WALKERS

SPACs and Aviation and Aircraft Finance

The commercial aviation industry is among the global industries which have undoubtedly faced the most challenges as a result of the COVID-19 global pandemic. A sharp, sudden decline in passenger numbers and demand for flights has resulted in an unprecedented and dramatic fall in aircraft valuations. However, as with all cycles, the bottom of the curve presents attractive opportunities for investors. With the rate of roll-out of vaccines rising across the globe and the industry taking the lead on cutting edge solutions to re-open the skies, such as vaccine passports, many, including some of the world's largest leasing companies, have been on record suggesting we may have seen the worst. As a result, interest in investing is now increasing with some high profile investors whom have already established platforms ready to deploy cash. During these uncertain times, one fundraising vehicle that has grown in prominence and dominated international financial headlines is the Special Purpose Acquisition Company or SPAC.

As market leaders for offshore legal, Walkers have advised on numerous SPAC transactions and aviation finance, providing us with a birds-eye view of market trends. In this paper we provide an overview of SPACs, and discuss how this structure can be utilised by investors in aviation and aircraft finance transactions.

What Are SPACs?

SPACs were developed as a vehicle to acquire target companies and to take them public through a reverse merger, with a sizeable target being acquired by the much smaller SPAC company. Each SPAC is a new company formed to raise capital through an initial public offering ("IPO") of its shares on an internationally-recognised stock exchange (commonly, but not exclusively, the NYSE or NASDAQ in the United States or Euronext in Amsterdam). SPAC sponsors tend to be private equity or venture capital firms, or executives with significant track records in those industries, though the growth of the market has seen a wide-variety of sponsors establishing SPAC vehicles. SPACs offer the same – or very similar terms – to investors as a traditional IPO, and so the 'sales-pitch' revolves around the track record and/or profile of the SPAC's sponsor and its target market segment.

Aside from the United States SPACs are often incorporated in the Cayman Islands (and to a smaller extent, in the BVI or Bermuda). The Cayman Islands is a global leader in capital markets transactions, with the flexible but robust nature of its legal regime continues to be the ideal jurisdiction for the incorporation of international listing vehicles of this nature. As a result Walkers has significant experience acting on many of the largest SPAC transactions in recent years.

In 2020, 250 SPACs were launched in the US with an IPO value of almost US$100bn, which, when leveraged have potential to make US$500bn of acquisitions. The fervour has continued into 2021 with over 340 SPACs launched raising over US$100bn in the first half of the year alone.

Already, a number of experienced aviation industry individuals, are considering SPACs as a source of equity for aviation ventures, alongside more traditional sources of initial capital raising.

The Initial Stages of a SPAC

Following the listing, a SPAC's board (which will have been appointed by its sponsor) typically has up to two years to identify its target and to complete the acquisition, known as its business combination or more colloquially referred to as the 'de-SPAC'. From the time of the IPO to the business combination, investors' IPO subscription funds are held in a trust account and often invested in US treasury bills. To mitigate the risk that a suitable business combination is not consummated, and the opportunity cost of not deploying cash elsewhere, investors are issued warrants along with shares in the SPAC – the shares and warrants together forming the 'unit' that is typically listed on IPO - with a set strike price, so if the share price in the SPAC rises above the warrant strike price following target acquisition, warrant holders can turn an immediate profit by exercising their rights under their warrants and selling the vested shares. This provides an upside and incentive to subscribe. The units, comprising shares and warrants are listed on IPO, with the warrants capable of being held – and traded – separately typically six months following the IPO.

Customary SPAC terms provide investors with a vote on the proposed business combination and the corresponding right to redeem their shares – and to be re-paid their initial capital investment – if they vote no. Similarly, if no business combination is effected during the SPAC's life, the initial investment amount is returned to shareholders. Clearly, this creates execution risk for the SPAC in consummating its business combination, which is usually addressed by the SPAC calling on additional private equity or venture capital investment through private investment in public equity, or PIPE.

The de-SPAC

In order to effect the business combination, and depending on the intended structure, domicile and listing post-merger, either the target or the SPAC would typically incorporate a wholly-owned Cayman subsidiary and then implement a merger between that subsidiary and the SPAC or target company. This would be accomplished using the statutory merger provisions set forth in the Cayman Companies Act, a well-trodden and efficient path that speaks to the flexibility of the Cayman companies law regime. Upon the effective date of the merger, all of the rights, property, business and liabilities of the two merging entities are vested in the surviving company by operation of Cayman law.

SPACs in Aircraft Finance

The aerospace industry has already seen its first SPACs focused on the acquisition of drone and satellite targets. SPACs, in particular, dominate in the technology sector and offer both sponsors and investors advantages alike. For sponsors, a source of financing to move quickly on targets, and for investors, an investment with shorter commitment periods than typical fund investments. Given the popularity of SPACs, it is likely to be a matter of time before we see the first SPAC acquisition in the commercial aviation space. Traditionally, acquisitions of leasing company platforms, have been financed by warehouse or acquisition facilities with rapid amortisation of between two to five years culminating in an IPO as an option to refinance the acquisition debt. As well as a new and innovative source of finance for leading aircraft -investors, SPACs are also a fast track option for an exit to the investment.

Walkers has significant experience advising on both SPAC and de-SPAC transactions across our offices, with dedicated teams in Asia, Europe and in the Cayman Islands. For more information on SPACs or aviation financing, please see contacts below.

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