



## Overview of HKEX's New SPAC Listing Regime

The HKEX's new listing regime allowing SPACs to list on the Main Board of the Hong Kong Stock Exchange will take effect on 1 January 2022 under amendments to the HKEX Listing Rules, including new Chapter 18B on SPAC listings, published in the HKEX's "[Consultation Conclusions on Special Purpose Acquisition Companies](#)" on 17 December 2021<sup>1</sup>. The Consultation Conclusions broadly adopt the proposals set out in the HKEX's September 2021 consultation paper<sup>2</sup>, with minor amendments. The proposed Listing Rule amendments and a draft of a proposed new Guidance Letter on Special Purpose Acquisition Companies (the **SPAC Guidance Letter**) are set out in Appendices IV and V, respectively, to the Consultation Conclusions.

Special purpose acquisition companies or SPACs are companies without business operations that raise funds through an IPO for the purpose of conducting a business combination<sup>3</sup> with a target (a **De-SPAC Target**) within a pre-defined time period in order to list the De-SPAC Target. A De-SPAC Transaction is a business combination between a SPAC and a De-SPAC Target that results in the listing of a Successor Company. The HKEX has been keen to introduce a SPAC listing regime in Hong Kong to ensure its continued competitiveness and continued ability to attract the listings of Mainland and South East Asian companies that might otherwise opt to list elsewhere in De-SPAC Transactions. US-listed SPACs have seen a surge in popularity while Singapore and the UK have revised or implemented their own SPAC listing regimes<sup>4</sup>.

# SPAC Listing Requirements

## HKEX Listing Rules Not Applicable to SPACs

Certain Listing Rules will not apply to SPACs, including Listing Rule 8.05 (financial eligibility and track record requirements for listing), Listing Rule 8.05C/14.82 (the prohibition on listing cash companies), Listing Rule 6.01(3)/13.24 (the requirement for sufficient operations and assets) and Listing Rules 14.89-14.90 (the prohibition on a fundamental change in principal business activities for one year post-listing). The requirement to appoint a sponsor would be shortened for SPACs to at least one month before submission of the listing application.

## SPAC IPO Fund Raising Size

SPACs will be required to raise IPO funds of at least HK\$1 billion under Listing Rule 18B.08 which must be held in a ring-fenced escrow account in Hong Kong operated by a trustee or custodian whose qualifications are consistent with the requirements of Chapter 4 of the SFC's Code on Unit Trusts and Mutual Funds.

## Minimum SPAC Share Price and Subscription Amount

The minimum subscription price for SPAC Shares will be HK\$10 (under new Listing Rule 18B.07) and the minimum board lot size and subscription amount will be HK\$1 million.

## Restriction to Professional Investors

Prior to the De-SPAC Transaction, only professional investors will be allowed to subscribe for and trade SPAC shares. Retail investors will be permitted to subscribe for and trade the shares of the Successor Company.

## Open Market Requirements

At listing, a SPAC will be required to have at least 75 professional investors, of whom at least 20 (reduced from the originally proposed 30) must be Institutional Professional Investors who hold 75% of the shares to be listed (modifying the general Listing Rule requirement for 300 shareholders at listing). Institutional Professional Investors are investors within paragraphs (a) to (i) of the definition of "professional investors" in section 1 of Part 1 of Schedule 1 to the SFO. They do not include high net worth professional investors within the categories set out in the Securities and Futures (Professional Investor) Rules who will be defined as "Non-Institutional Professional Investors" in new Listing Rule 18B.01.

## Trading Arrangements

SPAC Shares and SPAC Warrants will be listed and traded separately from the date of the SPAC's initial listing until the De-SPAC Transaction. To mitigate the risks of volatility in trading, the HKEX will allow both manual trades and automatching of orders subject to the HKEX's volatility control mechanism with different price deviation percentage parameters set for SPAC Shares and SPAC Warrants.

