



REVERSE MERGERS IN INDIA: A COMPARATIVE ANALYSIS WITH GLOBAL PRACTICES

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ABSTRACT

A distinct type of company restructuring known as reverse mergers has become more well-known in the business world as a substitute for conventional mergers and initial public offerings (IPOs). Rising markets like India have seen a lot of M&A activity in various industries, including telecom, automotive, finance, and pharmaceuticals. Globalization and other factors have fuelled this activity. To achieve more synergy, companies implement a range of strategic restructuring techniques, such as mergers and amalgamations. Reverse takeovers, often known as reverse mergers are one notable restructuring method. A Reverse merger is a planned takeover of a larger public business by a smaller private corporation. This research paper examines various legal frameworks in India compared with worldwide neighbouring reverse mergers. The legal complexities faced by Indian companies and companies working abroad with market dynamics and changing conditions, including prevalence and sectoral trends while attempting reverse merger. An analysis which examines Indian regulatory arbitrage governing reverse mergers, contrasting SEBI's evolving regulations with global standards. It evaluates companies planning to attempt reverse merger on their market performance and investor perceptions both domestically and abroad. The paper also explores disclosure and transparency requirements highlighting SEBI's rules about global diaspora. This study also includes various case studies while analysing the impact on India and abroad. Finally, the paper Forecasts the course of reverse mergers in India considering probable regulatory development and market scenarios by synthesizing this multidimensional facet, it aims to contribute to the apprehension of reverse mergers in the Indian market while comparing it to its peers for gaining insights into regulators, investors, and businesses navigating the complicated environment of reverse merger.

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INTRODUCTION

The standard path for a private company to go public typically involves an initial public offering (IPO), which is often a complicated and timely endeavour.¹ The traditional method to carry out an initial public offer is to first apply in front of the Securities and Exchange Board of India which can accept as well as reject your application if accepted then the merchant banker, and registrar issue, underwriter, and syndicate member have to be appointed to carry out an initial public offer. It follows a rigorous and lengthy process along with various legal complexities that have to be strictly followed like the issue of capital and disclosure requirement regulations of 2018 must be strictly complied with for the initial public offer. To bypass this Companies devised the quick method of a reverse merger to avoid the stringent procedures of the initial public offering. By acquiring a majority (>50%) share in a public company through a reverse merger transaction, a private company can bypass the conventional initial public offering (IPO) process and yet access financial markets. The public company in a reverse merger is generally a shell company indicating that the business is an "empty" corporation that simply exists on paper and has no real, ongoing commercial activity. This is continued by private companies acquiring public-listed companies by exchanging their majority of shares with the publicly listed company. The privately held business effectively becomes a subsidiary of a publicly traded firm and is thus considered a public company. The private company's controlling interest enables it to take over the merged company's operations, structure, branding, and more, while the public shell company remains intact following the merger² capital raised during this process is negligible but the time taken to complete this process is far less compared to traditional IPO to get listed on the stock exchange.³

¹ Conclusion (no date) Oxford Academic. Available at: <https://academic.oup.com/book/33698/chapter-abstract/288287668?redirectedFrom=fulltext> (Accessed: 12 August 2024).

² Reverse merger (2023) Wall Street Prep. Available at: <https://www.wallstreetprep.com/knowledge/reverse-merger/> (Accessed: 13 August 2024).

³ Kapoor, V. (2024) Reverse mergers : Regulatory challenges and investor protection, iPleaders. Available at: <https://blog.ipleaders.in/reverse-mergers-regulatory-challenges-and-investor-protection/> (Accessed: 13 August 2024).

REVERSE MERGER IN THE INDIAN CONTEXT AND ITS MOTIVES

Reverse mergers in India are influenced by the legislative framework, market conditions, and business practices, resulting in a distinct landscape. These transactions are largely regulated by the Securities and Exchange Board of India (SEBI) and the Companies Act, 2013. They have become popular as an alternate method for smaller firms to raise cash through the capital markets without going through the process of public listing.

A reverse merger may be described in two ways. The first is when a holding company combines with a subsidiary or investee firm. The second is when a profitable company is combined with a company that experiences Losses The phrase "reverse merger" has not been explicitly defined in any legislation. However, the High Court has examined three criteria for reverse mergers.

The assets of the transferor company exceed those of the transferee company.

The transferee company will issue equity capital as part of the purchase, and this capital will be more than its initial issued capital.

The change of control in the transferee company demonstrated that the current arrangement was a classic example of a reverse takeover, where control is acquired through a bid from the acquiring company⁴.

The concept of the Indian court is very clear in this scenario it stated that prima facie the plan of merging a profitable company with a loss-making entity couldn't be held as violating the principle of section 72A of the income tax 1961 since the aim behind this legal framework was to merge the loss-making entity with a stable one. It is further designed to provide tax benefits to financially struggling enterprises by facilitating their merger with more financially stable industrial companies. According to Section 72A, amalgamation is only allowed between businesses, and it is not permitted if any of the firms involved are partnerships or sole proprietorships⁵.

⁴ A study on reverse merger in India: Tax implications, <http://www.iosrjournals.org/iosr-jef/papers/vol2-issue5/C0252426.pdf> (last visited Aug 16, 2024).

