

A hand is shown placing a blue wooden block on top of a colorful wooden block structure. The structure is composed of various colored blocks (red, yellow, purple, green, orange) arranged in a complex, interlocking pattern. The background is a solid light blue color.

Going the SPAC route: key considerations

September 2021



Building a better
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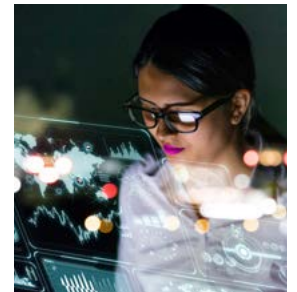
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Overview of SPAC



Recently, the capital market witnessed an unusual momentum in the filings by the Special Purpose Acquisition Companies (SPAC) which is showing no signs of slowing down. Even though the concept of SPAC has existed since the 90s, an unprecedented surge was witnessed in 2020 with an even higher record deals of SPAC in 2021. Such significant growth and maturation has led to opening a viable alternative path to the public markets for more private companies than ever before.

Concept of SPAC

Merging with a SPAC offers private companies a way to go public without conducting an initial public offering (IPO). SPAC, also referred as blank check company, is a shell company which has been set-up with the prime objective of raising capital from investors through an IPO to acquire one or more existing unspecified businesses in a particular sector (referred to as "target") in the future.

SPAC is available in multiple jurisdictions across the globe. The US and European exchanges account for the bulk of the SPAC activity.

SPAC in India is a developing concept. At present, the SEBI regulations may not be conducive for the listing of a SPAC in India. However, SEBI is planning to introduce a framework to enable listing of SPACs on domestic stock exchanges. Under the framework, SEBI may put in place a separate set of regulations to allow listing of "non-operating" or "investment" companies, which is expected to include a minimum threshold size for an IPO, qualifying criteria for sponsors, minimum sponsor investment, post de-SPAC lock-in of such amount, requirement of due-diligence, audits, controls framework and other operating guidelines for the SPAC. While allowing listing of SPACs in domestic stock exchanges is a welcome decision, one has to wait for detailed guidelines and see how such guidelines evolve in the future.

Below is the quick snapshot of indirect IPO through SPAC

Step 1: A SPAC is created for buying a controlling stake in private company/ target business. Sponsors are individuals or entity that forms and manages the SPAC and typically have a strong financial background and/or expertise in the target industry, such as private equity firm or other investment group. SPACs do not have operations but are essentially a temporary cash box.

Step 2: The SPAC gets publicly listed through the typical IPO process of filing a registration statement, undertaking a roadshow, etc. to generate cash for the future merger

(acquisition of target company). SPACs will usually issue units, and units are typically comprised of one share and a fraction of a warrant. IPO proceeds are held in a trust account until released to fund the merger or used to redeem shares issued in the IPO.

Step 3: Post IPO, SPAC identifies target (private company), and negotiates a merger deal with the target.

Step 4: Merger is consummated after relevant approvals from the shareholders and regulatory authorities. Post merger, the name and brand of the target company survive as the publicly listed entity.

Step 5: The SPAC sponsor owns a piece of the new company, and the formerly private entity is now a publicly traded company.

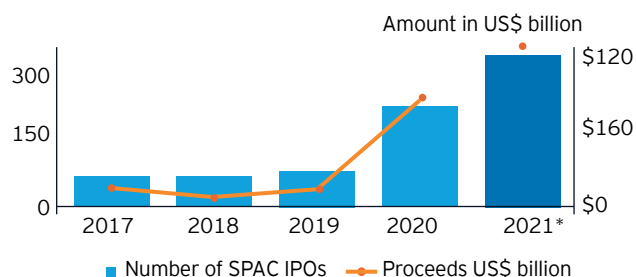
Global SPAC highlights

Public listing of SPAC through IPO process

- ▶ In the half year ended June 2021, SPAC IPO activities have already surpassed 2020's record year totals. Number of SPAC IPOs during YTD June 2021 has increased to 379 as compared to 39 during YTD June 2020, which is an increase of 872%.

Global SPAC IPO activity

YTD June 2021	Change on YTD June 2020
379 IPOs	▲ 872%
\$114.3 billion proceeds	▲ 846%



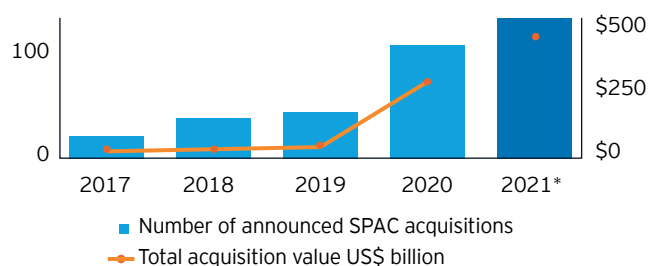
* YTD 2021 refer to the first six months of 2021

Source: EY Global IPO trends Q22021

SPAC merger with the target

- ▶ Announced SPAC acquisition activity is also growing at a faster pace, with the number of announced deals and deal values in half year ended June 2021 already surpassing 2020 full-year levels. US companies were the most active source of SPAC target companies in half year ended June 2021, followed by European, APAC and Israeli companies.
- ▶ Of the 634 SPACs that have completed IPOs globally between 2020 and the end of half year ended June 2021, 182 SPACs have announced acquisitions with a total acquisition value of US\$470 billion by the end of June 2021.

