*Page 87 - 100* **DOI:** *https://doij.org/10.10000/IJLMH.112435*

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

**[ISSN 2581-5369]**

**Volume 5 | Issue 1**

**2022**

# SPAC: The Way Ahead to Future

SWANKIT KUMAR NANDA[1] AND DEYASINI CHAKRABARTI[2]


## ABSTRACT

*Legal business and transactional procedures had traditionally shied away from using modern practical applicability's which had thereby tried to continue with the traditional activities of raising finances. With the advancement of investment techniques and increasing market and economic forces, individuals have started investing in a new and unique venture thereby resulting into the formation of special purpose acquisition companies. This considering the fact that company law by itself inculcates interdisciplinary jurisprudence as it touches all aspects of our lives and therefore, when imbibed together, we saw various leading developments in the sectors of mergers and acquisitions.*

*In regard to this, the introductory part of the paper shall focus on the historical and developmental ambit of the SPAC and the evolving stages of it in the societal dynamism against the means of traditional IPOs. The second part of the paper shall focus on to the implications of the cross-border SPAC, thus focusing on the nuances involved in it, and the third part shall deal with the existing challenges within the system and the gap which are being laid thereby, due to the inadequate legal position, thus examining the preparedness and future approach of the Indian regulators towards SPAC. Fourthly, the focus shall shift to the global scenario in relation to SPAC, whereas the last part shall highlight on to the benefits which a SPAC receives as result of listing on IFSC Stock exchange, therefore concerning upon the probable advantages and disadvantages, and the conclusion.*


***Keywords-*** *SPAC, Traditional IPO, Statutory claims, IFSCA Listing, Acquisition.*

## I. INTRODUCTION

Merger and acquisition had always been considered as a mode of restructuring and the initiation of stronger process while considering the needs and essentials of a company. Thereby the process had been successful in the growth and revival of companies, at a large. In the paradigm the process had been optimized through absorption and by the formation of a new entity, therefore giving us a wide range of opportunity to expand the various sectors of M & A transactions. The regulatory and the statutory framework of the company law had also necessitated the concerned implementation and regulation of such processes. Mergers &

---

[1] Author is a student at School of Law, KIIT University, Bhubaneswar, India.
[2] Author is a student at School of Law, KIIT University, Bhubaneswar, India.

 

Acquisition in itself in an omniscient process whereby the challenges initiates from the very basics of commercial intent, negotiation and due-diligence. Therefore, owning to the dynamic aspect of the M & A transactions, one of such recent development is the Special purpose acquisition companies (SPAC). The Special Purpose acquisition company is a company which is formed primarily with the objective to raise capital through an initial public offering. It allows investors to place resources into a fund, which will then be used to acquire one or more unspecified businesses that will be identified after the initial public offering (IPO).[3]SPAC was formed by David Nussbaum in the year 1993, when the blank check companies were prohibited in the USA. Thereby tracing back the history, Special purpose acquisition company had primarily came into existence in the year 1990s,typically as a last resort for the smaller companies to go public, however with the increasing traditional activities in the capital market, it had gradually lost its existence.[4] Following the same, SPAC gained its importance in the year 2003, and had successfully established in the dynamic commercial procedures of the business market.[5] The evolutionary ambit had started gaining focus, where in 2007, a total of 66 SPAC IPOs has raised $12.1 billion.[6] Significantly the SPAC IPO market was closed in early 2008, then reopened in 2010 with different terms, thus it is pertinent to mention that the implementation and its execution was at a constant struggling and challenging state.[7] However in 2010, the private equity firms where the only sponsors for the companies, subsequently the year 2019, marked a significant revival of this special purpose acquisition companies. These blank check companies, though deals with a greater extend of uncertainties, however it established it intention of successful acquisition, share exchange, reorganisation with one or more companies and the business transaction for the same. Therefore, the core team for the formation of the business is led by experienced management with greater relative understanding of the market forces.