⁵ Singhania & Partners, Reverse merger: Is the backdoor still open? Corporate and Company Law - Corporate/Commercial Law - India (2023), <https://www.mondaq.com/india/corporate-and-company-law/1268134/reverse-merger-is-the-backdoor-still-open#:~:text=Reverse%20mergers%20are%20a%20quick,overall%20development%20and%20public%20welfare.&text=1.,1962%2C%20%20C2%A7%2072A%2C%20No.> (last visited Aug 17, 2024).

The entire process comprises sophisticated tax issues, especially for mergers that span across borders and place a strong emphasis on enhancing corporate governance after the merger. Although the market performance has been inconsistent, there is a rising interest in reverse mergers, particularly in developing areas such as technology and renewable energy. India's financial markets are always changing, and as a result, the rules and market response to reverse mergers are expected to adjust. This might create new possibilities for firms looking to go public while dealing with the specific challenges of the Indian economic landscape.

The rationale behind concealing important information, such as unpaid debt, ongoing legal proceedings, etc., is that if the acquirer finds out, it might drastically lower the price at which the publicly traded company is being purchased, and occasionally it may also result in the deal being cancelled. For this reason, to enable the merger to occur at a greater price, public business leaders not only conceal important facts but also falsify the financials and operations.⁶

REVERSE MERGER IN GLOBAL CONTEXT

As the world globalizes more and more financial opportunities to bypass traditional stringent mechanisms will come into the picture reverse merger is another example that is getting common day by day it has grown increasingly common in the United States due to the decreased accessibility of traditional IPO markets, particularly for smaller companies. This procedure facilitates the entry of foreign enterprises, especially in industries like health, sciences, and telecommunication into the U.S. public market with more efficiency⁷. Companies have the option to merge with U.S. public corporations that have not performed well or do not have sustainable business operations. This allows the firm to become publicly listed more quickly and may also help improve the operations of the public company. Reverse mergers are attractive because they allow companies to avoid certain regulatory obstacles that are often connected with initial public offerings (IPOs), such as thorough investigations and market circumstances that can cause delays or failures in traditional offers⁸. This procedure may be accomplished within a few weeks, making it appealing to enterprises seeking to take advantage

⁶ Manthan Agarwala & Sarthak Sharma, Are Reverse Mergers Efficient?, 4 INT'L J.L. MGMT. & HUMAN. 814 (2021)

⁷ Life Sciences reverse mergers go global: Is it the path for your company? (2023) Cooley M&A. Available at: <https://cooley.com/2023/03/22/life-sciences-reverse-mergers-go-global-is-it-the-path-for-your-company/> (Accessed: 17 August 2024).

⁸ SPACs 5 minutes (no date) What is a reverse merger?, Woodruff Sawyer. Available at: <https://woodrufflaw.com/insights/spacs/reverse-merger> (Accessed: 17 August 2024).

of good market conditions promptly. Reverse mergers in a global setting are distinguished by their international nature, frequently involving firms from emerging economies that are looking to be listed in well-established financial hubs. This phenomenon has been especially remarkable in the case of Chinese enterprises entering the U.S. markets, but it also applies to a range of other foreign mergers and acquisitions. Companies can utilize the legal frameworks and investor bases of well-established markets while keeping their operational basis in their native nations through this approach.

REGULATORY FRAMEWORK

The extensive regulatory framework governing reverse mergers is in place to rigorously oversee these intricate transactions while ensuring the protection of investor interests and market integrity. It usually includes stringent disclosure standards, pre-transaction due diligence procedures, and shareholder and regulatory body approval processes (e.g., the SEC in the US, and SEBI in India). The majority of legal systems require that organizations, both public and private, engaged in reverse mergers furnish thorough disclosures about the transaction, encompassing financial particulars and potential hazards. Generally, shareholder approval is needed, and to protect minority interests, a supermajority vote is frequently necessary⁹. The requirements require complete financial reporting, conformity to accounting standards, and fulfilment of listing requirements on stock exchanges, which includes upholding a minimum public float. Corporate governance regulations frequently require the creation of oversight committees and the appointment of independent directors. The regulations promote transparency and protect investors in reverse mergers. It is thereby required by companies to make extensive disclosures concerning the private company, public shell company, terms of the merger, and post-merger entity¹⁰. In the context of reverse mergers, anti-fraud procedures and investor protection mechanisms are essential, with the goals of preventing market manipulation and defending minority shareholders¹¹.

⁹ (No date a) Investor bulletin: Reverse mergers. Available at: <https://www.sec.gov/investor/alerts/reversemergers.pdf> (Accessed: 13 August 2024).

¹⁰ SEC 7050 - reverse mergers, Viewpoint, https://viewpoint.pwc.com/dt/us/en/pwc/pwc_sec_volume/pwc_sec_volume_US/7000_mergers_and_acq_US/sec_7050_reverse_mer.html (last visited Aug 13, 2024).

¹¹ Investor protection, <https://rajdhnicollege.ac.in/admin/ckeditor/ckfinder/userfiles/files/Investor%20Protection.pdf> (last visited Aug 13, 2024).

Regulators frequently continue to closely monitor reverse-merged companies for a while after the merger. The particular requirements and implementation of this framework might differ greatly depending on the local market conditions and regulatory priorities, even if its goals are generally the same across countries.