Announced global SPAC acquisitions



*YTD 2021 refer to the first six months of 2021
Source: EY Global IPO trends Q2 2021

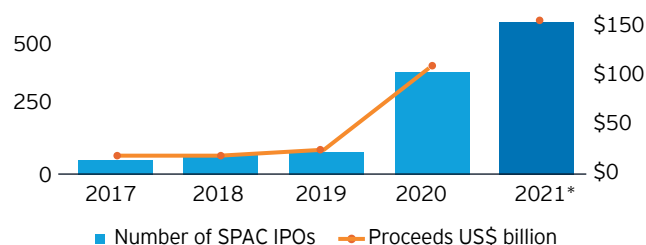
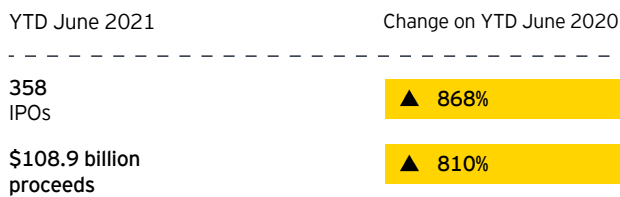
- ▶ As of 30 June 2021, there are 452 active SPACs with approximately US\$136.5 billion in available funds looking for investment. Deal pressure is quickly building as more SPACs are now in the market looking for the limited number of high-quality companies and as a result, standard transaction terms and valuations have become more competitive and negotiable.

US SPAC highlights

- ▶ Out of total Global activities in SPAC space, the US continues to account for the bulk of activity. Out of the total, 94% of the SPAC IPOs have taken place in the US market, contributing to 95% of the total proceeds.

- ▶ Compared to the record-breaking 2020 with 248 US SPAC IPOs that raised US\$80.9 billion and Q1 2021 which witnessed 299 SPAC IPOs with proceeds of US\$96.9 billion to shatter the record of 2020, Q2 2021 saw just 59 SPAC IPOs, which raised US\$12.0 billion.

US SPAC IPO activity

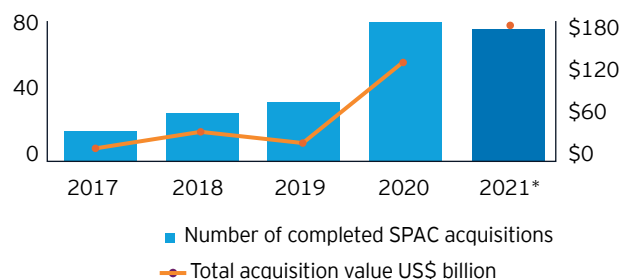


*YTD 2021 refer to the first six months of 2021

Source: EY Global IPO trends Q2 2021

- ▶ Despite a slowdown in SPAC activity, there were 69 SPAC acquisitions announced in Q2 2021. In addition, 39 SPAC acquisitions completed during Q2 2021 with a total acquisition value of US\$81.9 billion. Twenty-seven of these mergers were completed in June, which is the largest number of deals executed in a single month. As of 30 June 2021, a total of 150 active SPACs were reported to have identified targets.

