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The SPAC Frenzy: will Luxembourg become the European jurisdiction of choice?

While initial public offerings (IPOs) have been rare since the beginning of the COVID-19 sanitary crisis, the special purpose acquisition company (SPAC) has become a strong sustainable alternative to the traditional IPO process, reaching unprecedented levels in the last quarter of 2020 and at the beginning of this year, particularly in the United States (where the Wall Street Journal identified 188 new SPACs which raised EUR 50 billion). The wave is starting to hit Europe, and mainly Luxembourg, where the very first SPAC, Lakestar SPAC 1 SE, was implemented in February 2021, followed by two other recently listed SPACs, 468 SPAC I SE and OboTech Acquisition SE, which highlights Luxembourg's attractive regulatory environment and its potential to become the European hub of choice for this type of structuring.

How does a SPAC work?

SPACs, referred to as "shell companies", are publicly-traded investment vehicles that raise funds via an IPO in order to complete a targeted acquisition. They provide private companies with a unique way to access the public markets, while offering investors a way to co-invest side-by-side with best-in-class sponsors.

Unlike a traditional investment fund, SPACs do not impose any restrictions on the investor's profile since any individual or legal entity with access to the stock market can buy shares.

The SPAC itself has a limited lifetime, usually between 18 and 24 months, a period during which it has to identify a target and complete its acquisition. If the SPAC fails to complete an

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acquisition by the applicable deadline, the funds raised during the IPO are returned to investors.

Key features

- **Access to public markets:** SPACs help private entities gain access to public markets, particularly during periods of market volatility and open the door to long-term capital.
- **A better market certainty:** With SPACs, target companies may negotiate a “locked in” price of their stock with the SPAC sponsor as part of their agreement, avoiding the possible value hit that typical IPOs can cause during periods of market uncertainty.
- **Access to experienced sponsors:** Partnering with experienced sponsors will allow the private company target to benefit from its expertise and resources (i.e. network or management team).
- **Flexibility of deals:** With SPACs, there is a flexibility to negotiate the sale price of the target to the SPAC. In addition, if investors decide to withdraw their capital before the acquisition ends, SPAC sponsors may agree to fund any cash shortfall at closing.
- **Investor-friendly approach:** If the SPAC fails to complete an acquisition by the applicable deadline, the funds raised during the IPO are returned to investors.

Why establish a SPAC in Luxembourg?

Flexible and investor friendly corporate law

The openness and transparency of Luxembourg corporate law offers a variety of solutions for SPACs’ operating mechanisms from incorporation, through the search for investors while providing them with investment security, to the transfer of assets to a target company, which allows a smooth running of SPAC from start to completion of its goal.

In addition to the European company (*société européenne*), which is the most popular legal form for SPAC in Europe, Luxembourg law allows SPACs to adopt other legal forms such as a public limited company (*société anonyme*) or a limited stock partnership (*société en commandite par actions*) but not the one of a simplified joint-stock company (*société par actions simplifiée*).

The major advantage of such legal forms is not only the short time of their incorporation, but also a limited amount to be injected into the share capital at the outset (maximum EUR 30,000.- or equivalent required) which in the case of European companies is four times higher (minimum EUR 120,000.- required). Furthermore, the major advantage of the public limited company is that it can, when the target is selected, be merged with a target company governed by the laws of another EU Member State and subsequently become a European Company governed by the laws of any EU Member State (either by Luxembourg law or by the law of the target company).

The choice of a company legal form is crucial, as it will enable adjustments to be made on a case-by-case basis, such as the creation of different classes of shares (ordinary, preferential, redeemable), with a differential allocation of financial and decision-making rights (through voting or non-voting shares) between sponsors and investors. For instance, sponsors could become key decision-makers in the approval of the choice of a target by the general meeting of shareholders. It will also be strongly advised to provide for the possibility of redemption of shares in the articles of association when a SPAC is incorporated, should some of the investors no longer wish to follow their investments, their shares will be redeemed by the company. This will allow investors to exit their investments easily. Furthermore, Luxembourg corporate law and especially the rules applicable to public limited companies, protects the interests of minority shareholders, which may be an attractive feature for individual-oriented SPACs.

In addition to the provisions directly concerning shareholders, these legal forms of companies will offer the possibility to adapt the rules of corporate governance to the needs of the SPAC. Indeed, the choice and powers given to the number of directors, which can be flexibly adjusted and classified with different powers of decision or representation, is one of the key features for a SPAC to fulfil its ultimate mission.

Proven experience

Luxembourg’s attractive corporate and regulatory environment for listing vehicles is a key advantage for choosing Luxembourg as a SPAC incorporation hub. Luxembourg offers a variety of solutions to establish SPACs and such flexibility has made Luxembourg a leading center for holding companies and investment funds and is ideally suited to entice SPACs with its expertise in private equity, IPOs and M&A deals.

Flexible framework for listing

In case of listing in Luxembourg, a SPAC will have to use a prospectus approved by the *Commission de Surveillance du Secteur Financier* (**CSSF**), Luxembourg's competent authority for the approval of IPO prospectuses which has the reputation of being a proactive and investor-protective regulator. Dual listings (in Luxembourg and on another EU regulated market) are also possible. Another key advantage is that an IPO prospectus to be approved by the CSSF can be drawn up in English, German or French and once listed, a SPAC will also be subject to all applicable market rules (both on market abuse and disclosure requirements) which will allow investors to benefit from the security and liquidity of the market.

Although the three Luxembourg based SPACs mentioned above have so far been listed abroad, a listing on the Luxembourg Stock Exchange remains a very interesting option, given that it is the gateway to access international investors with a unique and integrated service offering covering listing, trading, information services, and reporting that has already attracted more than 2,000 issuers in over 100 countries.

The arrival of the SPAC wave in most European jurisdictions, particularly in Luxembourg, (where Luxembourg law – as the law of choice - may be able to outperform other jurisdictions by far), will certainly be welcomed by investment banks and sponsors seeking new opportunities as well as by retail investors looking to bet on creative and high-growth companies. The accessibility of the Luxembourg regulator and its knowledge of the product and terms, the country's legal framework and deal making experience undoubtedly position it among the key jurisdictions to consider for the successful launch of future SPACs.

For more information and to stay up to date on this topic, please feel free to reach out to the contacts listed on this article or your usual Luther S.A. contact.

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