital reserve</td>
<td>Reassess whether all acquired assets and assumed liabilities have been identified and properly valued. If negative goodwill remains, acquired assets (with certain exceptions) are proportionally reduced. If all eligible assets are reduced to zero and an amount of negative goodwill still remains, the remaining unallocated goodwill must be recognised immediately as an extraordinary loss.</td>
<td>IFRS does not use ‘negative goodwill’ It is termed as ‘excess of acquirer’s interest in the net fair values of acquirer’s identifiable assets. First reassess the identification and measurement of the acquirer’s identifiable assets, liabilities and contingent liabilities and the measurement of the cost of the combination. Any excess remaining after the reassessment is recognised in income statement immediately.</td>
</tr>
<tr>
<td>6</td>
<td>This method is prohibited.</td>
<td>This method is prohibited.</td>
<td>This method is prohibited.</td>
</tr>
</tbody>
</table>

(Source: Accounting Standards issued by the accounting bodies)
Table 3.1 shows major differences in the accounting standards related to mergers and acquisitions in India, UK, USA and those issued by the International Accounting Standards Board. An analysis of this table reveals that AS-14 is very much different from these three accounting standards. The major differences between AS-14 and other Accounting standards (FRS-6, SFAS-141 and IFRS-3) have been summarised below.

Differences between AS-14 and other Accounting standards (FRS-6, SFAS-141 and IFRS-3)

1. In AS-14 the shares issued as consideration are recorded at their fair values, which in appropriate cases is fixed/ determined by statutory authorities. However, the other three methods require the published price of the shares or market price over a certain period to be taken.

2. According to AS-14 assets and liabilities of the acquiree are transferred to the acquirer at the existing carrying amounts or at fair values. However the other three accounting standards require the assets and liabilities to be transferred at fair values only.

3. AS-14 does not recognise contingent liabilities at all. However the other three methods recognise contingent liabilities if they can be measured reliably at the time of acquisition.

4. AS-14 provides that amortisation period of goodwill arising on amalgamation should not normally exceed 5 years unless a bigger period (not more than 10 years) can be justified. Impairment testing is done only in some specific cases. However the other three methods require that goodwill arising on amalgamation should be tested for impairment annually.

5. AS-14 requires that in purchase accounting, if there is a negative goodwill, then it should be treated as a capital reserve by the transferee company. Capital reserve is not recognised as an income at any point of time. It is also not amortised. However, the other three methods recommend negative goodwill to be written off immediately or within a specified period in the income statement.
6. AS-14 recognises pooling of interests method. The other three methods strictly prohibit the use of this method and recommend only purchase accounting method.

**Impact of difference in accounting standards on the study**

Since the study involves both Indian and foreign companies certain differences were bound to happen in the method of preparation of accounts and their presentation by companies. The major impact of changes in accounting standards was found on the following items

1. PHL and Wockhardt prepared their accounts on the basis of AS-14 and hence amortised their goodwill arising on merger and amalgamation. However, Pfizer and GSK tested goodwill annually for impairment.

2. After the acquisitions PHL and Wockhardt did not do fair valuation of all assets and liabilities acquired by them. In majority of the cases only those assets and liabilities which related to investments in research and development were fair valued. Fixed assets like plant and machinery were mainly taken at historical cost. GSK and Pfizer applied fair valuation to all their assets and liabilities.

3. The contingent liabilities were not recognised at all by PHL and Wockhardt. However Pfizer and GSK applied fair valuation to all contingent liabilities.

**Strength of AS-14 over IFRS -3, SFAS-141 and FRS-61**

The biggest strength of AS-14 lies in the fact that in case of purchase accounting it allows the transferee company to incorporate the assets and liabilities of the transferor company at their existing carrying amounts or, allocate the consideration to individual identifiable assets and liabilities on the basis of their fair values at the date of amalgamation. Unlike SFAS- 141 or FRS-6 or IFRS-3 it does not force fair valuation of all assets and liabilities. There is no doubt about the fact that fair value accounting makes the financial statements transparent and facilitates better decision making, whereas in historical cost accounting the financial assets are stated at outdated values and hence are not relevant or reliable.

The fact that the market value of publicly traded firms on the New York Stock Exchange was five times their historical asset values in the year 2000 served to

In normal times, fair value accounting would not have been a subject of great debate. However, in boom or bust times, experts argue, if fair value accounting results in notional gains and losses, since the eventual settlement price of the financial assets/liabilities could be substantially different. The current economic slowdown in the US economy and other European countries is believed to have been aggregated due to the application of fair value accounting. It is now being found that this method of accounting played a meaningful role in bank failures in US in the year 2008. The economies of US and UK are much dependent on banks. The problem was that all assets and liabilities of companies in UK were fair valued. As the recession set in, the market prices of the assets crashed. The companies had taken huge loans from the banks on the security of their assets. Now, since the values of assets crashed the banks had to face huge losses. In all 19 banks failed in US in 2008. Since the banks have failed the whole economy is in trouble. Hence, USGAAP, UKGAAP and IFRS are all under review for promoting fair value accounting.