Completed US SPAC acquisitions



*YTD 2021 refer to the first six months of 2021

Source: EY Global IPO trends Q2 2021

US listing considerations for SPAC

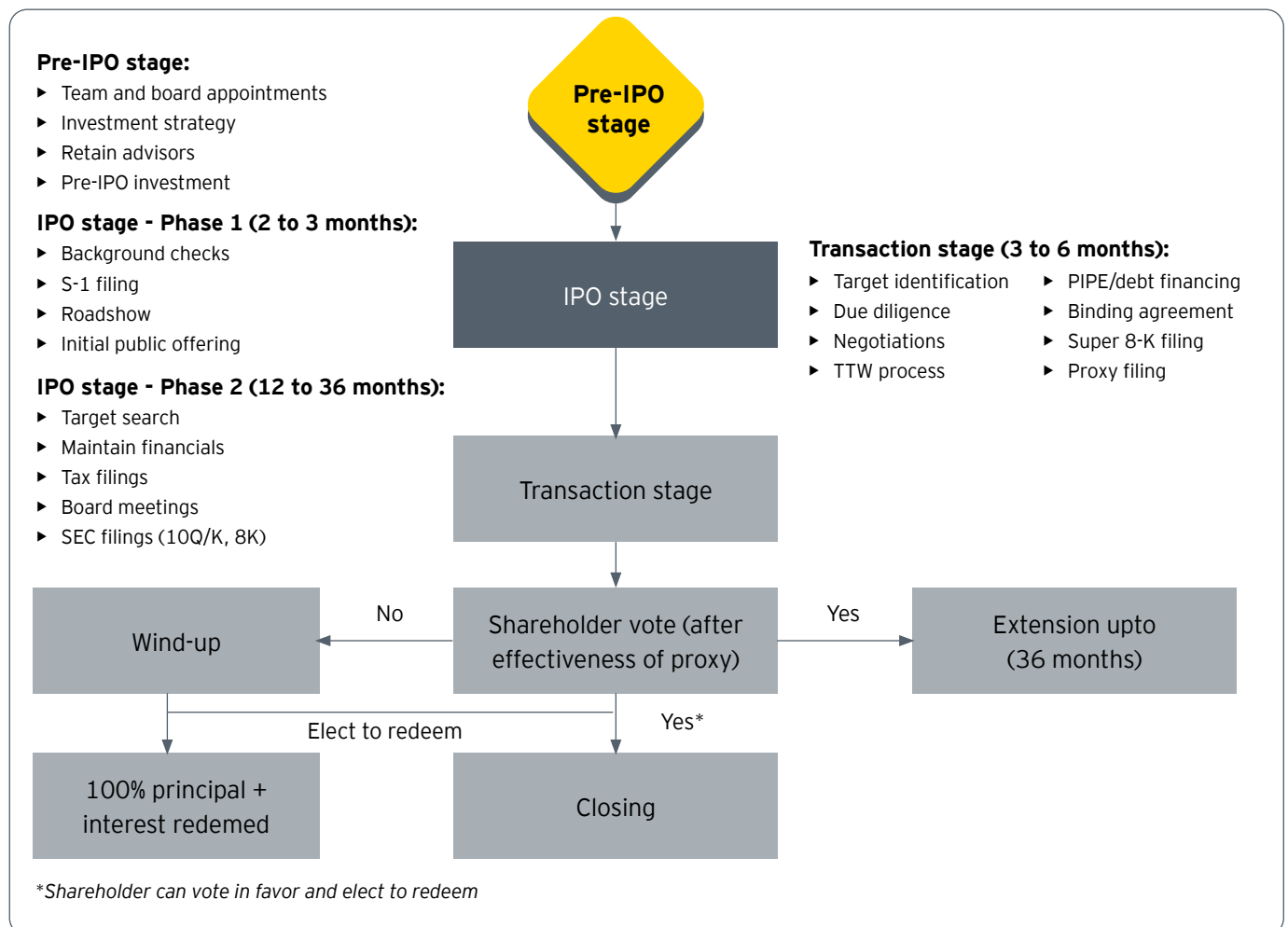


As observed above, in the US, SPACs have become very popular and currently exceed traditional IPOs in numbers and dollars raised. The reasons include greater acceptance among the private companies that are usually SPAC targets and increasing interest from financial sponsors and management teams with experience in private equity.

In the US, a typical life cycle of a SPAC comprises approximately eight months of IPO journey. A SPAC would normally take 18-24 months to identify and complete an initial merger with a target company based on the timeline included in the governing documents of the SPAC. However, timeline for an initial merger can be extended based on the governing instruments subject to shareholders' approval, subject to a maximum period of three years as per the US regulation from date of IPO.

It is notable that recently SPACs are also attracting more scrutiny from Securities and Exchange Commission (SEC). The acting head of the Division of Corporation Finance recently said the SEC staff is continuing to look carefully at filings and disclosures by SPACs and their private targets and is seeking clearer disclosures. The staff of the Division and the Office of the Chief Accountant also issued separate statements on the risks related to the increase in SPAC transactions.

The SEC staff has emphasized the need for management of newly merged public companies to understand and comply with both the general requirements in the Exchange Act to maintain adequate books and records and the Sarbanes-Oxley Act to maintain effective internal controls over financial reporting and disclosure controls and procedures over all disclosures in their SEC filings. The SEC staff has also emphasized the importance of board oversight before, during and after the merger.



SPAC IPO considerations

Upon formation, a SPAC is initially capitalized by sponsors, who contribute nominal capital or fund formation and offering costs in exchange for founder shares that typically make up 20% of the shares of the company after the IPO, assuming the underwriters don't exercise an overallotment option. The SPAC then files an initial registration statement on Form S-1 with the SEC to conduct its IPO.