## II. NUANCES OF SPAC

The Special Purpose Acquisition companies as the name suggests holds an unique and a special feature whereby the investors indulge into a greater level of uncertainty and risk pertaining to the nature of the investing companies in which their money or funds would be invested.

[3] Corporate Finance Institute, Special Purpose Acquisition Companies, https://corporatefinanceinstitute.com/resources/knowledge/strategy/special-purpose-acquisition-company-spac/. (last visited on Aug. 2 2021).
[4]Winston and Strawn LLP, SPAC 101 Basic and Current Trends, 2020, https://www.winston.com/images/content/1/3/v2/135061/Winston-Strawn-SPAC-Basics-Presentation-2018.pdf. (last visited on Aug. 5, 2021)
[5] *Id*
[6] *Id*
[7] *Id*

Thereby the SPACs are different from the traditional methods of raising and investment money. The SPAC gives a different dimension to the investment scope and processes compared to that of the traditional initial public offerings. During the formation of the Special Purpose Acquisition Companies, the investors have no knowledge regarding the target company. Thus, the investment is solely done on the presumption of the future profitable acquisition. The price of the SPAC's IPO typically ranges from $ 6 to $ 10 per unit[8]. Till the time deal is struck or the SPAC is forced to dissolve, 85 to 100 percent of the proceeds are typically held in a trust.[9]Thereby the cash which is placed in the trust are not released until SPAC completes the business combination. However, a time frame is certainly being given which extends to a period of 2 years after closing of the IPO, in case if the SPAC fails in the completion process of the business combination within the estimated time frame. Voting rights typically plays an important role in the SPAC transactions. The trust thereby created benefits the investors because of the voting rights which they are able to ascertain. Therefore, when the SPAC founders target the acquisition company, the non-founder members also get the opportunity to vote in order for the transaction on the basis of which their approval is sorted for the same.[10] Unlike the traditional IPOs, the price of the SPAC IPO is not dependent on the valuation of the existing business framework. When the units, stocks and warrants are traded as it solely focuses on the market upbringing and fluctuations, they might undergo a varied range of chances thereby making it difficult to affix the success of the SPAC.

The units of securities that is to be structured in the SPAC IPO's can specifically be categorised into types, that is common stock shares and the warrants. Warrants in case of SPAC are the contracts that reserves the right with the holder to purchase a certain number of additional shares in the future at a certain price from the company. Warrant terms can vary widely between SPACs, therefore it is important to know them before investing. This includes the number of shares an investor can purchase, the estimated cost at which and when shares can be purchased, the situations wherein a SPAC can redeem the warrants, and or the time frame during which they may expire. Therefore, when the SPAC completes the business combination transaction, before the concerned specified dates, warrants become exercisable. SPAC can also redeem warrants irrespective of the terms and conditions of the contract.

[8] US Securities and Exchange Commission 2021, https://www.sec.gov/oiea/investor-alerts-and-bulletins/what-you-need-know-about-spacs-investor-bulletin ( last visited Aug.5, 2021).

[9] Stowell, D., Technical note: No Assets, No Products, No Business Plan: Risks Associated with Special Purpose Acquisition Companies (2009)

[10] Masthead Logo, Vol.2, Fordham Business and Student Research Journal, FBSRJ, 5-6, (2012).

## III. Intricacies of cross- border SPAC

In this ever-globalized world, business houses are continuously hounding for new opportunities to expand, thereby to maximize their profit and in this contest for monetizing such opportunities, comes into picture, the cross-border SPAC.

A cross border SPAC can be said to be a game changer in the race, it is different & as well as similar to a foreign listing / IPO. Similar in the sense the aim of cross border SPAC remains the same, I.e. attract investor's monies in the foreign jurisdiction just like issuing of ADR, IDR or for that matter the GDRs. and cross border SPAC is different from the depository receipt system in the sense that it does not have to comply to the hard and fast listing regulations and obligations of the foreign jurisdiction. The cross-border IPO become smooth and less stringent through SPACs.

