

Deal Talk

January 23, 2025

“DRIVING” INTO THE FUTURE TOGETHER: UNPACKING INDIAN LAW CONSIDERATIONS FOR THE PROPOSED HONDA-NISSAN PARTNERSHIP

INTRODUCTION

On December 23, 2024, Japan’s second and third largest carmakers respectively, Honda Motor Co., Ltd (“**Honda**”) and Nissan Motor Co., Ltd (“**Nissan**”) sent shockwaves through the automotive industry when they announced the signing of a memorandum of understanding (“**MOU**”) to consider business integration, through the establishment of a joint holding company, for “*deepening the framework of*” their existing strategic partnership.¹ This follows another MOU that was previously executed by the parties on August 1, 2024 for achieving carbon-neutrality and zero-traffic-fatality in the automotive industry.

While strategic alliances in the automotive industry are common, this mega-alliance is poised to alter the dynamics of the global automotive industry by creating the third largest automaker in the world.² Additionally, Nissan and Honda have chosen a non-conventional model for a partnership in the automotive industry (as compared to the more conventional models such as acquisitions, mergers, platform sharing or technology sharing). This commitment from Honda and Nissan also comes in the backdrop of increasing competition from Chinese counterparts, with Honda’s chief executives indicating that this partnership is part of a plan to stabilise operations by 2030.³ Interestingly, there are public announcements that subject to discussions between parties, the merger may potentially include Mitsubishi Motors Corp. (of which Nissan is a major shareholder).

In our inaugural Deal Talk for 2025, we break down all the implications under Indian law for a deal similar to the Honda-Nissan deal structure, highlighting critical considerations to be borne in mind by two industry conglomerates when coming together overseas whilst having substantial presence in India.

PROPOSED TRANSACTION

Honda and Nissan are Japanese listed companies that have signed the MOU to create a joint holding company incorporated in Japan, which shall operate as the parent company of both the companies and be listed (by way of a “technical listing”) on the Prime Market of the Tokyo Stock Exchange (“**TSE**”) (such company, the “**Joint Holding Company**”). A “technical listing” is governed by Rule 208 of the Securities Listing Regulations of the TSE, which provides companies with the flexibility to list existing shares on public markets instead of issuing new shares to the public under the traditional initial public offering route. The ability to undertake a “technical listing” is available only when a company meets the criteria set out in Rule 209, which broadly assesses the market capitalisation, number of shareholders, and overall financial performance of the listed company. An interesting point to note is that Indian securities market does not have an institutionalized concept of a “technical listing”.

Post incorporation, the Joint Holding Company shall hold the entire shareholding of Nissan and Honda which would therefore become wholly owned subsidiaries of the Joint Holding Company. To this extent, both Nissan and Honda will respectively delist from TSE as a part of this process. While the date of listing of the Joint Holding Company and delisting of Honda and Nissan will be determined according to the applicable law, at the time when the Joint Holding Company acquires the shares of Nissan and Honda, existing public shareholders of Nissan and Honda would have the ability to swap their shares in Nissan and Honda with the shares of the Joint Holding Company.

However, the share transfer ratio has not been finalised and is slated to be determined subject to due diligence and third-party valuations referring to average closing prices of Honda and Nissan prior to the public announcement of the MOU.

The broad timelines and step plan for this deal are as follows –

(the “**Proposed Transaction**”).

Once the Proposed Transaction is consummated, on the effective date of the share swap, Honda will nominate a majority of the internal and external directors of the Joint Holding Company. Further, it is envisaged that the president and representative director or president and representative executive officer of the Joint Holding Company will be selected from amongst Honda’s nominated directors.

A diagrammatic representation of the current group structures of Honda and Nissan, and the structure pursuant to the Proposed Transaction is as follows –

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(i) Honda

As per public sources, Honda majorly operates through two companies in the Indian automotive market: (a) Honda Cars India Limited ("**HCIL**"), a public limited company operating as a wholly owned subsidiary of Honda,⁴ and (b) Honda Motorcycle & Scooter India Pvt. Ltd. ("**HMSI**"), a private limited company also operating as a wholly owned subsidiary of Honda.⁵

(ii) Nissan

Public sources indicate that in a structure similar to that of Honda, Nissan's Indian presence in the automobile industry is majorly through Nissan Motor India Pvt Ltd ("**NMIPL**"), which is a wholly owned subsidiary of Nissan.⁶

Further, Nissan has an alliance with French carmaker Renault in India. Renault Nissan Automotive India Private Limited ("**RNAPL**") is a joint venture between Renault and Nissan which undertakes manufacturing of import and export vehicles for each of them.

