Breathing new life into London listed SPACs – Guernsey's role

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The launch of Hambro Perks Acquisition Company Limited (HPAC) in November 2021 demonstrates that there is demand for London-listed SPACs following the FCA's changes to the Listing Rules which, in certain circumstances, remove the presumption that the SPAC's shares will be suspended once it announces its proposed acquisition.

The previous requirement for a suspension meant that investors would be locked into the SPAC until after the acquisition was concluded, and this was generally viewed as a major factor in the LSE not sharing in the SPAC boom seen in the US and, to a lesser extent, in Amsterdam. Under the revised rules, there is no presumption of suspension if the SPAC raises at least £100m from public shareholders and complies with a number of conditions, most notably the need to provide shareholders with an option to redeem their shares before the acquisition completes. As a result, investors will remain free to buy or sell shares in the SPAC and can get a return of their capital, in full, if they do not support the acquisition.

HPAC was the first SPAC to list in London and take advantage of that rule change, raising £150m in an oversubscribed fundraise that indicates that there is plenty of demand for SPACs, and for technology investments, on the LSE. HPAC is a Guernsey-incorporated company and in this note we set out why Guernsey is ideally suited as the jurisdiction of incorporation for SPACs, and in particular those looking to list on the LSE.

More details of HPAC, and Carey Olsen's role in the launch, can be found here.

The advantages of using a Guernsey SPAC

- Guernsey is well established as the leading offshore domicile of choice for European listed companies, with Guernsey ranking behind only the UK for the number of companies listed on the London Stock Exchange. Guernsey companies are frequently listed on all markets of the LSE, including the Main Market, SFS and AIM. Guernsey companies are also listed on many other exchanges around the world, including Euronext, NYSE, Nasdaq, TSX, JSE and ASX.
- Shares of Guernsey companies are eligible to be directly traded in CREST, without the need to use separate depositary interests.
- No Guernsey stamp duty is payable on any transfers of the shares in a Guernsey company and, should it be required, it is possible for a SPAC to be incorporated in Guernsey, but to be tax resident in the UK (or elsewhere) provided that certain criteria are fulfilled.
- Guernsey does not impose statutory pre-emption rights, meaning that the SPAC has complete flexibility regarding the terms of any pre-emption rights contained in its articles, and when those rights will (and will not) apply.
- Guernsey company law is based on principles similar to those for UK companies, and the company law jurisprudence applied by Guernsey courts is largely based on English common law principles, making the legal system predictable for investors who are used to the London market.
- Guernsey company law provides flexible options on share issues, re-designations, dividends, and financial assistance

(which is not prohibited). Furthermore, the share buyback, share redemption and capital reduction regimes are flexible and straightforward and are based around the ability of the directors to pass a prescribed solvency statement. Capital can be returned to investors without the need for complex procedures or applications to Court. This flexibility means that whatever capital structure is envisaged, it will be achievable if the SPAC is incorporated in Guernsey.

- With regard to an acquisition being completed by the SPAC, Guernsey law permits both local and cross border mergers (amalgamations), should that be the preferred acquisition route and if it is permitted in the target's jurisdiction of incorporation.
- Guernsey companies listed on the LSE are subject to the UK Takeover Code, which will provide reassurance for investors.
- Guernsey does not impose any requirement for documents to be notarised in order to establish a company or complete a transaction.
- No regulatory approval is required to establish the SPAC in Guernsey. If (as is usual) the SPAC is designed to make a single investment it would not need to be regulated in Guernsey as a collective investment scheme.
- The SPAC may be an AIF for the purposes of the Alternative Investment Fund Managers Directive ("AIFMD"). All Guernsey AIFs are eligible to be marketed into the European Union and European Economic Area ("EEA") in accordance with the provisions of the AIFMD through national private placement regimes ("NPPR").
- Guernsey AIFs with a Guernsey manager can be marketed in one or more countries of the EU/EEA through NPPR by complying with the requirements of AIFMD Article 42 (which requires that the manager produce annual reports, pre-investment disclosure and regulatory reporting on liquidity, risk management arrangements and leverage) and the provisions of the applicable national regimes. This reduces costs as the full panoply of AIFMD requirements do not apply, including that no depositary is needed (although a small number of EU/EEA countries require a depository in order to permit marketing under the NPPR route).

For further reading please find our SPAC briefing and offshore SPACs comparison table.

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FIND US

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272
E guernsey@careyolsen.com

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PLEASE NOTE

Key contacts

For further information or professional advice please contact our lawyers below or your usual Carey Olsen contact:

Annette Alexander
Partner

D +44 (0)1481 732067
E annette.alexander@careyolsen.com

Christopher Anderson
Partner

D +44 (0)1481 741537
E christopher.anderson@careyolsen.com

Andrew Boyce
Partner

D +44 (0)1481 732078
E andrew.boyce@careyolsen.com

Tom Carey
Partner

D +44 (0)1481 741559
E tom.carey@careyolsen.com

David Crosland
Partner

D +44 (0)1481 741556
E david.crosland@careyolsen.com

Tony Lane
Partner

D +44 (0)1481 732086
E tony.lane@careyolsen.com

Ben Morgan
Partner

D +44 (0)1481 741557
E ben.morgan@careyolsen.com