

Research

From Bailout to Buy-in

The Story of SMBC's Investment in Yes Bank

May 2026

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Brief Overview¹²

In 2025, SMBC, a multinational banking financial services institution owned by the SMBC Group, which is the second largest banking group in Japan with total assets of nearly USD 2 trillion³ as of December 2024, acquired a stake of 24.21% in Yes Bank, a prominent publicly listed Indian private sector scheduled commercial bank. The acquisition was executed through a multi-stage secondary market transaction totaling approximately INR 163.33 billion (approx. USD 1.86 billion). Part of the acquisition (representing 20% stake) was from Indian banks that had stepped in to help an ailing Yes Bank in 2020, including SBI (holding 13.18%) and Other Investor Banks (collectively holding 6.82%), with the balance 4.21% being acquired from Carlyle.

The acquisition by SMBC is one of the largest cross-border M&A transactions in the Indian financial sector. More significantly, as of the date of this M&A Lab, it has marked a successful deployment by the regulatory authorities in India of a restructuring and recovery process which provided a significant premium to the consortium of Indian banks that came to the rescue of Yes Bank.

Briefly, this deal is significant on account of the following factors:

- a. **Regulatory Inflection Point:** The deal signifies a shift in the RBI’s approach, moving from defensive capital regulation to a “prudential liberal regime”. By allowing a foreign bank to hold a significant stake in an Indian scheduled commercial bank, the RBI demonstrated flexibility in pursuit of systemic resilience;
- b. **Governance Transformation:** Entry of SMBC marks the transition of Yes Bank from a “rescue-oriented” consortium structure to a model of diffused institutional ownership led by a global strategic partner;
- c. **Strategic Synergies:** The partnership provides Yes Bank with global expertise in treasury and wholesale banking, while granting SMBC a strategic foothold in India’s high-growth economy; and
- d. **Commercial Validation:** The transaction is a reassuring testament to government-led rescue operations, providing systemic stability while ensuring profitable exits for participating institutions.

This M&A Lab analyses the transaction, including, the legal, regulatory and tax issues arising therefrom and will focus on the transaction involving the acquisition of shares from SBI and Other Investor Banks by SMBC.

1 Please note that, throughout this paper, Indian Rupee (“INR”) amounts have been converted into United States Dollars (“USD”) using the exchange rate as of September 17, 2025, being the date of completion of Transaction 1. As per the RBI Reference Rate, 1 USD is equal to 87.75 INR.

2 Please note that the figures set out in this paper are approximate and have been rounded to two decimal places. These figures are based on disclosures made by Yes Bank, SMBC, and SBI from time to time.

3 AGM Notice 2024-25 issued by Yes Bank, Available at: https://www.yes.bank.in/sites/web/content/published/api/v1.1/assets/CONTEBB076477AF94593ABD18CF195484BE0/native/agm_notice2025.pdf?download=false.

Glossary of Terms

Term	Details
2023 Directions	Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023
2025 Directions	Reserve Bank of India (Commercial Banks – Acquisition and Holding of Shares or Voting Rights) Directions, 2025
AAEC	Appreciable Adverse Effect on Competition
ADIA	Abu Dhabi Investment Authority
AGM	Annual General Meeting
AoA	Articles of Association
Axis Bank	Axis Bank Limited
Bandhan Bank	Bandhan Bank Limited
BR Act	Banking Regulation Act, 1949, as amended from time to time
BSE	BSE Limited
CA	Competition Act, 2002, as amended from time to time
Carlyle	CA Basque Investments, a special purpose vehicle (incorporated in the Republic of Mauritius), fully owned by CA Marans Investments (incorporated in the Republic of Mauritius), which is ultimately controlled by the funds managed by the affiliates of The Carlyle Group Inc
CBDT	Central Board of Direct Taxes
CCI	Competition Commission of India
DTAA	Double Taxation Avoidance Agreement
DVT	Deal Value Threshold
FDI	Foreign direct investment
FDI Policy	Consolidated FDI Policy Circular of 2020 issued by Department for Promotion of Industry and Internal Trade, as amended from time to time
Federal Bank	Federal Bank Limited
FEMA	Foreign Exchange Management Act, 1999, as amended from time to time
FERA	Foreign Exchange Regulation Act, 1973, as amended from time to time
FMV	Fair Market Value
ICDR Regulations	SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (as amended from time to time)
ITA	Income Tax Act, 1961, as amended from time to time
ITR	Income Tax Rules, 1962, as amended from time to time
IRDAI	Insurance Regulatory and Development Association of India
LODR Regulations	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended from time to time
M&A	Mergers and Acquisitions
MCA	Ministry of Corporate Affairs

Glossary of Terms

Term	Details
NBFC	Non-Banking Financial Company
NDI Rules, 2019	Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, as amended from time to time
NSE	National Stock Exchange of India Limited
Other Investor Banks	Axis Bank, Bandhan Bank, Federal Bank, HDFC Bank Limited, ICICI Bank Limited, IDFC First Bank Limited and Kotak Mahindra Bank Limited
Other Investor Banks’ Sale Shares	2,136,830,297 equity shares of Yes Bank collectively held by Other Investor Banks which were transferred to SMBC as part of Transaction 1
Other SPAs	Individual share purchase agreements executed between Yes Bank and each Other Investor Bank
PAC	Persons acting in concert, as defined under the Takeover Code
Purchaser SHA	Purchaser’s shareholders’ agreement with Yes Bank
RBI	Reserve Bank of India
Reconstruction Scheme	Yes Bank Limited Reconstruction Scheme, 2020 issued by the Department of Financial Services of the Ministry of Finance on March 13, 2020
SAT	Securities Appellate Tribunal
SEBI	Securities and Exchange Board of India
SBI	State Bank of India
SBI Sale Shares	4,134,404,897 equity shares of Yes Bank held by SBI which were transferred to SMBC as part of Transaction 1
SBI SHA	Shareholders’ agreement between SBI and Yes Bank
SBI SPA	Share purchase agreement between SBI and SMBC
SMBC	Sumitomo Mitsui Banking Corporation
SMBC Group	Sumitomo Mitsui Financial Group, Inc.
SMFG India	SMFG Credit India Co. Limited, registered as an NBFC - Investment and Credit Company with the Reserve Bank of India, and is a member of SMBC Group
STT	Securities Transaction Tax
Takeover Code	SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, as amended from time to time
Transaction 1	The transaction between SMBC, SBI and the Other Investor Banks
Transaction 2	SMBC’s acquisition shares of Yes Bank held by Carlyle representing 4.21% of the paid up capital of Yes Bank
VHL	Verventa Holdings Ltd.
Yes Bank	Yes Bank Limited

Details of the Deal

I. Parties to the Transactions

A. Yes Bank

Yes Bank was founded in 2004 by Rana Kapoor and Ashok Kapur and rapidly positioned itself as a fast-growing private sector lender with high growth, aggressive corporate lending and retail expansion. The bank’s aggressive growth strategy and high leverage helped it win market attention and investor interest through the 2010s.¹

In 2019, concerns emerged around the asset quality, governance, and alleged misreporting of financials in respect of Yes Bank, which resulted in a severe liquidity and confidence crisis. In March 2020, the RBI exercised its powers under the BR Act and put in place a moratorium for a one month period, followed by notification of Reconstruction Scheme by the Government of India on March 13, 2020, setting out a reconstruction plan that included a capital raise at a fixed price and a rescue consortium led by the SBI and involving the Other Investor Banks. The reconstruction plan reset the share capital (the participating banks were allotted shares at INR 10 each (approx. USD 0.11)), materially altered pre-existing shareholding patterns, and allowed the bank to stabilize, recapitalize and resume normal operations.²

In the years after the reconstruction, Yes Bank has gradually revived its franchise under its new management. The most recent step in that revival was the strategic sale by entities participating in the Reconstruction Scheme to SMBC, with SMBC agreeing to acquire around 20% of Yes Bank by buying stakes from the banks that participated in the Reconstruction Scheme.³ Along with this, SMBC has also agreed to acquire an additional 4.21% from Carlyle.⁴ These transactions made SMBC the single largest shareholder in Yes Bank, and represented the entry of a major foreign strategic investor into the bank and the Indian banking sector.⁵

B. State Bank of India

SBI is India’s largest public sector bank and the country’s principal government-owned banking institution.⁶ SBI played the lead role in the 2020 reconstruction of Yes Bank. It committed the largest single capital contribution to the reconstruction package of INR 72.5 billion (approx. USD 800.25 million) and acted as the “investor bank” under the reconstruction scheme.

1 Yes Bank, the Indian tiger that bit off more than it could chew, Financial Times, Available at: <https://www.ft.com/content/98ad1fd4-5fc5-11ea-b0ab-339c2307bcd4>.

2 Yes Bank: a new chapter beckons with multi-generational Japanese investor SMBC, Forbes, Available at: <https://www.forbesindia.com/article/leadership/yes-bank-a-new-chapter-beckons-with-multi-generational-japanese-investor-smbc/2988554/1>.

3 Yes Bank Transaction Update in respect of Transaction 1, Available at: https://www.yes.bank.in/content/published/api/v1.1/assets/CONT37A9A5EE556547F493C99DD77D3B6B24/native/ybl_yes_bank_investor_presentation_transaction_update_may_2025.pdf?download=false&channelToken=21f7ccfa2fc3401091938f541a6f8f2a.

4 SMBC Update in respect of Transaction 2, Available at: https://www.smfg.co.jp/news_e/pdf/e20250917_02.pdf.

5 Yes Bank Transaction Update in respect of Transaction 1, Available at: https://www.yes.bank.in/content/published/api/v1.1/assets/CONT37A9A5EE556547F493C99DD77D3B6B24/native/ybl_yes_bank_investor_presentation_transaction_update_may_2025.pdf?download=false&channelToken=21f7ccfa2fc3401091938f541a6f8f2a.

6 About Us, SBI, Available at: <https://sbi.bank.in/web/about-us>.

Details of the Deal

This role was pivotal in restoring depositors and market confidence during the crisis.⁷ Following the reconstruction and the ensuing stabilization, SBI remained Yes Bank’s largest shareholder until SMBC’s acquisition (which was first announced in May 2025), where SBI agreed to sell approximately 13.18% of Yes Bank to SMBC as part of Transaction 1.⁸ Even after the sale, SBI continues to be a major shareholder for Yes Bank with 10.78% shareholding.⁹

C. Other Investor Banks

Other than SBI, a consortium of seven banks participated in the Reconstruction Scheme and each bank sold substantially all or part of their holdings as part of Transaction 1.¹⁰ These are as follows:

- a) **Axis Bank:** Axis Bank is a major private sector bank established in the early 1990s. As part of the Reconstruction Scheme, Axis Bank subscribed to equity of Yes Bank by investing INR 6 billion (approx. USD 63.38 million)¹¹ and consequently, became a material institutional shareholder. As part of Transaction 1, Axis Bank sold part of its shares in Yes Bank along with other private banks in the consortium.
- b) **Bandhan Bank:** Bandhan Bank, set up from a microfinance and financial inclusion background and later converted to a universal bank,¹² participated in the Reconstruction Scheme by subscribing to equity share capital of Yes Bank worth INR 3 billion (approx. USD 34.19 million).¹³ Bandhan Bank subsequently sold its holding in Transaction 1 as part of the consortium transfer to SMBC.¹⁴
- c) **Federal Bank:** Federal Bank, a well-established regional private bank, was part of the reconstruction consortium and subscribed to equity in Yes Bank at the time of the Reconstruction Scheme amounting to INR 3 billion (approx. USD 34.19 million)¹⁵.
- d) **HDFC Bank:** HDFC Bank, India’s largest private sector bank by several metrics and a mature retail/corporate franchise,¹⁶ participated in the Reconstruction Scheme. It reportedly invested INR 10 billion (approx. USD 113.96 million).¹⁷
- e) **ICICI Bank:** ICICI Bank, another large private sector bank, subscribed to the equity of Yes Bank, as part of the Reconstruction Scheme, by investing INR 10 billion (approx. USD 113.96 million).¹⁸

7 SBI, Private Banks sell 20% Yes Bank stake to SMBC for Rs. 13, 482 Crore, Business Standard, Available at: https://www.business-standard.com/industry/banking/sbi-and-private-banks-sell-20-percent-yes-bank-stake-to-smbc-125050901449_1.html.

8 Id.

9 Id.

10 Id.

11 Corporate Announcements, Axis Bank, Available at: www.axisbank.com/docs/default-source/corporate-announcements/investor-interactions/13-03-2020_investment-in-yes-bank.pdf.

12 Universal banking combines the services of a commercial bank and an investment bank, providing all services from within one entity. Bandhan Bank converted into a universal bank on August 23, 2015, becoming India’s first microfinance institution to achieve this.

13 Stock Exchange Disclosure, Bandhan Bank, Available at: https://bandhan.bank.in/sites/default/files/2020-12/SE_Intimation_YES_Bank.pdf.

14 Bandhan Bank completes investment in Yes Bank to Japan’s SMBC, continues buying spree after SBI and Carlyle Group, Economic Times Available at: <https://economictimes.indiatimes.com/industry/banking/finance/banking/japans-smbc-buys-additional-stake-in-yes-bank-from-bandhan-bank-sprees-continues-after-sbi-carlyle-group/articleshow/123944358.cms?from=mdr>.

15 Federal Bank to invest Rs 300 crore in Yes Bank, The Economic Times, Available at: https://economictimes.indiatimes.com/industry/banking/finance/banking/federal-bank-to-invest-rs-300-crore-in-yes-bank/articleshow/74626861.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst; Bandhan Bank, Federal Bank together sell Yes Bank shares worth Rs. 688 Crore to SMBC, Moneycontrol, Available at: <https://www.moneycontrol.com/news/business/banks/bandhan-bank-federal-bank-together-sell-yes-bank-shares-worth-rs-688-crore-to-smbc-13554643.html>.

