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THE SPAC PARADOX IN INDIA: A FEMA-CENTRIC ANALYSIS OF CROSS-BORDER LISTINGS AND REGULATORY GAPS

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INTRODUCTION:

SPACS have become the new age alternative investment vehicle in the recent years globally due to the ease it has been providing to private companies and startups in attracting capital without going through the hassle of compliances and risks associated with direct public listing. This has been seen as an onboard advantage around the world especially as a considerable number of Indian companies have been flipping their structure outside the country to list on foreign stock exchanges through the route of SPAC. India being one of the world's biggest start-up ecosystems today, with more than 40,000 start-ups, 50 unicorns as well as more companies getting added to the club SPACS and the cross-border deals would only provide a thrust to businesses by allowing access to capital globally. These Special Purpose Acquisition Companies are being made just to raise money to acquire existing private companies. They don't have any commercial operations of their own which make them Blank Cheque Companies. These companies are led by a founders that bring in nominal capital known as Sponsors. This entire process of a SPAC being combined with an existing private entity is termed a De-SPAC transaction where it secures capital through an IPO in the public market.

While several jurisdictions have witnessed significant growth in SPAC activity, India today, lacks a proper regulatory framework in governing this operation. The existing legislations comprising of the Companies Act, 2013, FEMA along with Competition Act, 2002 and the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 have not been tailored to govern this. Implementation and operation of SPACs in India would require several tweaks and amendments in the existing laws to align them. In India we don't have a special framework for setting up and listing up of SPAC in the Indian stock exchange widely except in the IFSC which has its specific regulations governed by IFSCA.

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EVOLUTION OF SPAC:

SPAC originated from being known as "blank shell companies in 1980's" in the U.S stock market, set up to defraud the investors for penny stocks by promoting them with manipulative sales tactic without trading mechanism under the false pretext that their investment would lead to a boost in the stock prices but it often ended up with investors having worthless shares.[1] To regulate this scheme, a Penny Stock Reform Act was brought in 1990 by the US government with rules imposed by the US Securities and Exchange Commission to strictly regulate the blank check companies which resulted in a significantly decline during 1990's. Downfall in 1990's didn't stop their functioning, it was brought in as a much safer investment vehicle approved by the Securities and Exchange Commission which led to its boom in 2003 and substantial increase leading to be listed in the New York stock exchange and NASDAQ by 2008. From 2012 -2014, SPACs remained a niche item. However, in late 2016 that changed, when the SEC approved NYSE rule amendments to allow SPACs in a tender form only. The growth of SPACS in US accelerated its listing in other jurisdictions which includes Singapore and Hong Kong that changed their listing rules to permit the listing of SPACs on the Singapore and Hongkong stock exchanges in 2021. Similarly, SPACs have existed in the UK market but were not popular due to restrictive listing rules under the Financial Conduct Authority (FCA). After the global surge in SPACS's listing in US it introduced significant reforms to list in under own exchanges.

IRREGULARITY IN INDIAN FRAMEWORK:

Setting up of a SPAC in India has several regulatory challenges due to barrier caused by the already existing regulations. For instance, as per the Companies Act, 2013 a new entity can be set up only with a defined business objective but SPAC does not have any business activity of its own and is set up to eventually merge or acquire other companies, thereby lacking specified business object to be registered as a company. Even as per Section 248[2] of the Companies Act, the RoC has the power to strike-off the name of a company if it fails to commence its business within 1 year , since SPACs don't have any business of their own and it take them at least 18 to 24 months for entering into a business combination such as a merger with a target company which would lead to it being struck off at the dormant stage.

[1] J.S. Kalisvaart & C.F.C. Sutherland, A Brief History of the SPAC and Development of Its Characteristics, [Magazine for Financial Statements Law], no. 3 (July 2022).
[2] The Companies Act, 2013, § 248, No. 18, Acts of Parliament, 2013 (India).

Even the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018, do not allow the blank check companies to be listed. Regulation 6[3] states the eligibility requirements for IPO. As SPACS lack an operating business to satisfy the conditions listed in the same, it cannot be listed.

Further complying with the Competition Act also requires extensive disclosures from the SPAC which may not be obvious at the time of listing since the companies being in an early stage are not in the position to provide such disclosures. Even the Income Tax Act presents an issue it states that De- Spac transactions involving a foreign amalgamated company are not exempt from capital gains tax under "Section 47(vi)12" leading to a higher income under Section 45 of the Income Tax Act, 1961.[4]

REGULATION OF INDIAN- FOREIGN SPAC MERGERS THROUGH FEMA

Now that we have a deeper understanding of what SPACs are, we know that domestically, the same is not recognised under Indian law. However, Indian companies have had SPAC mergers but same can only be done in compliance with FEMA, as an Indian company can only merge with a foreign SPAC entity. In this part of the paper, we will be dealing with the compliances and regulations that an Indian-SPAC merger must go through and in turn an analysis of the FEMA framework as it applies to the life cycle of an Indian- SPAC. We will also be discussing the case study of ReNew Power Pvt. Ltd which got listed in NASDAQ in 2020 through a SPAC merger.

