

WEBINAR

THE HKEX'S SPAC LISTING REGIME

28 FEBRUARY 2022

1 CPD Point

The HKEX SPAC Consultation Paper

The HKEX Consultation Paper on SPACs was published on 17 September 2021

The HKEX SPAC Consultation Conclusions

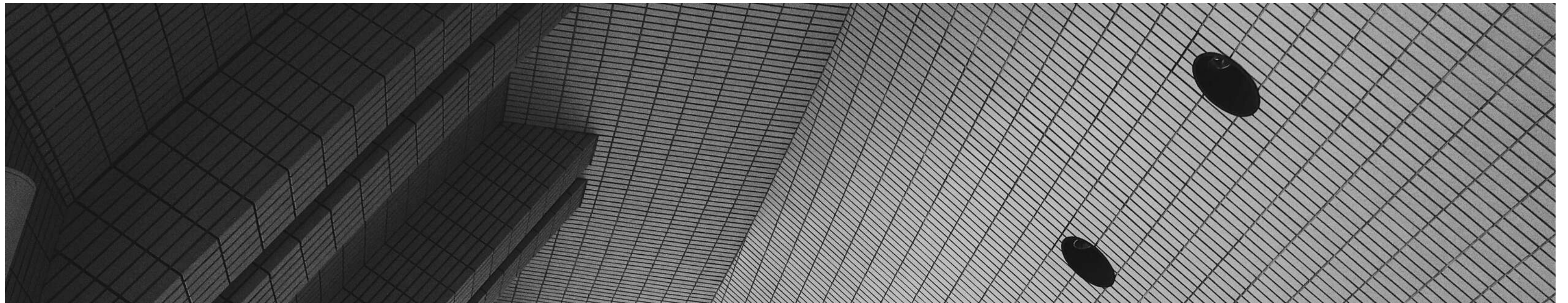
The conclusions to the HKEX SPAC Consultation Paper were published on 17 December 2021

The new SPAC Listing Regime

The HKEX's new listing regime for SPACs took effect on 1 January 2022

RE-CAP - SPACs

- SPACs are companies without operations which raise funds by means of an IPO to conduct a De-SPAC Transaction.
- A De-SPAC Transaction is a business combination between a SPAC and a De-SPAC Target.
- A Successor Company is the company that results from the completion of the De-SPAC Transaction.
- Key personnel - the SPAC Promoters.



SPAC LISTING REQUIREMENTS

Listing Rules not applicable to SPACs

- Listing Rule 8.05 - financial eligibility and track record requirements.
- Listing Rule 8.05C/14.82 - prohibition on listing cash companies.
- Listing Rule 6.01(3)/13.24 - requirement for sufficient operations and assets.
- Listings 14.89 - 14.90 - the prohibition on a fundamental change in principal business activities for one year post-listing.
- Sponsor appointment - the requirement to appoint an IPO Sponsor has been shortened to at least one month before submission of the listing application.



SPAC LISTING REQUIREMENTS

SPAC IPO fund raising size, share price and subscription amount



- Minimum fund raising size of HK\$1 billion.
- Minimum share issue price of HK\$10 per share.
- The HKEX is of the view that having a minimum fund raising size of at least HK\$1 billion *"would help ensure that the SPAC is capable of generating sufficient interest among professional investors."*
- Minimum subscription amount is HK\$1 million.

SPAC LISTING REQUIREMENTS

Professional Investor restrictions & open market requirements

- Professional investor restrictions - trading of SPAC securities prior to the De-SPAC Transaction will be limited to professional investors only.
- Retail Investors will be allowed to invest in the shares of the Successor Company.

Open Market Requirements

- SPAC Shares & SPAC Warrants to be distributed to a minimum of 75 professional investors (20 must be institutional professional investors).
- 75% of each of the SPAC Shares and SPAC Warrants must be distributed to institutional investors.

