

II. SKIPPING THE RIGMAROLE OF LISTING: CRITICAL ANALYSIS OF INDIAN REGULATIONS AND TAX PROVISIONS RELATED TO SPACs

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ABSTRACT

Listing a company on a stock exchange involves prolonged and complicated procedures. A company in need of immediate funding may not consider listing as an option. Interestingly, Special Purpose Acquisition Companies (SPACs) have opened an avenue for such companies. But it is problematic when majority of such transactions are concentrated in one country. To cater the very problem the article analyses the Indian regime on SPACs and tax implications pertaining to it. It compares various methods used by Indian companies to list overseas, using foreign SPACs and discusses tax implications in those methods. Further, it sheds light on India's plan on introducing SPACs in its newly built financial jurisdiction, GIFT-City and compares it with other jurisdictions like Singapore, Dubai, Malaysia etc. Lastly, it explains the necessity of both SPACs in India and Indian companies merging with foreign SPACs.

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I. INTRODUCTION

In the United States of America, in the year 2020, the number of companies that got listed through a Special Purpose Acquisition Company (“SPAC”) showed a dramatic hike. It surpassed the 2019 count of 59 SPAC transactions and increased to 248 in 2020, and 2021 has more to offer. Just in the first quarter, the count reached up to 316 SPAC Initial Public Offering (“IPO”) only on the National Association of Securities Dealers Automated Quotations (“NASDAQ”).¹ It reflects that most companies that went public on the United States stock exchanges chose the SPAC route instead of the traditional way of listing since it is a less time-consuming process that requires fewer compliances. It has also attracted many Indian companies. Recently, ReNew Power Private limited, a renewable energy-producing company, chose the SPAC route of listing, with the enterprise value of the transaction of approximately \$8 billion.² Earlier, Videocon and Yatra also chose the SPAC route for listing in U.S. stock exchanges.

¹ Tom Lydon, *Analyzing the Future of the Special Purpose Acquisition Company (SPAC)*, ETFRENDS.COM (May 11, 2021), https://www.etftrends.com/active-etf-channel/analyzing-future-of-spac/?utm_source=Nasdaq&utm_medium=referral&utm_campaign=nasdaq.

² ReNew Power Private Limited, *ReNew Power, India’s Leading Renewable Energy Company, to Publicly List through Business Combination with RMG Acquisition Corporation II in \$8 Billion Transaction* (Feb. 24, 2021) <https://renewpower.in/wp->

II. WHAT IS SPAC?

A SPAC is a shell company, also termed as a blank cheque company. It has no particular business, but as the name suggests, it is incorporated for a specific purpose. After incorporation, a SPAC is listed on a stock exchange for IPO, which helps a SPAC to raise capital and it is used for acquiring a target company, that is a private operational company. The amount raised through IPO is kept in a “Trust Account” or an “Escrow Account” so that it can only be used for acquiring a target company. After the SPAC acquires the target business and forms an initial business combination, also known as the process of de-SPAC, the private company or the acquired company also gets listed on the stock exchange, which is followed by dissolution of the SPAC and later, shares of the acquired company or the operational company are traded on the stock exchange.

Before initiating the process of De-SPAC, a SPAC provides the shareholders with a “proxy statement”. This is issued to the shareholders to provide them with details of the initial business combination. The proxy statement essentially contains information regarding the company to be acquired, the company's financial statements, the capital structure of the combined entity, etc.³ After the proxy statement is provided, the shareholders are asked for their votes on the initial business combination. Through this process, shareholders may choose to redeem their shares before the SPAC

content/uploads/2021/06/RMG-II-ReNew-Power-Transaction-Announcement-Press-Release-Feb-2021.pdf.

³ U.S. Securities and Exchange Commission, *What You Need to Know About SPACs – Updated Investor Bulletin (2021)*, SEC, <https://www.sec.gov/oiea/investor-alerts-and-bulletins/what-you-need-know-about-spacs-investor-bulletin>.

gets into the business combination or may stay back and later become the shareholders of the acquired operational company.

Parallely, there is a mechanism known as Private Investment in Public Equity (“PIPE”). Along with the capital raised by the IPO, SPACs also have few private investors, termed as PIPE investors. These PIPE investors invest in a SPAC when additional capital is required to acquire a target company. PIPE investors play a crucial role when the dissenting shareholders choose to redeem their shares, which creates a lack of capital to acquire a target company.⁴

SPACs are similar to any other company listed on a stock exchange in terms of valuing their shares. The first step involved in the valuation is the estimation of theoretical value per share. This can be done by multiplying “Net-Asset Value” (“NAV”) per share with the Price to Earnings ratio. Thereafter, factors such as discount to NAV, dividend yield, cost of capital rate and terminal growth rates are applied to arrive at an overall valuation for the company.⁵

SPAC’s shares are affected by the same factors as other equity stocks, for example, by market movements and global financial crisis. The only difference is that since these companies do not have any revenue from their core operations, they cannot be affected by business-specific factors such as industry outlook etc.