16 Who we are, HDFC, Available at: <https://www.hdfcbank.com/personal/about-us/overview/who-we-are>.

17 Supra Note 07.

18 Id.

Details of the Deal

- f) **IDFC First Bank:** IDFC First Bank, formed from the merger of IDFC Bank and Capital First,¹⁹ joined the reconstruction consortium in 2020, investing INR 2.5 billion (approx. USD 28.49 million),²⁰ and held a post-reconstruction equity stake which was partly transferred in the SMBC purchase from the group of private lenders.²¹
- g) **Kotak Mahindra Bank:** Kotak Mahindra Bank, a dominant private bank founded in the 1990s,²² subscribed to the reconstruction issuance (INR 5 billion or approx. USD 56.98 million) and subsequently sold part of its holding to SMBC as part of the portfolio of private banks transferring shares in the 2025 deal.²³

These private banks collectively sold 6.82% to SMBC as part of Transaction 1.

D. Sumitomo Mitsui Banking Corporation

SMBC is one of Japan's largest banking institutions and, together with its parent SMFG, forms a global financial conglomerate active across banking, leasing, securities, credit cards and consumer finance. SMBC itself traces its modern form to a 2001 merger of two leading Japanese banks and operates globally. SMFG is among the largest banking groups in Japan and the world, and SMFG is publicly listed. The group has been pursuing international expansion and had an established strategic presence in India through on-the-ground branches and an affiliated NBFC (SMFG India) as part of a broader India strategy.²⁴

E. Carlyle

Carlyle group held this investment through one of its Mauritius-incorporated special purpose vehicles (reports and regulatory filings describe the entity invested in Yes Bank as being ultimately controlled by funds managed by affiliates of the Carlyle Group Inc.).²⁵ Carlyle acquired a stake of 10% in Yes Bank in 2022 and has since adjusted its holding through market sales and private transactions.²⁶ Carlyle sold a portion of its stake to SMBC, allowing SMBC to acquire an additional 4.21% stake in Yes Bank.²⁷

19 Merger of IDFC Bank and Capital First, IDFC First Bank, Available at: <https://www.idfcfirst.bank.in/idfc-bank-and-capital-first-merger>.

20 IDFC First Bank to invest ₹250 crore in Yes Bank, The Hindu, Available at: <https://www.thehindu.com/business/Industry/idfc-first-bank-to-invest-250-crore-in-yes-bank/article61962826.ece>.

21 Supra Note 06.

22 About us, Kotak Bank, Available at: <https://www.kotak.bank.in/en/about-us.html>.

23 Supra Note 06.

24 Id.

25 CCI Approves acquisition of stake by CA Basque Investments of Yes Bank Limited, Press Information Bureau, Available at: <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1869746>.

26 Carlyle to invest up to a 10% Stake in Yes Bank, One of the Largest Private Sector Banks in India, Carlyle News release, Available at: <https://www.carlyle.com/media-room/news-release-archive/carlyle-invest-up-to-a-10-percent-stake-in-yes-bank-one-of-largest-private-sector-banks-in-india>.

27 Supra Note 04.

II. Chronology of Events

Date	Description
March 5, 2020	Imposition of moratorium by the RBI on Yes Bank
March 13, 2020	Reconstruction Scheme passed by the Ministry of Finance, Government of India
March 14, 2020	SBI and Other Investor Banks invested as part of the Reconstruction Scheme in March 2020
May 9, 2025	Yes Bank publicly announced that SMBC would acquire 20% in the bank (13.18% from SBI along with 6.82% from Other Investor Banks) and execution of SPA between SMBC, SBI and Other Investor Banks
July 15, 2025	The board of directors of Yes Bank approved the notice for the 21st AGM, specifically including the Special Resolutions required to amend the AoA for SMBC’s board rights
July 23, 2025	Amendment to Investment Agreement between Yes Bank and VHL (an affiliate of Advent International) based on which VHL’s 2020 investment terms were revised to replace the non-retiring board seat with one liable to retire by rotation and removing alternate director rights
August 21, 2025	21st AGM: Yes Bank shareholders passed a Special Resolution approving the “Alteration of AoA” to legally enshrine SMBC’s right to nominate directors. This was a mandatory statutory prerequisite before the RBI could grant its final approval
August 22, 2025	RBI granted approval permitting SMBC to acquire up to 24.99% of Yes Bank’s paid-up capital. The approval was valid for 1 year from the date
September 2, 2025	CCI granted approval for the proposed share/voting rights acquisition
September 10, 2025	Approval obtained from RBI for the proposed amendments to the AoA in connection with nomination of 2 (two) nominee directors by SMBC and 1 (one) nominee director by SBI
September 10, 2025	SMBC sold its entire 1.65% stake in Kotak Mahindra Bank (block deal) as part of portfolio re-alignment ahead of Transaction 1
September 17, 2025	Resignation of Mr. Sandeep Tiwari (nominee director of SBI) as a non-executive director of the board
September 17, 2025	Completion of the Transaction 1 involving secondary stake acquisition by SMBC in Yes Bank (13.18% from SBI + 6.82% from Other Investor Banks)
September 17, 2025	SMBC signed a definitive agreement with Carlyle to acquire an additional 4.21% equity stake in Yes Bank
September 18, 2025	Approval of appointment of Mr. Shinichiro Nishino and Mr. Rajeev Veeravalli Kannan as additional director, non-executive and non-independent directors on the board of Yes Bank (nominee directors of SMBC)
September 22, 2025	Completion of Transaction 2, involving SMBC acquiring 4.21% from Carlyle via off-market sale

III. Deal Structure/ Brief

SMBC’s acquisition of shares in Yes Bank can be divided into two transactions, as below:

A. Transaction 1 – SMBC Acquisition of 20% Stake in Yes Bank

a) Pre-Transaction Stage

Under the Reconstruction Scheme, SBI and Other Investor Banks infused capital into Yes Bank in exchange for equity shares, thereby becoming shareholders of the restructured bank. Prior to the Transaction 1, SBI held approximately 23.96% of the equity share capital of Yes Bank while the Other Investor Banks collectively held around 9.74%, with the remaining shareholding distributed among public shareholders. This consortium-based shareholding structure formed the foundation for the subsequent strategic divestment to SMBC.

Details of the Deal

b) Transaction Stage

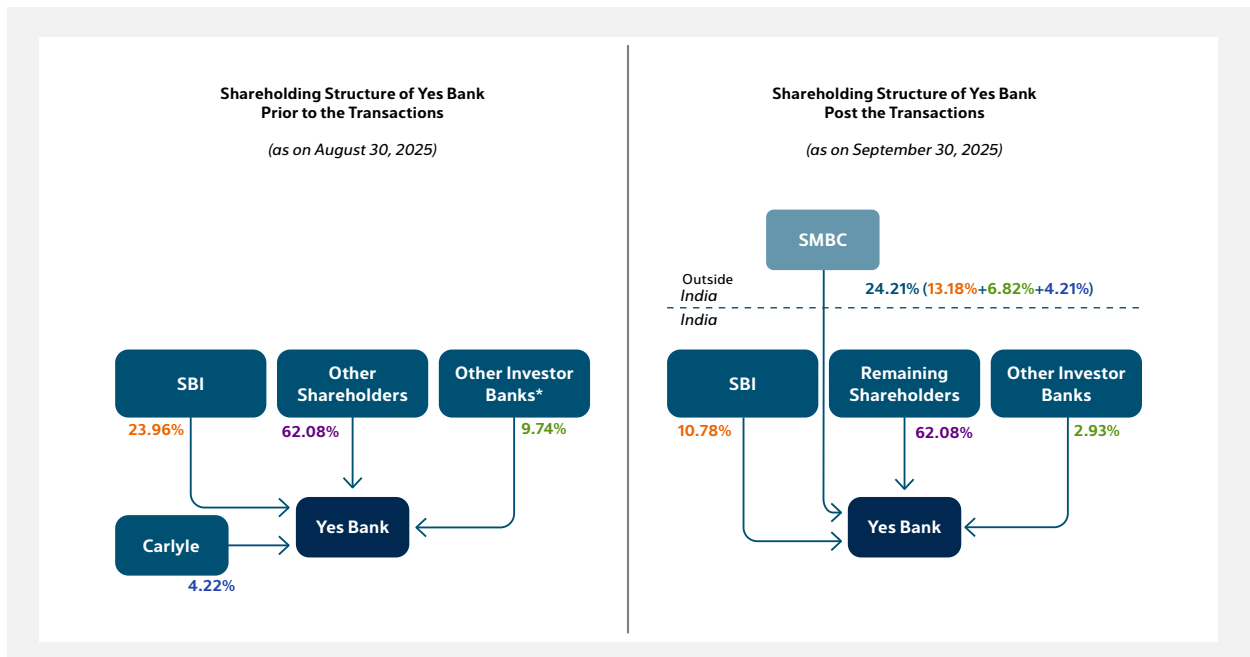
This transaction, notified by Yes Bank to the recognised stock exchanges (NSE, BSE) in May 2025, involved SMBC acquiring a 20% stake in Yes Bank through coordinated secondary transfers from SBI and the Other Investor Banks. At the first level, SBI executed the SBI SPA with SMBC for the sale of SBI Sale Shares. In parallel, the shareholders’ agreement between SBI and Yes Bank was amended to reflect the revised governance structure, and a new shareholders’ agreement was entered into between SMBC and Yes Bank capturing SMBC’s post-investment rights, including board representation and pre-emptive rights. At the second level, Other SPAs were executed between each of the Other Investor Banks, SMBC, and Yes Bank, under which SMBC agreed to acquire the Other Investor Banks’ Sale Shares. SBI SPA and Other SPAs were consummated simultaneously, resulting in SMBC successfully securing a 20% equity position in a single coordinated closing.

c) Post-Transaction Stage

Following Transaction 1, SBI’s shareholding reduced from 24% to 10.78%, and its board representation decreased from two seats to one, although it continued to remain a major shareholder of Yes Bank. SMBC emerged as the single largest non-promoter strategic investor in Yes Bank with two board seats and pre-emptive rights, enabling it to maintain its pro-rata shareholding in future issuances. Other Investor Banks collectively retained around 2.93% of the equity share capital post-transaction.

B. Transaction 2 – Secondary transfer from Carlyle to SMBC

In addition to Transaction 1, SMBC acquired 4.21% equity stake in Yes Bank from Carlyle through a secondary sale. The per share purchase price for this transaction was aligned with the valuation adopted in Transaction 1, and the total purchase consideration amounted to approximately INR 28.5 billion (approx. USD 324.78 million).



*Other investor Banks includes Axis Bank, Bandhan Bank, Federal Bank, HDFC Bank, ICICI Bank, IDFC First Bank and Kotak Mahindra Bank

*Other investor Banks includes Axis Bank, Bandhan Bank, Federal Bank, HDFC Bank, ICICI Bank, IDFC First Bank and Kotak Mahindra Bank

IV. Valuation

The acquisition of approximately 24.21% stake in Yes Bank by SMBC was executed as an off-market transfer²⁸ wherein shares were purchased directly from existing shareholders (SBI, Other Investor Banks, and Carlyle) outside of trading hours, rather than a block or bulk deal. For transfer of listed companies shares in case of an off-market transfer, the price at which the foreign investor (such as, SMBC) purchases the shares from persons resident in India (such as, SBI, Other Investor Banks) cannot be less than the price worked out in accordance with SEBI guidelines, i.e., as prescribed under ICDR Regulations for a preferential allotment:²⁹ the higher of (i) volume weighted average price of 90 trading days of the related equity shares quoted on the recognized stock exchange preceding the relevant date³⁰; and (ii) volume weighted average price of 10 trading days of the related equity shares quoted on the recognised stock exchange preceding the relevant date.

Given that the Transactions were undertaken as off-market transactions, the pricing was negotiated as part of the transaction documents, while ensuring the negotiated price remains above the value of the shares as determined by the applicable regulations. Based on publicly available information, the transacting parties used the price-to-book ratio mechanism to determine the price of SBI Sale Shares and Other Investors’ Sale Shares.³¹

Pricing Methodology: The transaction was executed at a negotiated price of INR 21.50 (approx. USD 0.24) per share, valuing the deal at a negotiated Price-to-Book (“P/B”) ratio of ~1.4x based on March 2025 book value.³² This P/B multiple served as the primary valuation benchmark, reflecting a premium over Yes Bank’s historical acquisition price (INR 10/share at the time of Reconstruction Scheme), aligning with the bank’s recovery metrics.

Regulatory Provisions: A critical aspect of the deal structure was its adherence to the Takeover Code. SMBC capped its holding at 24.21% (i.e., below the 25% threshold). By doing so, they avoided triggering “mandatory open offer” by SMBC to the public shareholders.³³ Had SMBC crossed 25%, they would have been required to give the minority shareholders an opportunity to exit, per Indian securities law.³⁴

V. Key Commercial Terms

A. Initial Acquisition from SBI and Other Investor Banks

On July 23rd, 2025, Yes Bank published a notice to conduct its twenty-first (21st) AGM, which included, on the agenda, a special resolution for the grant of certain special rights to SMBC and the amendment of AoA of Yes Bank to include such special rights, pursuant to the completion of:

28 Disclosure made by SBI dated September 18, 2025 under Takeover Code bearing reference number CC/S&B/AND/2025-26/472 and Available at: https://www.bseindia.com/xml-data/corpfiling/AttachHis/02AEA258_56C0_4E20_91CE_C29ED55B105A_105040.pdf.

29 Rule 21(2)(b) of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (as amended from time to time) read with Regulation 164 of ICDR Regulations.

30 Relevant date, per Regulation 161 ICDR Regulations, in case of preferential issue of equity shares for frequently traded shares means the date thirty days prior to the date on which the meeting of shareholders is held to consider the proposed preferential issue.