The SEC usually declares a SPAC IPO registration statement effective more quickly than a traditional IPO registration statement because the SPAC registration statement is simpler than that of an operating company. A SPAC's balance sheet usually presents only deferred offering costs, the statement of operations presents nominal operating expenses consisting of organizational and startup expenses and the statements of shareholders' equity and cash flows reflect the issuance of founder shares to the sponsors. Because they typically qualify as emerging growth companies (EGCs), SPACs may elect to provide reduced disclosures. A SPAC's IPO registration statement also doesn't have to include any financial statements of businesses to be acquired under Rule 3-05 of Regulation S-X if, as is usually the case, it hasn't yet identified a potential target at the time of its IPO registration statement.

After the IPO, a SPAC must promptly file an audited balance sheet under Item 8.01 of Form 8-K showing at least US\$5 million in net tangible assets (i.e., total assets less intangible assets and liabilities) to avoid classification as a blank-check company subject to the requirements of Rule 419 of Regulation C, which, among other things, restricts trading of a blank-check company's securities. A SPAC must also comply with normal public company periodic Exchange Act reporting obligations.

Transaction (SPAC and target merger) considerations

Financial statement

Once a SPAC identifies a target, SPAC files a proxy statement on Schedule 14A or, if it intends to register new securities as part of the transaction, a joint registration and proxy statement (joint statement) on Form S-4. In addition to the proposals for shareholder approval listed above and various nonfinancial disclosures, the proxy statement or joint statement also contains the following items:

a) Financial statements of the SPAC, target(s) and other entities, such as businesses acquired by the target or equity method investees of the target, to comply with Regulation S-X Rules 3-05 and 3-09

The proxy/registration statement must include the target's (1) annual financial statements audited in accordance

with PCAOB standards and (2) unaudited interim financial statements, depending on the timing of the transaction. Generally, the target must include annual audited financial statements for three years. The target's financial statements must comply with SEC rules and regulations, including SEC Regulation S-X and SEC Staff Accounting Bulletins, both of which govern presentation and disclosures in the financial statements.

However, there are two scenarios in which the financial statement requirements may be reduced from three years to two years, i.e., a) in case of Small reporting company (SRCs) or Emerging growth companies (EGCs) or b) if the SPAC has not yet filled its first form 10K.

If the audited balance sheet date is 135 or more days from the filing date (or mailing/effective date), then the unaudited financial statements must be included and should be dated no more than 134 days before the filing date (or mailing/effective date).

b) Unaudited pro forma financial information reflecting the proposed acquisition and any other material transactions

The proxy/registration statement must include pro forma financial information that reflects the close of the transaction. Pro forma financial information, which is unaudited, typically includes an introductory paragraph, a pro forma balance sheet, a pro forma income statement (or statements), and accompanying explanatory notes. The introductory paragraph briefly describes the transaction(s), the companies involved, the periods for which the pro forma financial information is presented, and any other information that may help readers understand the content of the pro forma information.

Ordinarily, the pro forma balance sheet and income statement(s) are presented in a columnar format that shows: (1) historical financial information of the SPAC, (2) historical financial information of the target, (3) pro forma adjustments, and (4) pro forma totals. Further, each pro forma adjustment should include a reference to an explanatory note that clearly discusses the assumptions involved and how the adjustments were derived or calculated.

The preparation of the pro forma financial information will depend on the determination of the accounting acquirer. If the target is identified as the accounting acquirer, the transaction may be a reverse recapitalization (i.e., the SPAC, which is a shell company, is the legal acquirer but not the accounting acquirer). However, in other instances, the SPAC may be identified as the accounting acquirer, and the transaction may be an acquisition of either: (1) a business or (2) a group of assets (if the target does not meet the US GAAP definition of a business).

Further, under Regulation S-X, Rule 3-05, the target may be required to provide separate audited preacquisition financial statements for its significant acquired or to be acquired businesses (acquirees) in the proxy/registration statement. The target must perform the significance tests in Regulation S-X, Rule 1-02(w) (i.e., the investment, asset, and income tests). If the acquiree is determined to be significant (i.e., the significance level exceeds 20 percent on any of the three tests), separate audited preacquisition financial statements of the acquiree may be required.

Audit and review

The financial statements of a target that has been determined to be the predecessor and included in the proxy statement or joint statement must be audited in accordance with Public Company Accounting Oversight Board (PCAOB) standards by a registered accounting firm that is compliant with both PCAOB and SEC independence standards. However, the financial statements of a target that is not the predecessor may be audited in accordance with the standards of the American Institute of Certified Public Accountants (AICPA).