⁴ Lynwood Reinhardt & Brooke Dorris, *SPACs: Why PIPE investment play a key role*, INDIAN BUSINESS LAW JOURNAL (July 21, 2021), <https://law.asia/spacs-why-pipe-investments-play-a-key-role/>.

⁵ Clifford Change, *Guide to Special Purpose Acquisition Companies*, CLIFFORD CHANGE (Sept. 03, 2021), <https://www.cliffordchance.com/briefings/2021/09/guide-to-special-purpose-acquisition-companies.html>.

Most of the SPACs are incorporated in the U.S. because it has regulations that provide a feasible environment for SPACs to incorporate, list, and sustain for a period sufficient for De-SPAC. There are many Asian countries also that have shown a propensity towards SPACs. For example, Malaysia has had a framework for SPACs since 2009 and it is continuously evolving.⁶ Hong Kong has also come up with a consultation paper on SPACs which creates a listing regime for SPACs in the Stock Exchange of Hong Kong.⁷ A step ahead, Singapore is set to list two SPACs on Singapore Stock Exchange in January 2022.⁸ Unfortunately, this is not the case in many major economies across the globe, including India.

III. REGULATORY HURDLES FOR SPACS IN INDIA

Many Indian promoters have shown an interest in listing through the SPAC route, but they had to list their companies on foreign bourses. It is not only because foreign jurisdictions have a suitable environment for SPACs, which attracts Indian promoters, but also the fact that Indian laws governing incorporation and listing are stringent, making it virtually impossible for SPACs to sustain in India. Some of the issues are discussed below:

⁶ Securities Commission Malaysia, SC revises SPAC Framework, SECURITIES COMMISSION MALAYSIA (16 Sept, 2021), <https://www.sc.com.my/resources/media/media-release/sc-revises-spac-framework>.

⁷ Hong Kong Exchanges and Clearing Limited, *Consultation Paper: Special Purpose Acquisition Company*, HONG KONG EXCHANGES AND CLEARING LIMITED (Sept, 2021), <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/September-2021-Special-Purpose-Acquisition-Co/Consultation-Paper/cp202109.pdf?la=en>.

⁸ Anshuman Daga, *Singapore's first SPACs to list in city-state this month -sources*, THOMSON REUTERS (7 Jan, 2022) <https://www.reuters.com/markets/asia/singapore-spacs-backed-by-tikehau-capital-vertex-file-listings-2022-01-06/>.

A. Early removal of non-operating companies

A SPAC is a non-operating company. It typically requires 18 to 24 months for identifying an operating company to initiate the process of De-SPAC or form a business combination.⁹ According to Section 248 of Companies Act, 2013,¹⁰ read with the Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016,¹¹ the Registrar of Companies may remove the company's name from the register of companies, which fails to commence its business within one year of incorporation. It is challenging for a SPAC to get listed, generate funds and find a target company for a business combination within one year.

B. Ineligibility of SPACs for IPO

Regulation 6 of the Securities and Exchange Board of India (Issue of Capital and Disclosure conditions) Regulations, 2018¹² provides certain eligibility criteria for companies for Initial Public Offering. The regulation mandates that:

- Net tangible assets of at least three crore rupees, in each of the preceding three years;

⁹ S.R. Patnaik, Surajkumar Shetty & CAM Tax Team, *Assessing Indian tax considerations for successful offshore listing of Indian companies* | , INDIA TAX LAW (2020), <https://tax.cyrilamarchandblogs.com/2020/09/assessing-indian-tax-considerations-for-successful-offshore-listing-of-indian-companies/#more-2154> (last visited Jul 12, 2021). note 3.

¹⁰ Companies Act, No.18 of 2013, § 248 (Ind.).

¹¹ Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, Gazette of India, pt. II sec. 3(i), Rule 3 (Dec. 27, 2016).

¹² Securities and Exchange Board of India (Issue of Capital and Disclosure conditions) Regulations, 2018, Gazette of India, pt. III sec. 4, Reg. 2 (Sep. 11, 2018).

- An average operating profit of at least fifteen crore rupees, calculated on a restated and consolidated basis, during the preceding three years, with operating profit in each of these preceding three years;
- A net worth of at least one crore rupees in each of the preceding three years.

These conditions demand the operationality and the history of a company. SPACs cannot satisfy any of these conditions.

Further, Rule 4 of the Companies (Prospectus and allotment of securities) Rules, 2014,¹³ mandates setting out of auditor's reports in the prospectus, for disclosure of profits, losses, assets, and liabilities of preceding five financial years. Although, sub-rule (2) of Rule 4 and Rule 6 clarify that if the company has not completed five years, it shall file reports for all the previous years after its incorporation. But the mandate of filing reports on profits or assets is impossible for a SPAC to comply with.