31 Transcript of the ‘Conference Call on acquisition of shares of Yes Bank’, SMBC Group, Available at: https://www.smfg.co.jp/english/investor/financial/small/pdf/20250512_faq_e.pdf.

32 Transcript of the ‘Conference Call on acquisition of shares of Yes Bank’, SMBC Group, Available at: https://www.smfg.co.jp/english/investor/financial/small/pdf/20250512_faq_e.pdf.

33 Regulation 3(1) of the Takeover Code.

34 Regulation 8 of the Takeover Code.

Details of the Deal

- a) Acquisition of SBI Sale Shares representing 13.18% of the equity share capital of Yes Bank from the SBI by SMBC, by way of SBI SPA dated May 9, 2025; and
- b) Acquisition of Other Investor Banks’ Sale Shares representing 6.82% of the equity share capital of Yes Bank from each of the Other Investor Banks by SMBC, by way of individual share purchase agreements (i.e., Other SPAs),

for a net consideration of INR 134.83 billion (approx. USD 1.53 billion), subject to receipt of approval for the acquisition from the RBI and CCI.

B. Share Purchase Agreements and Shareholders’ Agreements

SBI SPA along with the Other SPAs contained the following key terms customary to share purchase agreements in relation to a transaction of this nature and magnitude: (a) SMBC, by virtue of this transaction, would hold exactly 20% of the shareholding of Yes Bank; (b) Yes Bank provided customary fundamental and business warranties to SMBC backed by indemnity obligations in favour of SMBC; (c) SBI provided customary fundamental warranties backed by indemnities; (d) Yes Bank also provided standstill covenants between the execution and closing (“Standstill Period”) of the SPAs to covenant to SMBC that the business of the bank shall continue to operate in its ordinary course during the Standstill Period; (e) the Other SPAs were also mandatorily required to close simultaneously with the SBI SPA.

The resolution tabled and passed by Yes Bank in the meeting aforementioned stated that, subject to the approval of the RBI and CCI, and the relevant applicable regulations under the LODR Regulations and the BR Act, pursuant to the SBI SPA, by virtue of the acquired shareholding (including through the Other SPAs), SMBC had acquired the right to; (a) nominate 2 (two) non-executive and non-independent directors on the board of directors of Yes Bank; and (b) the pro-rata pre-emptive right to subscribe to such number of equity securities being issued by Yes Bank, in order for SMBC to maintain its proportionate shareholding in Yes Bank.

As a consequence of SMBC’s acquisition of shares of Yes Bank from SBI, the shareholders’ agreements of the Purchaser and SBI had to be requisitely amended, and so did the AoA of Yes Bank, to capture the various additions / changes in the rights granted to the Purchaser and SBI, respectively.

SBI, which earlier had the right to nominate two (2) non-executive non-independent directors on the board of directors of Yes Bank, was diluted to only having the right to appoint one (1) non-executive non-independent director. The AoA of Yes Bank were appropriately amended to capture the refreshed governance structure of the bank. These amendments to the various rights were accorded in the shareholders’ agreements of the respective parties with Yes Bank, i.e., the Purchaser SHA and SBI SHA.³⁵

In addition to the aforementioned rights, the Purchaser SHA and SBI SHA, each contained a fall-away threshold, upon the downward breach of which, the various rights granted to SMBC and SBI, respectively, would cease to exist. For SMBC, this threshold has been provided to be a minimum shareholding level of 10%, whereas for SBI, the threshold is 5% of the shareholding of Yes Bank.

35 Disclosure by Yes Bank to the respective stock exchanges pursuant to Regulation 30 of the LODR Regulations, NSE, Available at: https://nsearchives.nseindia.com/corporate/YESBANK_17012026125054_YBL_SE_Intimation_Outcome_BM_17012026_signed.pdf.

Details of the Deal

On September 18, 2025, Yes Bank announced the following: (a) Appointment of Mr. Shinichiro Nishino as non-executive and non-independent director of Yes Bank (“SMBC Nominee Director 1”); (b) Appointment of Mr. Rajeev Veravalli Kannan as non-executive and non-independent director of Yes Bank (“SMBC Nominee Director 2”); and (c) Resignation of Mr. Sandeep Tewari as a non-executive director of Yes Bank (the erstwhile second SBI nominee director on the board of directors of Yes Bank).

C. Subsequent Acquisition from Carlyle

The subsequent acquisition of a 4.21% equity stake by SMBC from Carlyle was executed via a definitive share purchase agreement in September 2025, structured as an off-market secondary transfer priced at INR 21.50 per share (~INR 28.5 billion or approx. USD 324 million) to mirror the valuation of the initial tranche. The closing of the transaction was governed by certain conditions precedent, requiring specific RBI approval for the transfer of shares between non-resident entities and validation that the acquirer’s aggregate shareholding would not breach the 26% voting rights cap prescribed by the BR Act. Commercially, the deal size was legally engineered to serve as a “bridging tranche,” keeping SMBC’s aggregate holding at 24.21%, just below the 25% mandatory open offer threshold under the Takeover Code.

VI. Value Proposition for Yes Bank

For Yes Bank, the strategic partnership with SMBC could yield multiple benefits:

- a) **Enhanced Credibility and Reputation:** The entry of a global financial powerhouse like SMBC as a strategic partner may enhance the credibility of Yes Bank and restore investor confidence in the bank, as this collaboration is expected to bring in a new level of professionalism, transparency and accountability. The increased share price of Yes Bank after the reports of infusion of capital by SMBC could be viewed as a testament to this fact.³⁶ Further, this improved perception might have been a key factor in the bank securing a credit rating upgrade to ‘AA-’. As articulated by the bank’s CEO, this re-rating is expected to lower its cost of deposits and unlock new business opportunities with high-rated corporates that were previously inaccessible.³⁷ The increased confidence may also help the bank raise capital in the future, both from domestic and international investors, with the stronger brand reputation and global governance standards of SMBC.
- b) **Access to Global Expertise and Business Synergies:** The partnership with SMBC could also provide Yes Bank with access to a wealth of global expertise and a vast network of corporate clients, unlocking new business opportunities. SMBC is one of the largest and most respected banking institutions in the world, with a strong presence in key international markets. SMBC’s expertise in areas such as corporate banking, treasury operations, and cross-border trade is expected to be a valuable asset for Yes Bank as the bank may draw on this expertise to improve its operational efficiency and to enhance its risk management capabilities, thus paving the way to its path of expansion of business and profits.

36 Yes Bank shares rise as Sumitomo Mitsui lines up Rs 16,000 cr fresh capital infusion, Economic Times, Available at :<https://economictimes.indiatimes.com/markets/stocks/news/yes-bank-shares-rise-as-sumitomo-mitsui-lines-up-rs-16000-cr-fresh-capital-infusion/articleshow/123577053.cms>.

37 Yes Bank sees ratings upgrades from SMBC stake buy, eyes double digit loan growth this year, says CEO, Moneycontrol, Available at: <https://www.moneycontrol.com/news/business/markets/yes-bank-sees-ratings-upgrades-from-smbc-stake-buy-eyes-double-digit-loan-growth-this-year-says-ceo-13629275.html>.

Details of the Deal

- c) **Long-Term Stability:** The transaction resolves the market uncertainty surrounding the eventual exit of the banking consortium. By replacing these institutions with a committed, long-term strategic partner, the deal ensures stability in the bank’s shareholding structure.³⁸ Furthermore, SMBC’s presence as an anchor investor, coupled with its pre-emptive rights, provides greater assurance for the success of any future capital-raising initiatives.³⁹

VII. Value Proposition for SMBC

Based on representations made by SMBC, the acquisition is a strategic move by SMBC to solidify its position in one of the world’s most promising economic regions. Through this, SMBC will get the following benefits:

- a) **Strategic Foothold in a High-Growth Market:** The acquisition of a stake in Yes Bank has provided SMBC with a strategic entry into the commercial banking business in the Indian market and further accelerate SMBC Group’s business in India, which has a fee pool which is expected to grow 2.5x in 10 years and a steady shift from state owned public banks to private banks.⁴⁰ This aligns with the long-term strategic vision of SMBC as quoted by Akihiro Fukutome, chief executive of SMBC⁴¹, as well as slots into the multi franchise strategy⁴² of SMBC,⁴³ of which India is a focus country.⁴⁴ Further, this move may also allow SMBC to diversify its revenue streams, develop full banking and financial services operations, reduce its dependence on the Japanese market, and to tap into the immense growth potential of the Indian economy.
- b) **Creation of an End-to-End Financial Ecosystem:** When combined with its existing non-banking financial company, SMFG India Credit, the stake in Yes Bank gives SMFG a comprehensive presence across the entire Indian financial services value chain, from retail and SME lending to wholesale and corporate banking.⁴⁵ While Rajeev Kannan, group executive officer and head of SMBC Group’s India division, stated that for the short term, the group intends to keep its existing non-bank lending business SMFG Credit separate from its investment in Yes Bank, he did acknowledge that “in the future, there is a possibility that things could be more integrated”.⁴⁶ This could provide significant synergies and further strengthen SMBC’s position in the Indian financial services landscape.
- c) **Other Synergies:** The partnership with Yes Bank will provide SMBC with access to an already established franchise in India, as Yes Bank is one of the leading private sector lenders in India, with a significant presence in both the retail and corporate banking segments, instead of following a green field approach. The partnership with Yes Bank is expected to provide SMBC with an opportunity to cross-sell its products and services to the customers of Yes Bank and it will have a significant impact on the growth trajectory of SMBC in the Indian market. It will allow the bank to accelerate its customer acquisition, to increase its market share, and to create new revenue streams, as well as support the flow of trade and capital from Japan to India. It will also provide the bank with a deeper understanding of the Indian market and its unique characteristics, thus providing a platform to expand its business in other emerging markets in Asia in the future.

38 ‘SMBC deal creates re-rating possibility for Yes Bank,’ Financial Express, Available at: <https://www.financialexpress.com/business/banking-finance-smbc-deal-creates-re-rating-possibility-for-yes-bank-prashant-kumar-3842306/>.

39 id.

40 News Release, SMBC, Available at: https://www.smbc.co.jp/news_e/pdf/e20250509_01.pdf.

41 Sumitomo of Japan buys 20% stake in Yes Bank for around Rs. 13,483 Crore, Indian Express, Available at: <https://indianexpress.com/article/business/sumitomo-japan-yes-bank-9993281/>.

42 In which the short-term goal of SMBC is to focus on maximize returns from existing investments without expanding into additional countries or new businesses.

43 News Release, SMBC, Available at: https://www.smbc.co.jp/news_e/pdf/e20250509_01.pdf.

44 Id.

45 Supra Note 39.

46 SMBC Rules out raising stake in Yes Bank beyond 25%, Yes Bank shares tumble, Reuters, Available at: <https://www.reuters.com/world/asia-pacific/smbc-rules-out-increasing-stake-yes-bank-beyond-current-level-2025-10-17/>.

VIII. Value Proposition for SBI, Other Investor Banks and Carlyle

The value proposition for the selling shareholders can be broadly set out as below:

- a) **Gain and Taxability of Exit:** The banking consortium, which had stepped in to rescue Yes Bank by investing at INR 10 per share, was able to exit its investment at INR 21.50 per share. This generated a substantial, gain validating their participation in the reconstruction scheme from a commercial standpoint.⁴⁷
- b) **Fulfilment of Stewardship Role for the Bank Consortium:** For SBI and the Other Investor Banks, the sale marked the successful conclusion of their mission. Their objective was to stabilize Yes Bank and steer it through its transformation. The handover to a credible, long-term strategic partner like SMBC represents the successful completion of this stewardship role, as articulated by SBI’s leadership.
- c) **Value Crystallisation for Carlyle:** For Carlyle, the sale to SMBC provided a timely and profitable exit, allowing it to crystallise the value created since its investment in 2022.⁴⁸

47 SMBC to buy additional 4.2% stake in Yes Bank from PE firm Carlyle Group, M&A Critique, Available at: <https://mnacritique.mergersindia.com/news/smbc-to-buy-additional-4-2-stake-in-yes-bank-from-pe-firm-carlyle-group/>.

48 Completion of Initial Acquisition of Stake in YES BANK and Execution of Agreement for Additional Stake, SMBC, Available at: https://www.smbc.co.jp/news_e/pdf/e20250917_02.pdf.

Contextual Background

I. Crisis Emerges

Yes Bank was once admired for its fast growth and aggressive lending appetite, which propelled it into the top ranks of private sector banks in India. However, behind its rapid ascent lay underlying vulnerabilities. Between 2015 and 2019, the bank heavily concentrated its lending towards sectors such as real estate, infrastructure, and shadow banking NBFCs, all of which faced mounting stress during this period. Poor credit appraisal, inadequate risk management, and governance lapses exacerbated the situation. The bank's annual results from late 2019 highlighted significant losses, a rise in non-performing assets (NPAs), and a capital erosion threatening its solvency.

Adding fuel to the fire, Yes Bank's attempts at raising fresh equity capital to shore up its balance sheet repeatedly failed, further shaking investor confidence. RBI closely monitored these developments and, by early 2020, deemed that the bank faced a severe financial position with no credible revival plan on the horizon. Concerns grew over the bank's liquidity position as depositors began withdrawing funds en masse, which, along with an absence of any credible plans for infusion of capital, risked systemic contagion in the banking sector.

On March 5, 2020, the RBI imposed a moratorium on Yes Bank, restricting withdrawals to INR 50,000 (approx. USD 569.8) per depositor and superseding the existing board of directors of Yes Bank. This move was intended to stem an outright collapse and allow time for an emergency resolution plan to be crafted, i.e., the Reconstruction Scheme.

II. Legal Framework and Strategic Design of Reconstruction Scheme

Leveraging its powers under Section 45 of the BR Act, the RBI swiftly formulated the Reconstruction Scheme to restore stability.¹ The official scheme was notified on March 13, 2020, after consultations with stakeholders and the Ministry of Finance.² The primary objectives were to protect depositor interests, stabilize the bank's liquidity, revamp governance, recapitalize the bank, and safeguard systemic financial stability.

