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Hong Kong

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CHARLTONS ON BEHALF OF 7 CORPORATE FINANCE FIRMS RESPONDS TO HKEX SPAC CONSULTATION

The Stock Exchange of Hong Kong (the “HKEX”), released its Consultation Paper on Special Purpose Acquisition Companies¹ (the “Consultation Paper”) in September 2021 which invited market participants to submit written responses to the Consultation Paper.

Charltons, on behalf of Alliance Capital Partners Limited, Altus Capital Limited, Anglo Chinese Corporate Finance, Limited, Frontpage Capital Limited, Oriental Patron Asia Limited, Somerley Capital Limited, and Yu Ming Investment Management Limited (the “Group”) submitted a response to the HKEX Consultation Paper. The Group’s full response can be read here.² Please also see HKEX Issues Consultation on SPACs³ which is a Charltons’ newsletter summary of the Consultation Paper.

The basis of the Group’s submission was that the current HKEX Listing Rules should, to the extent practicable, be equally applied to the listing of SPACs. To the extent, that this is not possible, the Group’s view was care should be taken not to apply unduly onerous requirements to SPACs so as not to curtail the innovation associated with SPACs and not to exclude the local Hong Kong market. Two key submissions made by the Group were that the trading of the shares in the SPAC should not be limited to professional investors and the market capitalisation requirements should be lowered from the proposed HK\$1 billion to HK\$500 million.

1 <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/September-2021-Special-Purpose-Acquisition-Co/Consultation-Paper/cp202109.pdf>

2 <https://www.charltonslaw.com/our-work/corporate-finance-and-capital-markets/services/listing-in-hong-kong/hk-spacs/>

3 <https://www.charltonslaw.com/hkex-issues-consultation-paper-on-spacs/>

Below is a summary of the Group’s responses in respect of the key proposals of the Consultation Paper. The Group’s full response can be read here.⁴

Subject	The Group’s response
Investor suitability	The Group’s view is that there should be no professional investor restriction and that retail investors should be able to trade the shares of the SPAC prior to the De-SPAC Transaction. There are sufficient safeguards to protect investors - not least, that investors’ funds are held in trust and the shareholders have a right of redemption on occurrence of certain events and at the time of the De-SPAC Transaction.
Trading arrangements	The Group agreed that the SPAC Shares and SPAC Warrants be permitted to trade separately for the period of the listing of the SPAC to the De-SPAC Transaction. It was noted that the Group did not consider that the SPAC Warrants are necessarily more volatile than other warrants as the Consultation Paper appeared to suggest.
Dilution cap.	The Group did not think that it was necessary that the HKEX impose a cap on the maximum dilution possible from the conversion of Promoter Shares or exercise of warrants issued by a SPAC. The Group’s view is that this should be left to the market to dictate and that the maximum dilution possible from the conversion of Promoter Shares or exercise of warrants issued by a SPAC, should be adequately disclosed in the Listing Document. If the HKEX was going to impose a dilution cap, then the existing practice under the HKEX Listing Rules should be applied.

4 <https://www.charltonslaw.com/our-work/corporate-finance-and-capital-markets/services/listing-in-hong-kong/hk-spacs/>

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SPAC Promoters	<p>The Group's view is that it is unnecessary to require each SPAC to have at least one SPAC Promoter which is a firm that holds a Type 6 (advising on corporate finance) and/or a Type 9 (asset management) licence issued by the SFC.</p> <p>As proposed, a SPAC will be required to appoint an IPO Sponsor. Therefore, it is unnecessary that one of the SPAC Promoters must hold a type 6 (advising on corporate finance) and/or a type 9 (asset management) licence issued by the SFC. The Group could not see any justification for this requirement as the due diligence will be carried out by the IPO Sponsor who will be formally appointed at least two months prior to the listing of the Successor Company. The IPO Sponsor will be required to make a declaration (in the form of Appendix 19 to the HKEX Listing Rules) that, amongst other matters: (a) the Successor Company is in compliance with all the conditions in Chapter 8 of the HKEX Listing Rules; and (b) that the Successor Company's Listing Document contains sufficient information to enable a reasonable person to form a valid and justifiable opinion on the financial condition and profitability of the Successor Company.</p> <p>These requirements also go beyond the requirements in the U.S., the UK and Singapore. There are adequate safeguards (including the IPO Sponsor regime as proposed) to protect the investor and to ensure an orderly market without having the requirement to restrict Promoters only to persons who hold a Type 6 and/or Type 9 licence. Therefore, it is unnecessary that one of the SPAC Promoters must hold a type 6 (advising on corporate finance) and/or a type 9 (asset management) licence issued by the SFC.</p> <p>In addition to the aforementioned submissions, the Group did not agree that SPAC Promoters should have to meet additional suitability and eligibility requirements and that the HKEX must be satisfied as to the character, experience and integrity of a SPAC Promoter. To this extent, the Group was of the view that a Promoter in Hong Kong was likely to be a company and that the proposals in the Consultation Paper in respect of a Promoter's suitability and eligibility requirements are likely to exclude a large part of the Hong Kong market apart from the 'bulge bracket' investment banks. The Group has concerns that the proposals in their current form are also likely to exclude anyone from the Hong Kong market who wishes to develop their skills within the SPAC market.</p> <p>The Group's view is that it is evident that the Promoters of a SPAC and the completion of a De-SPAC Transaction employ the same or similar skills and require the same or similar transactional experience as the negotiation and structuring of a sizeable acquisition by a publicly listed company and the sponsoring of an initial public offering through the structuring, marketing, documenting and conducting a detailed due diligence of a company to be listed pursuant to an existing listing mechanism under the HKEX Listing Rules.</p> <p>These skills and experience are widely available in Hong Kong and, in view of this, it should be unnecessary to restrict the promotion and sponsoring of a SPAC listing and De SPAC Transactions to a small select group of financial advisers and fund managers.</p>