However, the cross-border SPACs are not completely immune to regulations & obligations. In Indian scenario there are certain compulsory statutory provisions which ought to be complied with if the out bound merger (cross border SPAC / De- SPAC) includes an Indian company.

SPAC operates within the ambit of companies act 2013, for an out-bound merger / De- SPAC, involving an Indian company, the provision of section 234 would apply - which says, any company incorporated under the companies act 2013, (any Indian company), if merges with a foreign company, then it would need prior approval of the Reserve Bank of India. The RBI must approve the scheme of merger of the two entities and every detail like - mode of pay out to shareholders, percentage of usage of cash and depository receipts etc, must be approved by the RBI. [11]

According to RBI regulation and master directions on establishment of branches of foreign entity in India, which clearly states that there must be a profit-making track record for preceding 5 years. Which is obviously not possible & plausible for SPAC, as SPAC are generally 18-24 months old entity which is again a Shell / blank cheque entity with literally no business in existence.[12] Adding more to it, according to section 248 of companies act 2013, a registrar can strike out the name of a company if the company fails to start a business within 12 months from the date of registration.[13] This provision of section 248 makes it more stringent for SPAC to operate in India, typically SPAC does not have any business and it has a life span of 18-24

[11] The Companies Act 2013, § 234, No.18, Act of the Parliament, 2013 (India)

[12] Reserve Bank of India (RBI) - *Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities*, RBI/FED/2015-16/6 FED Master Direction No.10/2015-16 (Issued on 18th May, 2021).

[13] Companies Act 2013, Section-248,No.18 , Act of the Parliament, 2013 (India).

months but section 248 provide for a maximum threshold limit of only up to 12 months.[14]

If ever the regulators keep a liberal approach towards SPAC, then also they would at least do a prudent scrutiny into the company before approving it, to protect the investor's interest at large, and shell companies/ blank cheque companies, always considered to be indicative of red flags, which makes the approval procedure more time combustion.

Moreover, under the current Companies law regime, an Indian entity can only get involved in an overseas merger with a company incorporated at certain jurisdiction. The Indian company law regime does not welcome business entity from every jurisdiction for the purpose of De-SPAC / cross border merger.[15]

Another major set- back for SPAC in Indian scenario is "round tripping". RBI is strictly against round tripping. Now what exactly defines round tripping? - Round tripping refers to a scenario (series of financial transaction) where the monies from the host country (Country of origin) goes to a foreign jurisdiction and from that jurisdiction, the monies are again injected back to the country of origin as foreign investment. Despite the growing interest in overseas listing through SPAC, such listing is bound to hit by round tripping. The ODI regulation permits Indian entity to invest in foreign joint venture and wholly owned subsidiary, the ODI regulation do not expressly permits round tripping investment.

Making the process more stringent the LRS scheme only talks about "overseas investment" and remain silent on the issue of round tripping.[16] Basically in real practical scenario the RBI needs to be consulted on every matter pertaining to round tripping, if the RBI nods affirmatively then it's a GO signal for the transaction, but in many instances the RBI has done a deep scrutiny eliminating any chances of fraudulent transaction.

### SPAC & Challenges Thereto

Above we talked about cross border SPAC and its challenges in Indian regime, now we shift our focus to domestic SPAC, can a SPAC get registered in India, and the challenges it gets hit by - first of all a domestic SPAC means, SPAC formed in India to acquire an Indian entity. India as an economy has seen many ups and downs after its independence, starting from the 1990 economic crisis when India had to liberalise its economy and open it to the whole of the

---

[14] By Karan Upadhyay, *SPAC Regulations in India: Identifying regulatory challenges and the way forward*, SCC Online Blog, https://www.scconline.com/blog/post/2021/06/08/spac-regulations-in-india/#_ftn3 ( last visited Aug. 7, 2021)

[15] Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Rule 3.

