

# **“Erleichterte Regularien für Start-ups (Eased Admission Formalities for Start-ups)”**

## ***JUVE Rechtsmarkt, November 2014***

### **Summary Translation**

#### **Berthold Hummel comments on the increased interest of German companies in a U.S.-IPO**

##### *Under what circumstances would a listing in the U.S. be a benefit for German companies?*

For tech companies showing strong growth, a U.S.-IPO may be an alternative to a German listing, in particular if their business model is based on innovative, trendsetting technologies. Examples include 3D printing specialist voxeljet and biotech company Innocoll. For such corporates, the U.S. capital markets offer higher evaluations and a stronger investor demand. Good growth prospects for the company's business in NAFTA member states are relevant, too.

##### *Why do such IPO candidates have difficulties in the German equity market?*

It is not necessary the case that such businesses would not meet the local admission requirements. Moreover, the German capital market show partially a lack of understanding and appreciation of young growth companies, their business model and the power to drive innovation. This is evidenced for example with little press coverage, but also in the quite cautious if not hesitant approach of the underwriting banks to back German tech companies as IPO candidates.

##### *What makes a U.S.-IPO more attractive in these cases?*

On the one hand, liquidity in U.S. capital markets continues to be particularly high. Further, the placing power of domestic US underwriting banks is impressing. Finally and most importantly, the conditions created in 2012 by the Jumpstart Our Business Startup ACT (JOBS Act) play a material role. Foreign IPO candidates, so-called foreign private issuers, benefit from eased admission formalities. Thus, financial figures for only two years instead of five must flow in the admission procedure. The draft prospectus and registration statement can be confidentially discussed with the SEC before the filing. Likewise, the company can engage in a “Testing the water” communication with potential investors. In addition, less strict disclosure requirements and D&O reporting requirements are in place after the IPO. The high risk of personal liability of directors in the U.S. environment has discouraged a lot of German managers to consider a US listing up to this point. In the meantime the SEC and stock exchanges explicitly acknowledge the legal form of foreign companies as long as their executive committees and corporate governance structures are similar to those of domestic US corporates.

##### *For what companies would a U.S.-IPO be less suitable?*

For well-established and longstanding companies with relative slow growth but stronger cash-flows, a listing in the U.S. is not so much an alternative. Also, for companies which are majority-owned by private equity firms, this consideration is less attractive given the exit route by a trade sale.

***What are the biggest challenges compared to listing locally?***

Corporate governance and internal processes like the company's compliance program and the structuring of employee stock option schemes are required to be customary to U.S. investors and must therefore be adapted. It is also necessary to turn the issuer's shares into a tradable currency by creating transferable American depository receipts. In addition to these formal aspects, one has to keep in mind that for domestic German companies, investor relations in the U.S. incur more management time and travel activities. Finally, subsequent to the stock exchange admission, the board must think and act cross-border, for example with regard to reporting, public relations and administrative matters.