D&O–Insurance and SPAC Chimera or Breeding Success?

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Introduction

1. What is a SPAC?
2. Life stages of a SPAC
3. Different D&O carry different risks
4. Interplay or gaps in coverage?

What is a SPAC?

Special Purpose Acquisition Company

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- Special Purpose Acquisition Companies (**SPACs**) are newly formed companies listed on the stock exchange to raise public capital with the promise that the funds will be used to merge with or acquire an existing (usually private) company, usually within two years.
- After a suitable target company is found, the SPAC merges with the target company through a reverse merger, a process sometimes referred to as "**de-SPAC**".
- Swiss Finish for SPACs:
  - The sole purpose of a SPAC must be to purchase an acquisition target.
  - A De-SPAC event must be completed within no more than three years.

Life Stages of a SPAC

Life stages of a SPAC

Stage 1
Creation

- The SPAC is created by investors.
- The investors assemble a management team (D&O).

Stage 2
IPO

- The SPAC goes public and is listed on a stock exchange (IPO).
- The SPAC announces its intentions.
- Investors buy stakes on the understanding that the SPAC will invest in a suitable company.

Stage 3
Search for Target

- The SPAC has limited time to search for a suitable target company.
- If no target is found, the SPAC is dissolved.

Stage 4
De-SPAC

- The SPAC merges with the target company.
- The result is a single publicly traged company.

Main and supporting actors

SPAC

- The SPAC has a clean slate (no history)
- The dedicated management team's aims are to have the SPAC listed and search for a suitable target.

Target Company

- The Target Company might have a long history.
- The management team has been running the privately held company operationally for a long time.

De-SPAC

- The merged company has a newly assembled management team.
- There is a combined history with different attachment points.

Different D&O carry differing risks

Different D&O carry differing risks

- D&O of SPAC:
  - Risk of prospectus liability in connection with IPO.
  - Risk of failure to identify appropriate target.
  - Risk of failure in connection with due diligence process for target company.
- D&O of Target Company:
  - Risk of «typical» liability in connection with management of Target Company.
  - Risk of misrepresentation of value of the Target Company and financial projections.
- De-SPAC Company:
  - Risk in connection with operation of a listed company (insolvency, regulatory actions, shareholder claims etc.)

Interplay or coverage gaps?

Typical D&O policy features

- SPAC D&O Insurance:
  - Extended duration (two years) inkl. protection for IPO.
  - Change of control: Policy will only respond to acts prior to acquisition of Target Company
  - Sufficient tail protection (run-off)?
- Target Company D&O Insurance:
  - No coverage for prior acts by SPAC D&O or IPO.
- De-SPAC D&O Insurance:
  - No coverage for prior acts by SPAC and Target Company D&O.

Potential coverage issues

- If the same D&O is sued in multiple capacities, claims will be notified under multiple policies issued by different insurers.
- Arising issues:
  - Coverage gaps for certain D&O due to prior acts exclusions;
  - Failure to notify increase of risk;
  - Not all policies will have A-Side, B-Side and C-Side cover;
  - Allocation issues among insurers regarding defence costs and other loss;
  - Restriction to excesses coverage only;
  - Double insurance;
  - Policy limits.

Thank you for your attention!

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