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Yearly Rewind 2023

MERGERS & ACQUISITIONS |
PRIVATE EQUITY

INDEX

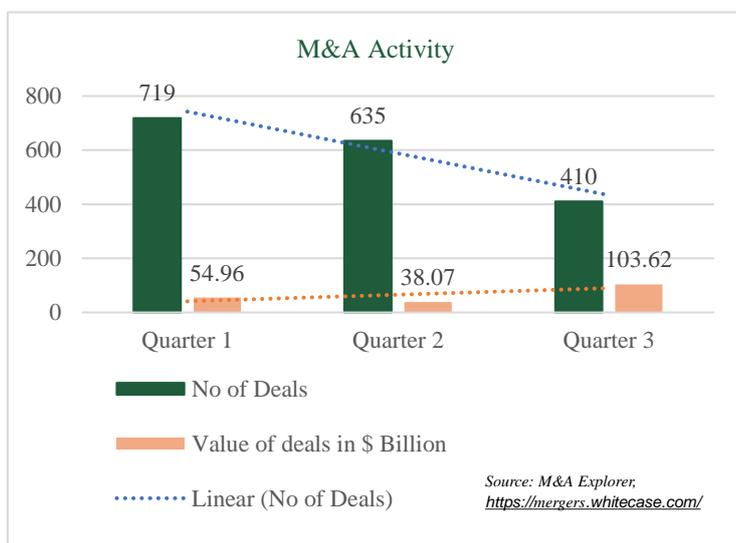
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MERGERS & ACQUISITIONS AND PRIVATE EQUITY

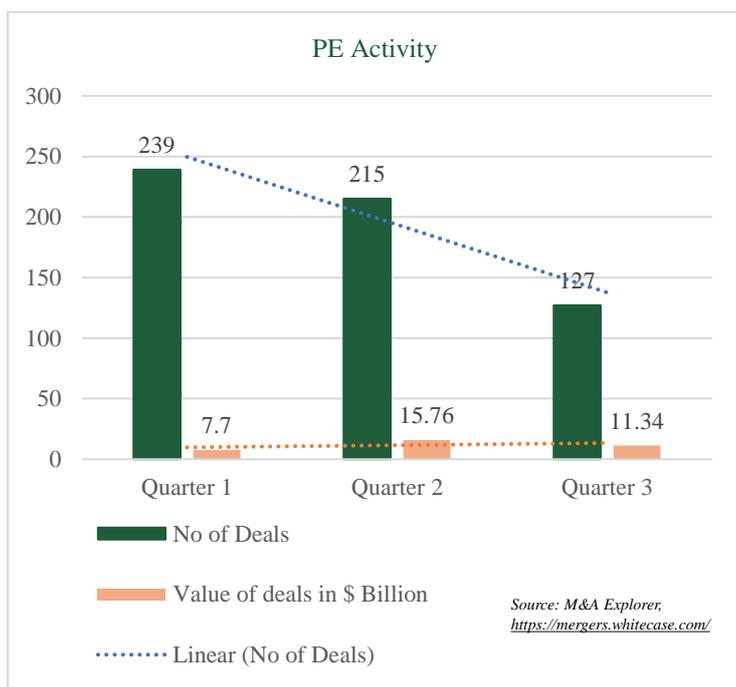
India is one of the world’s rapidly growing economies, creating an increasingly attractive and flourishing landscape for investors.¹ Boasting the largest young population globally,² India presents prospective investors with a valuable asset – youth waiting to fulfil their aspirations! Against this backdrop, and further fuelled by the recent geo-political developments, the investment landscape shows compelling tailwinds in the M&A and private equity / venture capital space, which picked up in Q3 of 2023, and may see further upswing in the year 2024. In this report, we touch upon (a) deal activities in the M&A and PE space including, in brief, sectoral deal analysis, (b) certain observations in the corporate governance space, and (c) certain developments in the legal / regulatory space which may benefit M&A and PE transactions in the near future.