When the financial statements of a non-issuer target are audited in accordance with PCAOB standards, the auditor would also be required to conduct the audit in accordance with AICPA standards pursuant to AICPA AU-C 700.44, and the report would reference the fact that the audit was performed under both the PCAOB standards and the AICPA standards (i.e., it would be a dual standards auditor's report). While auditor's reports that refer to the PCAOB standards generally must communicate critical audit matters (CAMs) for fiscal years ended on or after 15 December 2020, this requirement does not apply to audits of EGCs. The SEC staff has indicated that CAMs can be omitted from the PCAOB auditor's report of a target if (1) the target would be an EGC if it were to conduct its own IPO of common equity securities and (2) the combined company will qualify as an EGC immediately after the merger.

Companies contemplating a SPAC merger should understand the auditing requirements and plan accordingly. As additional audit work may be required to issue an auditor's opinion in accordance with PCAOB standards if the financial statements were previously audited in accordance with AICPA standards. Also, if the auditor that previously conducted the audit in accordance with AICPA standards, is determine not to have been independent in accordance with SEC regulations for the fiscal year immediately preceding the initial filing of the registration statement or proxy, a change in auditor and a re-audit of the financial statements may be required.

Filing review and comment process

Because SPAC mergers often result in a private operating company becoming a publicly traded entity, the SEC staff will review proxy statements and joint statements related to such transactions. The SEC staff has a target of issuing

comments on such filings within 30 days and subsequent rounds of comments on amendments more quickly than that (10 days). SPACs can expect to receive a few rounds of SEC staff comments before the definitive proxy can be filed and distributed or a joint statement can be declared effective and distributed. Most SPACs complete the SEC filing review and comment process for their proxy statements or joint statements over a period of several months, similar to the review period for traditional IPO registration statements.

Companies should pay close attention to the financial statement staleness dates when considering SEC staff comments. That's because significant effort and lead time is required to update the financial statements and related disclosures, as well as for any audits and post-report review procedures that auditors may need to complete.

Super 8K filings:

Within four business days of completing a SPAC merger, the combined company must file a Form 8-K, referred to as a Super 8-K, that includes disclosures under:

1	2	3	4
Item 2.01	Item 5.01	Item 5.06	Item 9.01
Completion of Acquisition or Disposition of Assets	Changes in Control of Registrant	Change in Shell Company Status	Financial Statements and Exhibits

The disclosure requirements of Item 2.01 and 5.01 include, for the predecessor target, all the information that would be required if the company were filing a Form 10 registration statement. Many of the disclosures in the Super 8-K would be identical to those in the proxy statement or joint statement, and the combined company may be able to incorporate them by reference to one of those filings. However, the combined company may need to update the financial statements and related disclosures due to age requirements.

If the SPAC merger closes after the target's most recently completed reporting period but well before the staleness date of the previous period's financial statements, the Super 8-K is usually filed with the previous period's financial statements because the financial statements for the most recently completed reporting period continue to be of the requisite age.

If the SPAC merger closes after the staleness date of the previous financial statements included in the proxy/registration statement, the Super 8-K reporting the close of the transaction would have to include more recent interim or annual financial statements, as applicable, and associated MD&A discussion for the predecessor.

Post merger considerations

Post-transaction securities offering (S1)

After a SPAC merger closes, the combined company will typically file a registration statement on Form S-1 to register shares that will be issued when the warrants issued in the SPAC's IPO are exercised and any other outstanding and unregistered shares. If the registration statement is filed before a periodic report that reflects the SPAC merger, no new financial information should be required. However, if the SPAC merger was accounted for as a reverse recapitalization and the registration statement is filed after the filing of such a periodic report, it could require recasting the prior annual financial statements of the target to reflect the recapitalization in the subsequent SPAC merger.

Post-transaction Exchange Act reporting

After the closing of the SPAC merger, the combined company is a publicly traded company and is responsible for complying with ongoing Exchange Act filing requirements.

Internal control considerations

The combined company must consider the requirements that apply to public companies related to internal control over financial reporting (ICFR) and disclosure controls and procedures (DCPs). While the target company is not required to report on its ICFR as part of the proxy/Form S-4 filing, management and its auditors may be required to report on ICFR once it becomes an issuer (i.e., the period subsequent to the Super 8-K). The target should also consider risk factor disclosure for any known material weaknesses.

Following the merger, officers of the combined company will be required to evaluate DCPs on a quarterly basis and sign Section 302 certifications. These certifications are required for each Form 10-Q and Form 10-K filing (i.e., there is no relief for a newly public company). In addition, if the SPAC has previously filed its first Form 10-K, management would ordinarily be required to perform an assessment of the combined company's ICFR under Item 308(a) of Regulation S-K11 for annual reports on Form 10-K.

However, for the company's Form 10-K covering the fiscal year in which the merger transaction was consummated, Question 215.02 of the C&DI on Regulation S-K states, the SEC staff would not object to management omitting its assessment of ICFR under Item 308(a) of Regulation S-K if it is not possible to conduct an assessment. Issuers that apply this guidance should disclose why management's assessment has not been included in the annual report, specifically addressing the effect of the transaction on management's ability to conduct an assessment and the scope of the assessment if one were to be conducted.