Considerations from an Indian legal perspective

While we wait for finalisation of the deal structure and a copy of the MOU to be disclosed in the public domain, from an Indian law perspective, the Proposed Transaction will likely involve an indirect transfer of the entire shareholding of HCIL, HMSI and NMIPL from Honda and Nissan to the Joint Holding Company. However, based on the structure available as of now, below are some of the critical Indian law considerations that the parties may need to bear in mind⁷ while undertaking a structure similar to the Proposed Transaction –

1. Potential approval of the Competition Commission of India ("**CCI**") under the Competition Act, 2002 ("**Act**")

As per recent amendments to the Act effective since September 10, 2024, any transaction meeting the following criteria will be subject to the prior approval of the CCI before consummation: (i) the value of the transaction is INR 2,000 crores (i.e. approximately USD 231 million) or more ("**Value Test**"); and (ii) the target has "substantial business operations" in India, ("**Business Test**") each as per the manner set out in the Competition Commission of India (Combinations) Regulations, 2024 (collectively, the "**Deal Value Threshold**"). The Deal Value Threshold is applicable even if the target otherwise meets the de minimis target exemptions under the Act, which exempts notifiability of transactions where the target's assets or turnover are below specified limits.⁸ Exemption can be sought from notification arising on account of the Deal Value Threshold only if an exemption is available under the Competition (Criteria for Exemption of Combinations) Rules, 2024.

While the deal value for the Proposed Transaction is not available in the public domain, the parties believe that this integration will lead to sales revenue exceeding 30 trillion yen (approximately USD 191.4 billion) and operating profit of more than 3 trillion yen.⁹

In light of the above, in the event the Proposed Transaction passes both the Value Test and the Business Test, it would be required to be notified to the CCI.

If prior approval of the CCI is to be sought owing to the Deal Value Threshold, the Joint Holding Company (being the acquirer in the Proposed Transaction) will have to file an application with the CCI upon execution of transaction documentation (and prior to the consummation of the Proposed Transaction) seeking its approval. Depending on the extent of overlaps in the Indian market between the parties to the Proposed Transaction, the process of receiving approval from the CCI could either be through the green channel route or may take 30-40 days.

While scrutinising the application, the CCI may potentially also examine the following indicative factors to assess whether the Proposed Transaction leads to an "*appreciable adverse effect on competition*" in the Indian markets:

- Potential market concentration of Honda and Nissan in India pursuant to the Proposed Transaction and their joint market power, in all relevant product markets such as non-electric automobiles, electric automobiles, four-wheelers and two-wheelers markets, to assess dominance;
- Possibility of vertical and horizontal integration with dealers, suppliers and servicing agencies involved in the automotive sectors;
- Benefits to end-customers through this deal.

However, given that the Indian automobile market is saturated with multiple players, the potential of the Proposed Transaction causing an "*appreciable adverse effect on competition*" would be relatively lower.

1. Possibility of incurring indirect transfer tax under the Income Tax Act, 1961 ("**IT Act**")

An indirect transfer occurs when the effective control of securities held in a specific jurisdiction occurs *indirectly* as a result of a transfer of ownership / interest of its holding entity (and **not directly** as a result of an actual transfer of securities in that specified jurisdiction).

Under the IT Act, any income arising from an indirect transfer of shares is taxable as capital gains if the foreign entity derives its value "substantially" from the assets situated in India.¹⁰ Value is said to have been derived "substantially" from Indian assets if the value of such assets: (i) exceeds INR 10 crores (approx. USD 1.15 million) ("**Limb 1**"); and (ii) represents at least 50% of the value of all assets owned by the company or entity ("**Limb 2**"). It is important to note that both Limb 1 and Limb 2 will have to be met for indirect transfer tax to be levied on a transaction.

Therefore, in the event the asset value of HCIL and HMSI (for Honda) and NMIPL (for Nissan) is above INR 10 Crores (approx. USD 1.15 million) each and respectively for Honda and Nissan, they represent more than 50% of their global value of assets, then the transfer of shares of Honda and Nissan from the current shareholders to the Joint Holding Company could trigger indirect transfer tax in India.