LEGAL FRAMEWORK IN INDIA

Reverse Mergers (RM) have become a significant occurrence in the Indian business sector, providing companies with an alternative method to achieve strategic goals and gain access to financial markets. The legal framework for reverse mergers in India exhibits regulatory loopholes and confusing regulations¹². Gaining a comprehensive understanding of the complexities associated with reverse mergers and the regulatory obstacles they provide is of utmost importance for policymakers, regulators, and market participants¹³. This research intends to enhance the investor-friendly environment for reverse mergers in India by identifying areas needing attention and suggesting regulatory reforms and best practices.

CURRENT LEGAL PRACTICES

The current legal practices state that reverse mergers in India are subject to regulation but not outright banned section 232 (H) Of the Companies Act 2013 defines:-“where the transferor company is a listed company and the transferee company is an unlisted company,

(A) The transferee company shall remain unlisted until it becomes a listed company.

(B) if shareholders of the transferor company decide to opt out of the transferee company, the provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal¹⁴.”

¹² Pratheeka, S. (2023) Navigating the reverse merger landscape: A case for a new regulatory framework in India, CBFL. Available at: <https://www.cbflnludelhil.in/post/navigating-the-reverse-merger-landscape-a-case-for-a-new-regulatory-framework-in-india> (Accessed: 17 August 2024).

¹³ Standard, B. (2016) Ambuja proposal to buy 24% in Holcim gets nod, Business Standard. Available at: https://www.business-standard.com/article/economy-policy/ccea-clears-ambuja-cements-proposal-to-acquire-24-in-holcim-116072100025_1.html (Accessed: 04 January 2025).

¹⁴ Maheshwari & Co. (2024) Navigating reverse mergers in India, Maheshwari & Co. Available at: <https://www.maheshwariandco.com/blog/navigating-reverse-mergers-in-india/> (Accessed: 17 August 2024).

It suggests that if an unlisted company merges with a listed one the last company which will be created will be an unlisted entity This strengthens the claim that reverse mergers have been seen as a means for weak corporations to exit their existing state.

Prior clearance from the stock exchange is required for the proposed scheme of arrangement when an unlisted business merges with a listed company, with the listed firm continuing as the listed entity. This need conforms with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015¹⁵. These standards encompass the necessity of revealing significant information on the merging businesses, such as their financial statements, assets, liabilities, and other pertinent particulars¹⁶. The goal is to furnish investors with extensive information to facilitate well-informed investment choices In India, reverse mergers can be understood by examining both Section 230(9) of the Companies Act and Section 12 of SEBI Regulations, 2011, despite their variances. Minority shareholders in India have specific appraisal rights, including those concerning reverse mergers. As per these regulations, if a majority of shareholders approve an amalgamation scheme, any dissenting shareholder has the right to demand that the NCLT compel the company to purchase their shares at a fair value determined by impartiality¹⁷ SEBI's rules for listed businesses must be strictly followed in financial reporting, and there are safeguards in place to safeguard the interests of minority shareholders¹⁸. Additional rules are applicable for cross-border transactions, in accordance with the guidelines set by the Reserve Bank of India (RBI). SEBI maintains a vigilant oversight of firms that have undergone reverse mergers after the merger has taken place¹⁹. It enforces severe fines for any failure to comply with regulations. SEBI consistently evaluates and revises regulations in response to evolving issues and market conditions²⁰. Their goal is to strike a

¹⁵ Agrawal, P. (2024) Reverse mergers: Regulatory challenges and investor protection, A.K. Legal & Associates. Available at: <https://aklegal.in/reverse-mergers-regulatory-challenges-and-investor-protection/> (Accessed: 17 August 2024).

¹⁶ (No date a) Companies act, 1956. Available at:

https://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf (Accessed: 04 January 2025).

¹⁷ nualslj, P. author By (2023) Unpacking reverse mergers: Minority shareholders' appraisal rights, NUALS Law Journal. Available at: <https://nualslawjournal.com/2023/06/15/unpacking-reverse-mergers-minority-shareholders-appraisal-rights/> (Accessed: 17 August 2024).

¹⁸ Scheme of arrangement under the Companies Act, 1956-revised requirements for the stock exchanges and listed companies - clarification (no date) SEBI. Available at: https://www.sebi.gov.in/legal/circulars/may-2013/scheme-of-arrangement-under-the-companies-act-1956-revised-requirements-for-the-stock-exchanges-and-listed-companies-clarification_24791.html (Accessed: 04 January 2025).

¹⁹ (No date a) A study on reverse merger in India: Tax implications. Available at: https://www.researchgate.net/publication/272813734_A_study_on_Reverse_Merger_in_India_Tax_Implications (Accessed: 04 January 2025).

²⁰ Tax implications of mergers and acquisitions (2024) Bloomberg Tax. Available at: <https://pro.bloombergtax.com/insights/federal-tax/tax-considerations-in-ma-and-restructuring/> (Accessed: 04 January 2025).

balance between enabling lawful corporate restructuring and avoiding any possible abuse of the reverse merger process.²¹

CROSS-BORDER REVERSE MERGER AROUND THE GLOBE

Multinational firms have a growing significance in the global value chain and contribute to the sustainable growth of the open economy. Unlike the classic internationalization approach, these firms engage in numerous deals where developing multinational corporations purchase mature economies. Reverse cross-border mergers and acquisitions driven by knowledge-seeking have gained significant attention in the field of international business research. In the Chinese context, cross-border mergers and acquisitions have transitioned from conventional resource and finance sectors to high-tech and knowledge-intensive companies with high value-added. Reverse cross-border mergers and acquisitions differ from typical M&As. For instance, in many cases of mergers and acquisitions, a less powerful company combines with a more powerful company, or metaphorically, a small organization assimilates a larger one. Engaging in mergers and acquisitions (M&As) in developed countries can facilitate the transfer of knowledge to the parent company, leading to the creation of synergies. This makes Reverse Merger a strategic tool for expanding overseas and adopting more advanced technologies.²² Consequently, companies can rapidly catch up with or even surpass competitors in their industry. This plays a crucial role in promoting enterprise innovation and ensuring sustainable development.