An EGC is not required to comply with the requirement to provide the auditor's report on ICFR under Section 404(b) of the Sarbanes-Oxley Act for as long as it qualifies as an EGC. The table below summarizes the requirements for compliance with Section 404(b) by filer with Non EGC status, subject to the exclusion relief discussed above.

Status	Initial public float	Initial annual revenue	Required to obtain auditor attestation on ICFR?	Enter/exit ICFR attestation requirement if:
SRC and non-accelerated filer	Less than US\$75 million	Less than US\$100 million	No	The issuer's (1) public float increases to US\$700 million or more (becoming a large accelerated filer), or (2) public float increases to US\$75 million but less than US\$700 million and revenue also increases to US\$100 million or more (becoming an accelerated filer)
SRC and non-accelerated filer	US\$75 million or more, but less than US\$700 million	Less than US\$100 million	No	The issuer's (1) public float increases to US\$700 million or more (becoming a large accelerated filer), or (2) revenue increases to US\$100 million or more (becoming an accelerated filer), unless public float also decreases to less than US\$75 million (in which case it remains an SRC and non-accelerated filer)

Status	Initial public float	Initial annual revenue	Required to obtain auditor attestation on ICFR?	Enter/exit ICFR attestation requirement if:
SRC and accelerated filer	US\$75 million to less than US\$250 million	US\$100 million or more	Yes	The issuer's (1) public float decreases to less than US\$60 million (becoming a non-accelerated filer and remaining an SRC), or (2) revenue decreases to less than US\$100 million (becoming a non-accelerated filer and remaining an SRC), unless public float also increases to US\$700 million or more (in which case it becomes a large accelerated filer)
Accelerated filer	US\$250 million to less than US\$700 million	US\$100 million or more	Yes	The issuer's (1) public float decreases to less than US\$60 million (becoming an SRC and non-accelerated filer), or (2) revenue decreases to less than US\$80 million (becoming an SRC and non-accelerated filer), unless public float also increases to US\$700 million or more (in which case it becomes a large accelerated filer)
Large accelerated filer	US\$700 million and greater	Less than US\$100 million	Yes	The issuer's (1) public float decreases to less than US\$60 million (becoming an SRC and non-accelerated filer), or (2) public float decreases to between \$60 million and less than US\$560 million and revenue remains below US\$100 million (becoming an SRC and non-accelerated filer)
Large accelerated filer	US\$700 million and greater	US\$100 million or more	Yes	The issuer's (1) public float decreases to less than US\$60 million (becoming an SRC and non-accelerated filer), or (2) public float decreases to between US\$60 million and less than US\$560 million and revenue decreases to less than US\$80 million (becoming an SRC and non-accelerated filer)

Indian Tax and regulatory considerations for SPAC



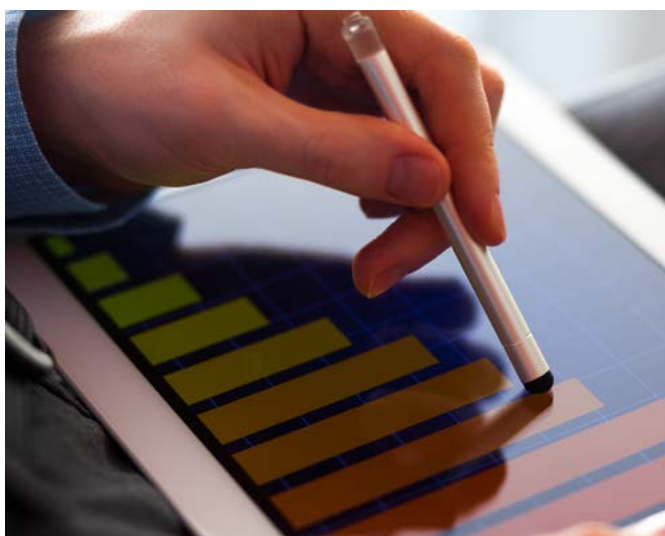
Considerations on migration into a SPAC

An Indian company could transition into a SPAC through any of these typical options:

- a) Share-swap:** under which the shareholders of the Indian target receives shares of the SPAC in exchange of their shares transferred in the Indian target, and the SPAC ultimately holds shares of the Indian Target; [or]
- b) Outbound merger:** whereby the Indian target merges with the SPAC, with the SPAC being the surviving entity undertaking the business of the Indian Target directly in India, and the shareholders of the Indian target would be issued shares of the SPAC; [or]
- c) Inbound merger:** in this case, the SPAC merges with the Indian target, with the target being the surviving entity, and the shares of the Indian Target are issued to shareholders of the SPAC.