An Indian entity wishing to into a SPAC merger with a foreign SPAC company, must go through the compliances under FEMA (Transfer or Issue of any Foreign Security) Regulations, 2004, FEMA (Cross Border Merger) Regulations, 2018, FEMA (Mode of payment and reporting of Non-Debt Instruments) Regulations, 2019, FEMA(ODI Regulations), 2022, LEAP Rules, 2024 and other approvals such as from the RBI and the NCLT.

Life cycle of a Indian Target- SPAC Merger

This type of a merger, essentially comes within the ambit of a cross border merger. Section

[3] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Regn. 6.
[4] Income Tax Act, 1961, S. 45, Acts of Parliament, 1961, (India).

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230[5] and 232[6] of the Companies Act, require approval from the National Company Law Tribunal (NCLT) and Section 234[7] requires the approval of the Reserve Bank of India (RBI) as well, for cross border mergers. Other than these approvals, a cross border merger must comply with FEMA and FEMA Cross border Merger Regulations. Section 6(3)[8] of FEMA gives power to the RBI to regulate the issue of foreign securities and overseas investment.
An entity wanting to merge with a foreign SPAC must follow a set of procedures to make sure it does not override any FEMA or other regulations. These processes, although complicated, have been followed by companies before such as Videocon, ReNew Power and so on. Another factor to take into account is the Liberalised Remittance Scheme that puts a cap of 250,000 USD per financial year, for an Indian resident to invest in foreign securities abroad. This scheme was introduced by the RBI under FEMA. There were 2 main avenues to choose from, for a foreign SPAC merger before, one through the use of American Depositary Shares and the other through Externalisation. However the former method can no longer be used due to a SEBI circular in 2019 prohibiting the same. Externalisation, on the other hand, is slightly more complicated, and is followed by shifting of shareholding structure, de-SPAC transaction and exit mechanisms.

SPACs through ADS

The ADS Route was followed by Videocon in 2016. ADS basically refers to non-US shares that can be bought by US investors on the American Stock Exchange. In 2014, the Indian government introduced a Depository Receipt Scheme[9], which allowed private Indian Companies to issue depository receipts outside India, to foreign depositories. Through this Scheme, Videocon got its securities listed on NASDAQ, the shares needed to be registered with the SEC and delivered to a depository bank before that. After this was done, a US SPAC entity called Silver Eagle Acquisition Corporation, merged with videocon by acquiring 30% of its stake. Videocon's ADS was transferred to Silver Eagle and then there was a de-merger wherein Silver Eagle dissolved and Videocon was listed on NASDAQ[10]. This route was much less complicated than the route followed by ReNew Power, however in 2019, a SEBI Circular[11]

[5] The Companies Act, 2013, § 230, No. 18, Acts of Parliament, 2013 (India).
[6] The Companies Act, 2013, § 232, No. 18, Acts of Parliament, 2013 (India).
[7] The Companies Act, 2013, § 234, No. 18, Acts of Parliament, 2013 (India).
[8] Foreign Exchange Management Act, 1999, § 6(3), No. 42, Acts of Parliament, 1999 (India).
[9] MINISTRY OF FINANCE, DEPOSITORY RECEIPTS SCHEME 5 (2014), https://egazette.nic.in/Write_Read Data/2014/161608.pdf.
[10] Videocon d2h Limited, Registration Statement (March 12, 2015).
[11] 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.

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prohibited the issue of Depository receipts by any company except those listed in India, which in turn closed this avenue of SPAC merger with foreign entities. In 2024, direct listing on foreign stock exchanges was introduced through FEMA (Non Debt Instruments) Rules[12]. However it is restricted only to international exchanges in GIFT-IFSC such as the NSE IFSC and India INX.[13]

