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Hong Kong

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HKEX PUBLISHES CONSULTATION CONCLUSIONS ON HONG KONG SPACs

On 17 December 2021, the Stock Exchange of Hong Kong Limited (“**HKEX**”) published conclusions to its consultation on creating a listing regime for special purpose acquisition companies (“**SPACs**”) in Hong Kong (the “**HKEX SPAC Consultation Conclusions**”) with the relevant amendments to the Rules Governing the Listing of Securities on HKEX to take effect on 1 January 2022 (the “**HKEX SPAC Rules**”). For a summary of the original consultation paper proposals, please see Charltons’ [October 2021 newsletter](#).

During the consultation period, the HKEX received 90 non-

duplicate submissions from various SPAC Promoters, professional bodies, investment managers, corporate finance firms and individuals, in which the respondents were generally supportive of the majority of the proposals.

This is the first of two Charltons’ newsletters on the HKEX SPAC Consultation Conclusions, in which the key HKEX SPAC Rules are summarised. A more detailed analysis will follow in the second newsletter to be published shortly. The key HKEX SPAC Rules to be implemented are summarised as follows:

Key HKEX SPAC Rules		
(1) Key rules relating to the period prior to a “De-SPAC Transaction” (i.e. prior to the business combination of a SPAC and the “De-SPAC Target” (i.e. the unlisted issuer with business operations) resulting in the combined company (the “Successor Company”)	Investor suitability	Subscription and trading of a SPAC’s securities (including shares and warrants) to be restricted to professional investors only. A SPAC must distribute securities to a minimum of 75 professional investors (of which at least 75% and no fewer than 20 must be institutional professional investors).
	SPAC Promoters	Each SPAC must have at least one “ SPAC Promoter ”, being a firm that holds (i) a licence with the Securities and Futures Commission of Hong Kong (“ SFC ”) to carry out corporate finance advisory and/or asset management regulated activity and (ii) at least 10% of the “ Promoter Shares ” (i.e. a class to shares of the SPAC which are issued exclusively to a SPAC Promoter at nominal consideration as a financial incentive to establish and manage the SPAC). A SPAC must distribute securities to a minimum of 75 professional investors (of which at least 75% and no fewer than 20 must be institutional professional investors). The SFC will consider granting waiver to this licensing requirement on a case-by-case basis (for example, to accept a SPAC Promoter if they have overseas accreditation that is equivalent to the SFC licence for carrying out corporate finance advisory (Type 6) and/or asset management regulated activity (Type 9)). Material change in SPAC Promoters would require approval by special resolution of independent shareholders (i.e. excluding SPAC Promoters and close associates) in order for the SPAC to continue.
	SPAC Directors	Each SPAC’s board of directors must have at least two individuals (including one director representing the licensed SPAC Promoter) licensed by the SFC to carry out corporate finance advisory (Type 6) and/or asset management regulated activity (Type 9).

		Key HKEX SPAC Rules			
(1)		Trading arrangements	Separate trading of SPAC Shares and SPAC Warrants from initial offering date, with additional measures in place to mitigate risk of volatility associated with trading of SPAC Warrants.		
		Dilution cap	Dilution effect of all warrants that may be issued (including warrants that may be issued to SPAC Promoters) must not exceed, if exercised, 50% of shares in issue at the time of the warrant issue. It is required that (i) new investors in a Successor Company are fully informed of this dilution prior to their investment and (ii) the minimum exercise price of the SPAC Warrants and Promoter Warrants must be at a price that represents at least a 15% premium to the issue price of the SPAC Shares.		
		Fund raising size	Funds expected to be raised by a SPAC from its initial offering must be at least HK\$1 billion.		
(2)	Key rules relating to De-SPAC Transactions	Application of new listing requirements	A Successor Company must meet all new listing requirements (including, inter alia, the engagement of IPO sponsor to conduct due diligence, minimum market capitalisation requirements and financial eligibility tests).		
		Independent PIPE investment	Investment from independent PIPE investors must be relative to the negotiated value ("NV") of a De-SPAC Target:		
				NV (HK\$ billion)	Minimum investment as a percentage of NV
				<2	25%
				2-5	15%
				5-7	10%
				=>7	7.5%
		>10	Waiver to be considered on a case-by-case basis		
		All PIPE investors must be professional investors and at least 50% of the independent PIPE investment must come from at least three independent sophisticated investors each being an asset management firm with assets under management of at least HK\$8 billion or a fund of a fund size of at least HK\$8 billion. A fund managed by a fund manager with assets under management of at least HK\$8 billion would qualify for this purpose.			
	Shareholder vote	De-SPAC Transactions must be approved by SPAC shareholders at a general meeting where any shareholder with a material interest (including any outgoing controlling shareholder of any De-SPAC Transaction involving a change of control) must abstain from voting.			
	Redemption option	SPAC shareholders to be given the option to redeem their shares prior to: <ul style="list-style-type: none"> a. a De-SPAC Transaction; b. a material change in SPAC Promoter and/or SPAC directors; and c. any extension to the deadline for finding a suitable De-SPAC Target. 			
	Open market in Successor Company's shares	The Successor Company must have an adequate spread of holders of at least 100 shareholders.			
	Forward looking statements	Application of existing requirements on any forward looking statements in the listing document for De-SPAC Transaction to a standard as that required for an IPO.			
(3)	Liquidation and De-Listing	Return of funds to Shareholders	If a SPAC is unable to find a De-SPAC Target and announce a De-SPAC Transaction within 24 months, or complete one within 36 months, the SPAC must be liquidated and all of the funds raised must be returned to its shareholder. The HKEX will then de-list the SPAC.		
(4)	Timing of Listing Applications	Submission of A1	A SPAC may make a listing application to the HKEX on or after 3 January 2022. An IPO Sponsor to a SPAC should be formally appointed after the publication of the HKEX SPAC Consultation Conclusions (17 December 2021) and the terms of engagement should reflect the applicable HKEX SPAC Rules.		

The new HKEX SPAC Rules, together with a HKEX Guidance Letter on SPACs will come into effect on Saturday, 1 January 2022. A SPAC seeking a listing in Hong Kong may submit a formal listing application under the new regime on or after Monday, 3 January 2022.

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