SPAC LISTING REQUIREMENTS

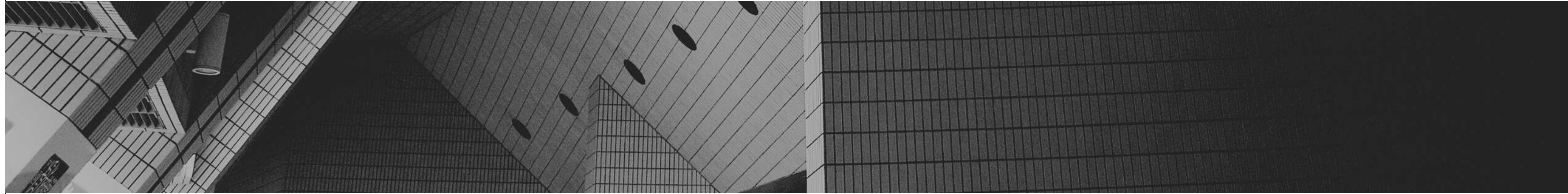
Trading Arrangements

- More than 90% of the Respondents supported the proposal to allow separate trading of SPAC Shares and SPAC Warrants from the date of listing of the SPAC.
- SPAC Shares and SPAC Warrants can be listed and traded separately from the date of the SPAC's initial listing until the De-SPAC Transaction.
- Manual trades and automatching orders will be allowed subject to the HKEX's volatility control mechanism.



SPAC PROMOTERS AND DIRECTORS

Eligibility of SPAC Promoters



SPAC PROMOTERS

- The HEX will need to be satisfied as to the character, experience and integrity of each SPAC Promoter and each SPAC Promoter must be capable of meeting a standard of competence commensurate with its position.
- A new SPAC Guidance Letter details the information that SPAC Promoters will be required to provide to the HKEX.
- Suitability assessment - the HKEX will take into account a non-exhaustive list of factors including the SPAC Promoters' experience and expertise

SPAC PROMOTERS ELIGIBILITY

Eligibility of SPAC Promoters — SFC licensing requirements

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

- licensed to carry on regulated activity Type 6 (advising on corporate finance) and/or Type 9 (asset management) under the Securities and Futures Ordinance (Cap. 571); and
- the beneficial owner of at least 10% of the Promoter Shares issued by the SPAC.



SPAC PROMOTERS ELIGIBILITY

Eligibility of SPAC Promoters - SFC licensing requirements

- Possible waiver available for the SFC licensing requirement where a SPAC Promoter has an overseas accreditation which is considered to be the equivalent to either a SFC Type 6 or Type 9 licence.
- The SFC licensing requirement will be considered to be met where the controlling shareholder is a licensed corporation and satisfies two conditions. These conditions are:
 - the SPAC can demonstrate it has sufficient safeguards and/or undertakings to ensure oversight by the controlling shareholder of the SPAC Promoter's responsibilities; and
 - the controlling shareholder gives the HKEX an undertaking that it will ensure that the SPAC Promoter complies with the applicable Listing Rules.

SPAC PROMOTERS ELIGIBILITY

Material change in SPAC Promoters

A material change in one of the following must be approved within one month of such change by a special resolution of the SPAC shareholders:

- 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);
- a SPAC Promoter holding the required SFC licence; or
- the suitability or eligibility of either of the aforementioned SPAC Promoters.