IV. OVERSEAS LISTING THROUGH FOREIGN SPAC

The lack of separate regulations for SPACs and current regulations for listing make it impossible for SPACs to incorporate, list, and merge in India. Hence, all the companies are bound to choose the traditional way of listing. However, Indian companies interested in overseas listings have shown a propensity towards the SPAC route of listing. Although regulations in India make an overseas listing of Indian private companies through the

¹³ Companies (Prospectus and allotment of securities) Rules, 2016, Gazette of India, pt. II sec. 3(i), Rule 4 (April 1, 2014).

SPAC route, a little cumbersome. Some of the methods previously adopted by companies have been discussed further:

A. Using American Depositary Shares (“ADSs”)

ADSs are securities of the non-U.S. company held by an American depository and may represent a part of share or bunch shares with varying rights, as per the company. ADSs are traded on recognized stock exchanges in the United States. Further, ADS holders are provided with depository receipts as proof of their ownership.

In 2014, the Government of India introduced a new scheme that facilitated the issue of depository receipt outside India.¹⁴ This scheme allowed private companies in India to issue or transfer securities to foreign depositories and opened an avenue for private companies for overseas listing through the SPAC route.

This method was used by Videocon in 2015 where it formed a business combination with Silver Eagle Acquisition Corp. to get listed on NASDAQ.¹⁵ In this, Videocon had to register its securities with the SEC, then deliver it to the Deutsche Bank Trust company, the depository bank in the United States. Further, funds raised by Silver Eagle were used to pay Videocon d2h in exchange for its equity shares (or ADSs). After the closing of the transaction and redeemed shares being paid out, the ADSs of Videocon were distributed with the shareholders of Silver Eagle, followed by the dissolution of Silver Eagle.

¹⁴ MINISTRY OF FINANCE, DEPOSITORY RECEIPTS SCHEME 5 (2014), <https://egazette.nic.in/WriteReadData/2014/161608.pdf>.

¹⁵ Videocon d2h Limited, Registration Statement (Form F-4) 241 (March 12, 2015).

The traditional way of listing for a foreign issuer in the U.S. requires filing Form F-1, which every foreign issuer has to file to get its securities registered with the SEC. While Videocon had to file only form F-4, which deals with the registration of securities of a foreign issuer in connection with any business combination. This form also acted as a proxy statement for the shareholders of Silver Eagle. It is imperative to understand that in this case, Videocon was aware of its shareholder's base. Hence, they were only required to frame the proxy or information statement to retain the existing shareholders.

Although this method of foreign listing through SPACs seems convenient, it has many challenges when it comes to Indian regulations. When the Indian company and the foreign SPAC form a business combination, it results in an outbound merger, this is because “the combined entity is a SPAC, which becomes an operating entity”.¹⁶ The Companies Act mandates approval from the Reserve Bank of India to form a cross-border merger. According to the Companies Act and rules thereunder, approval is required from the National Company Law Tribunal (“NCLT”). The requirement of multiple approvals makes it more time-consuming, contrary to the entire purpose of a SPAC listing.

Unfortunately, in October 2019, the Security Exchange Board of India (“SEBI”) released a circular, which allowed only listed companies in

¹⁶ Akila Agarwal, yash J. Ashar, Ravi Shah, Avani Dalal & CAM Markets Team, *Using SPAC vehicles as a means of listing outside India*, CYRIL AMARCHAND MANGALDAS (Sept 14, 2020) <https://corporate.cyrilamarchandblogs.com/2020/09/using-spac-vehicles-as-a-means-of-listing-outside-india/>.

India to issue securities for the purpose of issue of depository receipts.¹⁷ This circular has blocked a possible avenue of overseas listing through a SPAC, i.e., by using ADSs.

1. Tax issues in this method:

Since listing through this method results in an outbound merger, the tax implications in this method will accrue accordingly. This has been discussed in detail below under the heading Tax implications when a Foreign SPAC acquires an Indian target company.

B. Through Externalization

Externalization of a company means migrating a holding company from India to an offshore jurisdiction.¹⁸ It is done through a share swap, where the shares of a domestic company are swapped with the shares of a foreign company. This results in an overseas company becoming the holding company.¹⁹ This method is used for avoiding tax challenges and availing the benefits of being in a jurisdiction with regulations conducive to the company's operation. Externalization is also done to attract foreign investments. Though the company is migrated to a foreign jurisdiction, it continues its operation in India.

¹⁷ SECURITY EXCHANGE BOARD OF INDIA, FRAMEWORK FOR ISSUE OF DEPOSITORY RECEIPTS (2019), https://www.sebi.gov.in/legal/circulars/oct-2019/framework-for-issue-of-depository-receipts_44609.html.