[16] Vandana Pai & Ayush Jain, *The Reserve Banks Restrictions on Round Tripping – 0utdated in the context of SPACs*, LEXOLOGY, ( Aug. 20, 2021), https://www.lexology.com/library/detail.aspx?g=c77339b2-cf0e-452d-88c0-900cced27261

world to participate. Moving forward to 2008 economic crisis, India, like all other major economy was hit by a massive economic depression. Talking about stock market scams, India has seen many, starting from the infamous “Harshad Mehta Scam”, “Ketan Parekh Scam”, “Satyam Scam” and many more in between. As a result of all the economic crisis and stock market crisis, India developed a strict regulatory and obligatory regime for capital market and also a strict regime of company law. Thus, taking in view with the relevant conditions and circumstances it is not so SPAC friendly. In general sense a blank cheque company is always seen as a red flag because it can be easily used for tax evasion and many other illegal transactions.

Let’s begin with challenges that the SEBI (ICDR) Regulations possess for SPAC, according to ICDR regulations - the eligibility criteria for an entity to list on a recognised stock exchange are -

- A net tangible assets of at least Rs.3 crore , out of the Rs. 3 crore not more than 50% shall be in monetary assets.
- The entity must have an average consolidated operating profit of at least Rs. 15 crore for the preceding 3 years.
- The entity must have a consolidate net worth of at least of Rs. 1 crore for each preceding 3 years.[17]

Now when we look at the characteristic of SPAC, we know that meeting the provision of regulation 6 of SEBI (ICDR) is not feasible for SPAC. The reason being, the SPAC are entity which have a life span of only 18-24 months, therefore meeting the criteria of net tangible assets of 3 crore rupees for the preceding three years is not possible. The second criteria that is the average operating profit of 15 crore in preceding 3 years is also not possible, as we know SPAC have no business function, if there is no business at place then there arise no chance of operating profit. From the above mentioned challenges, we can assume that the listing regime for SPAC in India is not feasible. But nonetheless if any entity fails to comply with the aforementioned provisions, they can still list their share on the stock exchange, according to sub-regulation 2 of regulation 6, if a issuer (here the SPAC) fails to comply with sub-section 1 of regulation 6 then also it can be listed provided that:-

- The issue must be through book building process

[17] Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations,2018, Regulation-6(1).

- The issuer must at least allot 75% of the total proceed to institutional investors[18]

Considering the provisions of regulation 32(2) read with regulation 6(2) prescribes that, the net offer allocation must be such that -

- Not more than 15% of the total offer to be allotted to retail investors
- Not more than 15% of the total offer to be allotted to non-institutional investor
- At least 75% of the total proceed to be allotted to institutional investor out of which 5% must be allotted to mutual funds. [19]

This particular provision might give some relief to the promoters of a SPAC but as we say, a blank cheque company can be hit by any challenge at given point of anytime.

Now if we turn to the provision of companies act 2013, under the act, a company needs to mention the purpose for incorporation in the MOA (Memorandum of Association), but SPAC are not formed to carry out any business they are solely formed to acquire another entity, hence the purpose of incorporation would not be that convincing for the registrar of company.[20]

## IV. STATUTORY CLAIMS IN RELATION TO SPAC

May it be any financial transaction, considering the statutory claims against it makes the transaction a success or a failure. People just tend to look at the face value of a transaction and ignore the statutory claims arising out of it.  Same goes with SPAC, if we look SPAC from the perspective of the Income Tax Act, then SPAC would be a combination of merger/ reverse merger/cross border merger or acquisition or any feasible model as it may deems fit to  the promoters.

Merger and amalgamation are tax neutral under the income tax act of 1961, however it is not the case with an outbound merger / amalgamation. Provisions of section 47(5) of the act enumerate that - any transfer between amalgamated company and amalgamating company would not attract any tax, provided both the companies are Indian company.[21] But in case of de-SPAC transaction (Cross border SPAC) the amalgamated company always be of some other jurisdiction. Which would not give any of the company the benefits of section 47.