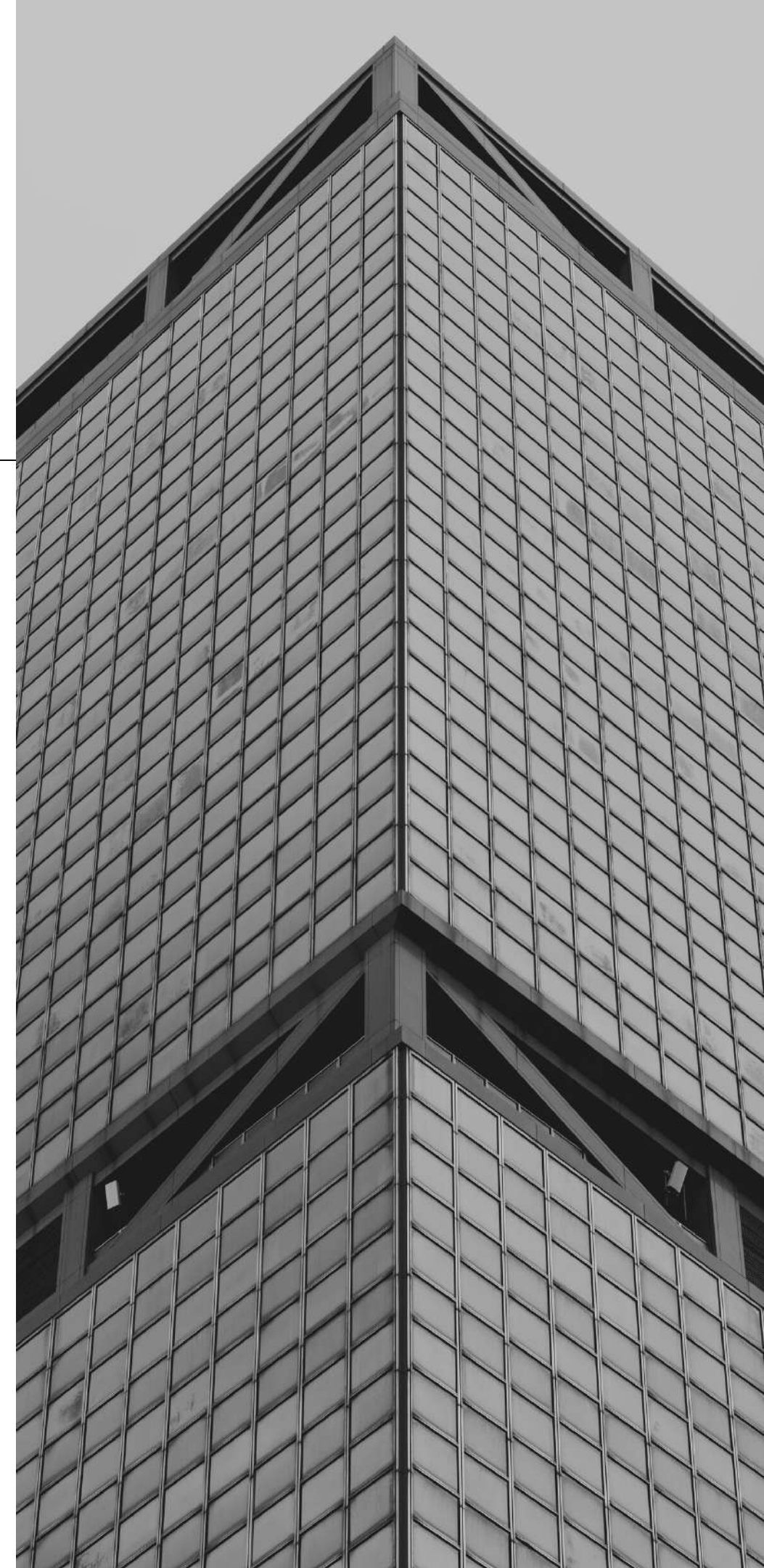
SPAC PROMOTERS ELIGIBILITY

Material change in SPAC Promoters

A material change includes:

- departure or addition of a SPAC Promoter; or
- change in control of a SPAC Promoter.

A change in the eligibility or suitability of a SPAC Promoter includes the 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 & ELIGIBILITY

Material change in SPAC Promoters

- A SPAC Board of Directors must consist of at least two Type 6 (advising on corporate finance) or Type 9 (asset management) licensed persons (the "Directors") licensed persons.
- One of the Directors must be a licensed person of the SPAC Promoter.
- Directors who represent the SPAC Promoter must be "*officers*" as defined in the SFO.



SPACs' CONTINUING OBLIGATIONS

Funds held in escrow

- 100% of the gross proceeds raised from the SPAC's public offering (the "Funds") to be held in an escrow account in Hong Kong.
- If a trustee is appointed, the trustee who holds the Funds must fulfill its duties imposed on it by general law of trusts and it must discharge its obligations and duties in a manner that is consistent with Chapter 4 of the Code on Unit Trusts.
- If a custodian is appointed, the custodian must hold the Funds pursuant to a custodian agreement which reflects the custodian's responsibilities under Chapter of the Code on Unit Trusts.
- An escrow agent can be used to hold the Funds provided that the escrow agent meets the obligations placed on either a trustee or a custodian.



SPACs' CONTINUING OBLIGATIONS

Funds held in escrow

Funds held in escrow may only be released:

- to make a distribution to SPAC Shareholders in the event of a redemption or the liquidation of the SPAC; or
- for the purposes of completing a De-SPAC Transaction.

SPACs' CONTINUING OBLIGATIONS

Promoter Shares and Promoter Warrants



Restrictions on transfer

Only SPAC Promoters permitted to beneficially hold Promoter Shares and Promoter Warrants.

Exception to the restriction on transfer

- In exceptional circumstances, the HKEX may waive the transfer restriction and allow a transfer of SPAC Shares or SPAC Warrants between SPAC Shareholders of the same SPAC (the "Transfer").
- The Transfer must be approved by a resolution of the shareholders. SPAC Promoters and their close associated will not be allowed to vote.

SPACs' CONTINUING OBLIGATIONS

Promoter Shares and Promoter Warrants - restrictions on holdings

- SPAC Shares issued to the SPAC Promoter must not exceed 20% of the total number of shares issued by the SPAC at listing.
- Post listing, additional Promoter Shares may be issued to the SPAC Promoter capped at 10% of the total number of shares in issue as at listing.
- Earn-out rights which are convertible into ordinary shares of the Successor Company are permitted subject to a cap.