¹⁸ Deepansh Guwalani, *Analysis of "Externalisation" under Indian Law*, INDIANCORPLAW.IN (May 14, 2018) <https://indiacorplaw.in/2018/05/analysis-externalisation-indian-law.html>.

¹⁹ Nivedita Nivargi and Vandana V, *Externalization: Key issues companies need to consider*, INDIAN BUSINESS LAW JOURNAL (June 7, 2018) <https://law.asia/externalization-key-issues-companies-need-consider/>.

Externalization has benefited many companies in the overseas listing, using the SPAC route. In this method, the holding company, being in a foreign jurisdiction, is easily acquired by a SPAC and is listed on a stock exchange. This method was successfully used by "Yatra online" to get itself listed on NASDAQ. Yatra, being incorporated in the Cayman Islands, was able to avail this method of listing. It formed a business combination with "Terrapin 3" ("the SPAC"), subsequently listing itself on the stock exchange.²⁰

In this method of listing, a company must externalize first. Usually, a company opts for externalization before the expansion of the business or just after incorporation,²¹ which was the case with "Yatra online." This is because flipping the ownership to a foreign jurisdiction has a substantial tax leakage.²² Externalising the company at a later stage may have larger tax implications. Hence, for a company incorporated in India with a well-established business, it will be challenging to avail this method of listing.

Using externalization, many companies have generated capital gains. But, can a resident individual invest and get benefit out of the listing? Before 2013, resident individuals were allowed to invest in shares of any foreign company. But, in 2013, the Reserve Bank of India came up with an amendment, which allowed resident individuals to invest only in Joint Ventures or Wholly Owned Subsidiaries.²³ Also, such investments can only

²⁰ Yatra Online, INC, Registration Statement, (Form F-3) (May 3, 2018).

²¹ Guwalani, *supra* note 18.

²² Algo Legal, *Externalization*, ALGO LEGAL (May 12, 2020) <https://algoallegal.in/externalisation/>.

²³ Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2013, Part-II, Section 3, Sub-Section (i) Reg. 2 (Aug 5, 2013).

exceed up to USD 2,50,000 in every financial year, as per the Liberalized Remittance Scheme.²⁴

1. Tax issues in this method:

A holding company, externalized from India to an offshore jurisdiction would acquire 100% of the Indian subsidiary and all its assets. This is mainly done via two methods either for (i) cash consideration or (ii) in exchange for its shares also known as Share Swap.²⁵

Capital gains tax may be imposed on the sale or swap of shares in a target company against shares in the SPAC. If shares of the target company are swapped for shares of the SPAC, then capital gains tax will apply to the profit made in selling those shares. The difference between the consideration received from SPAC and their own cost of acquiring the shares of the Indian Target will be subject to capital gains tax in India. Due to the anti-abuse clause²⁶ of the Income-Tax Act, 1961 (“**IT Act**”), SPAC would have to buy the Indian Target's shares at least at their FMV. This would reduce any negative Indian tax consequences for the SPAC and the Indian Target's shareholders due to such deeming requirements. Tax rates primarily depend

²⁴ RBI, *Master Direction - Liberalised Remittance Scheme (LRS)*, GOVT OF INDIA, <https://rbi.org.in/scripts/notificationuser.aspx?id=10192>.

²⁵ Spandan Saxena & Ashwin Bhat, *M&A Through Share Swap/Stock Swap Arrangements - Corporate/Commercial Law - India*, NOVOJURIS LEGAL (2018), <https://www.mondaq.com/india/shareholders/732580/ma-through-share-swapstock-swap-arrangements> (last visited Feb 16, 2022).

²⁶ Dr. Suresh Surana, *Anti-abuse provisions: A curse in disguise for businesses navigating the nebula of Indian taxation system - BusinessToday*, BUSINESS TODAY (2020), <https://www.businesstoday.in/opinion/columns/story/anti-abuse-provisions-major-roadblocks-in-raising-funds-for-businesses-due-to-complex-indian-taxation-system-273289-2020-09-17> (last visited Feb 16, 2022).

upon various factors like the mode of transfer, i.e., share swap vs merger, residential status of shareholders, availability of treaty benefits.

The benefit associated with this type of overseas listing could be that even though companies get themselves listed in an offshore jurisdiction, they can simultaneously look at accessing Indian markets through depository receipts, which can be listed on the NSE or BSE.

