



Cayman and BVI SPACs and private equity

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The re-emergence of SPACs in the last couple of years shows no sign of slowing down as the demand for SPAC formations continued into the second quarter of 2021. Increasingly diverse clients are now looking to be involved in SPACs. Whilst for some time general investors have recognised the advantages that SPACs offer, including access to investments and transactions which might otherwise be restricted to private equity (PE) or venture capital (VC) firms, now those same firms have themselves recognised that SPACs might also form part of their own strategies. The possibilities and advantages that SPACs offer have led to some of the biggest PE firms incorporating SPACs in their toolkits - many of which are incorporated in the Cayman Islands and the British Virgin Islands ("BVI").

While the majority of US-listed SPACs are incorporated using Delaware corporations, a SPAC incorporated in either the Cayman Islands or the BVI is often seen as an attractive alternative as it may offer a more efficient post-acquisition structure and remove any additional US tax, legal or regulatory implications that may arise simply as a consequence of using a US vehicle. The SEC and NASDAQ allow for rule concessions for non-US issuers which qualify as "Foreign Private Issuers" and for foreign entities to follow more flexible "home country rules". NASDAQ and other leading US exchanges allow listings by SPAC entities formed in most of the leading offshore jurisdictions, including the Cayman Islands and the BVI.

Additionally, the Cayman Islands and the BVI are popular SPAC jurisdictions for other reasons, including:

- the suitability of the Companies Act (Revised) of the Cayman Islands and the BVI Business Companies Act to SPACs;
- limited additional regulatory compliance requirements;
- tax neutrality; and
- the close similarity between Cayman and BVI law as compared against Delaware company law - which allows for an easy translation of existing standard legal forms and investor

understandings from one jurisdiction to the other.

Ogier has extensive experience in advising on setting up Cayman and BVI SPACs, including acting for PE firms. Notable SPACs that Ogier's have recently advised on include:

- ITHAX Acquisition Corp on its US\$241.5 million initial public offering on NASDAQ.
- ARYA Sciences Acquisition Corp IV, on its US\$130 million initial public offering NASDAQ (Ogier has acted as counsel for Perceptive Advisors' previous three SPACs: ARYA Sciences Acquisition III raised US\$130 million in August 2020 and announced its business combination with Nautilus Biotechnology in February 2021 - a transaction worth US\$350 million; ARYA Sciences Acquisition II completed its acquisition of Cerevel Therapeutics in October 2020; and ARYA Sciences Acquisition underwent a US\$253 million merger with Immatics Biotechnologies in July 2020).
- Kismet Acquisition Two Corp and Kismet Acquisition Three Corp - Kismet Acquisition Two raised US\$230 million and Kismet Acquisition Three raised US\$287.5 million and both trade on NASDAQ.
- Aries I Acquisition Corporation on its US\$143,750,000 million initial public offering on NASDAQ

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