Special Purpose Acquisition Companies (SPACS)

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Introduction

As the global economy continues its recovery from the shocks of recent years and world stock markets reach pre-crisis highs, interest has been a growing again in the use of special purpose acquisition vehicles (**SPACs**). Offshore jurisdictions such as Jersey, Guernsey, Cayman and the British Virgin Islands are increasingly being used for both the creation and ongoing business structure of such vehicles. These jurisdictions have proven to be ideal for this type of funding structure due to their flexibility and tax efficiency.

This client briefing gives a brief overview of the structure and benefits of using SPACs.

What is a SPAC?

A SPAC is a company incorporated with the sole purpose of raising money by way of an initial public offering (**IPO**). Following the IPO, the SPAC will then use the proceeds to fund the acquisition of a target business or businesses. Whilst many SPACs will have identified the industry and/or geographical area in which the acquisition will be made, one of the defining characteristics of a SPAC is that the target itself will not have been determined at the point of investment.

A time limit is usually placed on the SPAC identifying and acquiring its target (usually 18 to 24 months), during which time the IPO proceeds are held in escrow within a trust account at a third party custodian bank. The time limit is a result of shareholders not wishing to have their investment tied up indefinitely, but factors such as the relevant listing rules must also be considered (e.g. the AIM Rules require investor consent for this period to be extended beyond 18 months). If a suitable target is discovered during that time, then, depending on the SPAC's constitutional documents, the acquisition may still need to be conditional on the SPAC's board securing shareholder approval. However, this is not always required and recent SPACs have been structured so as to enable the target acquisition to be consummated without the requirement to secure shareholder approval. In some cases however, where a shareholder vote is not required by law or applicable regulation or under the terms of the constitutional documents, the shareholders may nevertheless be entitled to elect to redeem their shares in the SPAC, pursuant to a mandatory tender offer by the SPAC, if the acquisition proceeds. If however elections to redeem are received in respect of more than a specified percentage of the SPAC's listed shares, typically 30%, then the SPAC may not proceed with that particular acquisition.

If shareholder approval is required but not achieved or if any redemption tender offer receives elections or acceptances in respect of more than the specified proportion of shares, the acquisition will not proceed and the SPAC will then usually be liquidated and dissolved with the proceeds of the trust account returned to investors pro rata. Similarly, if no acquisition has been made by the end of the set time limit, the SPAC will be wound up and the proceeds of the trust account returned to the investors.

Benefits of a SPAC

A SPAC will usually be initially formed by a management team with a proven track record in private equity investments, who will comprise the executive directors and management team. The management will often be incentivised through holding a significant minority in the SPAC's share capital post-IPO (this is typically 15% to 20%). The management team of the SPAC will clearly benefit from such an incentive structure where they directly hold the equity in the SPAC in addition to receiving a share in its profits.

From the perspective of the incoming investors, there will be the potential for substantial capital gains on any investment actually made, but equally there is the opportunity to have most of their investment returned should a suitable target not be identified during the lifetime of the SPAC. Also, the fact that most SPACs offerings comprise warrants (convertible into shares within a particular period) as well as shares in a single unit, means that investors may limit their initial outlay whilst providing an opportunity to enhance the value of their investment at a later date. Enhancement may be achieved not just by exercise of the warrants at the relevant time, but also by selling the warrant on the market following the IPO.

From the side of a potential target and its owners, SPACs offer an exit strategy with advantages over conventional private equity funds or strategic buyers, in that SPACs have substantial cash as well as publicly traded stock to finance an acquisition. While owners of a target company typically must accept a portion of their consideration in shares or loan stock, a SPAC's cash position enables sellers to "cash out" to a much greater degree, while any equity element of the consideration may be in the form of exchange listed securities. In addition, because of its strong cash position, a SPAC does not need to take on as much debt as that taken on by private equity firms.

Representative transactions

Ogier has a wealth of experience from acting on numerous high profile SPACs across the globe, including the following:

- Jersey - Q Resources PLC: listed on AIM in 2010
- Guernsey - Sherborne Investors Guernsey A Limited - listed on AIM in 2010
- Cayman - India Hospitality Corp - listed on AIM in 2007
- BVI

Vallar Plc: acted for Credit Suisse, Singapore Branch in relation to a US$1.3 billion debt refinancing of two Indonesian entities to be acquired by Vallar plc.

Justice Holdings Limited: listed on the main market of the London Stock Exchange in 2011 and acquired 29% of Burger King Worldwide, Inc. in 2012 for approximately US$ 1.4 billion in cash.

Global Cornerstone Holdings Limited: listed on OTC Bulletin Board in 2011.

BGS Acquisition Corp: listed on NASDAQ in 2012.

Platform Acquisition Holdings Limited- listed on the main market of the London Stock Exchange in 2013 and acquired chemical industry specialist MacDermid, Incorporated for US$ 1.8 billion.

Infinity Cross Border Acquisition Corporation - listed on NASDAQ in 2012 and successfully acquired and merged with Glori Energy Inc. in 2014.

Collabrirum Japan Acquisition Corporation - listed on NASDAQ in 2012.

DT Asia Investments Limited - listed on NASDAQ in 2014.

Choice of Location

Our global network of offices covering the leading offshore jurisdictions means that Ogier is uniquely placed to assist arrangers of SPAC transactions establish corporate vehicles in their domicile of choice. A range of factors will need to be considered before selecting the appropriate jurisdiction (including the proposed location of assets, location of investors, suitable time zone and other external requirements, such as the impact of the UK Takeover Code).

Each of our jurisdictions - BVI, Cayman, Guernsey and Jersey offers:

- Economic and political stability
- Flexible, independently endorsed regulatory framework
- Tax neutral location
- Mature, well respected legal system

- Track record of product and service innovation
- Skilled and responsive workforce

In addition, Jersey, Guernsey, Cayman and BVI legal advice is offered from our Hong Kong office to the Asia Pacific region.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under Legal Notice

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