Thus, taking into consideration the tax implication from a shareholder perspective, De- SPAC

[18] Securities And ExchangeE Board Of India (Issue Of Capital And Disclosure Requirements) Regulations,2018, Regulation-6(2)
[19] Securities And Exchange Board Of India ( Issue Of Capital And Disclosure Requirement) Regulation 2018, Regulation-32(2).
[20] The Companies Act 2013, § 4(1)(C), No. 18, Act of the Parliament, 2013 (India).
[21] The Income Tax Act 1961, § 47(5), No. 43, Act of the Parliament, 1961 (India).

generally happens through swapping of shares with the Indian target entity or merging the Indian entity with the SPAC. In both the cases there is a "transfer" of shares to the shareholders, hence capital gain tax can be levied on them. Capital gain tax would be levied on excess of the fair market value over the cost of acquisition in the hands of the selling holders.[22] The rate of capital gain tax under Indian tax regime can vary from 10%-40% depending upon various factors like - mode of transfer of shares, jurisdiction of the shareholders to name a few.

Furthermore, if the value of capital assets transferred, are less than the stamp duty value then it attracts section 50 (C) of the Income Tax act. which makes it taxable[23].

## V. Implication of Stamp Duty

Apart from the capital gain tax, stamp duty ought to be paid in a transaction of merger / amalgamation. To know the essence of stamp duty on transaction pertaining to merger/amalgamation, we must look at a pertinent case law, where the apex court of India held that,- the scheme effecting the merger is an instrument and the same is leviable to stamp duty. It was further clarified that stamp duty was leviable on the instrument and not on the transaction of purchase and sale. :- *Hindustan Unilever & Anr. v State of Maharastra.* [24]

Moving a step further the High Court of Bombay held that since a De-SPAC transaction cannot be concluded without the approval of the tribunal, hence stamp duty is inevitable, though there is no real transfer of assets in a De-SPAC transaction but stamp duty ought to be levied.- *Li Taka Pharmaceuticals Ltd v. State of Maharashtra*[25]

Clearly we can see that the interpretation of stamp duty by Indian courts leaves no room for doubt and one can assume that the increase in cost in SPAC transaction due to the stamp duty implication.

### (A) IFSC Listing & Tax Implications

To invite more foreign investment and innovative way to raise capital into the GIFT city the IFSCA has sought to chalk out provisions for SPAC listing and tax implication involved thereto.

As per the income tax act 'foreign currency denominated equity shares of a company' listed on IFSC stock exchanges is not treated as a taxable transfer. And also the gain in capital thereon are also exempted from the purview of taxation. Hence, the transfer of a SPAC's foreign

[22] The Income Tax Act 1961, § 45, No. 43, Act of the Parliament, 1961 (India).
[23] The Income Tax Act 1961, § 50(c ), No. 43, Act of the Parliament, 1961 (India).
[24] *Hindustan Unilever & Anr v State of Maharastra* (2004) 9 SCC 438.
[25] *Li Taka Pharmaceuticals Ltd v. State of Maharashtra* AIR 1997 Bom 7.

currency denominated equity share by a non-resident shall not be regarded as a transfer under section 47(7)(ab) of the Income-tax Act, 1961,[26] and the resultant capital gains shall not be chargeable to tax.

This provision give a breathe of respite to the foreign SPAC players and would attract them to list on the IFSC stock exchange.

If the SPAC derive its value from Indian assets, It would not be subject to indirect taxation as well. [27]

Considering the perspective of India, IFSC stock exchanges can be proved to be a GO to solution for SPAC market in the future.