SPACs through Offshore Holding Companies

The current route to be followed is what was done by ReNew Power and Yatra Online, that is through Externalisation. Externalisation, essentially means externalising an Indian Company to an offshore jurisdiction by making an offshore holding company. The location for such a company is usually in jurisdictions such as Singapore, Cayman islands or Mauritius. Yatra Online was incorporated in the Cayman Islands.[14] ReNew Power's holding company was incorporated in the UK. This step entails the provisions of the FEMA (Overseas Investment) Rules and Regulations, 2022. Regulation 3[15] facilitates Overseas Direct Investment, and Rule 9 allows for the same but with the condition that the foreign entity must be *"engaged in a bona fide business activity, either directly or through a step down subsidiary or a special purpose vehicle"*.[16] This condition may pose a challenge to SPACs as they are normally shell companies who at the time of IPO have no operational business. However, in the ReNew Power merger, the entity had complied with FEMA ODI Rules, including this rule, as the activity of the entity was recognised to be a legitimate business, a one engaging in renewable energy projects.[17]

After externalisation, the next step would be shareholder restructuring and the De-SPAC transaction or reverse merger. The FEMA (Cross Border Merger) Regulations, 2018, is one of the main regulations governing this. Regulation 4[18] permits outbound mergers, where an Indian company merges into a foreign entity which is the regulation most aligned with SPACs. The shift in shareholding structure and De-SPACs are done most popularly through a share swap

[12] Government of India, Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.
[13] Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024, Notification No. G.S.R. 573(E), r. 4(5) (July 10, 2024).
[14] Yatra Online, INC, Registration Statement, (May 3, 2018).
[15] Foreign Exchange Management (Overseas Investment) Regulations, 2022, Notification No. G.S.R. 646(E), Reg. 3 (Aug. 22, 2022).
[16] Foreign Exchange Management (Overseas Investment) Rules, 2022, Notification No. G.S.R. 647(E), Rule 9 (Aug. 22, 2022).
[17] 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/asse ssing-indian-tax-considerations-for- successful-offshore-listing-of-indian-companies/#more-2154 (last visited Jul 12, 2021). note 3.
[18] Foreign Exchange Management (Cross Border Merger) Regulations 2018, Notification No. G.S.R. 244(E), Reg. 4 (March 20, 2018).

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which essentially means swapping the shares of the Indian Company for those of the offshore resulting company at its closing stage. Shareholders also have options of deferred exits and cash exits, which refer to retention of shares with negotiated exit mechanisms and selling Indian shares to the offshore resulting entity for cash consideration respectively. ReNew Power also successfully got listed in NASDAQ through a SPAC by following the same process, and created a three way merger through an intermediary offshore holding company.[19]

Constraints posed on shareholders

However, the FEMA cross border Regulations also pose significant concerns. It imposes a lot more restraints on resident shareholders compared to non- resident shareholders. Rule 23[20] of the FEMA NDI rules governs the sale of shares to an offshore entity and the FEMA (Transfer or Issue of Any Foreign Security) Regulations, 2004[21], governs the acquisition and holding of foreign shares by Indian residents. Non-residents do not fall in the ambit of the ODI rules and therefore they have more freedom in these matters which creates a distinct barrier for resident shareholders. Resident shareholders are compelled to follow the LRS as stated earlier which substantially limits their investment in foreign entities to USD 250,000 per financial year.

Further, investment in an offshore entity in this case might bring about round tripping concerns which is prohibited under ODI Rules. Round tripping basically means, reinvesting the capital originated in India, back in India by routing it through a foreign entity. The issue is that in the case of a SPAC merger, this is essentially what would happen. Therefore to address this concern, the following was done in the ReNew Power merger. The shareholders were divided into resident and non resident. The resident shareholders retained their shareholding at the level of the Indian entity and the non resident shareholders swapped their shares with the offshore holding company. This system cannot be considered as a solution as it creates an asymmetric shareholding structure.

Additionally, resident shareholders who prefer cash exits must also comply with the FEMA NDI Rules particularly Rule 21[22] which deals with pricing guidelines, and ensures fair market valuation but this defers negotiation as SPAC mergers usually have forward looking and market

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

[20] Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, Notification No. G.S.R. 647(E), r. 23 (Oct. 17, 2019).

[21] Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004, Gazette of India, pt. II sec. 3(i) (July 07, 2004).

[22] Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, Notification No. G.S.R. 647(E), r. 21 (Oct. 17, 2019).

driven pricing.[23] India's Foreign investment policy is getting more restricted by additional compliances such as the Press Note 3 of 2020[24]. This in essence requires that after the De-SPAC transaction, no countries sharing a border with India or Land Border Country (LBC) should have any ultimate beneficial ownership of Indian companies. Any such LBC investors would require prior approval of the government.