SPACs' CONTINUING OBLIGATIONS

Promoter Warrants

- Promoter Warrants that entitle the holder, upon exercise, to more than one share in the Successor Company are prohibited.
- Promoter Warrants must not be offered at a price that is less than 10% of the issue price of SPAC Shares at listing.
- Warrants issued must have an exercise price that represents at least a 15% premium to the issue price of the SPAC Shares issued at listing and must only be exercisable after completion of the De-SPAC Transaction.
- 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

HKEX new listing requirements



The Successor Company must meet all of the requirements for a new listing under the HKEX Listing Rules. These include:

- listing eligibility requirements;
- listing application procedures including the requirement to issue a listing document; and
- the appointment of an IPO Sponsor at least two months before the Successor Company's listing application is submitted.

Management & continuity - SPAC to be treated in the same manner as a RTO.

DE-SPAC TRANSACTION REQUIREMENTS

Fair market value of the De-SPAC Target



- De-SPAC Target must have a fair value of at least 80% of the funds raised by the SPAC at its initial offering.
- Fair value to be determined by the board and the HKEX will confirm this valuation by taking into account:
 - the basis of the opinion;
 - the negotiated De-SPAC value;
 - the IPO Sponsor's opinion;
 - involvement and commitment of funds by independent third party investors; and
 - the valuation of comparable companies.

DE-SPAC TRANSACTION REQUIREMENTS

Proceeds to be used as consideration for De-SPAC Transaction



- The HKEX had proposed to mandate that 80% of the funds raised by a SPAC must be used as consideration for the De-SPAC Transaction.
- Based on the market feedback, the HKEX have not imposed a requirement that a SPAC must use a certain portion of the net funds raised at its initial offering as consideration for a De-SPAC Transaction.

DE-SPAC TRANSACTION REQUIREMENTS

Independent third party investment

- A SPAC must obtain funds from independent third party professional investors.
- The amount of funds required from the independent third party professional investors will vary depending on the value of the De-SPAC Target.

<u>Negotiated value of the De-SPAC Target (A)</u>	<u>Min. independent professional party investment as a % of (A)</u>
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%

DE-SPAC TRANSACTION REQUIREMENTS

Min. investment by significant professional investors

- Independent third party investment must include independent investment from independent sophisticated investors (the "Sophisticated Independent Investment Requirement").
- HKEX Guidance Letter - the HKEX will consider the Sophisticated Independent Investment Requirement to be met where 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



DE-SPAC TRANSACTION REQUIREMENTS

Dilution Cap



Promoter Shares

- A SPAC is prohibited from issuing Promoter Shares that represent more than 20% of the total number of shares that the SPAC had in issue at the time of its listing.

Warrants

- Cap on warrants - the exercise of warrants must not result in the issue of more than 50% of the number of shares in issue at the time the warrant is issued.
- No cap on Promoter Warrants.

DE-SPAC TRANSACTION REQUIREMENTS

Announcement of De-SPAC Transaction

De-SPAC Transaction Announcement

A SPAC must publish an announcement detailing the terms of the De-SPAC Transaction as soon as possible following the finalisation of the terms of the De-SPAC Transaction and in any event, no later than 24 months of its listing date.

Completion deadline

De-SPAC Transaction to be completed within 36 months of the SPAC's listing.

Extension of deadlines

Six month extension will be allowed for either the announcement deadline or the transaction deadline which extension must be approved by an ordinary resolution.



DE-SPAC TRANSACTION REQUIREMENTS

Shareholder approval

- De-SPAC Transaction is conditional on shareholder approval. SPAC Promoters and other shareholders with a material interest in the transaction, and their close associates, are required to abstain from voting.
- The same rules that apply to a RTO will apply to outgoing controlling shareholder(s) - no voting restriction on the outgoing controlling shareholder.

DE-SPAC TRANSACTION REQUIREMENTS

Connected De-SPAC targets

The SPAC is required to comply with the requirements for connected transactions (Chapter 14A of the HKEX Listing Rules).