A hallmark of the scheme was its status as a rare public-private hybrid rescue, featuring capital infusion predominantly by SBI alongside a consortium of leading private sector banks, i.e., the Other Investor Banks. The strategic involvement of SBI as India's largest public sector bank, was designed to instill credibility and experience in managing the turnaround.

1 Section 45(4) and 45(7) of the BR Act.

2 Central Govt notifies - Yes Bank Reconstruction Scheme 2020, SCC OnLine, Available at: <https://www.sconline.com/blog/post/2020/03/14/central-govt-notifies-yes-bank-ltd-reconstruction-scheme-2020/>.

III. Key Features and Structural Changes

Reconstruction Scheme entailed several landmark measures.³

- a) A capital infusion of INR 100 billion (approx. USD 1.13 billion) was arranged, primarily led by SBI, which took up to a stake of around 49%, with a mandatory lock-in period of three years for 75% of such shares allotted to the participating banks to ensure commitment and stability.
- b) Imposition of a lock in on 75% of shareholding of the shareholders of Yes Bank holding 100 or more shares of the company for a period of 3 years.
- c) Eligible investors were allotted shares at a price of INR 10 per share (Face value of INR 2, along with a premium of INR 8, per share), with the bank's authorized capital increased significantly, to INR 62 billion (approx. USD 706 million), in order to facilitate a fresh share issuance.
- d) There were restrictions placed on the voting rights attached to shares held by investors in the reconstructed Yes Bank. For any investor other than the investor bank (i.e., SBI), voting rights were exercisable only to the extent of; (i) their actual shareholding in the bank; or (ii) 9% of the total voting rights of all shareholders in the reconstructed bank; or (iii) any lower percentage as decided by the RBI.
- e) RBI retained the discretion to permit an investor, other than SBI, to exercise voting rights beyond 9% but capped at a maximum of 15% of total voting rights. Investors who were allowed to hold voting rights up to 15% gained the privilege to nominate one director to the bank's board.
- f) Additionally, all investors, including SBI, who had subscribed to the shares of Yes Bank under the Reconstruction Scheme, were granted an exemption from any liability to pay capital gains tax under the ITA on any deemed profits or gains on account of such subscriptions.
- g) The entire existing board of directors of Yes Bank was replaced, and new management was appointed under the oversight of SBI and RBI nominations, focusing on restoring governance standards and compliance (as further set out in Section F (3) below).
- h) Depositors were fully safeguarded with no haircuts, ensuring that public confidence in the banking system was maintained, and branch operations and employee contracts continued unaffected.
- i) Several procedural provisions allowed the smooth implementation of the scheme, including waivers on third-party consents and preservation of pre-existing contracts and liabilities, creating legal certainty.

After notification of Reconstruction Scheme, Yes Bank, through its administrator, undertook a complete write-down of INR 84.15 billion (approx. USD 958.97 million) in additional tier 1 (AT-1) bonds, enforcing total loss for holders of these contingent convertible bonds.⁴ This move reasserted the risk hierarchy, with debt investors bearing losses ahead of shareholders or depositors. While such a write down was originally proposed as part of the Reconstruction Scheme by the RBI in its draft form, the write-down of such bonds occurred one day after the scheme was notified. The sequencing has led to legal controversy and is currently with the Supreme Court of India.⁵

3 Ministry of Finance (Department of Financial Services), Notification G.S.R. 174(E) of 2020, Yes Bank Limited Reconstruction Scheme, 2020, MNA Critique, Available at: mnacritique.mergersindia.com/reconstruction-scheme-for-yes-bank-of-india/.

4 Disclosure issued by Yes Bank dated March 14, 2020 bearing reference number YBL/CS/2019-20/186(2) under Regulation 51 of LODR.

5 SLP(C) No.3713 of 2023; SLP (C) No. 4244-4253 of 2023 and SLP(C) No. 3856-3865 of 2023.

IV. Immediate Impact and Stakeholder Response

The moratorium, while initially restrictive, helped prevent a run on the bank. An emergency liquidity facility of INR 600 billion (approx. USD 6.83 billion) was extended by the RBI to enable the bank to meet withdrawal demands without distress. The swift placement of new capital and management reform stemmed the liquidity crisis and restored operational continuity. Depositors regained access and confidence without losses, which was crucial for systemic stability. However, shareholders saw massive dilution due to capital raises, and AT-1 bondholders incurred total losses, creating precedent but also sparking litigation, while employees benefited from job security during the transition.

The handover of control to a new board of directors led by veteran risk managers and the largest public sector bank underscored the seriousness of the reconstruction and the priority accorded to prudent governance. In the years following reconstruction, Yes Bank witnessed marked improvements. By June 2023, its deposit base more than doubled from INR 1.1 trillion (approx. USD 12.53 billion) at the time of crisis to over INR 2.2 trillion, a significant indicator of regained depositor trust.⁶

The capital adequacy ratios improved robustly following the infusion and write-downs, allowing Yes Bank to resume regular lending activities with a tighter risk framework. The stipulated shareholding lock-in period helped provide medium-term stability, enabling management to focus on asset quality recovery rather than capital markets pressures. Profitability returned gradually as operational efficiencies improved, and bad loan provisioning stabilized. Market valuation responded positively, with new investors earning substantial returns compared to the distressed entry points in 2020.

The structural reforms during reconstruction introduced sharper accountability and clearer risk transmission mechanisms, renewing regulatory expectations for Indian banks deemed systemically important.

V. Critical Insights

Reconstruction Scheme showcased the ability of Indian regulators to implement a complex, high-stakes bank resolution blending public and private capital under tight timelines. The preservation of depositor interests without systemic contagion was a clear success.

However, the write-down of AT-1 bonds exposed ambiguities in investor risk perception and disclosure, triggering litigation and debate.⁷ Questions persist regarding regulatory oversight before the crisis and whether moral hazard concerns may influence future bank behaviour. Nonetheless, the scheme has become a blueprint for managing large private bank failures in India, demonstrating the value of coordinated intervention, decisive governance overhaul, and layered capital restructuring in safeguarding financial stability. The bank’s steady recovery from near collapse highlights the efficacy of the scheme, though ongoing vigilance and enhancements to regulatory frameworks remain essential to prevent future recurrences.

6 Gupta, Salil, “India: Yes Bank Moratorium, 2020”, Journal of Financial Crises, Volume 7, Issue 2, Available at SSRN: Available at: <https://ssrn.com/abstract=5309938>.

7 Id.

Commercial and Financial Considerations

I. Overview of the Banking Sector in India

The regulatory foundations of investment and mergers in India’s banking sector are anchored in the BR Act, which entrusts the RBI with exclusive powers to license banking companies, regulate their shareholding and voting rights, and intervene where operations threaten stability.¹ For decades after independence, the statutory architecture set up in 1949 was reinforced by foreign-exchange controls under FERA and later FEMA, which virtually prohibited FDI in banks and constrained domestic holdings through fit-and-proper and licensing criteria. Ownership dispersion was a policy imperative, that the Government of India sought to prevent concentration of financial power while protecting depositors and ensuring solvency. Foreign banks could enter India only via branch licences or wholly owned subsidiaries, while domestic private banks remained shielded from significant external equity.²

The post-1991 liberalisation phase initiated a gradual recalibration. Economic reforms emphasised capital inflows and competition, yet the banking sector opened later and more selectively than industry.³ Through a series of circulars, the RBI began easing restrictions on share acquisition subject to stringent suitability assessments. Structured processes were established for determining beneficial ownership and governance standards, along with specific thresholds set out for acquisition of equity or voting rights in banks.⁴

This framework was consolidated through the erstwhile 2023 Directions (now replaced by 2025 Directions), which unified norms for scheduled commercial banks, local-area banks and small-finance banks.⁵ The 2025 Directions reaffirm the requirement of prior approval for “major shareholding” ($\geq 5\%$), mandate continuous monitoring of shareholder fitness, and impose detailed reporting duties.

II. Major Trends in the Banking Sector in India

India’s banking sector is undergoing a structural transformation, marked by a discernible shift from regulatory-led consolidation to market-driven mergers and strategic capital partnerships. What once were rescue-oriented amalgamations are increasingly giving way to transactions aimed at scale, technological renewal, and global integration. The latest wave of investment spanning foreign bank entries, private equity infusions, and cross-border acquisitions illustrates how policy liberalisation and strategic necessity are converging to reshape the ownership landscape of Indian banks.⁶

1 BR Act.

2 RBI, Master Circular on Branch Authorisation issued on July 1, 2013; RBI, Scheme for Setting up of Wholly Owned Subsidiaries (WOS) by foreign banks in India, Available at: https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?id=2758.

3 RBI, Chronology of Events, Crisis and Reforms 1991 to 2000, Available at: https://rbi.org.in/history/Brief_Chro1991to2000.html.

4 Master Direction – Prior Approval for Acquisition of Shares or Voting Rights in Private Sector Banks, 2015, Available at: https://rbi.org.in/SCRIPTS/BS_ViewMasDirections.aspx?id=10126.

5 Master Direction – Acquisition and Holding of Shares or Voting Rights in Banking Companies, 2023, Available at: https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12439.

6 Global Giants bet big on India’s Banking boom, Business World, Available at: <https://www.businessworld.in/article/global-giants-bet-big-on-india-s-banking-boom-577187>.

A. Increase in Foreign Investment

A defining characteristic of this phase is the growing diversity of capital sources. Global commercial banks, sovereign investors, and private equity funds are all positioning themselves as long-term stakeholders in India’s financial system. Between January and September 2025 alone, the financial sector recorded nearly INR 731 billion (approx. USD 8 billion) worth of M&A transactions an increase of 127% year-on-year.⁷ This momentum reflects both confidence in India’s macroeconomic fundamentals and the regulatory willingness to accommodate complex ownership structures under the RBI’s prudential lens.

B. DBS LVB Amalgamation

The inflection point for this new trajectory can be traced to the 2020 DBS Bank–Lakshmi Vilas Bank (LVB) amalgamation, executed under Section 45 of the BR Act.⁸ Faced with LVB’s deteriorating asset quality and liquidity, the RBI invoked its special powers to merge the 94-year-old Indian lender with DBS Bank India Ltd. (DBIL), the Indian subsidiary of Singapore’s DBS Group. The transaction backed by a INR 25 billion (approx. USD 284.9 million) capital injection from DBS was remarkable not merely as a resolution of a distressed entity but as a precedent for foreign-bank-led rehabilitation. By permitting a foreign-owned subsidiary to absorb a domestic bank, the RBI signalled a pragmatic willingness to privilege systemic stability over ownership orthodoxy. The deal also allowed DBS to instantly scale its presence in South India, while safeguarding depositors demonstrating that well-regulated foreign institutions could be instruments of domestic financial stability rather than threats to it.

Building on this foundation of regulatory confidence, India’s banking market has since witnessed a series of strategic stake acquisitions by global players, each serving a different functional purpose within the system. This also paved the way for SMBC’s acquisition of a significant stake in Yes Bank, wherein RBI gave specific exemptions for certain regulatory requirements (including a limit of 15% applicable to single financial institution shareholders).⁹

C. Warburg Pincus, Abu Dhabi Investment Authority and IDFC Bank

Similarly, Warburg Pincus and ADIA in 2025 jointly invested INR 77 billion (approx. USD 877 million) in IDFC First Bank through compulsorily convertible preference shares, translating into a combined 15% stake upon conversion.¹⁰ Unlike traditional equity participation, the use of convertible instruments reflects a hybrid model balancing capital augmentation with deferred control. The transaction boosted IDFC First Bank’s capital adequacy from 16.40% to nearly 19%, signalling strong investor confidence in India’s retail-credit growth story and the bank’s profitability trajectory.¹¹

7 India’s Financial Sector sees \$ 8 Billion in deals, M&A jump 127% in 2025, Business Standard, Available at: https://www.business-standard.com/finance/news/india-s-financial-sector-sees-8-billion-in-deals-m-as-jump-127-in-2025-125102000153_1.html.

8 Section 45 of BR Act.

9 Master Direction – Acquisition and Holding of Shares or Voting Rights in Banking Companies, 2023, Paragraph 5(b).

10 IDFC First Bank’s board approves fundraising of Rs 7500 Crore from Warburg Pincus and Abu Dhabi Investment Authority, Business Standard, Available here: https://www.business-standard.com/content/press-releases-ani/idfc-first-bank-s-board-approves-fundraising-of-rs-7-500-crore-from-warburg-pincus-and-abu-dhabi-investment-authority-125041700988_1.html.

11 Warburg Pincus and ADIA invest up to 877 Million in India’s IDFC First Bank, Reuters, Available here: <https://www.reuters.com/business/finance/warburg-pincus-adia-invest-up-877-million-indias-idfc-first-bank-2025-04-17/>.

D. Blackstone – Federal Bank

This pattern of foreign strategic participation is paralleled by institutional capital inflows from private equity and sovereign funds seeking exposure to India’s banking growth cycle. In October 2025, Blackstone Group announced its intention to invest INR 61.97 billion (approx. USD 706.21 million) for a 9.99% stake in Federal Bank Ltd., which would make it the single largest shareholder in the Kochi-based lender.¹² The deal, structured via convertible warrants and accompanied by a board nomination right, represents the first significant private-equity presence at a board level in a major private bank. For the RBI, the approval underscored a recognition that patient, institutional capital particularly from long-horizon investors could strengthen governance and liquidity without compromising control.¹³

E. Emirates NBD – RBL Bank

A comparable evolution is visible in the proposed INR 274 billion (approx. USD 3.12 billion) acquisition of a 60% stake in RBL Bank by Emirates NBD PJSC, one of the Middle East’s largest financial institutions.¹⁴ Unlike DBS–LVB, this transaction is not motivated by distress but by expansionary ambition. Emirates NBD’s investment structured through a primary issue and an open offer will make RBL its listed Indian subsidiary, aligning with RBI’s 74% ceiling on foreign investment in private banks.¹⁵ The acquisition aims to leverage RBL’s retail footprint to build a pan-India banking franchise while deepening trade and digital-payment linkages along the India–West Asia corridor. The merged entity’s capital adequacy ratio is projected to rise to 40% post-deal, a level that positions it competitively among India’s large private lenders.¹⁶ Strategically, this deal reflects a graduation from financial rescue to market-led consolidation, where foreign investment functions as a lever for competitive scale, technology transfer, and cross-border integration.