However, this method has certain disadvantages:

- Capital gains made by an Indian resident on the selling of SPAC's share would be taxed in India.²⁷ Share of a foreign company is treated as unlisted share and any gains arising on stocks not listed in India shall be treated similarly as unlisted shares. As a result, if the transfer of SPAC shares results in gains for the transferor shareholder, the gains may be taxable in India unless a specific exemption is provided in Indian law to the effect that the sale of SPAC shares on an overseas stock exchange will not be subject to Indian capital gains tax. If the foreign company shares have a holding period of more than 24 months or 2 years, it will be considered as a long-term capital gain. If the holding of such shares is less than 24 months then it will be considered as short-term capital gains.
- Transferring an Indian subsidiary to an offshore jurisdiction also implies that foreign investors need to buy securities entitling them for dividend distributions from the Indian company's profit, which can be

²⁷ See, *Agreement For Avoidable Of Double Taxation And Prevention Of Fiscal Evasion With Mauritius*, Govt of the Republic of Ind - the Govt of Mauritius, DATED 6-12-1983, GSR 920(E).

either equity or preference share dividends. This means that one should expect lower dividend yield ratios if he is considering investing in companies listed through this route.²⁸

There is no assurance that companies that migrate to offshore jurisdictions would actually end up saving on taxes. For instance, if a shareholder who has been holding the shares of a company for more than one year goes ahead and sells them in Indian markets, they would have to pay capital gains tax. Thus, even though it might seem to be a good option for businesses, policymakers may need to ponder over whether such migration results in increased savings or not.

V. TAX IMPLICATIONS WHEN FOREIGN SPAC ACQUIRES AN INDIAN TARGET COMPANY

In the event of an outbound merger, the foreign business may face challenges with a Permanent Establishment (“PE”) in India. For example, if the Indian company has any fixed assets or has any business activities in India, the fixed assets or business operations will be owned/controlled by the foreign company after the merger is completed. Unless the foreign corporation sells the properties or business right away, it may be considered to have a PE in India under Indian tax laws. This might expose the foreign corporation to a tax rate of approximately 40 per cent in India on any income attributable to such assets/business operations.²⁹ The Indian office of the Indian company will be treated as a foreign company/branch office of the

²⁸ K DALAL, INDIAN TAXATION DECODED-AN MNC PRESPECTIVE 56 (1st ed. 2018)

²⁹ Income-Tax Act, 1961, §2(23A) (Ind.).

merged foreign entity following the merger of the Indian Target into SPAC.³⁰

For tax reasons, the SPAC's branch office in India would be considered a PE in India.³¹ A foreign company's PE will be taxed at 40% on its net income.³² Suppose the business model changes such that SPAC earns revenue in its home jurisdiction as well. In that case, it must be assured that no part of that revenue is attributable to the Indian PE's operations. This would shield the revenue generated outside of India from being taxed at a rate of 40% in India. The PE's income repatriation outside of India will not be subject to further taxation in India.³³

Apart from the taxability of the Indian branch as a PE of SPAC in India, it would be essential to check and make sure that SPAC's "place of effective management ("POEM")"³⁴ is not in India. This could happen if SPAC's key management employees are based in India or SPAC's directors or officers make important management decisions affecting SPAC's business while they are based in India during a financial year. If SPAC's POEM is found to be in India, it will be declared a tax resident of India and will be subject to Indian taxes on its global earnings. This aspect would require

³⁰ Patnaik, Shetty, and Team, *supra* note 9, note 15.

³¹ Income-tax Act, 1961, No. 43 of 1961, §92F(iii)(a) (Ind.).

³² DALAL, *supra* note 28, at 14.

³³ Devarsh Shah & Dharmvir Brahmhatt, *Tax Implications on SPAC: To SPAC or Not To SPAC?*, THE CBCL BLOG (2021), <https://cbcl.nliu.ac.in/taxation/tax-implications-on-spac-to-spac-or-not-to-spac/> (last visited July 12, 2021).

³⁴ See, CBDT, Circular for issuing guiding principles for determination of POEM, No. 06 of 2017, (Jan 24, 2017).

factual verification and suitable precautions to mitigate any adverse implications.³⁵

If the Indian Target was otherwise subject to a lower tax rate in India, such as 22% or 15% (applicable to a newly established manufacturing company after October 2019 if certain conditions are met), it should be carefully considered whether the merger is necessary for other reasons, despite the significant additional tax burden imposed on SPAC. Any transaction between the SPAC and the Indian PE must be conducted on an arm's length basis in accordance with India's applicable transfer pricing legislation.³⁶ This would also be true in the case of a parent-subsidiary relationship between SPAC and the Indian Target, i.e., if the Indian Target is not merged with SPAC.

Dividend withholding tax may be applied to dividends paid by SPAC to Indian shareholders in the nation where SPAC is incorporated. This rate will be determined by the Double Tax Avoidance Agreement (“DTAA”) rate between India and the country in which SPAC is located. They would also be taxed on these dividends in India at the same rate as if they had received dividends from the Indian Target. They should, however, be given credit for taxes withheld in SPAC's home country to avoid double taxation.³⁷

³⁵ V KUMAR & P SHARMA, AN INSIGHT INTO MERGERS AND ACQUISITIONS: A GROWTH PERSPECTIVE 61 (1st ed. 2019).

