Return of the SPAC?

Service area / Corporate
Legal jurisdiction / Jersey
Date / October 2020

There have been a plethora of recent articles in the legal and mainstream press on the potential increased use of special purpose acquisition companies (SPACs) as a means of gaining access to European equity capital markets. SPACs have had somewhat of a resurgence in the US and, although there are some distinct differences in the way that US and UK SPACs generally operate, it is thought that this may lead to more SPACs being used on this side of the Atlantic. In addition, it has been reported that the London Stock Exchange is reviewing ways to ignite its market for such offerings and in distressed markets, listed SPACs may be able to quickly take advantage of favourable acquisition opportunities that may arise.

A SPAC is a company that is incorporated with a view to raising capital via an IPO which then uses the proceeds to make one or more unspecified acquisitions typically targeting an identified sector. This effectively results in the acquired targets becoming listed. The structure of a SPAC can vary from deal to deal and this note sets out why Jersey is an excellent jurisdiction in which to incorporate a SPAC regardless of any proposed structure or where it is to be listed.

Typical Features of a SPAC

SPACs are often founded by people with particular expertise in the relevant target sector who subscribe for founder shares and, on the IPO, they are typically also issued with ordinary shares and warrants. Investors usually subscribe for a combination of ordinary shares and warrants. The founders of the SPAC are typcially entitled to a certain percentage of the value of the SPAC after it has made the relevant acquisition(s).

The SPAC usually has a time period in which it must make an investment or, in the absence of an approved extension, it will fail and the monies will be returned to the investors. In a US SPAC it is also typical that the investors will be given the ability to vote on any proposed acquisition. By contrast, in the UK, no shareholder approval is required before the SPAC may make an acquistion if it has a standard listing on the London Stock Exchange. It has been reported that this means that a UK SPAC may offer better deal certainly to the sellers of a potential acquisition target.

In the US another typical feature is that investors may be granted redemption rights pursuant to which they can require the SPAC to redeem their shares at various points in the SPAC's investment cycle (including, but not limited to, when an investor does not vote in favour of an acquisition).

When making an acquisition the SPAC may or may not seek further financing by way of debt or equity and, depending on the exchange on which the SPAC is listed, following an acquisition, the combined group may need to apply to be re-admitted to trading.

Why choose Jersey?

Jersey provides a stable, tax-neutral environment in which to establish and maintain a SPAC. It will typically be zero rated for income tax and not subject to capital gains tax within the jurisdiction. In addition, there will be no Jersey stamp duty payable on any transfers of the shares in the SPAC and, should it be required, it is possible for a SPAC to be incorporated in Jersey but to be tax resident somewhere else provided that certain criteria are fulfilled.

Jersey companies can have par or no par value shares and Jersey law provides flexible options on share issues, re-designations, dividends, and financial assistance (there is no prohibition on financial assistance in Jersey for either public or private companies). 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.

The flexibility of Jersey law means that whatever investment structure is envisaged it will be achievable if the SPAC is incorporated in Jersey and this, together with Jersey's tax neutral environment, makes Jersey a very attractive jurisdiction of incorporation. Any other market standards that are required with regard to the operation of the SPAC or the rules of the exchange on which it is to be listed can be built into a Jersey company's articles of association as necessary.

Jersey is a well regulated and reliable jurisdiction and Jersey companies have a long and successful history of listing on exchanges around the world including, but not limited to, the London Stock Exchange, the NYSE, NASDAQ and the HKSE. Jersey companies listed in the UK will be subject to the Takeover Code which will also be attractive to investors.

With regard to an acquisition being completed by the SPAC, Jersey law permits both Jersey and cross border mergers should that be the preferred acquisition route and it is permitted in the target's jurisdiction of incorporation.

Conclusion

Over the coming months it will be interesting to see if more SPACs are brought to European markets and in particular the main board of the London Stock Exchnage and AIM. Carey Olsen can provide bespoke Jersey law advice and assistance on all aspects of a SPAC transaction and should you wish to discuss any matters in this note or we can assist you with in any way please do not hesitate to get in touch.

Subscribe for more

Key contact

For further information or professional advice please contact our lawyer below:

Guy Coltman
Partner

D +44 (0)1534 822289
E guy.coltman@careyolsen.com

FIND US

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900
E jerseyco@careyolsen.com

FOLLOW US

Subscribe for more

Visit our corporate team at careyolsen.com

PLEASE NOTE

Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.