Where the Indian target are already held through an offshore value capturing holding/ operating company (typically referred as "externalized structure"), the above alternatives may continue to be relevant, though there may be various other alternatives that could be further evaluated and considered.

We have set out below the key India tax and regulatory considerations regarding the above identified alternatives discussed above. Overseas tax and regulatory implications for each such alternative would also have to be considered separately.



A. Share-swap

Under this alternative, once the share swap is done, Indian residents would indirectly hold shares of the Indian Target through the SPAC (i.e. an overseas entity). Amongst other aspects, this would make up a round-trip structure, which requires a specific approval from the RBI. Also, approval may be required where business of the Indian Target falls within regulated sectors, or if the Indian target has any foreign investment from a country which shares land border with India (PN3 Investors). Obtaining round-trip and PN3 approvals may not be forthcoming and is uncertain at this stage.

As far as Indian taxes are concerned, the shareholders of the Indian Target are generally subject to Indian capital gains tax under the Indian domestic tax laws (even where the consideration received by such shareholders are not monetary, i.e., shares in a SPAC). The applicable tax rates in such a case are given below - this may vary based on the period of holding, residential status and profile of the investor.

Particulars	Long term capital gains ¹	Short term capital gains
Indian residents	up to 28.5% ²	up to 42.8% ²
Non-residents	up to 14.3% ³	up to 43.7% ⁴

Having said the above, non-resident shareholders (especially from Netherlands or Mauritius/ Singapore for investments acquired prior to March 31, 2017) may enjoy tax exemption under the respective tax treaty. In addition, SPAC may also be required to withhold taxes upon purchase of shares from non-residents, suitable mechanism to address cash flows (where there is no cash involved) would need to be carefully thought through. In order to address the capital gains tax and/or round trip/ PN3 approvals being triggered immediately, parties may consider using put/call option arrangement with respect to such investors, whereby swap/ transfer of shares is deferred to a future date (based on milestones and valuations that may be mutually agreed between the Parties) and necessary implications would apply based on the law prevailing upon such future date.

Impact of the newly introduced provisions pertaining to tax collection at source (TCS) on "sale of goods" (at 0.1% of the sale consideration) in the hands of the seller/ investor needs to also be considered suitably. Lastly, since there is a change in voting power of the Indian target by more than 49%, brought forward losses, other than unabsorbed depreciation, of the Indian target are likely to lapse under this alternative.

- 1 Shares of an unlisted company are considered as 'long-term' if they are held for a period of 24 months or more, otherwise they are regarded as 'short-term'
- 2 In case of resident individual with total income more than INR 10 crores
- 3 In case of non-resident individual with total income more than INR 10 crores
- 4 In case of foreign company with total income more than INR 10 crores

As far as externalized structures are concerned, while the implications set-out above are largely similar, following aspects merit consideration:

- ▶ Need for any round trip approval for resident investors would depend on the route under which the investment was originally made by such investors. For instance, if the investments were made from funds earned outside India when such resident investors were non-residents, no approval may generally be required.
- ▶ From a tax perspective, non-resident shareholders would continue to be taxable under indirect transfer tax provisions in India, though 5% small shareholder exemption⁵ and tax exemption under wider treaty network⁶ may be available to investors. In addition, since there shall be no change in the immediate shareholding of the Indian target, the benefit of carry forward and set-off of business loss to the Indian target may continue to be available to the Indian target.

B. Outbound merger

The process of merger in India is time consuming (generally about 6 - 9 months) since approval of the High Court is required- this also depends on whether the corporate law of the SPAC jurisdiction permit such cross-border mergers.

It is likely that RBI approval would still be required where conditions prescribed under RBI's guidelines for cross-border merger are not satisfied, such as fair value of shares received by an Indian resident individual pursuant to outbound merger being within the limits of US\$250,000 prescribed under Liberalized Remittance Scheme, and so on.

In case of an outbound merger, while there may not be tax implications in the hands of the Indian target under general principles, the shareholders of the Indian target should continue to be taxable at rates similar to that of the share-swap alternative discussed above. Treaty exemptions shall be available upon meeting necessary conditions, and withholding tax implications discussed above shall continue to apply here as well.

As per the Indian tax laws, brought forward business losses and depreciation of the Indian Target would generally be extinguished in the event of a merger, unless the continuing entity (i.e., SPAC) satisfies specified conditions, like undertaking prescribed business, etc. Pursuant to outbound merger of an Indian Target with the SPAC, Indian offices of the erstwhile Indian Target would now be treated as branches of the merged foreign entity (i.e., SPAC in this case). Such a branch office would be regarded as Permanent Establishment

("PE") of the SPAC, resulting in profits attributed to such PE being taxed in India at tax rates of almost 43%.