The methodology for calculation of the asset value of the entity in India has been prescribed in Rule 11UB of the Income Tax Rules, 1962. Limb 1 will involve calculation of the current fair market value of the shares held by Nissan and Honda in HCIL, HMSI and NMIPL respectively through the prescribed valuation methodology to check if its value exceeds INR 10 crores. On the other hand, assessment of Limb 2 will involve: (i) identification of the fair market value of

each of Nissan and Honda as per the prescribed methodology; (ii) identification of the fair market value of HCIL, HMSI and NMPL as per the prescribed methodology; and (iii) subsequent comparison whether the 50% threshold is met based on the fair market values calculated in (i) and (ii).

It is important to note that the instance of the indirect transfer tax under the IT Act would be on the hands of the 'sellers' of shares of Honda and Nissan (i.e. the existing shareholders). However, an important point to note here is that the Income Tax Rules, 1962 also provides for a 'Small Shareholder Exemption' from indirect transfer tax which provides that indirect transfer tax shall not apply if the non-resident, directly or indirectly, does not hold (i) the right of management or control (including a right which would entitle the person to the right of management or control) or (ii) voting power, share capital or interest exceeding 5% of the total voting power, share capital or interest (as the case may be) of the company or entity which directly owns the assets situated in India.

Therefore, for any transaction which follows a similar structure to the Proposed Transaction shall also undertake the analysis for indirect transfer tax in India.

1. Press Note No. 3 of 2020 ("PN3") considerations

Since (i) the ultimate holding company of HCIL and HMSI will change from Honda to the Joint Holding Company; and (ii) the ultimate holding company of NMPL will change from Nissan to the Joint Holding Company, it will amount to an indirect investment of the Joint Holding Company into the existing Indian entities of Honda and Nissan. As an effect of this indirect investment, the *beneficial owner* of the shares of the Indian companies will change to the Joint Holding Company.

PN3 bars investments into India from entities that share land borders with India, or where the beneficial owner of an investment into India is situated in or is a citizen of any such country sharing land borders with India. These countries include China (along with Hong Kong), Bangladesh, Afghanistan, Nepal, etc.

Accordingly, as a result of the Proposed Transaction, the parties will have to ensure that the beneficial owner of the Joint Holding Company is not situated in / a citizen of a land bordering country. Since the Joint Holding Company shall be a listed company, it may also be important to undertake this assessment with respect to the existing shareholders of Honda and Nissan that would have been a shareholder of Honda or Nissan prior to the PN3 coming into force (that shall become shareholders of Joint Holding Company as a result of the Proposed Transaction).

1. The 'significance' of the Significant Beneficial Owner ("SBO") under the Companies Act, 2013 and allied rules ("CA 2013")

Under the CA 2013, it is mandatory for every legal holder of shares to declare the holder of beneficial interest (i.e. SBO) in such shares to the Indian company, if such beneficial interest is not held by them.¹¹ Further, Indian companies are required to subsequently disclose these beneficial owners to the Registrar of Companies ("ROC").¹²

Considering that HCIL, HMSI and NMPL are wholly owned subsidiaries, the currently reported SBOs for each of these entities are likely to be the controlling shareholders of Honda and Nissan respectively. This analysis would be required to be undertaken again to assess if there has been any change in the SBO by virtue of the Proposed Transaction. In case of a change, HCIL, HMSI and NMPL may have to file an updated Form BEN-2 (based on the declaration provided to it by the Joint Holding Company in Form BEN-1) with the ROC to reflect the new SBO.

Recent orders from the ROC in the LinkedIn and Samsung cases suggest that foreign managing officials of the ultimate foreign holding company could be considered "significant beneficial owners" of Indian subsidiary companies (regardless of whether they directly or indirectly, through the entity, control the affairs and management of the Indian company), and be penalised for non-declaration.¹³ Therefore, in light of these developments, the assessment and resultant categorisation of the SBO must be conducted with due consideration to the resultant group structure dynamics.

1. Overseas investment considerations applicable to resident Indians holding securities of Nissan or Honda (on the Japanese stock exchange)

Another key consideration for the Proposed Transaction is the potential impact of Indian overseas investment laws on the Indian resident shareholders of the foreign parent companies (being the listed Nissan and Honda entities in Japan). This may also be relevant for Indian employees of Nissan and Honda, who may have acquired shares in the Japanese listed entities through employee stock ownership plans / employee benefit plans.