There are numerous patterns discovered in Cross Border Reverse merger:

- (1) Most cross-border reverse mergers involve companies from Canada and China.
- (2) The majority of enforcement proceedings are related to Chinese companies.
- (3) Companies that were early adopters of the reverse merger strategy and those that chose a Big Four auditor were less likely to experience unfavourable corporate governance consequences. These consequences were measured by factors such as delayed submission of annual reports to the SEC, formal enforcement proceedings, and stock-market trading bans.

²¹ (No date a) The income tax act, 1961. [Available at: https://indiankanoon.org/doc/789969/](https://indiankanoon.org/doc/789969/) (Accessed: 04 January 2025).

²² Liu, X. et al. (2023) The impact of reverse cross-border mergers and acquisitions in emerging countries on the division position in the global value chain: A systematic framework of the third country effect, MDPI. Available at: <https://www.mdpi.com/2071-1050/15/6/4776> (Accessed: 17 August 2024).

(4) Additionally, these effects can be partly attributed to institutions in the home country. Companies from countries with stronger corporate governance experience fewer unfavourable corporate governance outcomes in the United States²³.

Chinese enterprises have opted for cross-border reverse mergers as a means of quickly being publicly listed in the United States. Chinese private corporations commonly purchase publicly listed shell companies in the United States. Following the merger, the American board voluntarily steps down, allowing the Chinese board to assume control and implement alterations to the company's operations. The company offers new shares to hedge funds and other investors, generating millions of dollars in additional money²⁴.

Cross Border Reverse Merger consists of various legal complexities which are subject to regulations that span multiple Judicial jurisdictions demonstrating the worldwide scope of these transactions. These legal intricacies target to safeguard investors' balance market integrity and ensure compliance with various domestic and international laws.

The Securities and Exchange Commission (SEC) in the United States has enforced strict regulations for reverse mergers, particularly those involving international corporations. The "Regulation S-K" by the SEC imposes extensive disclosure requirements, including specific details on the company's operations, finances, and potential risks, which can be found in 17 CFR part 229.²⁵ Companies must file a Form 8-K to disclose a merger and fulfil ongoing reporting requirements.²⁶ The Securities and Exchange Commission (SEC) has rigorous regulations in place to safeguard investors, which include mandates for transparent financial disclosures and strict adherence to corporate governance norms.

The Sarbanes-Oxley Act of 2002 ensures investor security by verifying corporate disclosures for reliability and accuracy²⁷.

²³ (No date a) Cross-border reverse mergers: Causes and consequences. Available at: https://business.gwu.edu/sites/g/files/zaxdzs5326/files/IB_Sem_2014_Siegel-Wang.pdf (Accessed: 17 August 2024).

²⁴ Reverse mergers - IOSR Journal, <https://www.iosrjournals.org/iosr-jbm/papers/Vol10-issue3/C01032129.pdf> (last visited Aug 17, 2024).

²⁵ Regulation S-K, Legal Information Institute, https://www.law.cornell.edu/wex/regulation_s-k#:~:text=Regulation%20S%2DK%20is%20a%20Securities,in%2017%20CFR%20Part%20229. (last visited Aug 18, 2024).

²⁶ Sakshi Shairwal, Cross border merger in India Lexology (2021), <https://www.lexology.com/library/detail.aspx?g=b86301e2-1b3e-43a0-a5cb-faaaea459d80> (last visited Aug 18, 2024).

²⁷ Sarbanes Oxley Act, Corporate Finance Institute (2023), <https://corporatefinanceinstitute.com/resources/economics/sarbanes-oxley-act/> (last visited Aug 18, 2024).

The European Union has its own unique set of rules and regulations to guard the reverse cross Border Mergers. In European laws the precedents were set by the Formenta merger Prior to the Formenta judgment, the 2007 Regulations had not been utilized to authorize a reverse cross-border merger under English law, despite its authorization under the corresponding Italian statute²⁸. The regulations followed were the Directive on Cross-Border Mergers of Limited Liability Companies (2005/56/EC) and for disclosure requirements (EU) 2017/1129.

In Hong Kong special measures were taken by the Securities and Futures Commission which were known as HKEx's Guideline it will initially utilize Bright Line Criteria to ascertain if the transaction(s) qualify as a reverse takeover. The transactions under the test will include a reverse takeover and will be considered as a new listing application. Transactions that do not meet the Bright Line Criteria can nonetheless be considered reverse takeovers under the principle-based test if the HKEx determines that the transactions are an effort to list assets to bypass the requirements for new listings according to the HKEx Listing Rules²⁹.

