Bösen-Zeitung, 17.02.2021

SPAC - Turbo Drive for German Start-Ups

Germany is a country of stock skeptics, and whenever this difficult relationship seemed to pick up speed, for example with the "people's share" Telekom, there were also disappointments. It must therefore be all the more surprising that currently "in the middle of the pandemic" there is room for IPOs of "empty" shell companies, so-called *Special Purpose Aqcuisition Companies* or SPACs. Two of these SPACs are currently on the home stretch to the Frankfurt trading floor. Both have venture capital investments in mind and both are backed by well-known names: Lakestar with investor Klaus Hommels and Rocket Internet with the Samwer brothers. This is a trend that has come over to us from the USA and has experienced ups and downs there - under various labels - since the 1980s. All the more surprising, then, that 250 such empty shell companies were successfully listed last year in the USA alone.

But who is investing in SPACs? Is it stock market gamblers, desperate people who see no other option in the age of negative interest rates, or is there a clever calculation behind it? First of all, it is important to remember that SPACs contain a very democratic element, because they also allow small investors to participate in private equity and venture capital strategies. This is otherwise possible for institutional investors from a minimum investment threshold - which is unattainable for most small shareholders. As always, there are, of course, admonishers and warners. But Wirecard shareholders know: Even a DAX company can be a Potemkin village.

Ultimately, the decision for a SPAC is a decision for an investment strategy, for personalities and track records. And this is exactly what institutional investors rely on when they enter private equity funds, for example. You just have to have the confidence that the SPAC will find and acquire an attractive target. It helps if they focus on future-oriented themes, which could be a real opportunity for German start-up financing. Not least because of the fast liquidity of the asset investment.

So how can the SPAC boom and the associated opportunities for investors be implemented in Germany? In the United States, the Securities and Exchange Commission (SEC) issued Rule 17 CFR § 230.419 (*U.S. Rule 419*) as early as 1933, which imposes a specific, investor-protective structure on SPACs. For example, most of the proceeds of the IPO must remain in escrow accounts until the acquisition. Investors must be able to exit between the time of the investment and the time of acquisition of the target company (*opt-out*), and the SPAC has a maximum of 18 months from the IPO to complete its investment. Comparable regulations do not yet exist in Germany.

From a marketing point of view, but also for reasons of investor protection, it seems to make sense to transfer comparable mechanisms to SPACs in this country as well. This is easily possible within the scope of the documentation. If the issuer has not existed for at least three years, the Exchange Admission Regulation requires that the respective exchange positively decides that the issue is in the interest of the issuer and the public before admission. German stock exchanges have so far made their decision dependent on the level of investor protection and are guided by the mechanisms outlined by U.S. Rule 419

In essence, nothing else applies to the securities prospectus. In particular, a SPAC prospectus must also contain all the information that is essential for investors. In the case of SPACs, there are some special features in this respect, but all of these can be easily dealt with.

However, German stock corporations do not seem to be very suitable as SPACs for various reasons.

Firstly, the capital collected by SPAC is not to be at the free disposal of the company's management body - as provided for by German stock corporation law. Rather, it is to be tied to a narrow purpose and initially remain in an escrow account. Secondly, the collected capital is to be paid back to the investors if the takeover fails. However, this investor protection mechanism conflicts with the creditor protection provided for by the Stock Corporation Act, which provides for a lock-up year before the company is dissolved. The core period of the fruitless investment would therefore be followed by another yield-free year. Thirdly, the investors' reservation of consent to the "deal" negotiated by SPAC's management to take over the target company could only be constructed by means of legal "crutches". And fourth, the exit option of investors could not be reconciled with the capital maintenance rules existing for German stock corporations. In short, the investor protection mechanisms required for SPACs would be difficult, probably impossible, to implement for a German stock corporation.

Against this background, it makes sense to use a foreign stock corporation as the SPAC, which can also be admitted to trading on German stock exchanges without any problems. Accordingly, foreign companies were also chosen for the SPACs mentioned at the beginning.

SPACs could provide German startups with the possibility of rapid access to capital and thus further strengthen Germany as a location for the future and innovation. This is good and - albeit with some hurdles - achievable.

Prof. Dr. Christoph Schalast*, is Managing Partner at Schalast Law | Tax in Frankfurt am Main and teaches at the Frankfurt School of Finance & Management.*

Prof. Dr. Andreas Walter*, LL.M. is a lawyer and as a partner head of the Banking Practice Group at Schalast Law | Tax in Frankfurt am Main and teaches at the IUBH and the Frankfurt School of Finance & Management.*