The Foreign Exchange Management (Overseas Investment) Rules, 2022 ("**OI Rules**") govern investments by Indian residents into overseas entities. Under Schedule III read with Rule 13 of the OI Rules, a resident individual may make or hold overseas investments via a "*swap of securities*" only in cases of a merger, demerger, amalgamation, or liquidation. Thus, the OI Rules do not permit Indian residents to acquire shares of an overseas entity through a share swap, unless the swap arises from one of these specific transactions.

Therefore, the parties must evaluate whether there are any Indian resident shareholders of Honda and Nissan as on date and implement suitable tax and legal structuring to ensure that the Proposed Transaction complies with Indian laws while providing the same commercial benefits to such shareholders.

1. Contractual obligations with respect to "change in control" triggers under contracts executed by HCIL, HMSI, and NMPL

A critical consideration in the Nissan-Honda deal is the assessment of whether a "*change in control*" obligation will be triggered under contracts executed by each of HCIL, HMSI and NMPL (including but not limited to with lenders, vendors, customers and suppliers).

Since the Proposed Transaction could result in an ultimate change in control for the Indian subsidiaries of both Nissan and Honda, the parties may have to conduct a thorough analysis to determine whether an **indirect "change in control"** is occurring under these agreements, in order to ensure that HCIL, HMSI and NMPL discharge any follow-on obligations arising from this trigger. These obligations typically include prior notification to the counterparty and / or obtaining their prior consent and / or providing post-transaction intimation. Change in control clauses are particularly

prevalent in lending arrangements entered into by Indian entities, as they are designed to safeguard the interests of the creditors.

As mentioned above, beyond financing agreements, such requirements may also be embedded in vendor, supplier, or other operational contracts, reflecting a broad spectrum of potential implications. Addressing these contractual provisions will be essential to ensure compliance, avoid disputes, and facilitate a smooth transition post-deal. Consequently, the parties may be required to negotiate proactively with counterparties, negotiate necessary waivers or approvals, and implement appropriate measures to satisfy these obligations as per the process and timelines set out in the underlying agreements.

CONCLUSION

When structuring a consolidation between foreign parent companies with Indian wholly owned subsidiaries, deal teams must go beyond the primary jurisdiction of the partnership to conduct a detailed analysis of the Indian regulatory landscape. Ignoring this critical dimension may result in regulatory hurdles or missed opportunities for optimizing the structure of Indian operations.

In light of the ongoing discussions around the Nissan and Honda partnership in Japan, it is evident that such collaborations can have significant implications for Indian subsidiaries. Deal teams should proactively evaluate Indian laws, including those related to corporate governance, taxation, foreign exchange management, and competition, to craft an arrangement that aligns with both global and local requirements.

A comprehensive approach that balances the strategic objectives of the parent companies with the regulatory and operational considerations of their Indian entities is essential to ensure the consolidation delivers its intended value seamlessly across all jurisdictions involved.

¹<https://global.honda/en/newsroom/news/2024/c241223beng.html>.

²<https://www.reuters.com/markets/deals/honda-nissan-set-announce-launch-integration-talks-media-reports-say-2024-12-22/>.

³<https://www.bbc.com/news/articles/cwy3ljvv93lo>.

⁴<https://www.aryahonda.com/>.

⁵<https://www.honda2wheelersindia.com/about-us/factory>.

⁶<https://india.nissanmotornews.com/en-IN/aboutnissanmotorindia>.

⁷Considering that Mitsubishi and Renault’s involvement in the transaction structure has not yet been confirmed, we have not added any references to their Indian presence and impact of the Proposed Transaction on such entities held by either of them in India, if any (either standalone or by way of an alliance).

⁸The target asset and turnover thresholds have been analysed in our article here:
<https://www.nishithdesai.com/NewsDetails/14949>.

⁹<https://global.honda/en/newsroom/news/2024/c241223beng.html>.

¹⁰Section 9, Income Tax Act 1961.

¹¹Section 89, CA 2013.

¹²Section 90, CA 2013.

¹³Please refer to our detailed analysis of the LinkedIn and Samsung orders at:
https://www.nishithdesai.com/fileadmin/user_upload/Html/Hotline/Yes_Governance_Matters_June1224-M.html.

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