Not only taxation benefits, if the SPAC are listed on IFSC stock exchanges they get additional benefits as well. A tabular representation of salient features of IFSC stock exchange listing herein below –

| **Sn. No.** | **Particulars** | **Details** |
| --- | --- | --- |
| 01 | Eligibility for SPAC issuers | ● The primary objective of the Issuer shall be to affect a merger/ amalgamation/ acquisition by way of De- SPAC transaction.<br>● The target company must have a business in place to be eligible for a De-SPAC transaction.<br>● There shall not be any active business of the SPAC issuer. |
| 02 | Threshold of Offer Size | A minimum of $50 Million |
| 03 | Minimum SPAC sponsor's contribution | They shall hold at least 20% paid of share capital post SPAC |
| 04 | Minimum subscription to be received | 75% of the total offer |

[26] *Id at 19.*
[27] *International Financial Services Centres Authority- Consultation paper on the proposed IFSCA (Issuance and Listing of Securities) Regulations, 2021, https://ifsca.gov.in/Viewer/ReportandPublication/9 ( Last visited May, 7, 2021).*

| | | |
|---|---|---|
| 05 | Minimum application size | $ 2,50,000 |
| 06 | Time limit to complete acquisition | 3 years [28] |

If a SPAC get listed on a IFSC stock exchanges it gets many exclusive benefits like the expiry date of SPAC is increased up to 3 years plus it can be extended up to another 1 year in against of a traditional SPAC having a lifespan of only up to 24 months on a maximum side.

## VI. GLOBAL SCENARIO IN RELATION TO SPAC

Special purpose acquisition companies are the new trends of investment that had proved itself successful and efficient in all essential scopes of investments. It is gaining an overall importance, keeping in view of the essence, nature and success rate of the investments which had resulted from it. In India, SPAC is at a nascent stage wherein the regulatory regime is yet to be developed and structed according to the needs and probabilities of investment in the society. Indian citizens are also free to invest in the oversea SPAC provided within certain limits. However, taking into consideration with the existing regulatory structure, the de-SPACing ambit of it may also result into taxable regulations. Therefore, at present Indian doesn't have a regulatory regime for the SPAC, however the International Finance Service Centre Authority (IFSCA) had been promoting and facilitating ideas upon the development and establishment of SPAC.[29]

London Stock exchange had embarked upon the preliminary and the structural guidelines for the development and formation of the SPAC.[30] As cash shells in the UK, SPACs are not eligible to be listed on the Official List's Premium segment. Neither they nor a closed-ended investment fund meet the independence and track record requirements set forth in the Listing Rules for premium listing of a commercial company (among other things, because they do not meet the diversification of risk requirements).[31] Therefore in UK there are an increased amount of rules and regulations on the investors compared to that of the US wherein they are not given an

[28] By Bhavin Shah, *The Rise Of SPAC- An Indian perspective* (May 2021) https://www.pwc.in/assets/pdfs/services/deals/rise-of-spacs-an-indian-perspective.pdf#:~:text=The%20year%202020%20witnessed%20a,from%20more%20than%20300%20SPACs.
[29] Pranav Satya, EY, https://www.ey.com/en_in/tax/spac-and-its-growing-relevance-in-india, (last visited July, 23, 21).
[30] London Stock Exchange, *Special Purpose Acquisition Companies*, https://www.londonstockexchange.com/raise-finance/funds/spacs?lang=en (last visited on Aug. 2, 2021)
[31] Nortan Rose Fulbright, *SPAC : The London Alternative*, https://www.nortonrosefulbright.com/en-gb/knowledge/publications/94734f5e/spacs-the-london-alternative, (last visited on July, 11, 2021)

 

adequate opportunity to redeem their shares. Thus, in US the investors have a greater degree of rights and liabilities established on them.

USA marks the initiation and the development of the SPAC. It offers a majority of the formations of the special purpose acquisition companies, and the jurisprudence to regulate the matters in SPAC had widely been effectively developed in USA. Securities Act of 1933 Rule 419, Rule 3a51-124 Section 11, Securities Exchange Act 1934, and the Sarbanes-Oxley Act of 2002 require public companies acquired by SPAC to comply with all applicable SEC filing requirements.[32] In other words, the regulator must receive all disclosures, audited financial statements, and documentation of internal controls within a specified timeframe. In Regulatory Notice 08-5419, the Financial Industry Regulatory Authority (FINRA) provides guidance on Special Purpose Acquisition Companies.[33] Securities and Exchange Commission (SEC) issued guidance on SPACs as well.[34]