The situation in India is a little better than USA and UK because in India both fair value accounting and historical accounting is permitted. The situation in USA and UK has shown what fair value accounting can do in adverse cases. Recession has not hit India as much as in western countries because even if the stock markets have crashed the balance sheets of companies have failed less because all assets were not fair valued.

Weakness of AS-14 as compared to IFRS- 3, SFAS-141 and FRS-6

1. The weakness of AS-14 lies in the fact that it allows both – pooling of interests method and the purchase accounting method for mergers and acquisitions. However the pooling of interest method does not show a true picture of the accounting statements. This can be proved as follows-

When the pooling of interest method is used, the balance sheets of the two businesses are combined and no goodwill is created. When the purchase method is used, the acquiring company will put the premium they paid for the other
company on their balance sheet under the “Goodwill” category. AS-14 requires 
the goodwill to be amortised over a period of 5-10 years. Let us take an example 
of two companies

Table 3.2
Comparison of Pooling of Interests Method and Purchase Accounting Method
(Figures in rupees except number of shares)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Company A</th>
<th>Company B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Earnings</td>
<td>1,00,000</td>
<td>20,000</td>
</tr>
<tr>
<td>Book Value per share</td>
<td>50</td>
<td>10</td>
</tr>
<tr>
<td>Number of shares</td>
<td>50,000</td>
<td>10,000</td>
</tr>
<tr>
<td>Market Value per share</td>
<td>100</td>
<td>20</td>
</tr>
</tbody>
</table>

(Source: Hypothetical figures taken for illustration)

Suppose company A decided to buy all of company B’s stock using the purchase method. Company B has a book value of Rs. 10 per share, and a market value of Rs.20 per share. If company A were to pay the current market price, it would spend a total of Rs. 2,00,000 (20 x 10,000). To keep this example simple we assume that the shareholders of company B approved the merger for cash. Hence, company A would gain control over company B by paying the shareholders of company B Rs. 20 for each share they owned.

Table 3.3
Calculation of Goodwill

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount paid by company A to shareholders of company B for acquisition</td>
<td>2,00,000</td>
</tr>
<tr>
<td>Original Book Value of company B</td>
<td>1,00,000</td>
</tr>
<tr>
<td>Goodwill (Premium paid by company A to shareholders of company B)</td>
<td>1,00,000</td>
</tr>
</tbody>
</table>

(Source: Hypothetical figures taken for illustration)
This amount of Rs. 1,00,000 shall go into the balance sheet of the combined firm as goodwill. It is required to be amortised against earnings for upto 5 years as per the requirements of AS-14. This means that each year, 1/5 of the goodwill amount \( \frac{1,00,000}{5} = 20,000 \) must be subtracted from company A’s earnings so that by the end of 5th year, there is no goodwill left on the balance sheet. Now that company A and company B are one company, their earnings will be combined. Assuming that next year’s results were identical, the combined company would earn Rs. 1,20,000 \( (1,00,000 + 20,000) \).

Table 3.4
Calculation of Earnings per Share
(Purchase Accounting Method)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Earnings of the combined firm</td>
<td>1,20,000</td>
</tr>
<tr>
<td>Annual Goodwill amortization charge</td>
<td>20,000</td>
</tr>
<tr>
<td>Earnings available for shareholders</td>
<td>1,00,000</td>
</tr>
<tr>
<td>Number of shares of combined firm ( (50,000 + 10,000) )</td>
<td>60,000</td>
</tr>
<tr>
<td>Earnings per share ( \frac{1,00,000}{60,000} )</td>
<td>1.67</td>
</tr>
</tbody>
</table>

(Source: Hypothetical figures taken for illustration)

Table 3.5
Calculation of Earnings per Share
(Pooling of Interests Method)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Earnings of the combined firm</td>
<td>1,20,000</td>
</tr>
<tr>
<td>Number of shares of combined firm ( (50,000 + 10,000) )</td>
<td>60,000</td>
</tr>
<tr>
<td>Earnings per share ( \frac{1,20,000}{60,000} )</td>
<td>2</td>
</tr>
</tbody>
</table>

(Source: Hypothetical figures taken for illustration)

If the pooling of interests method is used, no goodwill shall be created, and company A will report EPS (earnings per share) of Rs. 2. However, in case of
purchase accounting method the goodwill has to be amortised over a period of 5 years. Therefore the EPS reported under that method is Rs.1.67 per share. Goodwill reduced the earnings by Rs. 0.33 per share in purchase accounting method. This means that depending on the type of method used (pooling of interests method or purchase accounting method), the same transaction can have different EPS.