F. Privatisation of IDBI Bank

The proposed privatisation of IDBI Bank represents yet another dimension of this evolution. Following the 2021 Cabinet approval for strategic disinvestment, the RBI and SEBI approved certain foreign investors as eligible bidders, including Canada’s Fairfax Holdings and Emirates NBD to bid for a 60% stake.¹⁷ This will mark India’s first major sale of a government-owned bank to foreign-controlled entities. The reclassification of Life Insurance Corporation (LIC) as a “public shareholder” and the capping of its voting rights at 10% remove structural impediments to such a transaction.¹⁸ The development symbolises India’s gradual shift from state-led ownership to regulated privatisation, where the government retreats from managerial control while retaining supervisory oversight through the RBI.

12 Blackstone to invest Rs. 6196 Crore in Federal Bank for 9.99% Stake, Business Standard, Available here: https://www.business-standard.com/companies/news/blackstone-to-invest-rs-6196-cr-in-federal-bank-for-9-99-stake-125102400261_1.html.

13 Blackstone Affiliate buys 9.99% Stake in India’s Federal Bank, Reuters, Available here: <https://www.reuters.com/world/india/blackstone-affiliate-buys-999-stake-indias-federal-bank-2025-10-24/>.

14 Emirates BD to acquire majority stake in RBL Bank through primary infusion of USD 3 Billion – the largest FDI and equity raise in Indian Banking Sector Till Date- Emirates BD, Available at: <https://www.emiratesnbd.com/en/media-center/emirates-nbd-to-acquire-majority-stake-in-rbl-bank>.

15 RBL Bank eyes large lender status on back of Emirates NBD’s \$ 3 Billion Offer, Business Standard Available here: https://www.business-standard.com/industry/banking/rbl-bank-emirates-nbd-investment-expansion-wealth-digital-growth-125101900419_1.html.

16 Emirates NBD Deal is not sale, it is infusion of capital, New Indian Express, Available here: <https://www.newindianexpress.com/business/2025/Oct/26/emirates-nbd-deal-is-not-a-sale-it-is-infusion-of-fresh-capital>.

17 Sale of IDBI Bank a step closer after LIC gets SEBI nod, Times of India, Available here: <https://timesofindia.indiatimes.com/business/india-business/sale-of-idbi-bank-a-step-closer-after-lic-gets-sebi-nod/articleshow/123491255.cms>.

18 Government aims to complete IDBI Bank stake sale before FY26 end, Business Standard, Available here: https://www.business-standard.com/finance/news/government-to-complete-idbi-bank-sale-before-fy26-end-dfs-125100701463_1.html.

G. Transformation in the Sector

Cumulatively, these transactions reveal a three-dimensional transformation. First, the sector is moving from episodic consolidation to a sustained wave of mergers and strategic investments that emphasise synergy, technology, and capital efficiency. The DBS–LVB merger, once an emergency measure, has now become a template for cross-border strategic entry. Second, foreign bank participation is broadening from Japan’s SMBC and Singapore’s DBS to West Asian and North American institutions suggesting confidence in India’s regulatory predictability. Third, the rise of institutional investors such as Blackstone, Warburg Pincus, and ADIA marks the institutionalisation of banking ownership, where patient capital replaces promoter-driven control.¹⁹

The underlying regulatory philosophy behind this trend is neither laissez-faire liberalisation nor rigid conservatism. Instead, it reflects what may be called prudential liberalisation, a model in which openness to foreign and institutional investment coexists with strong supervisory guardrails. The RBI retains final say over ownership approval and voting rights (capped at 26%), while the CCI monitors market concentration under the CA.

At the same time, regulators recognise that scale and foreign partnerships are now strategic necessities. Mid-sized banks require capital to meet technology and risk-management demands, while global banks seek access to India’s under-penetrated market. As one industry observer noted, “foreign capital in Indian banking is now less about rescue and more about relevance.”²⁰ The result is a recalibrated ecosystem where competition, capital and regulation are not in tension but in dynamic balance a model increasingly defining India’s place in the global banking order.

III. CCI’s Outlook on the Banking Industry

In assessing combinations in the banking sector, the CCI applies factors under Section 20(4) of the CA with a focus on market concentration, horizontal overlaps, vertical linkages, entry barriers, and countervailing market power.²¹ In Kotak Mahindra Bank/ING Vysya Bank, the CCI noted that the merged entity’s combined market share was insignificant in the relevant markets and that significant competitors such as SBI, HDFC, and ICICI ensured continued contestability.²² Similarly, in Axis Bank/Citicorp Finance (India) Ltd, the Commission examined overlapping segments retail lending, deposits, digital payments, and distribution of financial products and concluded that low incremental market shares and dynamic fintech entry mitigated any competitive concerns.²³

In HDFC Ltd/HDFC Bank, one of the most comprehensive assessments, the CCI analyzed both horizontal overlaps (in loans, deposits, insurance distribution, mutual funds, and pension fund services) and vertical linkages (e.g., housing loans and downstream distribution), but found that combined shares even in narrow markets like auto loans or retail lending remained within 20%, with robust constraints from public and private

19 Global Banks bet billions on deals in India amid US credit jitters, Business Standard, Available here: https://www.business-standard.com/industry/banking/global-banks-bet-billions-on-deals-in-india-amid-us-credit-jitters-125102000073_1.html.

20 Why is the world betting big on Indian banks, Economic Times, Available here: <https://m.economictimes.com/industry/banking/finance/banking/foreign-investment-in-indian-banks-why-is-the-world-betting-big-on-indian-lenders/articleshow/124845023.cms>.

21 CA, Section 20(4).

22 CCI, Combination Registration No. C-2014/12/231, Available at: <https://cci.gov.in/images/caseorders/en/1652516578.pdf>.

23 CCI Combination Registration No.C-2022/06/941, Available at: <https://www.cci.gov.in/public/images/caseorders/en/order1665120155.pdf>.

sector banks.²⁴ Likewise, in AU Small Finance Bank/Fincare Small Finance Bank, the Commission emphasized that fragmented market structures and multiple competitors precluded any AAEC²⁵, while in SMBC/Yes Bank, it recognized the disciplining role of large incumbents and regulatory oversight by the RBI.²⁶

Across these cases, the CCI has consistently taken a functionally deferential yet analytically thorough approach acknowledging that RBI’s prudential norms, sectoral entry restrictions, and transparency obligations inherently limit anti-competitive conduct. The CCI thus treats its merger control function in the banking sector as an additional layer of market validation and ex ante assurance, rather than a barrier to financial consolidation, typically leaving the precise delineation of relevant markets open where competition risks are clearly remote.

Taken together, India’s investment-control system reveals a steady progression to a prudential liberal regime in which regulatory approval and fitness norms coexist with substantially higher investment ceilings. Throughout, the RBI has retained decisive gatekeeping power balancing capital inflow needs against governance risk and systemic exposure. The next section analyses these transactions collectively to identify the structural trends and regulatory logic driving India’s current wave of banking-sector mergers and investments.

IV. Implications of Transactions 1 & 2 for the Indian Banking Sector

RBI approval of SMBC’s acquisition in Yes Bank marks a regulatory inflection point in India’s banking-investment regime. While formally consistent with the BR Act and the 2023 Directions, the decision’s substance reflects a deeper policy evolution, a shift from defensive capital regulation to calibrated financial openness. Section 12(2) of the BR Act empowers the RBI to limit shareholding and voting rights in banks, and ordinarily restricts any single investor to 15% ownership. Paragraph 5(b) of the 2023 Directions, however, allows relaxation ‘on a case-to-case basis’ when the acquirer is a well-regulated financial institution and the transaction demonstrably serves the public interest. By invoking this discretionary clause, the RBI effectively reaffirmed its willingness to deploy regulatory flexibility in pursuit of systemic resilience and capital deepening.

The timing of the deal is significant. According to Reuters, both the RBI and the Ministry of Finance are examining amendments that would raise foreign-ownership thresholds potentially up to 49% for public-sector banks and permit higher stakes by regulated foreign financial institutions through the subsidiary route.²⁷ Such a move would reduce the asymmetry between private- and public-sector banks and bring India closer to global norms. Even within the current framework, India allows up to 74% FDI in private banks under the automatic and government-approval routes, though voting rights remain capped at 26%.

At this stage, India should also look towards the comparative jurisdictions to incorporate positive changes in the governing regulations. In the United Kingdom, there are no statutory caps on foreign ownership of banks,²⁸ institutions such as HSBC and Santander UK are themselves foreign-controlled. The United States likewise imposes no ownership ceilings, relying instead on prudential vetting under the Bank Holding

24 CCI, Combination Registration No. C-2022/06/942, Available at: <https://cci.gov.in/images/caseorders/en/order1665050789.pdf>.

25 CCI, Combination Registration No. C- 2023/11/1081, Available at: <https://cci.gov.in/images/caseorders/en/order1708343232.pdf>.

26 CCI, Summary of Combination Available at: <https://cci.gov.in/images/summaryorders/en/summary1750745208.pdf>.

27 India plans to hike foreign investment cap in State run Banks to 49%, Reuters, Available at: <https://www.reuters.com/sustainability/boards-policy-regulation/india-plans-hike-foreign-investment-cap-state-run-banks-49-source-says-2025-10-27/#:~:text=NARROWING%20THE%20GAP>.

28 Updates to the PRA’s approach of responsible openness to International Banks, Bank of England, Available at: <https://www.bankofengland.co.uk/news/2025/may/updates-to-the-pras-approach-of-responsible-openness-to-international-banks>.

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Company Act 1956.²⁹ Singapore lifted its 40% foreign-shareholding ceiling, moving to a licensing-based model under the Monetary Authority of Singapore.³⁰ Japan generally allows high levels of foreign participation subject to notification and fit-and-proper review,³¹ while France applies open-access regimes consistent with EU law.³² Compared with these jurisdictions, India's stance remains conservative but is steadily converging toward liberal practice through measured discretion rather than legislative overhaul.

By incorporating and increasing the thresholds, it can leverage foreign expertise in risk management, compliance, and technology - areas critical for mid-sized Indian banks seeking to compete in a digitised and capital-intensive environment.

In essence, the implications of the SMBC-Yes Bank deal extend beyond its balance-sheet arithmetic. It symbolises the institutional maturity of Indian financial regulation, where prudence and openness are not opposites but complements. By leveraging its discretionary powers to admit a foreign institution of impeccable standing, the RBI has balanced sovereign supervision with global participation. This hybrid model, already reflected in parallel deals across RBL, Federal, IDFC First, and IDBI Bank, suggests that India is entering a phase of controlled liberalisation that aligns regulatory caution with the strategic imperatives of global integration.

29 Bank Holding Company Act, 1956, Available at: <https://www.govinfo.gov/content/pkg/COMPS-252/pdf/COMPS-252.pdf>.

30 MAS lifts foreign shareholding limit on Finance Companies, Available at: <https://www.mas.gov.sg/news/media-releases/2002/mas-lifts-foreign-shareholding-limit-on-finance-companies--10-december-2002>.

31 In brief: ownership and acquisition of banks in Japan, Lexology, Available at: <https://www.lexology.com/library/detail.aspx?g=f40e9725-a819-46f1-848f-11a33a01d1d1>.

32 How can International Banks operate, Norton Rose Fulbright, Available at: <https://www.nortonrosefulbright.com/en-de/knowledge/resources-and-tools/banking-reform/supervision/france>.

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I. SEBI and Public Market Considerations

A. Implications of the Transactions under Takeover Code

The Takeover Code lays down the framework governing the acquisition of shares, voting rights or control of a company whose shares are listed on a recognized stock exchange, and therefore, eligible for being publicly traded. It sets regulatory requirements for acquiring significant stakes in publicly listed companies, primarily to protect public shareholders by ensuring transparency, fairness, and an exit opportunity (open offer) when control changes hands, mandating disclosures, fair pricing, and preventing indefinite uncertainty, making markets more orderly and equitable.

The Takeover Code defines an “acquirer”, as “[...] any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company;”¹

In the present transaction, the acquirer is SMBC, acting on its own (without any PAC) in the acquisition of equity shares of the publicly traded Yes Bank.

The Takeover Code requires any acquirer (along with its PAC) triggering the thresholds briefly set out below to make a mandatory public announcement to offer to buy additional shares (at least an additional 26% of the shares) of the publicly listed company from existing public shareholders, providing them with a fair exit opportunity. The thresholds are as following: (a) Shareholding Trigger; (b) Control Trigger; and (c) Creeping Acquisitions.

Acquisition of 24.21% stake in Yes Bank by SMBC did not breach any of the identified triggers. Accordingly, the SMBC was not required to make an open offer under the Takeover Code. We have briefly set out below details on each of the triggers for sake of clarity.

B. Shareholding Trigger

The Takeover Code provides that any acquisition of shares or voting rights in a listed company, which taken together with shares or voting rights, if any, held by the acquirer and its PAC, entitles the acquirer to exercise twenty-five percent (25%) or more of the voting rights in a listed company, then a public announcement of open offer must be made by such acquirer for acquiring additional shares from the existing shareholders of the target company, so long as such acquirer does not breach the maximum permissible non-public shareholding limit prescribed under the Takeover Code (“**Shareholding Trigger**”).²

1 Regulation 2(1)(a) of the Takeover Code, Available at: https://www.sebi.gov.in/legal/regulations/dec-2025/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-regulations-2011-last-amended-on-december-5-2025-_98643.html.