³⁶ Kumar Suvam & Menon Harsha, *Related Party Transactions and Arm's Length Transactions in Company Law: Surrounding Ambiguity and Unsettled Dust - The CBCL Blog*, THE CBCL BLOG, 2019, <https://cbcl.nliu.ac.in/company-law/related-party-transactions-and-arms-length-transactions-in-company-law-surrounding-ambiguity-and-unsettled-dust>.

³⁷ Patnaik, Shetty, and Team, *supra* note 9.

Dividend withholding tax may be applied to dividends paid by SPAC to Indian shareholders in the nation where SPAC is incorporated. This rate will be determined by the DTAA rate between India and the country in which SPAC is located. They would also be taxed on these dividends in India at the same rate as if they had received dividends from the Indian Target.³⁸ They should, however, be given credit for taxes withheld in SPAC's home country to avoid double taxation. When Indian shareholders sell SPAC shares on an overseas stock exchange, they will be taxed on capital gains. Such gains may be taxed in SPAC's home country under domestic law, and they should be credited for such taxes in India.

VI. THE ADVENT OF SPACS IN INDIA WITH GIFT-CITY

The Gujarat International Finance Tec-City (“GIFT”) Project also known as the GIFT city is India’s first operational greenfield smart city and India’s first international financial services centre. It was established with an aim to make it a global financial hub. Some features of the GIFT City are as follows:

- India’s first international exchange is established in IFSC. This exchange includes trading across all asset classes such as equities, currencies, commodities, and fixed-income securities.
- Any transaction undertaken will be treated as a transaction undertaken by a person outside India for exchange control purposes.

³⁸ DALAL, *supra* note 28, at 18.

A. Framework for SPACs

The International Financial Service Centers Authority (“IFSCA”) which regulates the financial activities in the GIFT-City, issued a consultation paper in March 2021 on the issuance and listing of securities, named as International Financial Services Authority (Issuance and Listing of Securities) Regulations, 2021.³⁹ Interestingly, it has a separate chapter that deals with SPACs. The chapter has provisions related to the IPO of SPACs, the eligibility of SPACs to raise capital through public offers, a list of disclosure obligations is also provided and many other important provisions which would help a SPAC to sustain and form a business combination.

B. Key Provisions Involved

The provisions added in the chapter allows startups or small companies to use the SPAC route to list and generate capital. Some of such provisions are discussed below:

The minimum issue amount permitted for a SPAC is 50 million U.S. dollars, with the sponsors holding a minimum of 20% of the post-issue paid-up capital.⁴⁰ The minimum subscription required for a successful SPAC IPO is set at 75% rather than 90%.⁴¹ Additionally, a minimum application value

³⁹ International Financial Service Centers Authority (Issuance and Listing of Securities) Regulations, 2021, Part III Section 4 of the Gazette of India 42 (Ind).

⁴⁰ International Financial Service Centers Authority (Issuance and Listing of Securities) Regulations, 2021, Part III Section 4 of the Gazette of India 42 (Ind).

⁴¹ *Id.*

of 250,000 US dollars is required, and the maximum proportion of a single allotment is 20%.⁴²

The offer document is required to contain a variety of disclosures, including the issue's objectives, the anticipated allocation of funds for administrative capital, the basis for the issue price, the SPAC's target business sector, and restrictions on the rights of shareholders voting against a business acquisition.

Several investor protection measures include ensuring that 90% of the IPO proceeds are deposited in an escrow account managed by an independent custodian,⁴³ requiring that a majority approve proposed acquisitions of shareholders,⁴⁴ and requiring that the businesses acquired have an aggregate fair market value of at least 80% of the aggregate. Finally, SPACs are obliged to complete acquisitions within three years, albeit this time limit may be extended by one year with the special permission of 75% of all shareholders save the sponsors.⁴⁵

VII. INTERNATIONAL FINANCIAL CENTERS ACROSS THE GLOBE: A COMPARATIVE ANALYSIS WITH GIFT CITY

We have chosen four more cities to look at closely since: (a) the first two epitomize what a fully-fledged GFC is, and what GIFT should aspire to become as it matures, and (b) the latter two offer immediate competition in

⁴² CONSULTATION PAPER ON PROPOSED INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (ISSUANCE AND LISTING OF SECURITIES) REGULATIONS, 2021 OBJECTIVE, (2021), <https://ifsc.gov.in/Document/ReportandPublication/consultation-paper-on-ifsc-issuance-and-listing-of-secruties-regulations-202110032021035750.pdf> (last visited Jul 12, 2021). at 30.

⁴³ *Id.*

⁴⁴ *Id.* at 31.

India's own neighbourhood in a manner that may compromise the emergence of GIFT as an International Financial Center (“**IFC**”).

