

European special purpose acquisition companies (SPACs)

US SPAC activity was buoyant in 2020 and with a number of listings of SPACs in Amsterdam, Paris and Frankfurt, the European SPAC alternative is increasingly a topic of discussion as a means to raise capital for M&A or to bring private companies onto the public markets. The European SPAC trend looks likely to continue in 2021, owing to the extent of “dry powder” in the hands of potential M&A investors and the separation of valuation of the M&A deal from the capital raising. In this high level outlook note, we examine the emerging European SPAC alternative. We are advising on a number of specific situations and would be pleased to discuss the structure with you.

What is a SPAC?

SPACs are companies with no business operations that are listed solely for the purpose of raising capital in order to finance the acquisition of another business or businesses. Investors are dependent on the skills of the SPAC’s management to identify target(s) and negotiate satisfactory terms with the target’s board. The founders of the SPAC, or “sponsors” will typically have specific industry expertise or private equity experience and the identity of the sponsor is therefore key to attracting investors in the SPAC, who will prefer sponsors who can demonstrate a track record of successful acquisitions. From the perspective of the shareholders in the target, acquisition by a SPAC offers a route to listing of their company on the stock market, giving them the benefit of a potentially liquid and freely transferable security, without the same level of marketing that accompanies a traditional IPO (although there will usually still be a roadshow and bookbuilding process) and with some reduction in the regulatory process.

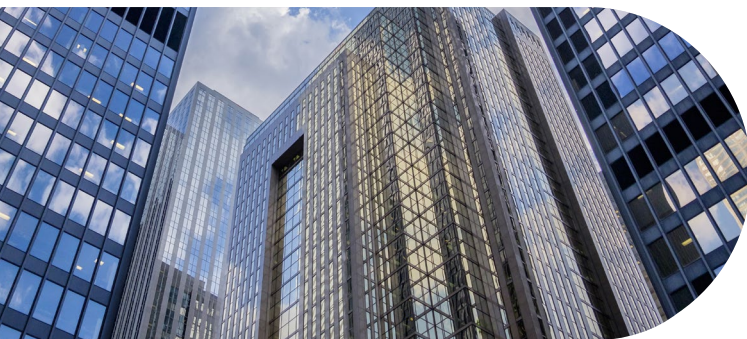
Key differences in US and European SPACs

Typically, where a SPAC is listed in the United States, each unit acquired by shareholders on its IPO will comprise a share (typically priced at \$10) and a warrant entitling purchase of a further share on redemption, for an agreed price. The proceeds of the IPO will be held in trust and the use of proceeds will be restricted to funding:

- future acquisitions by the SPAC;
- redemptions at the option of any shareholder who dislikes the choice of acquisition target; or
- redemptions where the SPAC does not agree to an acquisition within a certain period, usually 12 to 24 months of listing.

A further key feature is that shareholder approval of the acquisition is usually required. The combination of these key features means that investors may potentially get back 100% of their capital. Read more about US SPACs in our article [here](#).





The European SPAC market is developing because it may be challenging to merge an EU target with a US SPAC, owing to the effect of cross-border tax rules, in particular the US anti-inversion regime and the lack of application of the EU cross-border merger regime. In addition, US SPACs will typically be US listed and the enlarged group may prefer to avoid perceived litigation risk and the enhanced regulatory burden associated with a US listing. The European SPAC structure marries the US SPAC's features with the EU regulatory environment. The European SPAC regime is in the main developing consistent with the US standards outlined above, except that the IPO proceeds are put into an escrow rather than a trust fund. The founder shares rank subordinate in liquidation, there are share redemption rights, there is a shareholder vote required and no minimum acquisition size. On Euronext Amsterdam, there is no need to suspend trading around announcement or leak of the business combination, so no need to re-apply for the admission to listing of the enlarged vehicle.

On European SPACs, the practice on warrants is evolving: sometimes warrants are issued partially at business combination (in a US SPAC, all warrants are always issued at IPO); or there may be a warrants series with varying exercise prices (in a US SPAC, all warrants are exercisable at \$11.50). The redemption rights and mechanism may differ between European SPACs. However, we also see some variance among the US SPAC deals.

Structuring European SPACs within the EU regulatory framework

Recently, Allen & Overy has advised on a series of US-style European SPACs listing on European exchanges, in particular on Euronext Amsterdam. The benefits of a European SPAC structure include that:

- It confers the same commercial benefits as the US SPAC on a vehicle which operates in compliance with the EU's harmonised continuing disclosure obligations. (This also facilitates re-listing, following completion of the M&A deal, in weeks, rather than months).
- The Dutch competent authority, the Autoriteit Financiële Markten (AFM), can conduct an expedited review of a SPAC prospectus, given its experience.
- Euronext Amsterdam has a reverse listing policy that permits an alleviated disclosure document about the business combination with prescribed details regarding the acquisition and the re-listing of the newly enlarged group. The content requirements are equivalent to the information that is required of a listed trading company making an acquisition, rather than more onerous class circular or prospectus content requirements.
- It is possible to de-SPAC into any EU target or move the enlarged group to any listing venue in the EU.
- The business combination can be structured as a full merger, giving target shareholders instant listed shares.

There may be variations in the process for establishing the European SPAC or in executing the de-SPAC transaction, on other European exchanges. Again, we have recent experience.

“De-SPACing” – completion of the acquisition and re-listing the newly enlarged group

De-SPACing comprises the execution and completion of the acquisition of the target and the admission of the newly enlarged group to listing. At this stage, the listed entity typically assumes the name of the target, hence the term De-SPAC. SPACs may choose to change their listing segment or redomicile and list in another jurisdiction, at the time of re-listing. The acquisition by the European SPAC will be subject to:

- The rules of the stock exchange where the SPAC is listed and where the enlarged group will be listed post-completion, together with any other regulatory approvals.
- The securities laws governing the stock exchange where the SPAC is listed and any other jurisdictions where the SPAC is marketed to potential investors.
- The company law and constitution of the SPAC and its acquisition target.

Following re-admission of the SPAC, the newly enlarged group will function as a listed trading company.

Please contact your usual Allen & Overy contact if you wish to discuss this topic.

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