Additionally, the SPAC will need to:

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



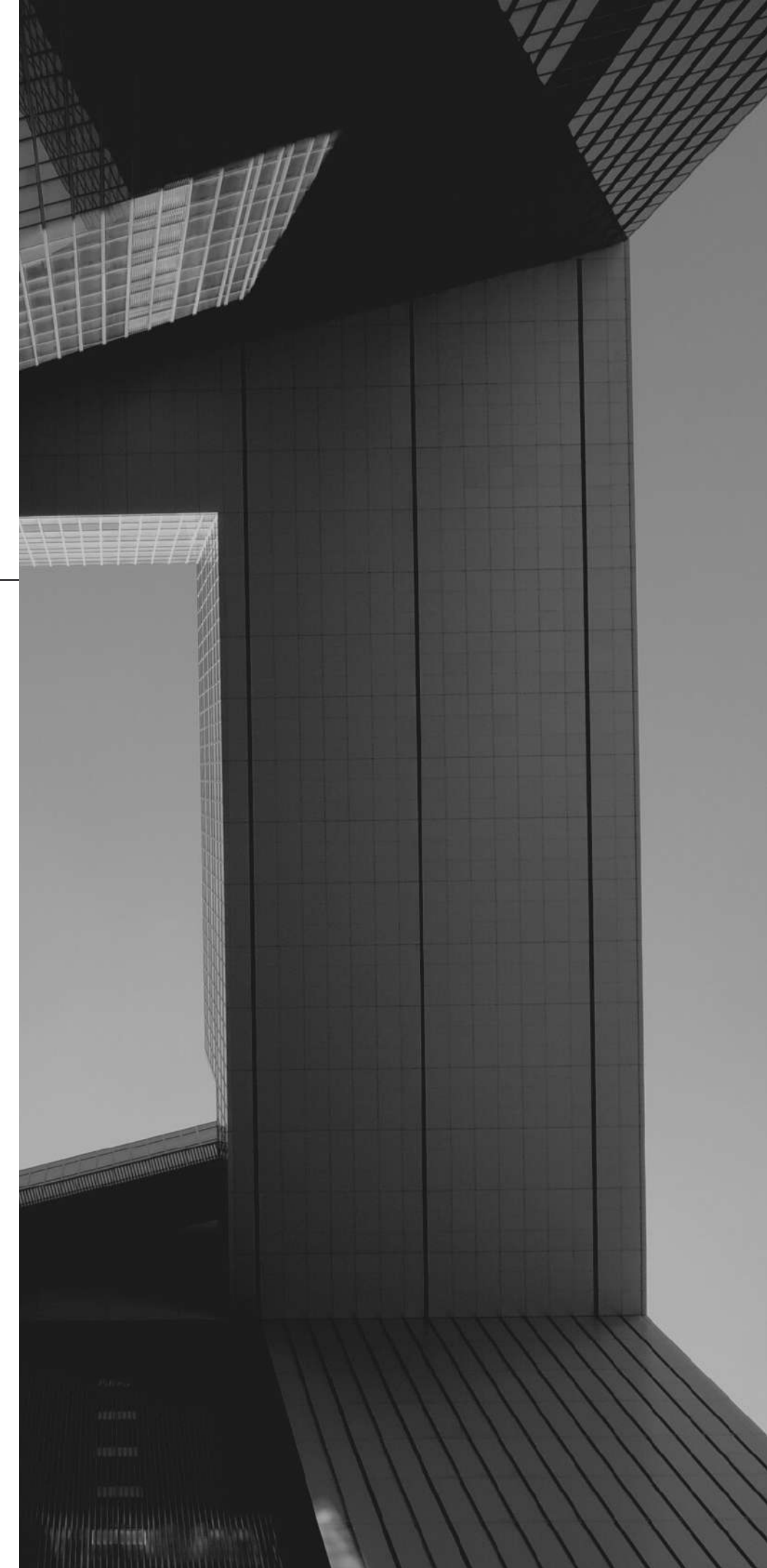
DE-SPAC TRANSACTION REQUIREMENTS

Share redemptions

Share redemptions are a key shareholder protection mechanism.

Shareholders will be given an opportunity to redeem all or part of their shares at the issue price of such shares prior to a general meeting (irrespective of how they vote) to approve any of the following:

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



DE-SPAC TRANSACTION REQUIREMENTS

Open market in Successor Company's shares and SPAC Promoter lock-up

Open market requirements

On listing, the Successor Company must have at least 100 shareholders.

lock-up restrictions

Lock-up period of 12 months from the date of completion of the De-SPAC Transaction. Lock-up to apply to:

- Promoter Shares;
- Promoter Warrants; and
- any securities resulting from the conversion or exercise of Promoter Shares, Promoter Warrants and earn-out rights.



DE-SPAC TRANSACTION REQUIREMENTS

Controlling shareholder lock-up

A controlling shareholder will be restricted from disposing of shares in the Successor Company:

- for a period of 6 months from the date of listing of the Successor Company; and
- in the second 6 month period after listing, if such disposal will result in the controlling shareholder ceasing to be a controlling shareholder.