2 Ibid.

The Takeover Code defines “maximum permissible non-public shareholding” to mean such percentage shareholding in the target company excluding the minimum public shareholding required under the Securities Contracts (Regulation) Rules, 1957.³ For listed companies (excluding public sector), the maximum permissible non-public shareholding in India is generally 75%.

C. Control Trigger

Besides crossing twenty-five percent (25%), acquisition of “control” over a company also triggers the requirement for making a public announcement of an open offer, irrespective of the shares or voting rights held by such acquirer in the target company (“Control Trigger”).⁴

Control has been given a broad ambit under Regulation 2(1)(e) of the Takeover Code, and includes “[...] the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner [...]”

In the absence of any established jurisprudence clearly bright-lining the ambit of “control,” each veto right is typically assessed based on the underlying commercial rationale and its effect on the target company’s overall management and policy decisions. Following the Jet–Etihad transaction,⁵ SEBI indicated that it intended to issue new guidelines to establish “bright lines” for determining whether a change in control had occurred in mergers and acquisitions, and it released a discussion paper to that effect.⁶ However, SEBI ultimately decided not to adopt a bright-line test for identifying an acquisition of “control,” concluding instead that such determinations must be made on a case-by-case basis.⁷

D. Creeping Acquisitions

In addition to the thresholds provided in Regulation 3(1) of the Takeover Code, in case any existing shareholder, not being a promoter or shareholder in control, of a publicly listed company in India, already holding at least 25% or more of the voting rights, acquires additional shares or voting rights in such company, in any given financial year, in increments of 5% or more shall also be mandated to make a public announcement of an open offer to the existing shareholders of the target company. Such acquisitions should also not breach the maximum permissible non-public shareholding threshold (elaborated above).

It is important to note that the 5% limit is calculated on a gross basis i.e., aggregating all purchases and without factoring in any reduction in shareholding or voting rights during that year or dilutions of holding on account of fresh issuances by the target company. If an acquirer acquires shares along with other subscribers in a new issuance by the company, then the acquisition by the acquirer will be the difference

3 Regulation 2(1)(o) of the Takeover Code; Regulation 19(2)(b) of the Securities Contracts (Regulation) Rules, 1957, Available at: https://www.sebi.gov.in/legal/rules/may-2025/securities-contracts-regulation-rules-1957-last-amended-on-may-19-2025-_94058.html.

4 Regulation 4 of the Takeover Code, Available at: https://www.sebi.gov.in/legal/regulations/dec-2025/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-regulations-2011-last-amended-on-december-5-2025-_98643.html.

5 SEBI WTM Order in respect of Tailwinds Limited, Available at: https://www.sebi.gov.in/sebi_data/attachdocs/1399545948533.pdf.

6 Discussion Paper on “Brightline tests for Control under SEBI Takeover Regulations, 2011, Available at: https://www.sebi.gov.in/sebi_data/attachdocs/1457945258522.pdf.

7 Mergers and Acquisitions – An Indian Legal, Regulatory and Tax Perspective, Nishith Desai Associates, Available at: https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Mergers___Acquisitions_in_India.pdf.

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between its shareholding pre and post such new issuance. It should be noted that an acquirer (along with PAC) is not permitted to make a creeping acquisition beyond the statutory limit of 75% non-public shareholding in a listed company.⁸

However, since SMBC’s holding did not cross this threshold, a creeping acquisition, and subsequently, an open offer obligation has not been triggered. The acquisition (or approval thereof) of up to 24.99% shareholding appears to be a strategic maneuver on SMBC’s part, in order to specifically avoid attracting open offer obligations.

E. Disclosure requirements applicable to similar transactions

Regulation 29 of Takeover Code⁹ requires disclosure where (i) any acquisition results in shareholding or voting rights of 5% or more in a listed company, and (ii) any person holding 5% or more (together with its PAC) experiences a change in such holdings exceeding 2% of the total shareholding or voting rights, with such disclosures to be made in the prescribed format to the stock exchanges and the listed company within two working days of allotment, acquisition, or disposal.

In this case, SMBC’s acquisition of 24.21% stake in Yes Bank exceeded the prescribed threshold, and the required disclosures were duly made through filings dated May 9, 2025¹⁰ and September 18, 2025¹¹, thereby ensuring compliance with the transparency requirements under the Takeover Code and facilitating market oversight.

II. Antitrust Considerations

A. Applicability of CCI approval

According to Section 6 of the CA, any proposed combination shall not take effect until it has been approved by the CCI. Section 5 lays out the law on combinations, and it prescribes that any acquisition of shares, control, voting rights, or assets by a person could qualify as a ‘combination’, if it exceeds the given thresholds.¹²

8 Research Paper on Mergers & Acquisitions- An Indian Legal, Regulatory and Tax Perspective June 2025, Nishith Desai Associates, Available at: https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Mergers___Acquisitions_in_India.pdf.

9 Regulation 29 of the Takeover Code, Available at: https://www.sebi.gov.in/legal/regulations/dec-2025/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-regulations-2011-last-amended-on-december-5-2025-_98643.html.

10 Yes Bank Disclosure, BSE, Available at: <https://www.bseindia.com/xml-data/corpfiling/AttachHis/5c19e3d6-cd87-44e1-8f22-446369ca324f.pdf>.

11 Yes Bank Disclosure, NSE, Available at: https://nsearchives.nseindia.com/corporate/YESBANK_18092025115807_YBL_SE_Intimation_Outcome_of_Board_Meeting_SMBC_18092025_signed.pdf.

12 CA, Section 5, Available at: <https://cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>.

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The current thresholds for filing a notice under Section 5 are (“**Jurisdictional Threshold**”):

Thresholds for Filing Notice¹³

		Asset		Turnover
Enterprise Level	India	>INR 25 billion (approx. USD 284.9 million)	OR	>INR 75 billion (approx. USD 854.7 million)
	Worldwide with India Leg	>USD 1.25 billion with at least >INR 12.5 billion (approx. USD 142.45 million) in India		>USD 3.75 billion with at least >INR 37.5 billion (approx. USD 427.35 million) in India

OR

		Asset		Turnover
Group Level	India	>INR 100 billion (approx. USD 1.14 billion)	OR	>INR 300 billion (approx. USD 3.42 billion)
	Worldwide with India Leg	>USD 5 billion with at least >INR 12.5 billion in India (approx. USD 142.45 million)		>USD 15 billion with at least >INR 37.5 billion in India (approx. USD 427.35 million)

Additionally, the concept of a deal value threshold (“**DVT**”) was introduced in 2024, which prescribes that any acquisition, whose value exceeds INR 20 billion (approx. USD 227.92 million) and where the target company has substantial business operations in India, shall be qualified as a combination and thus shall be notifiable to the CCI.¹⁴

However, Section 5(e) of the CA read with the Competition (Minimum Value of Assets or Turnover) Rules, 2024 exempt certain acquisition from being qualified as a “combination” if the target enterprise’s assets are below INR 4.5 billion (approx. USD 51.28 million), or its turnover is below INR 12.5 billion (approx. USD 142.45 million).¹⁵ However, it is pertinent to note even if the de minimis exemption is available, but the transaction meets the requirements of DVT, the transaction shall be notifiable to the CCI.

B. Applicability of exemptions (if any) to notification

Below is a threshold analysis to evaluate whether the deal qualifies as a combination or is exempted:

¹³ CA, Section 5 r/w MCA Notification No. S.O. 1130(E), Available at: <https://cci.gov.in/combination/legal-framework/notifications/details/19/0>.

¹⁴ CA, Section 5(d) r/w The CCI (Combinations) Regulations, 2024, Regulation 4 (2) Available at: <https://cci.gov.in/legal-framework/regulations/67/>.

¹⁵ CA, Section 5(e), Available at: <https://cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>.

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Nature of Threshold	Status
Jurisdictional Threshold	The transaction exceeded the asset and turnover thresholds prescribed under Section 5 of the CA. Specifically, SMBC and Yes Bank’s combined assets and turnover in India surpassed INR 25 billion (approx. USD 284.9 million) (assets) and INR 75 billion (approx. USD 854.7 million) (turnover), and their global enterprise values also exceeded the applicable worldwide thresholds.
De Minimis Threshold Exemption	The transaction could not avail the de minimis exemption because the combined asset and turnover thresholds of the Target (Yes Bank) in India were well above INR 4.5 billion (approx. USD 51.28 million) (assets) and INR 12.50 billion (approx. USD 142.45 million) (turnover).
Deal Value Threshold	The present deal is valued at approx. INR 134.83 billion (approx. USD 1.54 billion), exceeding the threshold of INR 20 billion (approx. USD 227.92 million) by INR 114.83 billion (approx. USD 1.31 billion) thereby mandating a filing to and approval from the CCI. This threshold is independent of asset/turnover thresholds and ensures large-value transactions undergo scrutiny.

Note: As per Yes Bank’s financials for FY 2024–25, the Bank reported total assets worth INR 4.23 Trillion (approx. USD 48.21 billion) and a net income of INR 148.01 billion (approx. USD 1.69 billion)¹⁶

In order to seek exemption from filing a notification with the CCI, the acquirer must either (i) fall below the prescribed thresholds and thereby not constitute a “combination” within the meaning of the CA; or (ii) if the thresholds are met, the transaction must nonetheless qualify as an exempted combination under the Competition (Criteria for Exemption of Combination) Rules, 2024 (“Exemption Rules”). The Exemption Rules specify that an acquisition of shares or voting rights not exceeding 25% shall not require prior approval from the CCI, provided that such acquisition is made solely for investment purposes and does not confer control over the target enterprise.¹⁷

In the present transaction, as it has been described in the table above, all the prescribed thresholds have been breached, and SMBC is not eligible to claim exemption under the Exemption Rules under point (i) above. For the limb in (ii), the Exemption Rules include an explanation which explicitly provides that an acquisition shall not be regarded as made solely for investment purposes if the acquirer obtains the right or ability to appoint a director to the board.¹⁸ In the present case, pursuant to the Shareholders’ Agreement executed between SMBC and Yes Bank, SMBC has been given the right to nominate two directors to the board of Yes Bank.¹⁹ The CCI, in various orders, has held that even minority investments which give material influence or have strategic rights attached shall be construed as a combination requiring notification.²⁰

Further, while there are specific exemptions for acquisitions by banks pursuant to loan agreements or in cases of bank restructuring notified by the government, this transaction was a secondary sale between financially sound entities and did not qualify for such exemptions.²¹

16 Press Release, Yes Bank, Available at: https://www.yesbank.in/content/published/api/v1.1/assets/CONT2D9C32F1CC740A1937B7A6A2E7DC4A5/native/ybl_yes_bank_press_releaseq4fy25.pdf?download=false&channelToken=21f7ccfa2fc3401091938f541a6f8f2a.

17 Competition (Criteria for Exemption of Combination) Rules, 2024.

18 Ibid.

19 Disclosure under Regulation 30 of SEBI (LODR) Regulations, 2015 by Yes Bank, Available at: [YESBANK_09052025162330_SEIntimation_Reg30_09052025_signed.pdf](https://www.yesbank.in/content/published/api/v1.1/assets/YESBANK_09052025162330_SEIntimation_Reg30_09052025_signed.pdf).

20 CCI, Goldman Sachs (India) Alternative Investment Management Private Limited order, Available at: https://www.cci.gov.in/combination/order/details/order/1518/0/orders-section43a_44.

21 Notification regarding exemption of banking company in respect to which Central Government has issued notification under Section 45 of the BR Act: SO 1034(E). - CCI, Available at: <https://www.cci.gov.in/combination/legal-framework/notifications/details/16/0>.

Accordingly, the transaction constitutes a “combination” under the CA as it cannot be considered a mere investment and effectively confers a degree of control on SMBC, and there are no specific exemptions available for this transaction.

C. AAEC Related Concerns

SMBC’s application to the CCI stated that both the parties and their group entities operate in highly competitive, fragmented, and evolving markets regulated by the RBI. These markets include several established players, such as commercial banks, NBFCs, financial institutions, and financial technology companies who are expected to continue exercising competitive pressure post-transaction. It also states that the proposed transaction does not raise any competition concerns, irrespective of how the relevant market is defined, and provided indicative market delineations based on the overlapping activities of the parties to assist the CCI’s assessment:²²

- a) Provision of loans and lending services in India;
- b) Provision of loans against securities in India;
- c) Provision of digital payment services in India;
- d) Provision of deposit-taking services in India;
- e) Provision of foreign exchange services in India;
- f) Provision of investment banking services in India; and
- g) Provision of cash management services in India.

The CCI granted its unconditional approval to the transaction on September 2, 2025, thereby signifying that the transaction does not cause any AAEC.²³ The primary reason for this conclusion was the absence of any significant horizontal overlaps between the business activities of SMBC and Yes Bank in India. Prior to the transaction, SMBC’s presence in the Indian commercial banking space was limited. Therefore, the combination did not lead to any meaningful increase in market concentration in the relevant market. The transaction could be seen as a change in the financial shareholding of Yes Bank, not a consolidation of competing banking operations.²⁴

The CCI in its order, while it was notified of Transaction 2, only assessed Transaction 1, as the binding documents in relation to Transaction 2 had yet to be entered into at the time of the order. It gave approval for acquisition of 24.99% of the share capital and voting rights by SMBC, however, it specified that the notifiability requirement with respect to Transaction 2 may be examined by SMBC at the time of executing binding documents for the same.

22 Summary of proposed Combination between SMBC and Yes Bank, Available at: <https://www.cci.gov.in/images/summaryorders/en/summary1750745208.pdf>.

