

# French SPAC: The Keys To a Successful Transaction

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In December 2020, Xavier Niel, Matthieu Pigasse and Moez-Alexandre Zouari announced the success of the IPO of 2MX Organic, a newly incorporated vehicle whose purpose is to make acquisitions in the production and distribution of consumer goods, which successfully raised 300 million Euros from qualified investors in France and abroad[1]. After the success of the IPO of Mediawan in April 2016, 2MX Organic is the second special purpose acquisition company (SPAC) to be registered, launched, and listed in France on Euronext Paris.

This type of IPO, developed in the United States for more than two decades, has seen a growth in the last ten years, beating a record in 2020 with 237 SPACs launched for a total amount of 80 billion dollars raised[2]. In Europe, these specific transactions are known but still little developed, whereas Europe, especially France, has all necessary ingredients for the success of SPACs.

## **1 – An operating company in the making**

A SPAC is a commercial company whose purpose is to become an operating company from its de-SPACing, i.e. from the date of completion of the initial business combination for which it has been incorporated, which shall occur within 24 months from the date of the SPAC's listing.

A SPAC is not a fund, neither from a legal standpoint – it is a commercial company – nor from a regulatory standpoint since the SPAC does not meet the criteria of alternative investment funds (AIF) within the meaning of the provisions of the French Monetary and Financial Code and the AIFM Directive[3].

From its listing date, the SPAC will look for targets, select one or more of them, and carry out the initial business combination to effect its de-SPACing. The completion of that determining transaction will shape the success of the SPAC.

## **2 – A project led by a team**

The project presented by the SPAC is led by a team comprising the founders (or sponsors) of the SPAC, who are behind the project, and the members of the board of directors or supervisory board, depending on the governance of the SPAC.

The profile and track record of the founders, as well as their knowledge of the sector, are guarantees of the reliability of the project: the legitimacy of the SPAC is based on the latter. The founders shall also convince the investors of the capacity of the team to carry out the initial business combination in the targeted sector within the given time period. Indeed, if the initial business combination is not carried out within the 24-month time period following its listing, the SPAC will be liquidated.

In this regard, the success of the Mediawan and 2MX Organic SPACs lies for the most part in the complementarity of the profiles of their founders. That does not mean that the success of a SPAC is based on the renown of the latter, but rather on the track record of the founders in the targeted sector and on their capacity as deal makers.

Contrary to a classic IPO, for which the history and development project of the company are highlighted, the SPAC is a gamble on the future, started from a blank page. The quality of the project shall thus be flawless to convince investors, which are more and more called on regarding various SPAC projects.

The project relates to both a determined sector and the possibility to form a group through external growth transactions. The targeted sector shall have strong growth potential while at the same time enabling for a consolidation of its assets and/or players. The SPAC is a vehicle making it possible, in shorter time, to form a European leader capable of competing with American, Chinese, or Indian groups.

### ***3 – At-risk founders benefiting from a strong leverage***

Until the de-SPACing, the risk is borne by the founders only, whose initial investment will finance the IPO, operating, target search and initial business combination costs. The compensation for this risk-taking is the benefit for the founders of an immediate leverage ('promote') on the day of the IPO. By investing about 2.5% of the funds held by the SPAC, they will hold 20% of the share capital and voting rights of said SPAC.

Shares held by the founders, including preferred shares and warrants giving right to ordinary shares, are not listed; in case of completion of the initial business combination, their preferred shares will be converted into listed ordinary shares fungible with the shares held by the investors.

### ***4 – Protected investors***

The term 'blank check company', which is often used when referring to a SPAC, shall not mislead the public: far from writing a blank check to the founders, investors in a SPAC are in fact more protected than investors in a classic IPO. Indeed, capital raised from investors during the SPAC IPO is held in a trust account or a secured deposit account and may only be released for purposes of the completion of the initial business combination or, failing that, the liquidation of the SPAC.

In the absence of a de-SPACing within the given time period, the SPAC is liquidated, and all investors are reimbursed at the IPO offering price and before the founders. In case of a de-SPACing, the investors not wishing to support the proposed initial business combination may ask for the buyback of their shares by the SPAC at the IPO offering price.

The investors of a SPAC only take a real risk from the de-SPACing, if they support the proposed initial business combination and wish to remain shareholders of the SPAC. As from this date, they bear the same risk as any shareholder of a listed company and may still leave the company, thanks to the liquidity offered by the listing, at any time after the completion of the IBC by selling their shares on the market or over the counter.

### ***5 – A structuring M&A transaction***

The purpose of a SPAC is to carry out an initial business combination, which may concern a single target company or asset, or several targets and assets at the same time, in order to become an operating company. To that purpose, the SPAC team shall conduct a narrow screening of the assets and companies of the sector when defining its project, without yet identifying a precise target. Discussions with the target may start only after the SPAC IPO, in

compliance with applicable rules on insider information – the SPAC being a listed company – and related recommendations of the *Autorité des Marchés Financiers*, the French market regulator.

In addition to the funds raised at the time of the IPO and to classic financing sources of a merger-acquisition transaction (bank financing, etc.), the SPAC may call on the market to raise debt or additional funds, or to pay all or part of the acquisition price with shares.

The initial business combination may take any possible forms (share deal, asset deal, contribution, merger, etc.). Depending on the SPAC structure and governance, the initial business combination shall be subject to (1) the approval of the special meeting of the investors voting by a 2/3 majority, based on SPAC Mediawan's structure, or (2) the only approval of the board of directors voting by a qualified majority, including the vote of its independent members, and shall give rise to an information of the investors through the publication of a dedicated notice, based on SPAC 2MX Organic's structure. In any cases, if the initial business combination takes the form of a merger or any other transaction form requiring a decision from the shareholders, the initial business combination shall be subject to the approval of all SPAC shareholders, keeping in mind that the founders will hold 20% of the voting rights at shareholders' meetings.

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[1] Prospectus approved by the *Autorité des Marchés Financiers* on November 27, 2020 under number 20-583.

[2] Sources: *SPAC Insider* and *SPAC Research* (December 17, 2020).

[3] Directive 2011/61/EU of June 8, 2011 on alternative investment fund managers, called the "AIFM Directive".  
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