## SPAC Promoters and Directors

### Eligibility of SPAC Promoters

The HKEX will need to be satisfied as to the character, experience and integrity of SPAC Promoters (i.e. persons who establish a SPAC and/or beneficially own shares issued to them by the SPAC) and that SPAC Promoters are capable of meeting a standard of competence commensurate with their position. The proposed new SPAC Guidance Letter lists the information that SPAC Promoters will need to provide to the HKEX for it to determine whether the SPAC Promoter has the character and experience required.

### SFC Licensing Requirement

At listing and on an ongoing basis, at least one SPAC Promoter must be:

- (i) licensed for regulated activity Type 6 (advising on corporate finance) and/or Type 9 (asset management) under the Securities and Futures Ordinance (the **SFO**); and
- (ii) the beneficial holder of at least 10% of the Promoter Shares (i.e. unlisted shares of a separate class to SPAC Shares issued by a SPAC exclusively to a SPAC Promoter at nominal consideration).

The SPAC Guidance Letter provides that the SFC will consider waiving the SFC licensing requirement on a case-by-case basis for SPAC Promoters with an overseas accreditation issued by a regulatory authority the HKEX considers equivalent to an SFC Type 6 or Type 9 licence (at paragraph 15 of the SPAC Guidance Letter).

### Material Change in SPAC Promoters

A material change in:

- (i) a SPAC Promoter who, alone or with its close associates, controls 50% or more of the issued Promoter Shares (or if none, the single largest SPAC Promoter);

- (ii) a SPAC Promoter holding the required SFC licences: or
- (iii) the suitability or eligibility of a SPAC Promoter referred to in (i) or (ii),

must be approved by a special resolution of the SPAC shareholders at a general meeting (at which SPAC Promoters and their close associates must abstain from voting) within one month of the material change and by the HKEX. A material change includes (among others) the departure or addition of a SPAC Promoter and a change in control of a SPAC Promoter. A change in the eligibility or suitability of a SPAC Promoter under paragraph (iii) above will include the SFC's revocation or suspension of a SPAC Promoter's licence and its breach of any laws or regulations having a bearing on its integrity and/or competence.

## SPAC Directors

A SPAC board must include at least two Type 6 and two Type 9 SFC-licensed persons, one of whom must be a licensed person of a SPAC Promoter.

Chapter 3 of the HKEX Listing Rules applies to SPACs and requires that INEDs comprise at least one third of their boards subject to a minimum of three INEDs.

## SPACs' Continuing Obligations

### Promoter Shares

The number of Promoter Shares issued to SPAC Promoters must not represent more than 20% of the total number of the SPAC's issued shares as at its listing date.

Following completion of the De-SPAC Transaction, SPACs are permitted to issue additional Promoter Shares capped at 10% of the total number of shares in issue as at the SPAC's listing date. The HKEX may also allow SPACs to issue additional rights to SPAC Promoters entitling them to receive additional ordinary shares of the Successor Company following completion of the De-SPAC Transaction as earn-out rights subject to the following:

- (i) the total number of ordinary shares of the Successor Company to be issued under the earn-out rights ("**earn-out shares**") and all Promoter Shares must not exceed 30% of the number of the SPAC's issued shares at listing;
- (ii) the earn-out must only be convertible into earn-out shares subject to the satisfaction of objective performance targets. If the performance targets are determined by changes in the price of the Successor Company's shares, the targets must be: (a) at least 20% higher than the issue price of the SPAC

shares at listing; and (b) satisfied by reference to the volume weighted average price of the Successor Company's shares (calculated on the basis of the HKEX daily quotations sheets) over a period of at least 20 trading days within a 30 consecutive trading day period commencing at least six months after the Successor Company's listing.

## **Promoter Warrants**

New Listing Rule 18B.30(2) will prohibit Promoter Warrants that entitle the holder, upon exercise, to more than one share in the Successor Company. Promoter Warrants cannot be issued at a price that is less than 10% of the issue price of SPAC Shares at listing and cannot contain more favourable terms than those carried by other warrants issued by the SPAC new Listing Rule 18B.30(1) and 18B.30 (3).