APPLICATION OF THE TAKEOVERS CODE



01 Takeovers Code to apply prior to the completion of the De-SPAC Transaction

02 The De-SPAC Transaction:

- waiver of the application of Rule 26.1 of the Takeovers Code (application of this rule would normally be waived)
- where a waiver is granted, no general offer is expected by the owner of the De-SPAC Target and no offer period will commence

03 The Successor Company:

- the Takeovers Code to apply

DE-LISTING THE SPAC

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

- either the announcement deadline or the transaction deadline (extended or otherwise) is not met; or
- 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 funds to the SPAC Shareholders.

Liquidation and de-listing

De-listing of the SPAC to take place before its liquidation.





MCQs

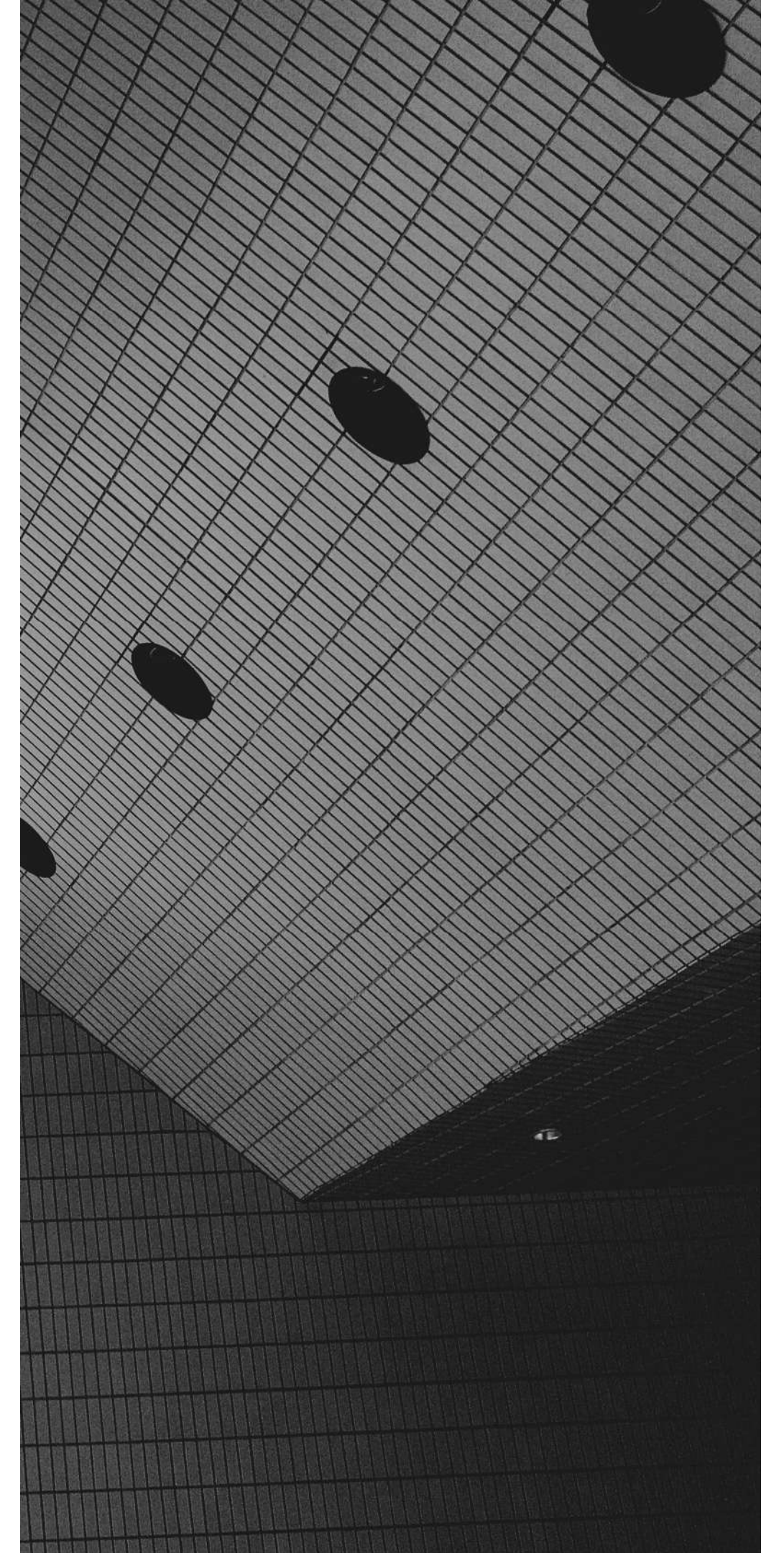
MCQs

Question 1

Retail investors will be allowed to trade SPAC Shares prior to the listing of the Successor Company.
True or False?