While major international organizations like International Financial Reporting Standards play a major role in financial reporting across different nations The Financial Action Task Force Is particularly relevant when it comes to implementing measures against money laundering and terrorist financing in financial transactions that involve many countries. Companies that are targeting cross-border reverse mergers must comply to compliance various legal frameworks to properly constitute a reverse merger.

A COMPARATIVE ANALYSIS OF REGULATORY APPROACHES TO REVERSE MERGERS IN INDIA AND ABROAD

The Companies Act, 2013, specifically Section 234, is the main law in India that regulates reverse mergers. This law allows for the merger of an Indian company with a foreign company, but only after obtaining approval from the Reserve Bank of India (RBI) and complying with the Companies (Compromises, Arrangements, and Amalgamations) Rule 25 A, 2016. The Reserve Bank of India (RBI) has also issued a notification about the Foreign Exchange Management (Cross Border Merger) Regulations, 2018. These regulations must be followed

²⁸ Website terms | practical law, [https://uk.practicallaw.thomsonreuters.com/w-017-1331?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-017-1331?transitionType=Default&contextData=(sc.Default)&firstPage=true) (last visited Aug 18, 2024).

²⁹ Top 10 things about reverse takeovers of hkex listed companies, Charltons (2022), <https://www.charltonslaw.com/hong-kong-law/the-10-most-important-things-to-know-about-reverse-takeovers-of-hk-listed-companies/> (last visited Aug 18, 2024).

for both inbound and outbound mergers.³⁰ The “Scheme Of Arrangement” by Companies Act section 232(3) (h) Addresses the same concept, but does not explicitly refer to it as a 'reverse merger'. The MCA notified Section 234 of the Companies Act, 2013 which permits cross-border Reverse mergers.³¹ On the other hand, the United States Securities and Exchange Commission (SEC) has enforced stricter regulations, especially for international corporations, in response to well-known instances of fraud³². Companies that result from reverse mergers must meet strict SEC requirements to be listed on major exchanges, including a minimum trading duration on U.S. marketplaces.³³ Hong Kong's strategy, as detailed in its Listing Rules, prioritizes the disclosure of listed firms and includes special regulations regarding reverse takeovers. The laws in China, which are supervised by the China Securities Regulatory Commission, have gotten more strict, especially for companies seeking to list outside.

To address regulatory challenges and enhance investor protection in reverse mergers, experts recommend strengthening disclosure requirements, making fairness opinions obligatory, granting greater authority to regulatory bodies, promoting investor education, and establishing robust corporate governance processes.

SPAC (SPECIAL PURPOSE ACQUISITION COMPANY) AND REVERSE MERGER: UNDERSTANDING ALTERNATIVE PATHS TO GOING PUBLIC

A special purpose acquisition company (SPAC) raises capital through an initial public offering (IPO) to acquire an existing operating company. SPACs are also referred to as "blank check companies."³⁴ A private corporation may choose to reverse merge with a SPAC rather than

³⁰ Cross border mergers & demergers in India – finer aspects, Grant Thornton Bharat, <https://www.grantthornton.in/insights/blogs/cross-border-mergers-demergers-in-india-finer-aspects/> (last visited Aug 18, 2024).

³¹ Mergers & Acquisitions under the Companies Act, 2013, <https://ibclaw.in/wp-content/uploads/2019/09/Mergers-Acquisitions-under-the-Companies-Act-2013-A-Critical-Analysis-Sept18.pdf> (last visited Aug 18, 2024).

³² Peter Gratton, Securities and Exchange Commission (SEC) defined, how it works Investopedia, <https://www.investopedia.com/terms/s/sec.asp> (last visited Aug 18, 2024).

³³ SEC approves new rules to toughen listing standards for reverse merger companies; 2011-235; November 9, 2011, ; 2011-235; November 9, 2011 (2011), <https://www.sec.gov/news/press/2011/2011-235.htm> (last visited Aug 18, 2024).

³⁴ Fox, M. (no date) 219 'blank-check' companies raised \$73 billion in 2020, outpacing traditional ipos to make this the year of the SPAC, according to Goldman Sachs, Business Insider. Available at: <https://markets.businessinsider.com/news/stocks/spacs-raised-73-billion-more-than-traditional-ipos-blank-checks-2020-12-1029906693> (Accessed: 04 January 2025).

take on the difficulties of marketing to a new investing public. In addition to the advantages of capital markets, this would give access to an existing investor base.³⁵

SPACs, or Special Purpose Acquisition Companies, are essentially reverse mergers. In these transactions, a business seeking to list quickly and affordably partners with a publicly traded shell company.³⁶ Unlike traditional acquisitions, SPACs generally offer details about the target company before the purchase, and these disclosures are reviewed by the SEC.³⁷ Even this authorized adjustment would not benefit most SPACs listed on NASDAQ or AMEX, as the majority of SPAC acquisitions involve reverse mergers where more than 20% of the SPAC's shares are issued. Aside from these issues and the sluggish market conditions, SPACs experienced a significant decline in 2008 as some of their inherent weaknesses were revealed. The emergence of SPACs (Special Purpose Acquisition Companies) showcases their effort to adapt the private equity model for the public market. They draw extensively from private equity contracts, particularly in terms of restricting how managers deploy funds and using incentive compensation to align managers' interests with those of the owners. It is suggested that the SPAC IPOs launched in 2020 are poorly designed, despite the significant hype surrounding them. Additionally, research indicates that only a few SPACs have delivered favourable outcomes for their owners who chose not to redeem their shares. Historically, SPAC IPOs have provided financial support to businesses struggling to go public for various reasons. This trend has been unintentionally facilitated by the relatively more lenient regulatory environment for SPACs.