SPAC Warrants and SPAC Promoter Warrants must not be issued at a price that is less than 15% of the issue price of the SPAC Shares at listing and must only be exercisable after completion of the De-SPAC Transaction (new Listing Rule 18B.22(1) and 18B.22(2)). SPAC warrants will have to expire at least one year after, and not more than five years after, the completion of the De-SPAC Transaction and must not be convertible into further rights to subscribe for securities expiring less than one year or five years thereafter (new Listing Rule 18B.22(3)).

SPAC Promoters, their directors and employees, SPAC employees, and their close associates, will be prohibited from dealing in the SPAC's listed securities before the completion of a De-SPAC Transaction.

## **De-SPAC Transaction Requirements**

### **Application of HKEX New Listing Requirements**

The Successor Company (the company resulting from the De-SPAC Transaction) must meet all the requirements for new listing under the Listing Rules (including the listing eligibility requirements of Chapter 8 and the listing application procedures under Chapter 9, including the requirements for the issue of a listing document, the appointment of at least one sponsor who must be appointed at least two months before the Successor Company's listing application submission).

### **Fair Market Value of the De-SPAC Target**

A De-SPAC Target must have a fair market value at least 80% of the SPAC's IPO funds raised (prior to any redemptions). As to the determination of "fair market value", the HKEX expects the SPAC's board of directors to confirm satisfaction of this requirement, taking into account the Negotiated De-SPAC Value. According

to the SPAC Guidance Letter, the HKEX will assess the board's confirmation taking into account: (a) the basis of the opinion; (b) the negotiated value of the DeSPAC Target agreed by the parties; (c) the sponsor's opinion; (d) the amount committed by, and involvement of and validation by the independent third party investors; and (e) the valuation of comparable companies.

## Independent Third Party Investment

The HKEX requires a SPAC to obtain funds from independent third party professional investors in order to complete a De-SPAC Transaction. The amount required will depend on the size of the De-SPAC Target and will require investment from independent third party professional investors of an amount constituting at least the following percentage of the negotiated value of the De-SPAC Target (although the SEHK may accept a lower percentage than 7.5% for De-SPAC Targets with a negotiated value of over HK\$10 billion).

Negotiated value of the De-SPAC Target (A)	Minimum independent professional party investment as a % of (A)
Less than HK\$2 billion	25%
HK\$2 billion or more but less than HK\$7 billion	15%
HK\$5 billion or more but less than HK\$7 billion	10%
HK\$7 billion or more	7.5%

## Minimum Investment by Significant Independent Professional Investor

The independent third party investment referred to above must include significant investment from independent sophisticated investors, as defined in guidance published on the SEHK website (new Listing Rule 18B.42), and result in their beneficial ownership of listed shares in the Successor Company. According to the SPAC Guidance Letter, the SEHK will consider the significant investment by sophisticated investors requirement to be met if at least 50% of the value of the required independent third party investment comes from at least three investors which are each an asset management firm with assets under management of at least HK\$8 billion or a fund with a fund size of at least HK\$8 billion.

In determining the independence of a professional investor in a De-SPAC Transaction, the HKEX will apply the criteria applied to independent financial advisers.

## Announcement of the De-SPAC Transaction

A SPAC will be required to publish a De-SPAC Announcement (i.e. the announcement of the De-SPAC Transaction following finalisation of its terms) within 24 months of its listing date (the "**Announcement Deadline**") (new Listing Rule 18B.69).

## Shareholder Approval of De-SPAC Transactions

A De-SPAC Transaction must be conditional on approval by the SPAC's shareholders in general meeting. SPAC Promoters and other shareholders with a material interest in the transaction, and their close associates, will be required to abstain from voting and any outgoing controlling shareholders of the SPAC and their close associates will be prohibited from voting in favour of the resolution approving the De-SPAC Transaction.