(a) True

✓ (b) False



MCQs

Question 2

Which of the following statements is incorrect?

- (a) The funds held in escrow must be held in cash or cash equivalents.
- ✓ (b) The trustee or custodian used to hold the funds from the SPAC's IPO in escrow must be a licensed financial institution with the HKMA.
- (c) A trustee if appointed will be expected to fulfil its duties and obligations as required under Chapter 4 of the Code on Unit Trusts.
- (d) A custodian if appointed would be required to hold the funds in accordance with a custodian agreement which reflects its responsibilities under the Chapter 4 of the Code on Unit Trusts.



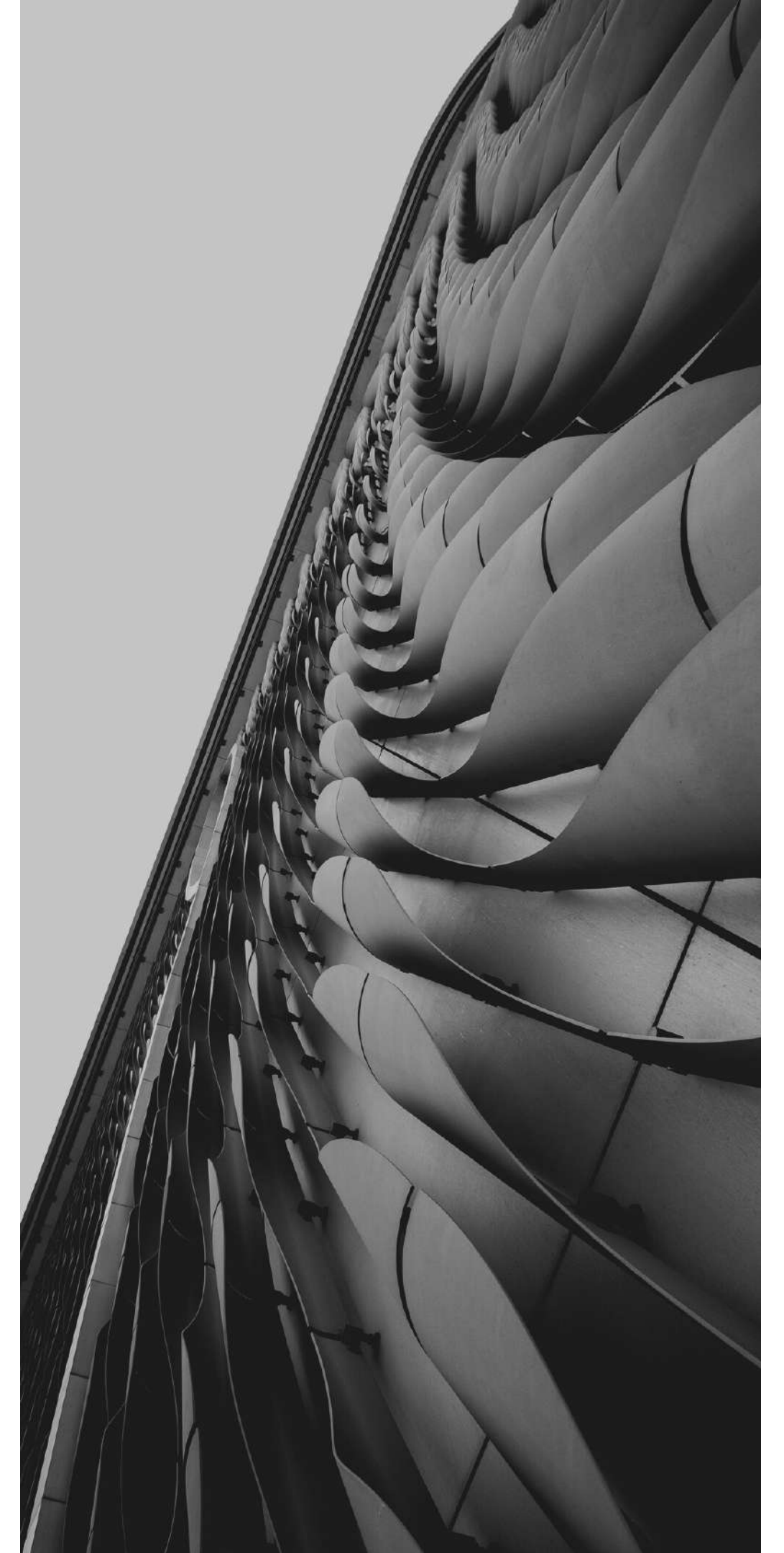
MCQs

Question 3

The minimum market capitalisation requirement of a SPAC is the same as the minimum market capitalisation requirements for a traditional IPO on the Main Board (i.e. HK\$500 million). True or False?

