

SPACs: what should be included in a Luxembourg prospectus?

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Although special purpose acquisition companies (SPACs) are not a new phenomenon, SPAC activity in the European Union has increased significantly since the beginning of this year. To guide sponsors and other professional intermediaries to list SPACs, the European Securities and Markets Authority (ESMA) has issued a general statement on 15 July 2021 (the Public Statement). This Public Statement has been supplemented by specific guidelines issued by the Luxembourg Stock Exchange (LuxSE) in August 2021.

Particular consideration should be given to the following disclosure requirements in the prospectus:

1. Risk factors

This section should notably include (i) the conflicts of interest inherent to SPAC transactions, (ii) the governance of the SPAC, (iii) the decision-making process concerning the business combination and (iv) any possible future dilution.

2. Strategy and objectives

This should include detailed information about the SPAC's investment policy/strategy and the criteria for the selection of the target company (which should be consistent with the rest of the information in the prospectus).

3. Escrow accounts and the reinvestment of the proceeds

Information about any escrow account or the reinvestment of the proceeds of the offering in the period before the acquisition of the target company should be incorporated.

4. Directors' experience

This should include an indication of the principal activities performed by the directors outside of

the SPAC where these are significant as well as their relevant management expertise and experience.

5. Conflicts of interest

The prospectus should disclose any conflicts of interests arising as the result of: (i) the sponsors losing their initial investment if no acquisition is completed by a specific deadline, (ii) any agreements with the sponsors restricting their disposal of the SPAC's securities, (iii) any possibility that the SPAC could invest in companies associated with the sponsors, (iv) the sponsors and their affiliates having already invested in the same sector as the SPAC, and (v) the sponsors and their affiliates being not compelled to share any potential targets they identify with the SPAC.

6. Shares, warrants and shareholder rights

This should include (i) detailed information on the share and warrant structure, including information on any redemption, withdrawal rights and information about any rights that the shareholders meeting must approve concerning acquisition of the target company, (ii) the procedure for approving the business combination in the shareholders' meeting, including the required majority for its approval and (iii) a detailed description of the disclosure that the issuer will provide to the shareholders' meeting about the target company and the ensuing business combination.

7. Major shareholders

This section should include (i) the name of any person other than a director who, directly or indirectly, has an interest in the SPAC's capital or voting rights which is notifiable under the SPAC's national law, together with the amount of each such person's interest or, if there are no such persons, an appropriate statement to that effect that no such person exists; and (ii) information as to whether major shareholders have different voting rights or an appropriate statement to the effect that no such voting rights exist.

8. Related party transactions

Information about any related party transactions should be included.

9. Material interests

Any services provided to the SPAC by parties associated with the sponsors shall be disclosed.

10. Information on the proceeds of the offer

If the SPAC is aware that the anticipated proceeds will not be sufficient to fund the entire acquisition, it should include an estimation of the amount and sources of other funds needed, including further details about the proceeds since they are being used to acquire the target

company.

The prospectus should include information about the financing of the acquisition of the target company in the event that the proceeds do not cover the entire acquisition price. Equivalent information should also be provided in relation to the shares and the warrants placed with the sponsors, since the proceeds of such placement are often used to fund the SPAC during the period before the acquisition of the target company.

11. Information on the intention of certain persons to subscribe in the offer

An indication of whether major shareholders or directors intend to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.

12. Information on the offer price

Any material disparity between the public offer price and the effective cash cost to directors, or affiliated persons, of securities acquired by them in transactions during the past year, or which they have the right to acquire.

13. Additional information

In addition, it is generally expected that the following disclosures be included in SPAC prospectuses:

- (i) the future remuneration of the sponsors and their possible role after the acquisition of the target company;
- (ii) information about the future shareholdings of the sponsors and other related parties;
- (iii) information about possible changes to the governance after the acquisition of the target company; and
- (iv) detailed information about the possible scenarios that may arise if the sponsors fail to find a suitable target to acquire, including possible scenarios such as the winding up of the issuer and de-listing of the shares.

14. Luxembourg specific considerations

In light of the above guidelines from ESMA, the LuxSE urges sponsors of SPACs to take into account the following supplementary recommendations during the structuring process:

- (a) Funds raised by SPACs should be placed in an escrow account with a regulated financial institution and issuers shall document an order of priority for outgoing payments.
- (b) The issuer should grant redemption rights to the SPAC shareholders and describe the

conditions under which the rights can be exercised.

(c) The majority of the shareholders should approve the business combination with the target company in a general meeting (de-SPAC process) and the issuer shall provide the shareholders with the information necessary to make an informed decision about the exercise of their redemption rights.

(d) In the prospectus accompanying the admission to trading, the issuer should describe its business strategy to deliver insights on the target industries and geographies where it seeks acquisition opportunities.

(e) the timeframe for the consummation of the business combination shall be defined and limited in time.

(f) In addition, SPACs shall also provide the following documents:

(i) a legal memorandum regarding the position of the issuer under the Luxembourg AIFM law.

(ii) a general presentation highlighting the experience and track record of the SPAC management.

We would be delighted to discuss any of these matters in more detail.

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