MARKET DYNAMICS: THE CHANGING NATURE OF REVERSE MERGERS IN FINANCIAL MARKETS PREVALENCE AND TRENDS IN INDIA

Although reverse mergers are not as common in India as in other global markets, they have significantly impacted the country's business sector. The tendency has been shaped by a multitude of causes, encompassing governmental changes, market conditions, and company strategy. In recent years, there has been a growing anticipation that reverse mergers may become more prevalent in India. However, such an outcome has not yet occurred. According

³⁵ Dimitrova, L. and Fong, M. (2023) 'Special purpose acquisition companies', *The Palgrave Encyclopedia of Private Equity*, pp. 1–7. doi:10.1007/978-3-030-38738-9_181-1.

³⁶ (No date) Reuters Reuters | Breaking International News & Views. Available at: <https://www.reuters.com/> (Accessed: 04 January 2025).

³⁷ Rodrigues, U. and Stegemoller, M.A. (2021) 'Spacs: Insider ipos', *SSRN Electronic Journal [Preprint]*. doi:10.2139/ssrn.3906196.

to Sharad Rathi” Securities Head, “Although the reverse merger technique offers advantages, it is susceptible to exploitation. For a reputable firm, we recommend either pursuing a private placement or conducting an initial public offering (IPO³⁸)” The occurrence of reverse mergers in India has been impacted by several variables, such as the aspiration for expedited market entrance and the tactical benefits they provide. Notable examples, such as the merger between Yatra Online and Terrapin Acquisition Corporation in 2016 and the Vodafone-Idea merger in 2018, demonstrate the growing acceptance of this business model³⁹. Reverse mergers in India encounter obstacles such as the requirement for improved regulatory transparency and safeguarding the interests of minority owners, despite their potential advantages. The absence of Strict regulations regarding reverse mergers in current legislation might result in uncertainties that can be taken advantage of, underscoring the need for reforms that enhance investor safeguarding and market credibility.

GLOBAL INVESTOR ATTITUDES IN A REVERSE MERGER

Global trends in reverse mergers have significantly improved in the last decade the rise can be seen consistently in past years and trends It has been shown that in reverse mergers, investor sentiment impacts bidder announcements of extraordinary returns. Negative sentiment is associated with lower expectations for synergy benefits and greater perceived risks.⁴⁰

On the other hand, investor attitudes changed as a result of many high-profile fraud cases, especially those involving Chinese businesses listed in the U.S. through reverse mergers. Concerning this issue, the Securities and Exchange Commission declared, "Given the potential risks, investors should be especially careful when considering investing in the stock of reverse merger companies⁴¹," A research by Goldman Sachs stated, "Enhanced regulatory scrutiny and improved due diligence processes have helped mitigate some of the risks associated with reverse mergers" Another significant alternative has also come into the picture Alternative public listing techniques have rekindled interest due to Special Purpose Acquisition Companies

³⁸ Nehal Chaliawala, Reverse mergers gain ground on the expressway to public markets mint (2024), <https://www.livemint.com/companies/news/reverse-mergers-gain-ground-on-the-expressway-to-public-markets-11717734805189.html> (last visited Aug 18, 2024).

³⁹ Maheshwari & Co., Navigating reverse mergers in India Maheshwari & Co. (2024), <https://www.maheshwariandco.com/blog/navigating-reverse-mergers-in-india/> (last visited Aug 18, 2024).

⁴⁰ Ed, https://www.pure.ed.ac.uk/ws/portalfiles/portal/16696216/CONCEPTUALIZING_FINANCIAL_SOCIALIZATION_Final.pdf (last visited Aug 18, 2024).

⁴¹ SEC issues bulletin on risks of investing in reverse merger companies (2011), <https://www.sec.gov/news/press/2011/2011-123.htm> (last visited Aug 18, 2024).

(SPACs). According to an article in the Harvard Business Review, "SPACs have emerged as a popular alternative to traditional IPOs and reverse mergers, offering a blend of the benefits of both."⁴²

In a recent Deloitte poll, it was found that "65% of institutional investors consider reverse mergers as a viable option for certain companies, but emphasize the need for thorough due diligence and transparent disclosures."⁴³ This research shows that institutional investors are increasing.

There are numerous instances where reverse mergers disappointed investors' expectations. Any issuer can let down investors. An example of a firm that became public via a reverse takeover on the CDN is Kazakhstan Minerals Corp. (TSE: KMC.U), which is presented in an article about reverse takeovers. Quickly, the stock price reached \$20,000, and in 1996, the business moved up to the TSE. Consequently, the share price plummeted, disappointing investors. The stock is currently trading at about \$0.10/share on the TSE.⁴⁴

These frauds must tend to stop by scrutinizing reverse takeovers more closely it is well known that reverse takeover comes with riskier companies investing in it not only disclosure is necessary but regulation upon them is necessary so that investors will be more interested in reverse merger companies When stock exchanges are given the authority to oversee transactions and keep tabs on the amount of disclosure, securities authorities need only demand for "prospectus level" disclosure. Assuming public investors are cognizant of the potential consequences, the end product may be a riskier asset.