Deal activity in India



Mergers & Acquisitions

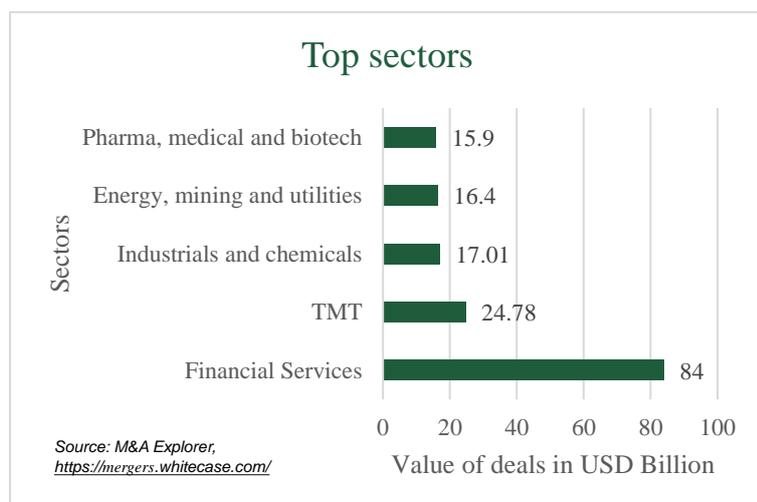
M&A suffered in India during 2023. M&A deal value at a global level saw a decrease, ranging from 41–45%.³ In India, deal value plunged by 61% in comparison to its 2022 figures.⁴ One possible reason behind such drop could be that in 2022 there was a mega merger between HDFC and HDFC Bank. It is expected that India’s M&A activity will grow strong in the year 2024 due to global interest in Indian markets.



Private Equity

In Q3 of 2023, private equity activity remained moderate yet consistent, comprising of 127 deals totalling to USD 11.34 billion. Notably, there was an uptick in deal value from Q1 to Q2 of 2023, followed by a subsequent decline from Q2 to Q3 of the same year. This pattern is evident on a global scale, with the peak deal value occurring in Q2 of 2023 and a subsequent dip in Q3.⁵ On an annual basis, there is a noteworthy 44% decrease in global PE deal value for the year 2023.⁶ This global decline is mirrored in India, where the PE deal value experienced a 40% downfall compared to the figures recorded in year 2022.⁷

Key Sectors (by deal value)



1. Financial services: In Q1 of 2023, fintech dominated both M&A deal volumes and values. Additionally, fintech deals led PE in deal volume, while banking and non-banking finance companies took the lead in PE deal values. Notably, BPEA, EQT, and ChrysCapital's investments of ~USD 1.1 billion in HDFC Credila Financial Services played a substantial role in the overall PE deal values within the financial services sector.⁸

2. Technology, Media, and Telecommunications (TMT): In year 2023, a visible trend emerged as

global corporations such as Accenture, Truecaller, and Adobe acquired Indian AI-based startups, including Flutura, TrustCheckr, and Rephrase.ai.⁹ Other key deals involved Saregama acquiring majority stake in Pocket Aces Pictures Pvt Ltd. for ~USD 23 million and the merger of PVR Pictures with Inox.

- 3. Industrials and chemicals:** In the Indian chemical industry, alkali chemicals have the largest share with ~73.3% of the total production from April to March (2022-23). It is expected to contribute USD 383 billion to India's GDP by 2030. Further, India is the 6th largest producer of chemicals in the world and 3rd in Asia, contributing 7% to India's GDP.¹⁰ The industrials and chemicals sector's notable deal value suggests investor's interest in manufacturing, industrial production, and chemical industries. In February 2023, Adani Group acquired controlling stakes in both Ambuja Cements and ACC from Holcim for a combined value of USD 10.5 billion. This single transaction catapulted them to become the second-largest cement producer in India.¹¹
- 4. Pharma, medical and biotech:** The pharma, medical, and biotech sector demonstrate a considerable deal value, indicating a continued focus on healthcare innovations, pharmaceutical advancements, and biotechnological developments. In the year 2023, the M&A space witnessed a remarkable 161% surge in deal values, primarily fuelled by Nirma's acquisition of a 75% stake in Glenmark Life Science for USD 689 million.¹² However, there was a decline in cross-border deals, with only one inbound deal – Gleneagles Development's acquisition of Ravindranath GE Medical Associates for USD 90 million. In the PE space, both values and volumes decreased from the previous quarter (Q2 of 2023). A noteworthy trend in health tech emerged with 12 deals recorded in the quarter. The standout deal involved significant investments from Temasek Holdings, and other investors, in Pharmeasy for value of USD 2 billion. This signals a strong demand for digital health solutions in India, indicating substantial investment interest in the health tech segment.¹³ We note that this could be because of the potential for consolidation in the health sector, due to the fragmentation of the hospital provider base in India.