Before we delve into the analysis of these four cities. It is important to clarify some terms in order for better understanding of the comparative analysis.

A. Global Financial Service Center (“GFC”)

Financial Centers such as London, New York, and Singapore are considered to be GFC as they offer a complete range of markets, products and services to clients worldwide, along with advanced settlements and payment systems. The legal/regulatory framework is considered to be open, well designed robust enough to safeguard the integrity of all principal-agent relationships and supervisory functions. Out of these, London used to be considered as the leading Global Financial Service Center, until the Brexit uncertainty, post which, many experts opinions suggest that London may ultimately lose its stature as a global financial hub.⁴⁶

B. Regional Financial Service Center (“RFC”)

They are more national than regional in orientation. RFCs differ from GFCs in that they have reasonably developed financial markets and infrastructure; but they are not as sophisticated, wide or deep as GFCs. They intermediate funds in and out of their region, but they have relatively small

⁴⁵ *Id.*

⁴⁶ I.M.F.H.P.E. COMMITTEE, MUMBAI - AN INTERNATIONAL FINANCIAL CENTRE (2007), <https://books.google.co.in/books?id=cwGwE5BllgIC>.

domestic economies (compared with their regions) and are not as globally competitive as GFCs.⁴⁷

C. Offshore Financial Service Center (“OFC”)

OFC comprise the third category of IFC. They are smaller and provide more limited specialist services in the areas of tax, transfer pricing, wealth management and private banking. Offshore finance is, at its simplest, the provision of financial services by banks and other agents to non-residents. These services include borrowing money from non-residents and lending to non-residents. This can take the form of lending to corporates and other financial institutions, funded by liabilities to offices of the lending bank elsewhere, or to market participants. It can also take the form of the taking of deposits from individuals and investing them elsewhere. However, it exploited the reality that financial markets in other large economies such as Germany, France, Japan and the OFCs were being overregulated and over-taxed.⁴⁸

D. Comparative Analysis

1. London

It has been an important IFC for over three centuries. It was predominant in 1830-1980 when the British Empire covered much of the world. It was holding the leading position until the Brexit convention led to uncertainties with regards to the Trade with BREXIT nations.⁴⁹

⁴⁷ *Id.* at 16.

⁴⁸ *Id.*

⁴⁹ Y S PARK & M ESSAYYAD, INTERNATIONAL BANKING AND FINANCIAL CENTERS (2012), <https://books.google.co.in/books?id=JHLvCAAQBAJ>.

2. *New York*

It rose to prominence with: (a) the growing stature of the economy between 1870 & 1918 and thanks to the US finance market innovations it has become one of the premier IFC in the world what is happening in China and India today; and (b) relentless American innovation in finance.⁵⁰

3. *Singapore*

It emerged in the 1980s and 1990s and is now well-established from a business perspective, Singapore's attractiveness lies in its transparent and sound legal framework complementing its economic and political stability.⁵¹

4. *Dubai*

More specifically, the Dubai International Financial Centre (“**DIFC**”) is a newly emergent enclave IFC with the resources and infrastructure in place to develop very rapidly in providing IFS to markets in the Middle East as well as in West, Central and South Asia. IFCs and Dubai have not evolved as a consequence of their historical and geographical legacies, or natural evolution of their market economies at the crossroads of global financial flows for trade and investment. They have emerged as a result of a powerful push by their respective governments to develop IFCs.⁵²

5. *India*

Though the GIFT city is new in comparison to all the other financial centres, it has the opportunity to expand like any other IFCs if the

⁵⁰ *Id.* at 35.

⁵¹ *Id.* at 40.

⁵² *Id.* at 46.

Government can take proper measures in the formulation of legal policies. Prior to the establishment of IFCs in India, companies still wanted to enter the Indian market because of the availability of cheap labour, and the establishment of the Financial Center will further attract these Companies.⁵³

VIII. RECOMMENDATIONS TO IMPROVE & EASE UP THE PROCEDURE FOR SPACS IN INDIA.

The authors recommend that SPACs should be given a longer time to find a target, as less time puts stress on the SPAC's and most of them tend to fail. For instance, after Hibiscus Petroleum Bhd was listed on Bursa Malaysia, several other market peers like Sona Petroleum and CLIQ Energy also opted for SPAC in 2013 but eventually failed. In the case of CLIQ, it failed to secure a qualifying target within the given time.⁵⁴ Eventually, in 2019 CLIQ Energy was delisted from Bursa Malaysia.⁵⁵ It is said that high oil prices lead to higher valuation shares than expected.⁵⁶ Hence, providing a longer time for SPACs to find a target could be a viable option as it will put less pressure on SPACs.