23 CCI approves SMBC acquiring certain shares, voting rights in Yes Bank, Available at: <https://legal.economictimes.indiatimes.com/news/cci-approves-smbc-acquiring-certain-shares-voting-rights-in-yes-bank/123690841>.

24 Competition Compliance Manual, Available at: https://www.cci.gov.in/images/publications_compliance_manual/en/compliance-manual1652179683.pdf.

III. Corporate Governance Considerations

A. Corporate Governance Changes During and Post Reconstruction Scheme

In March 2020, the RBI imposed a moratorium on Yes Bank and promulgated the Reconstruction Scheme (as further detailed in Section D above). Under this RBI-led scheme, the pre-existing board of directors was superseded, and Mr. Prashant Kumar, a former SBI executive, was appointed as the administrator²⁵ under Section 36ACA²⁶ of the BR Act. The administrator held office during the moratorium period²⁷ and vacated upon its cessation, after which a new board of directors was constituted on March 26, 2020. The government and RBI prescribed that SBI would hold up to 49% equity²⁸, not falling below 26% for three years, and nominate directors, while RBI reserved²⁹ the right to appoint additional directors under Section 36AB of the BR Act³⁰. Crucially, the Reconstruction Scheme mandated a lock in for existing shareholders, capped voting rights, and reclassified the shareholders to ordinary public shareholders. It also deleted specified articles dealing with promoter rights. These steps constituted a radical board overhaul and placed Yes Bank under close RBI and government oversight during the recovery phase.

Following reconstruction, Yes Bank’s board of directors was reconstituted in accordance with the Reconstruction Scheme, in line with statutory corporate governance norms. Mr. Sunil Mehta, ex-Punjab National Bank chairman, was appointed as a non-executive Chairman, Mr. Mahesh Krishnamurthy and Mr. Atul Bheda were appointed as non-executive directors, and SBI nominated³¹ two officer-directors, while Mr. Prashant Kumar was appointed as the Managing Director and CEO. RBI also had the right to appoint further directors. All directors, except any RBI additional directors, were appointed for one year or until an alternate board of directors was duly elected.³² SBI and other investors subscribing under the Reconstruction Scheme were to be treated as “public shareholders” for five years from allotment of shares under all applicable laws. As a listed public company with no promoter, Yes Bank was obliged to comply with the Companies Act, 2013 and SEBI’s LODR Regulations. In practice, this meant the board included a super-majority of independent/non-executive directors, meeting the Act’s independence thresholds, and statutory committees had majority independent membership as required by LODR Regulations. The reconstructed Yes Bank board of directors was designed to meet all corporate governance mandates for Indian listed banks, diffusing concentrated promoter control and embedding RBI-appointed oversight.

25 Yes Bank Limited, Notice of the Sixteenth Annual General Meeting 2020, Available at: <https://www.yesbank.in>.

26 BR Act, Section 36ACA.

27 Ministry of Finance, Yes Bank Limited Reconstruction Scheme 2020, GSR174(E), Available at: [https://egazette.gov.in/\(S\(rfolizzskhpxbpmcm5oakpw\)\)/ViewPDF.aspx](https://egazette.gov.in/(S(rfolizzskhpxbpmcm5oakpw))/ViewPDF.aspx).

28 Ibid.

29 RBI announces draft scheme of reconstruction for Yes Bank, Business Standard, Available at: https://www.business-standard.com/article/news-cm/rbi-announces-draft-scheme-of-reconstruction-for-yes-bank-120030601172_1.html.

30 BR Act, Section 36AB.

31 YES Bank’s new management: Prashant Kumar appointed MD, CEO; Sunil Mehta Non-Executive Chairman, Business Today, Available at: <https://www.businesstoday.in/industry/banks/story/yes-bank-new-management-prashant-kumar-appointed-md-ceo-sunil-mehta-non-executive-chairman-252120-2020-03-15>.

32 Ibid.

B. Changes in Corporate Governance Post Investment by SMBC

The governance-framework overhaul required by the Reconstruction Scheme (as mentioned in Section D above) may well have been a key condition for SMBC to invest in Yes Bank. Established financial institutions may tend to favour backing banks with stable, independent and professionally managed boards, rather than promoter-led entities operating in the volatile Indian market in sectors such as financial services. The current board of directors of Yes Bank³³ constitutes of a non-executive, part time chairman, six independent directors, four (non-executive and non-independent) nominee directors³⁴ and a managing director (CEO).

SMBC upon its investment also got additional governance rights in this structure, with the right to nominate two non-executive directors to the board (along with SBI, which had the right to nominate one director). While the RBI specifically stipulated that SMBC cannot be classified as a “promoter”, thereby intimating that they did not want to give significant operational control to an entity, SMBC’s board seat rights could still provide it with oversight and voting rights. SMBCs voting rights also did not extend to veto matters, which may generally be given to a large investor, to grant an aspect of negative control and a greater say in the operations. However, the nomination of their directors may have enough of an impact on the governance of Yes Bank to bring global perspectives and best practices to the board of directors. This transition from a board largely influenced by the domestic rescue consortium to one that includes representatives of a long-term global strategic partner marks the next stage in the evolution and maturity of Yes Bank’s corporate governance.

C. Shift from Promoter Control to Institutional Ownership

The post-reconstruction governance of Yes Bank offers a clear illustration of India’s evolving regulatory paradigm, which seems to be shifting from concentrated promoter control toward diffused, institutionalised ownership under the oversight of strong regulatory authority. The Reconstruction Scheme was implemented with the intention to replace legacy promoters with professional and institutional directors. When the Reconstruction Scheme changes are coupled with the recent acquisition by SMBC and RBI’s explicit instructions to not classify SMBC as a “promoter”, Yes Bank is now essentially free of a ‘promoter’ in the traditional sense, with majority of its shares held by public and institutional investors including SBI and SMBC.

This structural evolution aligns with the broader regulatory trajectory under SEBI regulations and the Companies Act 2013, which both emphasise the importance of independent boards and more arm’s length capital providers. RBI and SEBI have both been indicating that banks must be subject to robust board oversight, and that promoter families should meaningfully dilute their control where governance has been weak.

More broadly, the Yes Bank scenario signals a trend in which regulator or government led restructurings are bringing in reputable institutional investors rather than enabling defaulting promoters to remain at the helm. With a foreign banking institution like SMBC having meaningful influence in Yes Bank, we may expect the governance practices to further strengthen, and it will be important to observe how this translates into the Bank’s performance and operations going forward.

³³ As on February 25, 2022.

³⁴ 1 nominee of Verventa Holdings Limited, 1 of SBI and 2 of SMBC.

IV. Banking Law Considerations

The acquisition of a 24.21% equity stake in Yes Bank by SMBC serves as a seminal case study in the application of the BR Act³⁵ and 2023 Directions³⁶. Unlike standard corporate M&A, the acquisition of control or significant influence in Indian private banking is governed by a dual-objective regulatory framework: ensuring the “fit and proper” status³⁷ of major shareholders while simultaneously preventing the concentration of power that could destabilize the financial system.

The primary legislative hurdle for the transaction was Section 12B of the BR Act, which mandates that no person shall acquire 5% or more of the paid-up share capital or voting rights of a banking company without the prior approval of RBI. In evaluating SMBC’s application, RBI applied the rigorous ‘fit and proper’ criteria outlined in the 2023 Directions. Given that this transaction involved the acquisition of more than 10% shareholding in a banking company, part (ii) of the ‘fit and proper’ criteria³⁸, i.e., ‘For acquisition of 10% or more in a banking company’ was applied by RBI to determine SMBC’s eligibility to acquire shares of Yes Bank.

The approval process necessitated a departure from the traditional assessment of investor eligibility solely at the time of the transaction. Under the 2023 regime, the ‘fit and proper’ status is a continuous monitoring obligation. Consequently, the transaction documents impose a statutory covenant on Yes Bank to strictly monitor SMBC’s eligibility annually. This involves scrutinizing the acquirer’s integrity, financial strength, and ensuring no links to jurisdictions identified as high-risk by the Financial Action Task Force (FATF). For SMBC, a Globally Systemically Important Bank (G-SIB)³⁹, the RBI likely relied on “regulatory comfort” from the Japan’s banking regulatory body, Japan Financial Services Agency (JFSA), expediting an approval that would have been arduous for a private equity applicant.

A defining feature of this transaction is the classification of SMBC as a “major shareholder” rather than a “promoter,” despite holding the largest block of equity stake (24.21%) in a banking company.

- a) **“Source of Strength” Liability:** In Indian banking jurisprudence, a “Promoter” acts as the bank’s “source of strength,” carrying a statutory obligation to infuse capital during periods of financial distress. By successfully achieving “Public Shareholder” status, SMBC insulated itself from this open-ended liability.

35 BR Act.

36 Master Direction – RBI (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023, Available at: https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12439.

37 Annexure II of Master Direction – RBI (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023, Available at: https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12439.

38 For acquisition of 10% or more in the banking company:

- a) All aspects as laid down in (i) above.
- b) Details of group entities, in case the applicant belongs to a group.
- c) Source and stability of funds for acquisition and the ability to access financial markets as a source of continuing financial support for the banking company.
- d) The business record and experience of the applicant including any experience in acquisition of business.
- e) The extent to which the corporate structure of the applicant will be in consonance with effective supervision and regulation of the banking company.
- f) The soundness and feasibility of the plans of the applicant for the future conduct and development of the business of the banking company.
- g) Shareholder agreements and their impact on control and management of the banking company.

39 Financial Stability Board (FSB), in consultation with the Basel Committee on Banking Supervision (BCBS) and national authorities releases a list of Globally Systemically Important Banks, which are banks that regulators have identified as crucial to global financial stability. G-SIBs are determined by their size, interconnectedness, complexity, substitutability, and cross-jurisdictional activity.

- b) **Diversified Ownership Mandate:** The RBI’s 2023 Directions generally cap non-promoter shareholding at 15% for financial institutions, public sector undertakings and the government, while promoter holding is capped at 26% of the voting rights of a banking company. SMBC’s acquisition of 24.21% represents a rare regulatory dispensation, potentially because the regulator perceives high stability and long-term commitment.

Perhaps the most critical structural constraint of the deal was Section 12(2) of the BR Act, which acts as a statutory “poison pill” against hostile takeovers or excessive dominance in banking companies. The statute explicitly caps the voting rights of any single shareholder at 26%, regardless of their economic ownership, therefore, the acquirer would be able to block special resolutions but would not be entitled to pass any ordinary or special resolutions.

SMBC’s decision to keep its shareholding below 24.99% was not merely to avoid the SEBI Open Offer (25%) but also aligned with the BR Act’s efficiency frontier. Acquiring equity beyond 26% would have resulted in “dead capital” (shares that carry economic right but zero voting power). This statutory cap ensures that even the largest shareholder cannot unilaterally dictate special resolutions, which require a 75% majority, thereby preserving the “diversified control” ethos of Indian private banking.

V. FEMA Considerations

Foreign investments in a private sector bank are governed under the FEMA, FDI Policy, 2020 (as updated from time to time) and the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (hereinafter collectively referred to as “Exchange Control Laws”). The Exchange Control Laws permits foreign investment up to 74% of the paid-up share capital of a private bank, with automatic route permitted for investment up to 49%, and the Government approval route applying for investment beyond 49% and up to 74%.⁴⁰

Exchange Control Laws also require that at least 26% of the paid-up capital of a company receiving foreign investment in the private banking sector must be held by resident shareholders at all times, except in the case of a wholly owned subsidiary of a foreign bank. Sub-clause (e) of Clause F.2.1 of the NDI Rules, 2019 further mandates that all applicable procedures and sectoral regulations issued by the RBI, SEBI, MCA, and IRDAI must be complied with for any foreign acquisition. Sub-clause (f) of Clause F.2.1 of the NDI Rules, 2019 applies to RBI guidelines on acquisition of capital instruments (including equity shares) of private banks, requiring prior permission for any acquisition that results in a person owning or controlling 5% or more of the bank’s paid-up capital.

This operates alongside the statutory restriction on voting rights, wherein individual non-promoter shareholders in banking companies are capped at 10% voting rights, unless specifically permitted otherwise by the RBI⁴¹. Finally, Sub-clause (j) of Clause F.2.1 of the NDI Rules, 2019 reinforces that all foreign investments in private sector banks must conform to the prudential norms, licensing conditions, and regulatory requirements under the BR Act, and the RBI Act, 1934, adding an additional supervisory layer to foreign bank investments. Further, acquisitions by foreign banks also trigger RBI’s fit and proper assessment, which evaluates financial soundness, governance credentials, global compliance record, and business history.

⁴⁰ Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

⁴¹ Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies, Available at: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12440&Mode=0>.

Legal, Regulatory and Tax Considerations

FEMA pricing guidelines, beneficial ownership verification, KYC requirements, and restrictions on voting rights further shape the enforceability and sequencing of transactions. Due to these layered requirements, cross-border acquisitions in the Indian banking sector involve heightened scrutiny, and even minority investments by foreign banks are reviewed for systemic impact, concentration of ownership, and compliance with prudential norms governing management control and influence.

As Yes Bank is a private sector bank, the acquisition fell within the sectoral cap of 74%, and therefore, although permissible, remained conditioned on compliance with the fit-and-proper norms, FEMA pricing rules, reporting requirements, and prudential restrictions on voting rights. Overall, the deal demonstrates how FEMA and the broader banking regulatory framework operate jointly to regulate foreign investment in Indian banks, ensuring supervisory oversight, ownership dispersion, and financial stability while enabling significant foreign participation in the sector.

VI. Tax Considerations

A. Legal Provisions

Under the ITA, gains arising from the transfer of a capital asset are taxed as capital gains. The rate of tax depends on the nature of the capital asset and the period for which it is held, which determines whether the gains are characterized as long-term or short-term.