GIFT City's SPAC Regulations

India's total stock market capitalization is more than $ 5 trillion, making it the fourth largest in the world.[25] Having a robust domestic financial market, India has been looking beyond its jurisdiction for increasing its capital raising opportunities as global investments generally provide diversified and wide range of investment options. With this objective, the government of India introduced the International Financial Services Centre ("IFSC") at GIFT Multi Services Special Economic Zone ("SEZ") in Gujarat in April 2015. IFSCA was regarded as the financial regulator vested with the roles and powers of SEBI, led to it in bringing in the International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021 to provide for a comprehensive framework for issuance and listing of securities at the IFSC.[26] It is permitted within this regulation for setting up and listing of SPACS. IFSCs are meant to provide an integrated platform to domestic and international investors to deal in SPACs.

The essential features of the regulatory framework for the listing of SPACs includes firstly Regulation 68 which includes the three fold eligibility test which entails that to undertake an IPO of specified securities a redemption mechanism, a sponsor "good track record" requirement, and negative disqualification criteria barring debarred persons, willful defaulters, and fugitive economic offenders should be satisfied.[27] Furtherance to which IFSCA may reject the listing based on case- to case basis without any metric criteria prescribed for it follow for

[23] 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 Mar 27, 2026).
[24] Press Note No. 3 (2020 Series), Department for Promotion of Industry and Internal Trade, Notification No. F. No. 1/2020-FC-I (Apr. 17, 2020).
[25] CS Pradeep Ramakrishnan, Arjun Prasad & Akash Boddeda, Global Listings at GIFT IFSC, CHARTERED SECRETARY (May 2025), https://ifsca.gov.in/Document/ReportandPublication/consultation-paper-on-ifsca-issuance-and-listing-of-secruties-regulations-202110032021035750.pdf.
[26] Dhruv Singhal & Sonakshi Arora, Role of IFSC in the Indian SPAC Dream: An Overview – Part 1, INDIA CORPORATE LAW (Aug. 31, 2021), https://corporate.cyrilamarchandblogs.com/2021/09/role-of-ifsc-in-the-indian-spac-dream-an-overview-part-1/.
[27] IFSCA (Issue and Listing of Securities by Special Purpose Acquisition Companies) Regulations, 2021, Reg. 68 (India).

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rejection. This eligibility of IFSCA's discretion of operating without published criteria, procedural safeguards mechanism stands in stark contrast to the UK FCA's commitment to criteria-bound eligibility assessments and the US system's principle that a compliant registration statement cannot be arbitrarily denied effectiveness, raising serious concerns under administrative law principles of non-arbitrariness, legitimate expectations, and the rule of law and will definitely impact the ease of doing business.

The minimum offer size as per Regulation 72 for an IPO by a SPAC is USD 50 million while the minimum application size is USD 100,000.[28] Compared with other jurisdictions the offer size value is lower but is still seen to be a good start in attracting investors because if it was too large it would have been difficult for the SME's and Startups to be eligible. These were the conditions also adopted by the countries of Canada and Malaysia, each require a SPAC to raise a minimum of $24 million and $36 million respectively but they failed to receive that many SPAC investments even after their long presence in global SPAC market in comparison to other countries and their thresholds.[29] Even the 75% subscription threshold as a condition for the IPO finds limited parallel in comparable jurisdictions like the US has no specific with SPAC IPOs being fully underwritten and subscription risk being absorbed by the underwriter. This introduces an all for nothing risk that could discourage underwriter participation in an already nascent market compounded by the requirement that at least 50% of the underwriting commission be deferred into escrow which might materially complicate the underwriter's risk calculus.

Furtherance to this Regulation 71 which was meant to enhance investor protection and reliability to investors in SPACs tends to be insufficient, while it provides initial disclosures in the offer document with regard to the basis of issue price, risk factors, tax, sponsor acquisition experience, target sector, litigations, valuation models, remuneration etc. yet these disclosure parameters are not adequate to protect investors particularly retail participants. This gap is highlighted by the Division of Corporate Finance of the US SEC on December 22, 2020, which mandated detailed disclosure of potential conflicts of interest between sponsors, directors, and shareholders; the impact of outstanding litigations on business combination decision-making; the financial incentives of sponsors and their divergence from shareholder

[28] IFSCA (Issue and Listing of Securities by Special Purpose Acquisition Companies) Regulations, 2021, Reg. 72 (India).
[29] Sreshtha Banerjee, GIFT City's SPAC Regulations - A Key to India's SPAC Framework?, IRCCL (Aug. 30, 2021), https://www.irccl.in/post/gift-city-s-spac-regulations-a-key-to-india-s-spac-framework.

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interests.[30] The Regulations must accordingly be amended to ensure accountability of SPAC sponsors and directors and to bring Indian disclosure standards in line with international best practice.