Hence from the above analysis it is quite clear that pooling of interests method does not give a true picture of the position of the company and therefore should be abolished.

2. India is expected to adopt IFRS completely by April 2011. Hence, the same principles of fair value accounting shall be implemented in India also. Looking at the repercussions of fair value accounting which played some role in the global economic crisis, its implementation in India shall be a difficult task for the government.

Suggestions for improvement of AS-14

1. Looking into the fact that pooling of interests method inflates earnings per share, it is suggested that AS-14 should also abolish this method and only purchase accounting method be used.

2. India should adopt IFRS; however certain precautions should be used while implementing fair value accounting.

   a) Fair value model should be applied only to those assets and liabilities that have real and determinable market value. Fair valuation of all intangible assets like prospective customers, computer softwares under development etc. shall make financial statements a lot more predictive. A list of assets and liabilities that shall be fair valued and those which shall be measured at historical cost should be made. Every entity should use the same method for fair valuation of a particular asset. This shall avoid any contradiction.

   b) Companies should explain their reasoning behind the inputs they use for fair valuation. If they have not plugged in the best observable data to come up with their assessments, they should show why their measurement choice was more appropriate.
c) To provide financial statement users with additional fair value information, a separate disclosure containing each entity’s fiscal year-end balance sheet with all financial assets/liabilities at fair value and each entity’s fiscal year-end income statement reporting the effects of all fair value changes in earnings should be made.

d) Unrealized losses on financial instruments measured at fair value should be recorded and shown under a separate head. This shall help investors understand existing economic conditions in a better way.

e) Since investors in India are not used to understanding financial statements prepared completely on the basis of fair valuation hence in the beginning period for 2-3 years when IFRS is adopted, companies can make accounts in two separate sets; one on the basis of assets and liabilities measured on historical cost and the other on the basis of fair valuation. This shall help the investors understand the difference in the two valuation techniques better.

**Competition Act**

**Introduction**

In today’s world competition is very important. Competition accelerates the rate of economic growth, promotes innovation and leads to higher productivity and efficiency. Competition is a boon to the consumers as it leads to a fall in the prices of products, brings wider choices and produces better services. For a businessman it creates a level playing field where all firms can perform up to the best of their capabilities. To maintain healthy competition in an economy there should be an effective competition policy and a competition law enforcement agency, which ensures that healthy competition, prevails in the economy. Keeping in view the above facts the government of India formulated the Competition Act in 2002. The Act was amended by the Parliament in September 2007 and is now known as Competition (Amendment) Act, 2007. The Act aimed at establishing a Commission whose aim was to

1. Eliminate practices having adverse effect on competition
2. Promote and sustain competition
3. Ensure freedom of trade to all the firms in the market.
Competition Law in India

After India became a party to the WTO agreement in 1995, a perceptible change was noticed in India’s foreign trade policy, which had been earlier highly restrictive. Recognising the important linkages between trade and economic growth, the government of India, in the early 90s took steps to integrate the Indian economy with the global economy. Thus, it finally enhanced its thrust on globalisation and opened up its economy removing controls and resorting to liberalization. Consequently, India made its first anti-competitive legislation - the Monopolies and Restrictive Trade Practices Act (MRTP Act) an integral part of the economic life of the country. However, the government soon realised that the scope of MRTP Act was inadequate for fostering competition in the market and eliminating anti-competitive practices in the national and international trade. Hence, the Government of India in October 1999 appointed a high level committee on Competition Policy and Law (the Raghavan Committee) to advice a competition law consonant with international developments. Acting on the report of the committee, the Government enacted the Competition Act, 2002 which replaced the earlier MRTP Act of 1969.

Comparison of Competition Act and MRTP Act

The Competition Act is very much different from the previous MRTP Act. It is based on the liberalised regime and provides more power to the commission. Moreover, the Competition Act also aims to create awareness on competition related issues amongst the masses. Table 3.6 highlights the main differences between the Competition Act and MRTP Act.

