

Guernsey as a jurisdiction for special purpose acquisition companies (SPACs)

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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.

The structure of a SPAC can vary from deal to deal and this note sets out why Guernsey 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 typically 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 acquisition 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 Guernsey?

Guernsey 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 Guernsey 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 Guernsey, but to be tax resident somewhere else provided that certain criteria are fulfilled.

Guernsey companies can have par or no par value shares and the respective laws provide flexible options on share issues, re-designations, dividends, and financial assistance (which is not prohibited). Furthermore, the share buyback, share

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redemption and capital reduction regimes are flexible and straightforward and are based around the ability of the directors to pass a prescribed solvency statement. No regulatory approval will be required to establish the SPAC in Guernsey.

This flexibility means that whatever investment structure is envisaged, it will be achievable if the SPAC is incorporated in Guernsey, and this, together with the islands tax neutral environment, makes the Channel Islands 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 company's articles of incorporation as necessary.

Guernsey is a well regulated and reliable jurisdiction and Guernsey domiciled 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. Guernsey 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, Guernsey law permits both local and cross border mergers, should that be the preferred acquisition route and it is permitted in the target's jurisdiction of incorporation.

Conclusion

Guernsey was the jurisdiction of choice for the establishment of Resolution Limited which acquired Friends Provident and Germany 1 Limited which acquired AEG power Solutions.

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 Exchange and AIM. Carey Olsen's seven partner corporate and M&A practice is the largest team practising corporate law in Guernsey, with particular strengths in the listing of Guernsey-domiciled companies on the London Stock Exchange (LSE). We currently advise 65% of Guernsey-domiciled entities listed on the Main Market, AIM and Specialist Fund Segment (SFS) and can provide bespoke Guernsey law advice and assistance on all aspects of a SPAC transaction.



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