Separately, in case of an externalized structure, need for RBI approval and tax implications would be similar to a case of share-swap discussed above. Also, tax losses and unabsorbed depreciation of the Indian target may be protected as long as at least 51% shareholders of the Foreign Hold Co continue as shareholders of the amalgamated entity/ SPAC.

C. Inbound merger

It is interesting to note that the inbound merger alternative could essentially act as a mechanism to consolidate SPAC into India and achieve direct overseas listing of an Indian company on overseas stock markets. While the Indian Government has recently given a go-ahead to a long pending demand by enabling 'direct listing of Indian companies' in overseas stock exchanges, detailed guidelines on how to achieve this are yet to be issued. Hence one would currently have to wait and watch before implementing this alternative.

Having said this, inbound merger of a SPAC into an Indian company could potentially be a tax-free alternative (subject to satisfaction of other merger tax-neutrality conditions). Also, no RBI approval may generally be required unless the business of the Indian Target is regulated, or if any of the SPAC's shareholders are PN3 Investors. Lastly, brought forward tax losses of the Indian Target would lapse, where the merger results in a change in voting power of more than 49%. The timeline of a court process and permissibility under SPAC jurisdiction still needs to be considered as discussed earlier.

Ongoing considerations for a SPAC

An Indian company migrating to an overseas SPAC (either in lieu of share swap or outbound merger discussed above) would also have to bear in mind the following considerations, from a future tax and regulatory perspective:

- a) Where key management and commercial decisions are taken in India, the place of effective management ("POEM") of the SPAC may be regarded to be in India and the SPAC could be subject to Indian taxes on its global income. This aspect would have to be borne in mind and suitably addressed.

5 Non-resident shareholders would not be subject to 'indirect transfer' tax provisions where they hold less than 5% directly or indirectly in the Indian Target and have no management control rights directly or indirectly in the Indian Target

6 Some of the key jurisdictions in this regard include France, New Zealand, UAE, Germany, Indonesia, Thailand, Spain, Cyprus and Australia. Notably, USA, UK and Canada do not provide for such exemption

- b) Where the Indian target remains a subsidiary of the SPAC (i.e., in case of a share-swap), repatriation of profits from the Indian target to shareholders of the SPAC may have tax implications in India, and this would need to be carefully evaluated.
- c) From a shareholders' perspective, on the basis that the overseas SPAC may be deriving value from Indian target/operations, sale of SPAC shares in future should be taxable in India (subject to '5% small shareholder exemption'⁷ or any beneficial tax exemption under the treaty) at the rates below:

Particulars	Long term capital gains ⁸	Short term capital gains
Indian residents	up to 28.5% ⁹	up to 42.8% ⁹
≥ 5% Non-residents	up to 14.3% ¹⁰	up to 43.7% ¹¹
< 5% Non-residents	NIL	NIL

- d) From a future investment perspective, investment in a SPAC by resident investors would primarily be permitted under portfolio route by: a) an individual Indian resident shareholder (up to US\$2,50,000 per financial year); and b) listed companies. In addition, there may be further conditions that may need to be met by them. On sale of the SPAC shares, resident investors would be required to repatriate such sale proceeds to India within 90 days from the date of sale. Further, there may not be any restrictions for non-resident investors, except for PN3 Investors.

Recent regulatory updates

a) Listing of SPAC in GIFT City

The Gujarat International Finance Tech City (GIFT City) is India's first International Financial Services Centre (IFSC), similar to the IFSCs set up in Shanghai, Dubai, etc. Considering the widespread interest around SPACs, International Financial Services Centre Authority (IFSCA) has now facilitated listing of SPACs in GIFT City. IFSCA has recently issued regulations containing conditions and guidelines for listing of SPACs on recognized stock exchange of the IFSC GIFT City, such as minimum public offer size, compulsory sponsor holding, minimum application size and minimum subscription, etc.

Further, as per a recent amendment to the Indian tax laws, transfer of a capital asset being a foreign currency denominated equity share of a company by non-residents on a recognized stock exchange in IFSC shall not be subjected to Indian capital gains tax, where the consideration for such transaction is paid or payable in foreign currency. Accordingly, such non-resident shareholders of a SPAC listed on recognized stock exchange of the IFSC should be eligible for such tax exemption under the Indian tax laws.

How capital markets evolve in the IFSC and how investors react to such changes as well as the opportunities that would come up must be observed in the coming future.

7 Non-resident shareholders would not be subject to 'indirect transfer' tax provisions where they hold less than 5% directly or indirectly in the Indian Target and have no management control rights directly or indirectly in the Indian Target

8 Shares of a company listed overseas are considered as 'long-term' if they are held for a period of 24 months or more, otherwise they are regarded as 'short-term'

9 In case of resident individual with total income more than INR 10 crores

10 In case of non-resident individual with total income more than INR 10 crores

11 In case of foreign company with total income more than INR 10 crores



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