Reverse mergers are a desirable option for businesses looking to go public, but their success is largely dependent on the attitudes and opinions of investors. Reverse mergers must be accepted in the global market over the long run, and this can only be achieved by addressing legal obstacles, improving transparency, and creating an atmosphere that is more conducive to investment.

⁴² Spacs and reverse mergers: What's different this time?, Sia Partners - Global Management Consulting Firm (2024), <https://www.sia-partners.com/en/insights/publications/spacs-and-reverse-mergers-whats-different-time> (last visited Aug 18, 2024).

⁴³ 2024 M&A trends survey: Mind the gap, <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/mergers-acquisitions/us-2024-matrends-report.pdf> (last visited Aug 18, 2024).

⁴⁴ Jason Brock, Regulating the Reverse Takeover, 60 U,17,17-19. TORONTO FAC. L. REV. 1 (2002)

BACKDOOR DELISTING IN THE NAME OF REVERSE MERGER

For business purposes, listed businesses may choose to voluntarily delist their securities to save money on continuing listing fees and steer clear of onerous listing agreement compliance requirements. Lack of stock trading is one of the other factors that contribute to voluntary delisting.

Promoters and exchanges looking to get complete control of the business. SEBI (Delisting of Equity Shares) Regulations 2013 and SEBI (Delisting of Equity Shares) (Amendment) Regulations 2015⁴⁵, together known as the "SEBI Delisting Regulations," govern the delisting of securities in India. In India, the delisting process is a laborious and time-consuming procedure, and companies must adhere to the rules set forth by SEBI. If they don't or the process is delayed, SEBI will also charge interest to the company, making the process much more difficult.

Going through the formal delisting process requires the companies to send a letter of offer to their public shareholders, get approval from the board of directors, designate a merchant broker who is registered with SEBI, fix the floor price using the book-building method, and many other time-consuming steps. The majority shareholders then decide on the final price. Ultimately, Through this approach, an offer is considered successful if the promoters' shareholding plus the shares that were accepted through the bid total 90% more than the shares issued of that class, plus the aggregate percentage of the promoters' pre-offer shareholding plus 50% of the offer size.

The acquirer will still be required to fulfil the Takeover Regulations' mandated open offer procedure and pay interest at the rate of 10% per annum for the postponed open offer if the delisting attempt is unsuccessful. Undoubtedly, the delisting process is now a little simpler thanks to the 2015 Amendment to the 2009 Regulations. However, it is still quite expensive, time-consuming, and challenging.⁴⁶ In addition to restricting RTO by outlawing backdoor IPOs, CA 2013 raises serious concerns about backdoor delisting. Under Section 232(h), unlisted companies are not allowed to use RTO to become listed corporations. It does not,

⁴⁵ Securities and Exchange Board of India (delisting of equity shares) regulations, 2021 [last amended on August 3, 2021] (no date) SEBI. Available at: <https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-delisting-of-equity-shares-regulations-2021-last-amended-on-august-3-2021-50517.html> (Accessed: 04 January 2025).

⁴⁶ Aden R. Pavkov, Ghouls and Godsend's? A Critique of "Reverse Merger" Policy, 3 BERKELEY BUS. L.J. 475 (Fall 2006)

however, account for the alternative situation, when a publicly traded company wants to use an RTO to delist from the stock exchange, an unlisted company, therefore becoming unlisted. Businesses that hide in this supposedly grey area can make a big difference⁴⁷. They stay clear of the SEBI Delisting Regulations when they decide to delist their shares voluntarily. Remarkably, this issue, which might result in backdoor delisting, was overlooked by the Companies Amendment Bill, 201636, which changed various aspects of CA 2013, and it did not solve the apparent legal loophole.

COMPANIES INVOLVED IN REVERSE MERGERS IN INDIA AND ABROAD.

The companies which are taking huge benefits out of the Alternatives to Public Offer are nanotech companies that have been using reverse To access larger sources of finance, such as hedge funds and other investors who typically only invest in publicly traded firms, organisations are increasingly turning to the reverse merger strategy. This trend is expected to continue in the coming years. An example of this would be Ecology Coatings in November of 2006. The company manufactures protective coatings for metals, plastics, and paper based on nanotechnology. They announced that they had signed a letter of intent to go public through a reverse merger with The OCIS. Another example is Neah Power, a micro fuel cell firm, which carried out a reverse merger in March 2006 to become publicly traded. Other instances of successful reverse mergers involve firms involved in nanotechnology, such as Altair Nanotechnologies (provider of sophisticated nanomaterials) and Arrowhead Research (provider of RNAi treatments, anti-cancer medications, carbon-based electronics, and compound semiconductor materials).⁴⁸

CASE LAWS OF THE REVERSE MERGER

Global Case Laws -

The Delaware Chancery Court has played a crucial role in establishing the legal structure governing reverse mergers in the United States. An important instance occurred in a reverse triangular merger, where the court determined that such mergers do not qualify as an automatic transfer of the surviving corporation's interests. This ruling established that the assets and

⁴⁷ Home. Available at: <https://prsindia.org/billtrack/prs-products/prs-legislative-brief-2599> (Accessed: 04 January 2025).