In 2010, Singapore Marked the initiation and the development of the bringing SPAC as a viable option for investment. The Singapore Stock Exchange had issued a consultancy paper on the "Proposed Revision to the Mainboard Admission Criteria and the Introduction of SPAC", wherein the basic structural guideline was established ranging from minimum market capitalization of $150 million based on the issue price and post invitation issued share capital along with at least 25% of the SPAC's total number of issued shares which must be held by at least 300 public shareholders.[35] However Singapore is trying to establish a ground for SPAC by changing the rules and the rules for all to allow a greater transparency and clarity among the investors. At present Singapore had proposed to have a listing criterion of SG $ 300 million for SPACs, with a time frame of 3 years for them to combine with the target company, however the result for the same will depend upon finding the targets and also to persuade the targets to list in Singapore.[36]

SPAC being a new sectoral development in the fields of investment, it is going through an

[32] Himanshu Dubey & Ajay Kumar KV, *An overview of SPACS and related concern in India*, https://vinodkothari.com/wp-content/uploads/2021/03/An-overview-of-SPACs-and-related-concerns-in-India.pdf (last visited on June, 23, 2021).

[33] Finra, Regulatory notice, 08-54, Guidance on Special Purpose Acquisition Companies, https://www.finra.org/rules-guidance/notices/08-54 (last visited on 20th July, 2021)

[34] U.S Securities & Exchange Commission, Division of Corporate Finance, Securities and Exchange Commission CF Disclosure Guidance: Topic no. 11 ( December 22, 2020) https://www.sec.gov/corpfin/disclosure-special-purpose-acquisition-companies (last visited at 10th May, 2021)

[35] Singapore Exchange, Consultation Paper, Proposed Amendment to the Listing Rules, Pg. 5, https://api2.sgx.com/sites/default/files/2018 09/Consultation%2BPaper%2Bon%2BProposed%2BRevisions%2Bto%2BMainboard%2BAdmission%2BCriteria%2Band%2Bthe%2BIntroduction%2Bof%2BSPAC.pdf (last visited at 10th May, 2021)

[36] Asian Business Law Journal, SPAC Invaders, https://law.asia/spac-invaders-asia/. (last visited June, 31, 2021).

evolutionary stage of development in Canada. The Canada Toronto Stock Exchange had also issued guidelines which actively promotes in the developmental ambit of SPAC, which thereby states that a minimum of $ 30 million shall be allowed to be raised via the IPO with a minimum price of $2.00 per share unit.[37]As the SPAC is in a nascent stage, the taxable challenges are to be considered as a crucial ambit of it. The essential criteria's which are at a trial stage at present are the exchangeable share structure and re-domiciling the SPAC.[38] However in the recent time, they are also trying to focus on the Canadian target companies rather the US based companies. However, as there are a lot of ambiguities regarding de-SPAC transaction prevalent, as well as in the legal statutory and structurization of the modes and methods, SPAC in Canada is yet to be developed as a successful investment mechanism.

## VII. ADVANTAGES & DISADVANTAGES

Special Purpose Acquisition Companies are thereby gaining importance in the legal paradigm due to its scope of its investment and its mechanism behind its functioning. The functioning is critical both of in terms of legal and statutory compliance and market uncertainty. Thus, it proposes to give us a huge number of advantages and disadvantages pertaining to the same. Having said that SPAC feels in the gaps and are in a better mode of investment compared with that of the traditional IPOs. Consecutively, SPAC proposes to establish efficient methods by which the investor can invest in small companies. In SPAC transactions there are a certain time frame for the working and completion of the investment procedure, thereby preventing it from being long, imposing and cumbersome. The pricing structure in the SPAC plays a unique roll whereby their established mechanism of functionality provides them the opportunity to raise capital in favourable terms. Thus, their pricing structure which is inclusive in the active structures of the target company gives them a foundational base to raise their finances. SPAC for the timing have a comparatively less number of regulatory scrutiny involved in it thereby speeding up the process in going public in compared to that of the traditional IPOs. In the year 2020, amid the pandemic SPAC had shown a tremendous performance in raising finances and investments compared to other failing mechanisms when the economic was declining. Thus adding on to the flexibility of the operations and a greater deal of transparency while acquiring