## Completion Deadline for De-SPAC Transactions

A SPAC will have to complete a De-SPAC Transaction within 36 months of its listing date (the "**Transaction Deadline**") (new Listing Rule 18B.70).

## Extension of SPAC Announcement or Transaction Deadline

SPACs will be allowed to request a six-month extension of either the Announcement Deadline or the Transaction Deadline. The extension must be approved by an ordinary resolution of the SPAC's shareholders in general meeting at which SPAC Promoters and their close associates will be required to abstain from voting.

Prior to the general meeting to approve the extension of either the Announcement Deadline or the Transaction Deadline, shareholders must be given the opportunity to redeem all or part of their shareholdings at the price at which the shares were issued in the SPAC's IPO.

## De-SPAC Transactions involving Connected De-SPAC Targets

Where a De-SPAC Transaction is a connected transaction under Chapter 14A of the HKEX Listing Rules, the SPAC will be required to comply with the requirements for connected transactions under that Chapter and the SPAC will additionally need to:

- (i) demonstrate that minimal conflicts of interest exist in relation to the proposed transaction;
- (ii) support its claim that the transaction would be on an arm's length basis with adequate reasons; and
- (iii) include an independent valuation of the transaction in the SPAC's listing document.

## Share Redemptions

A SPAC will have to provide its shareholders with the opportunity to redeem all or part of their shareholdings for an amount which must not be less than the price at which the shares were issued in the SPAC's IPO prior to a general meeting to approve any of the following:

- (i) a De-SPAC Transaction;
- (ii) a material change in a SPAC Promoter; or
- (iii) any extension to the deadlines for announcing or completing a De-SPAC Transaction (new Listing Rule 18B.57).

SPAC Shares that are redeemed must be cancelled (Listing Rule 18B.62). In addition to announcing the voting results of a general meeting,<sup>5</sup> a SPAC must also announce the amount of share redemption as soon as practicable after the meeting.

## Open Market in Successor Company's Shares

On the listing of the Successor Company, the minimum number of shareholders required at listing will be reduced from 300 to 100 (new Listing Rule 18B.65).

## SPAC Promoter Lock-up

SPAC Promoters will be subject to a restriction on the disposal of their holdings in the Successor Company (which will apply to their Promoter Shares and Promoter Warrants and any securities resulting from the conversion or exercise of Promoter Shares, Promoter Warrants and earn-out rights) for 12 months from the date of completion of the De-SPAC Transaction (new Listing Rule 18B.66).

## Controlling Shareholder Lock-up

The controlling shareholder(s) of a Successor Company will be subject to the lock-up provisions of Listing Rule 10.07 with respect to disposals of their shareholdings in the Successor Company following its listing.

## De-Listing

Trading of a SPAC's securities will be immediately suspended if:

- (i) either the Announcement Deadline or the Transaction Deadline (extended or otherwise) is not met; or



(ii) the SPAC fails to obtain approval by a special resolution of its shareholders at a general meeting (at which SPAC Promoters and their close associates must abstain from voting) for a material change in a SPAC Promoter within one month of the change.

Following suspension, the SPAC will have one month to return the IPO funds raised to holders of the SPAC Shares on a pro rata basis (new Listing Rule 18B.74).

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[1] HKEX “Consultation Conclusions: Special Purpose Acquisition Companies” (December 2021)

[2] HKEX “Consultation Paper: Special Purpose Acquisition Companies” (September 2021)

[3] A business combination can be a merger, share exchange, asset acquisition, share purchase, reorganisation or other type of transaction

[4] HKEX “Consultation Paper: Special Purpose Acquisition Companies” at paragraph 6

[5] Under Listing Rule 13.39(5)

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CHARLTONS  
易周律師行

Hong Kong Office

Dominion Centre 12th Floor  
43-59 Queen's Road East Hong Kong

[enquiries@charltonslaw.com](mailto:enquiries@charltonslaw.com)  
[www.charltonslaw.com](http://www.charltonslaw.com)  
Tel: + (852) 2905 7888  
Fax: + (852) 2854 9596