⁴⁸ Thomas L. James, Use of Reverse Mergers to Bypass IPOs: A New Trend for Nanotech Companies, 4 NANOTECH. L. & BUS. 95 (2007).

interests of the surviving corporation are preserved after a merger, ensuring legal clarity for parties participating in reverse mergers.⁴⁹

The case of **SEC v. China Energy Savings Technology, Inc.** occurred in 2006. The lawsuit was about deceptive reverse merger practices carried out by a Chinese company. The Securities and Exchange Commission (SEC) accused the company and its executives of engaging in market manipulation and spreading false information to investors. This case highlighted the dangers associated with foreign companies using reverse mergers to enter the U.S. markets.⁵⁰

The case of **Longwei Petroleum Investment Holding Ltd. Securities Litigation (2013)** An investor-initiated collective legal action in which a Chinese corporation is accused of engaging in fraudulent activities after a reverse merger. This case highlighted the need for Due Diligence and investigation in reverse merger agreements⁵¹.

The case of **China Agritech, Inc. Securities Litigation (2013)** pertained to accusations of accounting fraud and misrepresentations made by a Chinese business that became publicly traded through a reverse merger. The ruling of the U.S. District Court for the District of Delaware emphasized the need to file class action lawsuits promptly in such circumstances⁵².

Indian Case Laws -

Bihari Mills Ltd (Gujarat High Court): This case discusses the nature of takeovers and mergers, including reverse mergers. The court elaborates on the motives behind takeovers, such as synergy, which refers to the advantages gained from merging companies that can lead to improved overall earnings.⁵³

⁴⁹ Delaware Chancery Court finds reverse triangular merger under Delaware law does not effect an assignment of rights of the surviving corporation, Pratt's Journal of Bankruptcy Law, Hunton Andrews Kurth LLP, <https://www.huntonak.com/insights/legal/delaware-chancery-court-finds-reverse-triangular-merger-under-delaware-law-does-not-effect-an-assignment-of-rights-of-the-surviving-corporation> (last visited Aug 18, 2024).

⁵⁰ SEC v. China Energy Savings Technology, inc. et al.. case no. 06-CV-06402-ADS-AKT (E.D.N.Y.), U.S. Securities and Exchange Commission, <https://www.sec.gov/enforcement/information-for-harmed-investors/china-energy> (last visited Aug 18, 2024).

⁵¹ Longwei Petroleum Investment Holding Limited and Michael Toups, U.S. Securities and Exchange Commission, <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-23584> (last visited Aug 18, 2024).

⁵² In re China agritech, Inc.. s'holder deriv. Litig., C.A. No. 7163-VCL (del.. ch. May 21, 2013) (Laster, V.C.), Delaware Law Firm Potter Anderson, <https://www.potteranderson.com/insights/cases/In-re-China-Agritech-Inc-Sholder-Deriv-Litig-C-A-No-7163-VCL-Del-Ch-May-21-2013-Laster-V-C> (last visited Aug 18, 2024).

⁵³ 1983 SCC ONLINE GUJ 177

Miheer H. Mafatlal vs Mafatlal Industries Ltd (Supreme Court Of India, 1996): This judgment emphasizes that any scheme for amalgamation or merger must not be contrary to the public interest. It sets a precedent for evaluating mergers, especially with foreign subsidiaries, ensuring that such transactions promote national economic interests.⁵⁴

Mackintosh Burn Ltd. v. Sarkar And Chowdhury Enterprises Private Limited (Supreme Court Of India, 2018): This case touches upon the transfer of securities and the rights of shareholders in public companies, which is relevant to reverse mergers where the ownership structure changes significantly⁵⁵

Hindustan Lever Employees Union v. Hindustan Lever Ltd. And Others (Supreme Court Of India, 1994): This judgment highlights the importance of independent valuation in mergers and the necessity for fairness to all shareholders, which is critical in reverse mergers where control dynamics may shift⁵⁶.

CONCLUSION: THE EVOLUTION AND FUTURE OF REVERSE MERGERS IN GLOBAL MARKETS

Several important conclusions about reverse mergers' changing position in contemporary financial markets are drawn from the thorough examination of these transactions in both domestic and foreign contexts. Companies looking for quick market access find reverse mergers to be a compelling alternative to standard initial public offerings (IPOs). Regulators, investors, and market players should all pay close attention to the unique combination of issues and concerns that accompany this route to public markets.

Particularly in reaction to previous cases of fraud and market manipulation, the regulatory environment involving reverse mergers has experienced substantial change. Emerging countries like India are still striving to create comprehensive frameworks, while developed markets like the US have put strict restrictions in place through the SEC. This legislative discrepancy highlights the need for more unified international standards by posing both possibilities and challenges in cross-border transactions.

⁵⁴ 1997 AIR SCC 506

⁵⁵ 2018 SCC ONLINE SC 279

⁵⁶ 1994 INSC 483

As demonstrated by several case laws and regulatory developments in different countries, investor protection is still a top priority. Stronger protections and more stringent disclosure requirements are required due to the potential of backdoor delisting through reverse mergers, especially in markets with less developed regulatory frameworks. Due diligence and open corporate governance are crucial, as demonstrated by the experience of Chinese companies debuting on US markets through reverse mergers. Looking ahead, it seems that cross-border opportunities and technological innovation will play a bigger role in the future of reverse mergers. However, the flexibility of regulatory frameworks to change while preserving market integrity will be crucial for success in this changing environment. The equilibrium between providing effective market access and guaranteeing sufficient investor protection will probably continue to influence the development of Reverse merger practices globally.