The sponsors lock-in requirement mandating them to hold 15-20% of paid-up capital from listing until one-year post-business combination might be consistent with the "skin in the game" principles that define SPAC governance globally. However, the regulations being silent on the treatment of the lock-in in the context of multiple sequential acquisitions constitute a material legislative gap as it does not provide any guidance on whether the lock-in period of one year is from the completion of first acquisition or the last one. This ambiguity created would lead to sponsors strategically making sure to trigger the earliest possible lock-in commencement date, effectively circumventing the provision's investor-protective purpose.

Further, as per Regulation 82(2), dissenting shareholders have a right to redemption of their investment but it is subjected to a pro rata portion of the aggregate amount.[31] But the Financial Conduit Authority of UK brought a recent change to its SPAC Listing Rules, the redemption can either be a pro rata share of the IPO proceeds or at a fixed pre-determined price[32]. IFSCA can also provide the two options for redemption, which must be disclosed initially so that the investors concerned can make an informed choice.

The investor protection being the prime objective of the IFSCA Regulations is further reinforced through Regulations 85, 86, and 89, wherein sponsors cannot transfer their specified securities prior to the completion of the business combination mandated by the regulation. However, Regulation 89(3)'s prescription of a merely 180-day post-combination lock-in period which raises serious concerns about whether it is sufficient to protect investors from sponsor misconduct. This could be understood through the SPAC sponsor William Ackman, whose SPAC was incorporated as one of the most highly capitalised blank cheque vehicles in history, raising USD 4 billion in its IPO, yet was ultimately dissolved without completing a business combination, resulting in substantial losses for public shareholders.[33] While US SEC objected

[30] Division of Corporation Finance, Securities and Exchange Commission, CF Disclosure Guidance: Special Purpose Acquisition Companies, CF Disclosure Guidance Topic No. 11 (Issued on Dec. 22, 2020) (US).
[31] IFSCA (Issue and Listing of Securities by Special Purpose Acquisition Companies) Regulations, 2021, Reg. 82(2) (India).
[32] Financial Conduct Authority, Investor Protection Measures for Special Purpose Acquisition Companies: Proposed Changes to the Listing Rules, CP21/10 (Issued on Apr. 30, 2021) (UK).
[33] Svea Herbst-Bayliss, *Bill Ackman to Wind up SPAC, Return $4 Billion to Investors*, NASDAQ (Jul. 11, 2022), https://www.nasdaq.com/articles/bill-ackman-to-wind-up-spac-return-$4-bln-to-investors.

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to Ackman's proposed deployment of SPAC proceeds, it also showed how sponsors can exploit the SPAC structure at the expense of ordinary investors particularly where accountability mechanisms are weak and lock-in periods are short. Therefore the 180-day lock-in period is plainly insufficient and should be extended to at least one year to ensure that sponsors bear the consequences of their investment decisions alongside the investors they serve.

Conclusion

SPACs are structures that prevail in developed economies. India being a developing economy, is bound to have a different approach to SPACs. As seen throughout this paper, India currently lacks a domestically recognised SPAC framework, therefore, the SPACs that occur in India are either in the nature of cross border mergers, which eventually get listed in foreign stock exchanges as seen in the case of ReNew Power, or through the GIFT City- IFSCA Regulations. Although SPACs have several advantages such as creation of a faster listing timeline in the stock exchange, certainty of funds available in volatile markets, and flexibility of deal pricing, deferred exits and other such mechanisms during combinations and so on. One must also consider whether India is ready for such a structure and capable of efficiently monitoring and supervising the same. The lack of domestically recognised SPACs is leading to a "brain drain" of sorts by shifting value creation, off shores and losing high- growth listings from our markets. Further, India is several steps behind other countries due to its lack of a SPAC framework. Implementing a domestic SPAC framework, would resolve all these issues and bring India at par with the other countries, however India is a retail heavy market and presently, India's focus is mostly on protecting investor interests. There is also a fundamental paradox with the adoption of SPACs in India. India's legal framework bases itself on disclosures, valuation discipline and capital controls, SPACs are the very opposite of that, promoting forward looking gains, flexible pricing and lack of disclosures. SPACs have also seen failures, such as the downfall of SPACs after the 2020-21 boom. With all these factors to keep in mind, the present path for India should be a balanced one. Instead of having a full domestic SPAC regime, India should enable SPAC-like transactions within a controlled environment, particularly through the IFSC, while reforming FEMA provisions to accommodate cross-border restructuring by minimising the restrictions such as LRS. Such a framework would balance innovation in capital markets with investor protection and macroeconomic stability and by a step forward towards capital market innovation in line with the global markets.