Subject	The Group's response
Trustee/custodian requirements	<p>The Group agreed that 100% of the gross proceeds of the SPAC's initial offering should be held in a trust account located in Hong Kong and should be held in cash or cash equivalents. However, the Group was of the view that the proposed qualification criteria in respect of the trustee/custodian were too restrictive and that the category of trustee/custodian could be expanded. The requirements set out in Chapter 4 of the UT Code in respect of a trustee/custodian are very narrow. The effect is that only (a) a bank licensed under the Banking Ordinance (Cap. 155), (b) a registered trust company registered under the Trustee Ordinance (Cap. 29) that is a subsidiary of a bank of the type in (a) above or a trust company that is a trustee of a registered MPF scheme under the Mandatory Provident Fund Schemes Ordinance (Cap. 485). Therefore, the category of eligible trustees/custodians should be broader. For example, the category could be expanded to include a corporation or registered institution that is licensed by the SFC to carry on Type 1 Regulated Activity (with additional requirements) as has been adopted for private open-ended fund companies.</p> <p>Further, to mitigate against risks associated with exchange rate fluctuations, the Group's view is that the funds raised from an IPO should be deposited in the currency that matches the issue price.</p>
Fund raising size	<p>The Group's view is that the minimum fund raising size should be HK\$500 million which is consistent with Chapter 8 of the HKEX Listing Rules. This would make SPACs more likely to be available as a listing route for a range of businesses which would meet the HKEX Listing Rules requirements for an IPO.</p>
Independent third party investment	<p>The Group did not agree that the HKEX should mandate that a SPAC obtain funds from outside independent PIPE investors for the purpose of completing a De-SPAC Transaction. The Group was of the view that imposing arbitrary transactional requirements is likely in certain circumstances to hinder the structuring of a De-SPAC Transaction and result in a less than optimal transaction.</p>
Shareholders to vote on the De-SPAC Transaction	<p>The Group agreed that a De-SPAC Transaction must be approved by the shareholders. However, the Group's view is that shareholders should be able to redeem their shares regardless of their voting decisions on one or more of the matters set out in paragraph 352 of the Consultation Paper (which includes voting on a De-SPAC Transaction). This would be consistent with the approach in Singapore and the U.S., which allows all independent shareholders to have a redemption option regardless of their voting decisions.</p>
Forward looking information	<p>The Group agrees that SPACs should be required to comply with existing requirements with regards to forward looking statements included in a listing document produced for a De-SPAC Transaction. As mentioned, the current HKEX Listing Rules should be equally applied to SPACs insofar as possible.</p>

Subject	The Group's response
Open market in the shares of the Successor Company	<p>The Group is of the view that the minimum market capitalisation should be reduced to HK\$500 million.</p> <p>There should be no restriction on the type of investor (i.e. retail investors should be permitted to purchase and trade SPAC Shares prior to the completion of the De-SPAC Transaction).</p> <p>Further, the Group proposes that the Successor Company should have at least 300 shareholders as is currently required by Chapter 8 of the HKEX Listing Rules. Removing the professional investor restriction will mean that these anomalies and problems associated with shareholder spread and liquidity will fall away.</p>

The HKEX confirmed that an announcement on SPAC listings in Hong Kong will be made soon, but have not yet provided a concrete timeframe within which the HKEX expects to publish the consultation conclusions.

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