SPACs IPOs – The first IPO of a German Special Purpose Acquisition Company

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Late July 2008, Germany1 Acquisition Limited, the first German Special Purpose Acquisition Company (or SPAC) was successfully launched on the Euronext Amsterdam raising Euro 275 million, with a prominent management team consisting of Prof. Dr. h.c. Roland Berger, Dr. Thomas Middelhoff and Florian Lahnstein. Being without any operative business, Germany1 has been set up under the laws of Guernsey as a limited liability company, offering to acquire one or more operating businesses valued between €1 billion and €3 billion with principal business operations in Germany, Austria or Switzerland through a merger, capital stock exchange, share purchase, asset acquisition, reorganisation or similar transaction.

Since the early 1990s, SPACs have increasingly attracted investors' attention in the US and recently also in Europe. As a consequence, more than 150 SPAC IPOs have filed in the US since 2003 with last year showing that SPACs already represent up to 25% of the whole IPO activity in the US. In the period between 2006 and 2007 SPAC listings in the US increased from 18 offerings raising $2.4 billion by over 400% to 49 IPOs accumulating $9.9 billion. This development continued in 2008 with eight such deals raising $3.1 billion in the first quarter. In December 2007 Liberty Acquisition Holdings Co. managed to place the first SPAC on the US market to raise $1 billion.

A success story of American origin, in recent years SPACs have made their way to Europe. Lately, there have been a few SPACs listings on the London AIM as well as on the Euronext Amsterdam, where Liberty Acquisition Holdings International managed to raise Euro 600 million. In 2007 four SPAC IPOs were launched on the AIM.

A SPAC is a public company without any operative business (shell company) seeking to acquire one or more successfully operating companies. Typically, during the IPO process, the SPAC will identify and describe the particular industry the prospective target should be engaged in. Accordingly, Germany1 described the targeted industries geographically - Germany, Austria, Switzerland.

Several safeguards apply to ensure investors' protection. These safeguards can also be considered to be the main reason for the success of SPACs. They are neither imposed by statutory nor stock exchange rules, but will mainly be introduced by means of the (corporate) rules governing the SPAC and will also be bindingly described in the prospectus: as such, the greater part of the net issue proceeds raised (up to 98%) must be submitted into a trust account, where the money will only be invested conservatively, e.g. in short term government bonds.

Also, the management has to seek a potential target and sign a letter of intent within a timeframe of 12 to 24 months (in case of investments in China even 30 to 36 months). Otherwise the SPAC has to be liquidated and the raised funds have to be distributed to the shareholders. In case of many of the SPACs listed in the US, the shareholders have to consent to the proposed business transaction by a majority of at least 50%, and no more than 19.99% of the shareholders can demand to redeem their shares. In case of Germany1 Acquisition Limited, the latter threshold has been set at 30% of the shares in the SPAC.

This memorandum is intended only as a general discussion of these issues. It is not considered to be legal advice. We would be pleased to provide additional details or advice about specific situations. For additional information on this important topic, please feel free to call upon your Dewey & LeBoeuf relationship partner.

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Those shareholders voting against the proposed business transaction will then be repaid most of their investment. Furthermore, typically the target company must have a fair value of at least 80% of the SPAC's net assets at the time of the takeover.

The SPAC's success therefore crucially depends on the management of the SPAC that generally comes from a private equity, hedge fund or M&A background and will usually hold shares in the SPAC in the amount of at least 20%. In addition, the management will also be granted options to purchase further SPAC shares. The management's interest in the success of the company is guaranteed by the fact that it does not receive salaries prior to the takeover of the target. Moreover, the participation of the management in a liquidation of the company will be deeply subordinated, i.e. only after all other shareholders have been satisfied.

In a typical SPAC IPO investors acquire so called units which comprise of a share in the SPAC and one or two warrants to purchase further shares. These warrants generally have a term of up to four years, in which shares of the company can be acquired for a fixed price, provided that the takeover of the target has been successfully accomplished. After completion of the IPO, shares and options will be traded separately.

The advantages for SPACs investors are obvious: in contrast to investments held in private equity funds, SPACs are much more transparent. Furthermore, the listed SPAC shares can be sold much more quickly than illiquid shares in closed funds. Also, the separate trading of shares and warrants allows the shareholders to adapt their investment after the separation of the units according to their willingness to take risks. In addition, shareholders of a SPAC (unlike investors of a private equity fund) have the direct power to decide whether or not a transaction should take place. Due to the fact that SPACs are fairly independent from the finance and debt capital markets, they can - in particular in times when private equity funds are encountering difficulties in obtaining financing for takeovers - accomplish cash-down takeovers through their IPO revenues. This can in part also compensate for the temporal disadvantage, as well as for the uncertainty vis-à-vis private equity funds arising from the fact that the proposed takeover requires shareholder approval to be obtained in a general meeting.

Considering the successful SPAC IPOs on the Euronext it would be highly desirable to admit SPACs also to the Frankfurt Stock Exchange. Since the above-mentioned safeguards can be implemented more easily in some foreign jurisdictions than in German public company law, it can be anticipated that SPACs listed on the Frankfurt Stock Exchange would be companies incorporated under foreign law. Due to the considerable amount of capital being raised by a SPAC IPO, it is preferable that the vehicle should be listed on the regulated market. However, such a listing may be difficult since the relevant provision of the *Börsenzulassungsverordnung* (the ordinance governing admission to the German Stock Exchange) requires a three-year operating history of the listed company. It would thus be very helpful if the Frankfurt Stock Exchange would allow SPACs to be listed by means of an exemption from the relevant provision for the benefit of both the issuing company and the investors. The *Börsenzulassungsverordnung* already provides the possibility to grant such an exemption pursuant to Sec. 3 para 2.

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