Key deals

- 1. AMG Media Networks acquired majority stake in IANS:** AMG Media Networks Limited (AMNL), a wholly owned subsidiary of Adani Group, has acquired a 50.5% stake in news agency IANS India Private Limited.¹⁴
- 2. Axis Bank - Citi Bank acquisition:** Axis Bank acquired Citibank's consumer banking business in India for USD 1.4 billion.¹⁵
- 3. Temasek's investment in Manipal Hospitals:** Temasek, a Singapore-based investment company, invested USD 2 billion in Manipal Hospitals, a leading healthcare provider in India.¹⁶

4. **BPEA EQT and ChrysCapital's deal in HDFC Credila:** Baring Private Equity Asia (**BPEA**), EQT, and ChrysCapital invested USD 1.3 billion in HDFC Credila, a non-banking financial company that provides education loans in India.¹⁷
5. **ADIA and GIC's follow-on investment in Greenko Energy:** Abu Dhabi Investment Authority (**ADIA**) and GIC, a Singaporean sovereign wealth fund, invested USD 1.55 billion in Greenko Energy, a leading renewable energy company in India.¹⁸
6. **Carlyle's buyout of VLCC Wellness:** Carlyle, a global investment firm, acquired VLCC Wellness, a leading wellness and beauty services provider in India, for USD 1.1 billion.¹⁹

Foreign Direct Investment (FDI)

India is poised to claim the third spot in the global consumer market by 2027, with household spending projected to surpass USD 3 trillion ([read more here](#)) At the core of this economic engine is the country's vast middle class (i.e., income up to USD 36,000), estimated at ~USD 400 million ([read more here](#)) (in the year 2021) individuals, who serve as the primary drivers of consumption expenditure. The burgeoning middle class, coupled with rising disposable incomes, stands as the pivotal force propelling the upward trajectory of domestic consumption in India. The government's strategic emphasis on rural development and farmers ([read more here](#)) further taps into the growing market for diverse consumer goods, contributing to the expansion of India's economic landscape.

India's investment growth has also been bolstered by a suite of government initiatives ([read more here](#)), encompassing the development of the financial system, enhancement of infrastructure, and relaxation of FDI norms. Under the current framework, most sectors are open for 100% FDI through the automatic route. Furthermore, India's FDI policy undergoes regular reviews, underscoring the nation's dedication to maintaining its status as an attractive and investor-friendly destination. This ongoing commitment ensures that the investment climate remains dynamic, adapting to the evolving needs of the global market.

Recent updates

1. As per the world investment report by United Nations Conference on Trade and Development (UNCTAD),²⁰ India received 8th highest FDI in the world in 2022.²¹
2. There were no major changes to India's FDI legislation, although there were minor amendments to the current laws and regulations governing FDI's in India such as introduction of a new standard operating procedure for processing FDI.²²
3. Simplified processes such as single-window clearance and the goods & services tax implementation, have eased the bureaucratic burden on businesses and foreign investors in India, which enhanced the ease of doing business in India.

Notable FDI in India²³

1. In July 2023, Walt Disney explored various strategies to help its Star India business grow and reduce expenses, which may involve a joint venture or sale.
2. In July 2023, Havas' Indian arm, a French advertising and public relations company, declared its acquisition of PivotRoots.
3. In June 2023, private equity investors, including Blackstone Inc., BPEA EQT, CVC Capital Partners, and General Atlantic Service Company, were competing to acquire Mumbai-based Indira IVF Hospital Pvt. Ltd.
4. In February 2023, Singapore Airlines purchased a 25.1% stake in the Air India group for USD 267 million.
5. In January 2023, the rural economy-focused technology startup VilCart secured USD 18 million in funding from Asia Impact SA, NABVENTURES Fund, and Texterity Pvt. Ltd. to expand its operations.

Corporate Governance

In 2023, investors in Indian start-ups made governance a top priority to avoid unwarranted situations.²⁴ The recent spate of layoffs at well-funded start-ups, such as Swiggy and ShareChat, coupled with the revelation of alleged financial improprieties at GoMechanic, BharatPe, Zilingo has prompted investors across the ecosystem to re-examine their approach on governance issues of portfolio companies.²⁵ Aggressive investors, wary of potential oversights during the frenzy of 2021, are now making governance a top priority along with the renewed focus on profits over growth.²⁶ Investors are establishing strict oversight mechanisms including regular mandatory reporting of financial disclosures, periodic internal control and audit testing to avoid unwarranted situations.