Capital assets being listed equity shares are treated as long-term (and the gain arising from their transfer as long-term capital gains) if held for more than 12 months at the time of their transfer.⁴² Listed equity shares held for 12 months or less are treated as short-term (and the gain arising from their transfer as short-term capital gains).⁴³ With effect from July 23, 2024, long-term capital gains are taxed at the rate of 12.50%,⁴⁴ while short-term capital gains are taxed at the rate of 20%.⁴⁵ An additional surcharge and higher education cess is also applied on the base capital gains tax rate.⁴⁶ Where the transferor is a non-resident, the ITA imposes an obligation on the transferee to withhold tax at the applicable rate e.g., 12.50% (plus surcharge and cess) in the case of capital gains arising on the sale of listed equity shares.⁴⁷

If the transactions are entered into on a recognized stock exchange in India, a securities transaction tax (“STT”), at the rate of 0.10% applies on both the buy and sell sides of the transaction.⁴⁸

⁴² Section 2(29AA) of the ITA.

⁴³ Section 2(42A) of the ITA.

⁴⁴ Section 112A of the ITA.

⁴⁵ Section 111A of the ITA.

⁴⁶ Surcharge and a health and education cess at 4% on the aggregate amount of tax and surcharge applies. The rates of surcharge as per the Paragraph E of Part I of the First Schedule of the Finance Act, 2025, are as follows:

Total Income	Domestic Companies	Foreign Companies
Exceeding INR 10 million but not exceeding INR 100 million	7%	2%
Exceeding INR 100 million	12%	5%

⁴⁷ Section 195 of the ITA.

⁴⁸ Section 98 of the Finance Act (No. 2), 2004.

Accordingly, the gains arising to the investors (SBI, the Other Investor Banks and Carlyle) from the sale of their shares in Yes Bank would ordinarily be subject to capital gains tax at the rate of 12.50% (plus surcharge and cess), assuming that they qualified as capital assets and were held for more than 12 months, which is likely to be the case. Since Carlyle is a non-resident, SMBC would be required to withhold capital gains tax on the consideration payable to Carlyle. While Carlyle may qualify as a resident of Mauritius for purposes of the India-Mauritius DTAA, because it acquired its Yes Bank shares in 2022, it is unlikely to benefit from an exemption from or reduction in Indian capital gains tax.⁴⁹

B. Exemption under paragraph 3(7) of the Reconstruction Scheme?

Public reporting⁵⁰ suggests that some of the investors (not including Carlyle) may, by virtue of Clause 3(7) of the Reconstruction Scheme, be exempt from capital gains tax on the gain arising from the sale of their shares in Yes Bank. This proposition is analyzed below.

Clause 3(7) of the Reconstruction Scheme provides that: *“The investor bank and investors who have subscribed to the shares of the reconstructed bank under this Scheme shall not be liable to pay capital gains tax under the Income-tax Act, 1961 (43 of 1961) for any deemed profits or gains on account of such subscriptions.”*

Clause 3(7), drafted as such, does not operate as a blanket exemption from capital gains tax. Instead, it is narrowly framed to exempt from capital gains tax “any deemed profits or gains” that “arise on account of... subscriptions”. The rationale for such an exemption is unclear considering that as a matter of settled principle, the act of subscribing to the shares of a company for cash does not, vis-à-vis the subscriber, involve the transfer of a capital asset,⁵¹ a precondition for the capital gains tax to apply. However, when viewed in the context of Section 56 of the ITA, the purpose of the clause becomes apparent: it is intended to carve out an exemption from the tax on *deemed income* otherwise chargeable under Section 56.

Section 56 of the ITA brings certain items of income to tax under the head “Income from Other Sources.” Under Section 56(2)(x), the receipt of money, movable property, or immovable property, as gifts or for inadequate consideration, are made taxable. Unless an exemption applies, the difference between the fair market value (“FMV”) of the property received and the consideration (if any) paid is deemed income taxable to the recipient under the head “income from other sources.”

In Yes Bank’s case, the Reconstruction Scheme permitted SBI and the Other Investor Banks to acquire shares of Yes Bank at a consideration of INR 10 per share. If the FMV of those exceeds the subscription price, the difference would have been taxable in the hands of SBI and the Other Investor Banks under Section 56(2)(x) of the ITA. It is in this context that Clause 3(7)’s purpose becomes clear: to exempt the deemed profits arising on subscription from being charged to tax under Section 56 of the ITA.

49 Historically, investors resident in Mauritius benefited from an exemption from Indian income tax on capital gains arising from a transfer of shares of an Indian company. However, following an amendment to the India-Mauritius DTAA in 2017, this exemption no longer applies in case of shares acquired after March 31, 2017.

50 Available at: <https://economictimes.indiatimes.com/industry/banking/finance/banking/yes-bank-stake-sale-sbi-private-banks-set-to-reap-a-big-tax-bonanza/articleshow/123886476.cms>; <https://www.newindianexpress.com/business/2025/Sep/17/sbi-completes-yes-bank-stake-sale-nets-36x-more-in-tax-free-gains>; <https://www.angelone.in/news/market-updates/yes-bank-stake-sale-to-smbc-tax-free-sbi-hdfc-and-6-other-banks-to-earn-13-483-crore>; https://www.business-standard.com/companies/news/yes-bank-stake-sale-tax-free-sbi-hdfc-icici-axis-japan-smbc-125091500145_1.html.

51 A ‘transfer’ under Section 2(47) of the ITA, in relation to a capital asset, is defined to include inter alia the sale, exchange, or relinquishment of the asset, or the extinguishment of any rights therein. Subscribing to shares for cash does not involve the conveyance or relinquishment of an existing capital asset by the subscriber. Rather, subscription requires a primary issuance that results in the creation of a new capital asset in the hands of the subscriber, in consideration for the subscription amount paid to the company. Since the subscriber does not part with any pre-existing capital asset, the subscription does not constitute a “transfer” within the meaning of section 2(47) and, consequently, falls outside the charge to capital gains tax.

This interpretation is reinforced by the CBDT’s amendment⁵² Rule 11UAC of the ITR, which prescribes the classes of persons exempt from tax under Section 56(2)(x) in specified circumstances. Specifically, Clause 2(3), inserted pursuant to the amendment, provided that equity shares of Yes Bank allotted to an “investor” or “investor bank” under the Reconstruction Scheme at the price specified in the Scheme would not be subject to tax under Section 56(2)(x).

Nevertheless, Clause 3(7) could have benefited from more precise drafting, considering that deemed income under Section 56 is not subject to capital gains tax, but income tax at the ordinary applicable rate.

Still, it is inadvisable to read the reference to a “capital gains tax” in Clause 3(7) as conferring an exemption from tax on capital gains that arise because of a future sale of shares acquired in the Reconstruction Scheme. While it could possibly be argued that gains from the sale of shares arise on account of their prior subscription, in the sense that a sale would not be possible without first subscribing to the shares, this confuses sequence with causation. Capital gains arise because a capital asset is transferred, not because it was earlier acquired. The taxable event is the sale of the shares, and the necessary causal link for capital gains tax lies in that sale, not in the subscription. Treating subscription as the cause of capital gains would blur the basic distinction between acquiring an asset and later realizing gains from it. It is precisely because the exemption from capital gains tax is linked to “any deemed profits or gains” that “arise on account of... subscriptions” that Clause 3(7) is better read as not granting an exemption to the gains that arise from the sale.

In view of the above, the proposition that gains from the sale of shares are exempt from tax is not convincingly supported by the text of Clause 3(7), particularly when read in the context of the ITA, and adopting such a position may not be free from challenge.

52 Notification G.S.R. 421(e) [no. 40 /2020/f. No.370149/143/2019-tp], dated 29-06-2020.

Other Sources

1. India considers easing bank ownership rules foreign interest grows, Reuters, Available at: <https://www.reuters.com/world/india/india-considers-easing-bank-ownership-rules-foreign-interest-grows-2025-06-03/>
2. Growth potential accommodating regulatory stance fueling wave, Business Standard, Available at: https://www.business-standard.com/finance/news/growth-potential-accommodating-regulatory-stance-fuelling-wave-125101401361_1.html
3. Draft Guidelines for ‘on tap’ Licensing of Universal Banks in the Private Sector, RBI, Available at: <https://www.rbi.org.in/commonperson/English/Scripts/PressReleases.aspx?Id=1738#:~:text=In%20a%20departure%20from%20the,v%29%20Existing>
4. Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023, RBI, Available at: [https://lexcomply.com/rsjadmin/news/202302091531MD%20RBI-DOR-2022-23-95-MD-RBI%20\(Acquisition%20&%20Holding%20of%20Shares-Voting%20Rights%20in%20Bank%20Companies\)%20Direct,%202023.pdf#:~:text=defined%20in%20clause%20,WOS%29%20mode](https://lexcomply.com/rsjadmin/news/202302091531MD%20RBI-DOR-2022-23-95-MD-RBI%20(Acquisition%20&%20Holding%20of%20Shares-Voting%20Rights%20in%20Bank%20Companies)%20Direct,%202023.pdf#:~:text=defined%20in%20clause%20,WOS%29%20mode)
5. SMBC Rules out increasing stake in Yes Bank beyond current level, Economic Times, Available at: <https://bfsi.economictimes.indiatimes.com/articles/smbc-rules-out-increasing-stake-in-yes-bank-beyond-current-level/124623591>
6. Viksit Banking roadmap Indian banking sector, PWC, Available at: <https://www.pwc.in/assets/pdfs/viksit-banking-roadmap-indian-banking-sector-2047.pdf>
7. SMFG’s 20% stake in Yes Bank may set precedent for foreign investment, Times of India, Available at: http://timesofindia.indiatimes.com/articleshow/121442403.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst
8. Home, SMA Legal, Available at: <https://www.smalegal.in/home/smbcyesbank>
9. Why financial giants buying Indian banks, Indian Express, Available at: <https://indianexpress.com/article/explained/explained-economics/why-financial-giants-buying-indian-banks-blackstone-10328138/>
10. India’s financial sector sees 8 billion deals jump, Business Standard, Available at: https://www.business-standard.com/finance/news/india-s-financial-sector-sees-8-billion-in-deals-m-as-jump-127-in-2025-125102000153_1.html
11. Global giants bet big on India’s banking boom, Business World, Available at: <https://www.businessworld.in/article/global-giants-bet-big-on-india-s-banking-boom-577187>
12. Global banks bet billions on deals in India amid us credit jitter, Business Standard, Available at: https://www.business-standard.com/industry/banking/global-banks-bet-billions-on-deals-in-india-amid-us-credit-jitters-125102000073_1.html
13. Global banks bet billions on deals in India amid us credit jitter, Bloomberg, Available at: https://www.bloomberg.com/news/articles/2025-10-20/global-banks-bet-billions-on-india-deals-amid-us-credit-jitters?utm_source=semafor&embedded-checkout=true
14. India considers easing bank ownership rules foreign interest grows, Reuters, Available at: <https://www.reuters.com/world/india/india-considers-easing-bank-ownership-rules-foreign-interest-grows-2025-06-03/>
15. India plans hike foreign investment cap state run banks 49%, Reuters, Available at: <https://www.reuters.com/sustainability/boards-policy-regulation/india-plans-hike-foreign-investment-cap-state-run-banks-49-source-says-2025-10-27/#:~:text=NARROWING%20THE%20GAP>
16. India races reform financial sector foreigners pull 17 billion, Reuters, Available at: <http://reuters.com/sustainability/boards-policy-regulation/india-races-reform-financial-sector-foreigners-pull-17-billion-2025-10-27/#:~:text=Several%20measures%20to%20anchor%20foreign,and%20banks%20to%20finance%20mergers>

Other Sources

17. Foreign investment in Indian Banks why is the world betting big on Indian lender, Economic Times, Available at: <https://economictimes.indiatimes.com/industry/banking/finance/banking/foreign-investment-in-indian-banks-why-is-the-world-betting-big-on-indian-lenders/articleshow/124845023.cms?from=mdr>
18. RBI Unleashes Banking Power: New Capital Market Rules Set to Reshape India's M&A Landscape, Financial Content, Available at:
19. <https://markets.financialcontent.com/wral/article/marketminute-2025-10-24-rbi-unleashes-banking-power-new-capital-market-rules-set-to-reshape-indias-m-and-a-landscape>
20. RBI Greenlights SMBC's Acquisition of Up to 24.99% Stake in YES Bank, Scanx, Available at: <https://scanx.trade/stock-market-news/corporate-actions/rbi-greenlights-smbc-s-acquisition-of-up-to-24-99-stake-in-yes-bank/17483544>
21. Sale of IDBI Bank – a step closer after LIC gets SEBI nod, Times of India, Available at: <https://timesofindia.indiatimes.com/business/india-business/sale-of-idbi-bank-a-step-closer-after-lic-gets-sebi-nod/articleshow/123491255.cms>
22. Amalgamation of Lakshmi Vilas with DBS Bank India Limited, DBS, Available at: https://www.dbs.com/newsroom/Amalgamation_of_Lakshmi_Vilas_Bank_with_DBS_Bank_India_Limited

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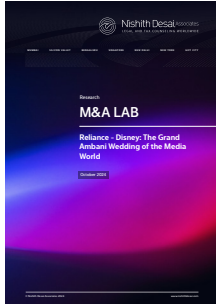
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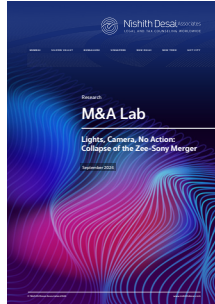
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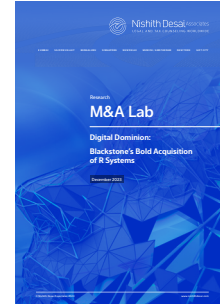
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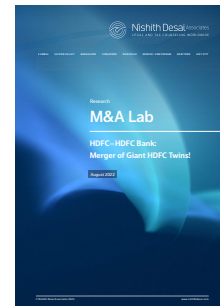
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