Kripto varlıkların sermaye katkısı olarak kabulüne ilişkin yönetim kurulu kararı

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İsviçre şirketler hukuku, varlığın bilançoda gösterilebilmesi, şirkete devredilebilmesi ve paraya çevrilebilmesi şartıyla kuruluşta veya sermaye artırımında ayni sermaye konulmasına izin verir. Ayni sermaye esas sözleşmede tanımlanmalı ve ruhsatlı bir denetçi tarafından doğrulanmalıdır.[1] Zug ve Zürih ticaret sicilleri, Bitcoin, Ether ve yayımlanmış bir fiyatı olan likit tokenleri ayni sermaye olarak kabul eder. Bunu yaparken katkı tarihindeki değerlemeyi esas alır ve oynaklık için ihtiyatlı bir iskonto uygular. Singapur şirketler hukuku ise nakit dışı bir karşılık karşılığında pay ihracına kanuni bir değerleme şartı aramaksızın izin verir. Ancak yöneticiler karşılığın yeterli olduğuna kanaat getirmek zorundadır ve Muhasebe ve Kurumsal Düzenleme Otoritesi (ACRA) değerin belirtilmesini ister.[2] Aşağıdaki karar bir İsviçre anonim şirketi (AG) içindir. Singapur'daki yönetim kurulu kararı daha kısadır ve ardından özetlenmektedir.

Resolution of the Board of Directors of [Name] AG, Zug, of [date].

1. The Board notes that [contributor] proposes to contribute [number] [Bitcoin / Ether / tokens] (the "Contributed Assets") to the Company

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> against the issue of [number] registered shares with a nominal value of CHF [amount] each in the capital increase resolved by the general meeting on [date]. 2. The Board notes the valuation report of [valuer] dated [date], valuing the Contributed Assets at CHF [amount] on the basis of the volume-weighted average price on [exchanges] over the [thirty] days preceding [date], less a discount of [x] per cent for volatility and liquidity, and resolves to apply a contribution value of CHF [amount], being not more than the value so determined. 3. The Board approves the contribution in kind agreement between the Company and the contributor dated [date], under which the Contributed Assets are transferred to a distributed ledger address controlled by the Company, with the private keys held in accordance with the Company's key management regulation. 4. The Board approves the founders' / capital increase report under Art. 635 CO describing the nature and condition of the Contributed Assets, the appropriateness of the valuation and the transfer mechanism, and notes the audit confirmation of [auditor] under Art. 635a CO. 5. The Board confirms that the Contributed Assets are freely transferable, that they can be shown as an asset in the Company's balance sheet, that they are not subject to any encumbrance, and that the contributor has confirmed the source of the Contributed Assets to the satisfaction of the Company's compliance function. 6. The Board resolves to amend the articles of association to record the contribution in kind as required by Art. 634 para. 2 CO and to file the application for registration with the Commercial Register of the Canton of Zug. 7. The Board instructs [name] to execute the transfer confirmation once the Contributed Assets have been received at the Company's address and the transaction has reached finality on the relevant ledger.

Singapur'daki yönetim kurulu kararı, nakit dışı karşılık karşılığında öngörülen pay tahsisini ve yöneticilerin, belirtilen bir değerleme yöntemine dayanarak karşılığın yeterli olduğu yönündeki tespitini kayıt altına alır. Ardından tokenlerin şirketin cüzdanına transferini, karşılığın belirtildiği pay tahsisi bildiriminin (return of

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allotment) ACRA'ya sunulmasını ve uyum biriminin fonların kaynağına ilişkin teyidini kaydeder. Denetçi teyidi gerekmez. Bu, Singapur yolunu hızlandırır, ancak değerleme riskini doğrudan yöneticilere yükler.

Zug açısından

Zug ticaret sicili 2017'den bu yana kripto varlıklarla ayni sermaye işlemlerini yürütmektedir ve ne istediğini bilir: başvurudan birkaç gün önceki bir tarihe ait değerleme, şirketin kontrol ettiği bir adrese transfer ve şartsız bir denetçi teyidi. Dosya eksiksizse tescili iki hafta içinde bekleyebilirsiniz. Uygulamadaki risk, değerleme ile tescil arasındaki fiyat hareketidir. Fiyat katkı değerinin altına düşerse denetçi teyit vermeyi reddedebilir. Uygulayıcıların bir iskonto öngörmesinin ve değerleme tarihini mümkün olduğunca geç tutmasının nedeni budur.

Notlar

1. OR/CO md. 634 (ayni sermaye), 1 Ocak 2023'ten itibaren geçerli değişik hâliyle; md. 635 ve 635a (kurucu raporu ve denetim teyidi); İsviçre ticaret sicilinin kripto varlıklarla ayni sermayeye ilişkin uygulaması P. Kısım, II. Bölümde ele alınmaktadır. ↩
2. Companies Act 1967, s. 63 (pay ihracı) ve s. 68 (karşılık); bkz. P. Kısım, III. Bölüm. ↩

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