The study on Competition Act was incorporated because the Competition Act regulates mergers and acquisitions in India. However, during the course of study no issues related to Competition Act and the sample companies were found. Neither of the sample companies from India (PHL and Wockhardt) have ever faced any problem in complying with the rules and regulations of Competition Act while effecting their M&A deals. But during the course of study certain points came forward, that can be incorporated in the Competition (Amendment) Act, 2007 to make it even more effective.
<table>
<thead>
<tr>
<th>S.No.</th>
<th>Basis of difference</th>
<th>Competition Act</th>
<th>MRTP Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Definition of competition concepts</td>
<td>The Competition Act is based on the liberalised regime whereas the MRTP Act was based on command and control regime.</td>
<td>The MRTP Act was based on command and control regime.</td>
</tr>
<tr>
<td>2</td>
<td>Creation of awareness</td>
<td>The Competition Act clearly defines the various competition concepts like abuse of dominance, cartels, collusion and price fixing, bid rigging, boycotts and refusal to deal and predatory pricing.</td>
<td>The MRTP Act was mainly based on controlling the market. There was no emphasis on creating awareness amongst the masses.</td>
</tr>
<tr>
<td>3</td>
<td>Powers of the Commission</td>
<td>The Competition Act provides for the regulation of combinations. It provides for creating public awareness on competition related issues. Further, market studies are also conducted periodically.</td>
<td>The CCI has the power to impose penalties on organisations and individuals who undertake anti-competitive activities. Moreover, the government departments are also within the ambit of the CCI.</td>
</tr>
</tbody>
</table>
Findings

1. The definition of “combinations” is unnecessarily repetitive and gives rise to confusion. For example, Sections 5(b) and 5(c) are subsumed under Section 5(a). But, from a competition law perspective the only pertinent provision is Section 5(a), which regulates an acquisition of “control”. It defines “combinations” by reference to assets and turnover:

   (i) exclusively in India; and
   (ii) in India and outside India.

   The turnover limits are biased against the Indian company. For example, an Indian company with turnover of Rs. 3000 crores cannot acquire another Indian company without prior notification and approval of the Competition Commission. On the other hand, a foreign company with turnover outside India of more than USD 1.5 billion (or in excess of Rs. 4500 crores) may acquire a company in India with sales just short of Rs. 1500 crores without any notification to (or approval of) the Competition Commission.

2. No combination shall be regarded as effective until CCI approves the combination or the lapse of 210 days from the date of notification to CCI—whichever is earlier. The lengthy 210-day wait impacts time lines for closing transactions, and raises the costs involved in waiting.

3. The commission is very much thinly staffed. Against the recommended strength of 480 professionals, the CCI is recruiting just 120 staffers.

Suggestions

1. It is suggested that Section 5 be modified and a single sales/turnover test be adopted along the following lines:
   a) Combined world-wide turnover of the parties to the “combination” in excess of a specific amount; and
   b) each of at least 2 of the parties to the “combination” must have turnover in India in excess of a specific amount; and
   c) the “combination” gives rise to a market share in India in excess of 25%.
This test will give a better understanding of the acquisitions that come under the purview of Competition Commission and those that do not.

2. The 210 days waiting period for a company to get acceptance from the CCI is too long. In the current business scenario every single day counts. It may also happen that after getting clearance from the commission after 7 months (210 days) the merger may not remain as lucrative as it was earlier and the company misses out on the opportunity. In view of all this the government should seriously think of reducing this time lag. The waiting period should not be more than 90 days. This is because SEBI Takeover Regulations require the acquirer to complete all procedures relating to the public offer including payment of consideration to the shareholders who have accepted the offer within 90 days from the date of public announcement.

3. All vacant posts in the commission should be immediately filled in view of the current workload.

Conclusion

The above chapter is a brief summary of comparison of the accounting standards in India, USA, UK and as issued by the International Accounting Standards Committee. The chapter concludes on the note that India should abolish pooling of interests method. It also suggests certain precautions that should be taken by ICAI (Institute of Chartered Accountants of India) before switching over to IFRS in April 2011. Fair value accounting is very good provided it is applied cautiously.

Further the chapter also discusses the major flaw in the Competition Act passed by the Parliament in 2007. The 210 waiting period for a company is too large, and hence the government should seriously consider reducing the time period.
References


3. Regulation of combinations

Combination.

The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises if—

(a) any acquisition where—

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have—

(A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or

(ii) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—
(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

[(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

(ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores;

or

[(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or]

(c) any merger or amalgamation in which—

(i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

[(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, as the case may be, have or would have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

[(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India.]

Explanation.—For the purposes of this section,—

(a) “control” includes controlling the affairs or management by—

(i) one or more enterprises, either jointly or singly, over another enterprise or group;

(ii) one or more groups, either jointly or singly, over another group or enterprise:
(b) "group" means two or more enterprises which, directly or indirectly, are in a position to—

(i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or

(ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or

(iii) control the management or affairs of the other enterprise;

(c) the value of assets shall be determined by taking the book value of the assets as shown in the audited books of account of the enterprise in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

4 [(2A) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under section 31, whichever is earlier.] *(Section 6(2A))*