Byju's and Deloitte Resignation

Deloitte, the auditor of Byju's, tendered its resignation citing a "significant impact" on its ability to conduct the audit in accordance with necessary standards. The resignation underscored the absence of communication regarding the resolution of audit report modifications for the fiscal year 2021-22.

Adani Ports & SEZ and Deloitte Resignation

Adani Ports and SEZ disclosed Deloitte's resignation, its statutory auditor since 2017, which had been re-appointed in 2022. Deloitte raised concerns over specific transactions highlighted in the Hindenburg Research Report about the group. The resignation was compounded by Deloitte's limited audit remit concerning other listed group companies. The Adani Group firm, however, asserted that the board's audit committee found Deloitte's grounds for resigning to be "not convincing or sufficient".

Supreme Court Decision's Impact

A Supreme Court decision in May 2023 allowed the Serious Fraud Investigation Office to resume criminal proceedings against BSR & Associates LLP and Deloitte Haskins & Sells LLP, former auditors of IL&FS Financial Services. This decision has heightened auditors' caution, emphasizing the increased scrutiny and potential legal ramifications surrounding auditing practices.

The year 2023 witnessed the following key occurrences in change of auditors, which may be a first lead to issues brewing in a company:

These developments underscore the sensitive nature of auditing functions, where auditors navigate complex scenarios, raise pertinent concerns, and sometimes make the decision to resign due to perceived impediments to their ability to fulfil their responsibilities effectively. The landscape has been further influenced by legal decisions, reinforcing the need for auditors to exercise heightened diligence in fulfilling their roles.

Key changes in the legal landscape

1. **Dematerialization of shares:** To increase transparency and facilitate digital oversight on transactions of large private companies, the government has now mandated dematerialization (i.e., electronic form) of securities of private companies as well. Earlier, only public companies were required to maintain their securities in dematerialized form (*read more [here](#)*).
2. **Amendment of money laundering laws:** The Ministry of Finance, by way of

notification, has amended the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (PMLA). The key amendment has been made in Rule 9 of the PMLA, where for the purpose of determining the beneficial owner of a partnership firm, the threshold has been reduced to ownership of / entitlement to more than 10% (earlier it was 15%) of capital or profits of the partnership. Further, a person 'who exercises control through other means of the partnership has also been added to identify the beneficial owner. 'Control' has been defined

to include the right to control the management or policy decision (*read more [here](#)*).

3. **Fast track mergers:** In a significant development concerning fast-track mergers, the process has been streamlined. Now, the timeframe for regional director to give approval to a fast-track merger has been specified, which was earlier not fixed, leading to delays. Other amendments included the introduction of deemed approval, wherein the failure of regulatory authorities to raise objections within specified time will result in automatic approval.
4. **Angel Tax:** In cases where an investor purchases shares of an unlisted company at a value higher than the fair value of such shares, the difference between the value paid and the fair value is taxable. Earlier, this was only applicable to Indian resident investors. However, the Finance Act, 2023 has extended the applicability of this to consideration

received from non-residents for issue of shares. Currently 21 (twenty one) countries have been exempted from this, which includes Australia, Denmark, Finland, France, Germany, Japan, Sweden, United Kingdom and United States.²⁷

5. **Enforceability of put option:** A put option in a transaction document grants the holder the right to sell a specified asset, such as shares or property, at a predetermined price within a defined timeframe. This contractual provision provides the holder with downside protection by allowing them to sell the asset regardless of its market value at the time of exercising the option. The enforceability of put option in agreements has been a contentious matter. Recently, the Bombay High Court in *Percept Finserve Pvt. Ltd. v. Edelweiss Financial Services Ltd.* held that a put option clause contained in a share purchase agreement is legally valid.

Looking ahead

The surge in both outbound and inbound investments ascertains a growing cross-border economic collaboration. Sustaining this momentum in 2024 requires that Indian authorities ensure the continuity of rules and regulations without any sudden changes, while the Indian judiciary must persist in safeguarding capital and intellectual property with utmost diligence.

For prospective investors, adopting a long-term perspective on the Indian opportunity is imperative. Allocating resources to individuals capable of comprehending the nation's diversity across various dimensions, such as, culture, religion, food, climatic conditions, education, geography, and more, is crucial. A recommendation for investors unfamiliar with India is to travel the country, experiencing firsthand the varied facets to gain a comprehensive understanding of the diverse opportunities India presents!

ENDNOTES

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