⁵³ *Id.*

⁵⁴ Hon-Wei Leow and Wee-Yeap Lau, *Special Purpose Acquisition Company IPO as an Alternative Tool of financing to traditional IPO: Case Studies an Emerging Market*, CHARTERED ALTERNATIVE INVESTMENT ANALYST ASSOCIATION (7th Dec, 2018) https://caia.org/sites/default/files/specialpurpose_websiteupload_7-12-18.pdf.

⁵⁵ *CLIQ Energy to be delisted on March 4*, THE SUNDAY DAILY (27th Feb, 2019) <https://www.thesundaily.my/business/cliq-energy-to-be-delisted-on-march-4-XC602213>.

⁵⁶ Structural issues hindering SPACs' growth in Malaysia, THE MALAYSIAN RESERVE (9th July, 2018) https://themalaysianreserve.com/2018/07/09/structural-issues-hindering-spacs-growth-in-malaysia/?__cf_chl_jschl_tk__=EjKRjv8yTQAhu4R1BZOk3qMu5FZ4rD7FXR.Tdvvb2IM-1641997650-0-gaNycGzNC-U.

IX. CONCLUSION

People opposing SPACs often quote that since these companies do not have any business, they will be looked upon with high suspicion, especially in a country like India which has a long history of financial frauds. But it depends largely on the regulatory framework and how vigilant are the regulatory authorities to avoid any financial crimes using SPACs.

Further, it is also claimed that a major risk involved with SPACs is related to valuation. Since no concrete data on revenues etc. is available for analysis and investments are made looking at the history of the sponsors. Also, there could be disbelief among investors regarding its ability to generate revenues/cash flows in future. Thus, many investors may find it extremely risky to invest in SPACs.

Nonetheless, these speculations and risks can be mitigated by regulatory authorities by introducing programs to educate retail investors regarding SPACs. For example, the Securities and Exchange Commission in the United States regularly releases articles to educate retail investors as to how they should invest in a SPAC or what are the risks involved.

Interestingly, looking at the recent trend, SPACs could be an ideal choice for investors looking for alternate avenues of investment. These new entities can help bring in much-needed risk capital into Indian stock markets, which would lead to increased activity levels and healthier times ahead. Thus, it can be stated that facilitating SPACs will have far-reaching benefits on all fronts including valuation, regulatory compliances etc.

From another perspective, the introduction of SPAC's may prove exceedingly beneficial for domestic institutional/private investors, who may become PIPE investors in a SPAC transaction. This would also increase investment options available to retail investors and expand their risk-taking ability.

SPACs offer small investors a chance to participate in high-growth firms with minimum capital commitments. In this sense, it seems like it is a derivative product offered by stock exchanges for raising money from retail investors. Thus, one can say that SPAC acts as a facilitator between companies requiring large sums for investments and risk-averse individual investors.

Unlike India, SPACs are trending in China, and recently many Chinese companies have generated capital estimated up to \$129 Billion through SPACs.⁵⁷ At the same time, ReNew power is the only Indian company to initiate overseas listing through SPAC. By the time India comes up with final regulations for SPACs in the financial jurisdiction (GIFT City), many companies which are going through a financial crisis due to the pandemic might have already suffered due to a lack of investments. That is why India needs to have regulations that do not restrict but facilitate an Indian entity (private/public) to list overseas using SPAC, at least for the time being.

Further, there are two more benefits that Indian companies can take advantage of from listing overseas using SPACs:

⁵⁷ Market SPACulation, CHINA BUSINESS LAW JOURNAL (2021), <https://law.asia/market-spaculation>.

- Indian companies that wish to expand overseas but are not able to garner enough capital from local markets, where large volumes of capital are already out on debt. Thus, these companies can use SPACs as an alternative method of tapping into foreign sources, without having to worry about regulatory compliances. As such, it could be regarded as an important route through which Indian firms can exploit opportunities offered by foreign countries.
- Small caps companies or start-ups looking for growth avenues that generally do not have access to offshore money, SPACs may be an ideal choice for them.

The easiest way to facilitate overseas listing is by allowing both private and public companies in India to issue ADSs or Global Depository Receipts outside India and eliminating the concept of double taxation. This method can be beneficial for companies at least for the time being.

Recently, Section 23 of the Companies Act, 2013 was amended and the direct listing on permitted overseas stock exchanges was permitted.⁵⁸ Unfortunately, it was only for the companies which are listed in India. More importantly, direct listing cannot be used in a SPAC transaction because it attracts the compliances of an outbound merger and double taxation.

If direct overseas listing is allowed for both listed and unlisted companies in India, waiving the heavy compliances of an outbound merger and double taxations, it shall be an ideal situation for Indian companies to list overseas using SPAC, by the time India prepares its own SPAC sustainable

⁵⁸ The Companies (Amendment) Act, No. 29 of 2020, § 5 (India).

environment. In the long run, the plans made by IFSCA for the GIFT City reflect a promising future for SPACs in India.