---

[37] Canada Toronto Stock Exchange, The Company Manual, Special Purpose Acquisition Companies, https://qweri.lexum.com/w/tsx/tsxcme-en#!fragment/zoupio-_Toc56069274/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgFYA2ABi4E4ATAHYALAEoANMmylCEAIqJCuAJ7QA5BskRCYXAiUr1WnXoMgAynlIAhdQCUAogBknANQCCAOQDCTyVIwACNoUnZxcSA (last visited on 5, Aug, 2021)

[38] Cheryl V. Reicin, et.al, *Canadian Companies SPAC; Special Consideration*, https://www.torys.com/insights/publications/2021/04/canadian-companies-and-spacs-special-considerations (last visited on Aug. 16, 2021).

the target or in the procedural ambit, had substantially contributed towards the growth and promotion of SPAC in the growing market stricture across the globe.

Having said that it also possesses a certain number of challenges, thereby resorting to its disadvantages of it as well. The investors in a SPAC takes a greater risk of uncertainty of the market forces compared to the mother investments which happen at large. Thus, here as the concept of “blank check” companies are involved, the investors completely invest based on their presumption in the future target companies, in which the capital that had been raised are to be invested. The chances of increasing conflict of interest also raises a certain amount of uncertainty, because a multiple number of investors are involved in the process of raising finances. Thereby if the management by change doesn’t meet the expectations of the investors then the result will be dreadful leading to the failure of SPAC. The goodwill of the company plays an important role in the matters of mergers and acquisition. Thus, while investing in the same, investors depend completely on the management for the matters of choosing the target company and its effectivity. Having said that a more balancing approach is need to make the successful completion of the investment. A proper legal framework in SPAC is yet to develop uniformly. Thus, most of the countries including India is trying to develop into the structural and strategized formula for the formation of the SPAC and its investment process in the same. It had resulted into a combination of both the positive and negative implications, however the result can be sorted from the effective structuring and formation of a legal basis.

## VIII. Conclusion

SPAC thereby is the new development which had resulted into a modern and an efficient mode of raising finances. It had shown its worth in the present situation of pandemic and the economic fluctuations. Though it is uncertain had certain nuances and intricacies in it’s the functioning, but yet its implication and execution can give in us a successful result in the economic sector of working and functioning efficiently. The countries are trying to increase upon the adaptability and develop upon the process of SPAC which will in the near future will prove one of the effective and a common method of investment.

From the above detail analysis and scanning of Indian corporate law regime, we conclude that it is not that SPAC friendly for the time being. The Companies Act is perhaps the major road block in the way of SPAC. The companies act would not allow a blank cheque entity to get registered, the registrar of company may put a stop in the way of registration as the companies act do not have provision for incorporation of shell company. The Indian regulators also posses a challenging situation for a SPAC, per say the RBI & SEBI, have plethora of compliance &

obligatory requirement for a company in order to get merge into another foreign entity. The SEBI then throws in the way 'The SEBI ( ICDR) regulation which makes it difficult for a blank cheque company to get listed on a stock exchange. What makes the Indian regime more rigid for the SPAC is the Indian taxation regime. Which do not spare the SPAC or any foreign entity for that matter outside the purview of tax. The SPAC needs to pay the capital gain tax and the stamp duty which makes the overall deal less cost efficient. The future is the SPAC, business houses would never want to get into the maze of regulatory compliance if they have a more feasible option to go public. India needs to buckle up its regulatory regime to be SPAC ready, nonetheless India has already move a step forward towards a SPAC friendly regime. The IFSCA is trying to develop a SPAC friendly ecosystem, however it is in a nascent stage. hence it will need constant government support and government aid in order to sustain the long relay forward.

*****

 