(a) True

✓ (b) False



MCQs

Question 4

Which of the following statements is incorrect?

- (a) The board lot size of a SPAC is HK\$1 million.
- (b) Each SPAC share will have an issue price on listing of at least HK\$10.
- ✓ (c) A Successor company must ensure that its shares are held by at least 300 shareholders.
- (d) A SPAC must hold 100% of the funds raised from its initial offering in an escrow account.



MCQs

Question 5

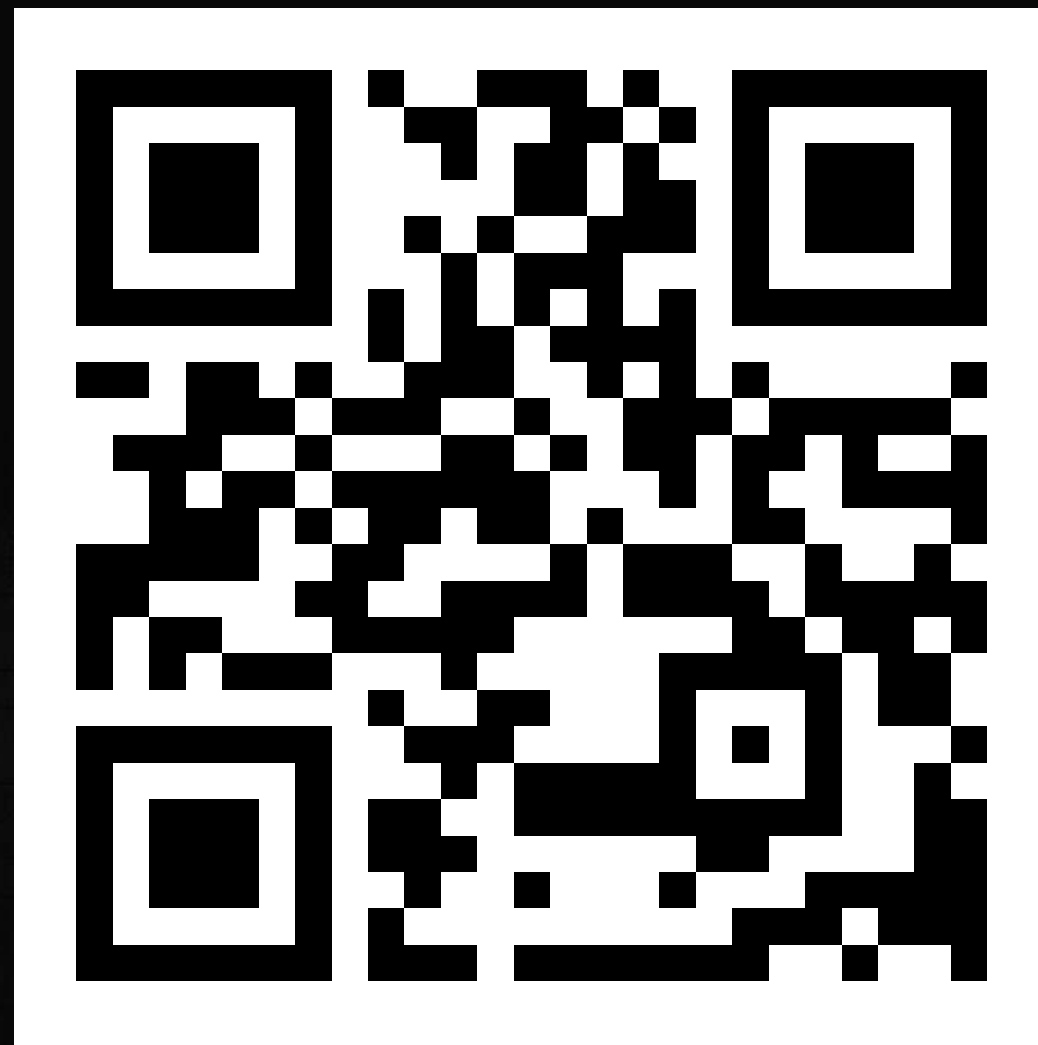
SPACs must appoint an IPO Sponsor. True or False?

- ✓ (a) True
- (b) False





Q&A



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