

## Client Alert

### Corporate Finance

6 January 2022

## Overview of Hong Kong's listing regime for special purpose acquisition companies (SPACs)

On 17 December 2021, The Stock Exchange of Hong Kong Limited (**Exchange**) announced new rules to create a listing regime for special purpose acquisition companies (**SPACs**) that took effect on **1 January 2022**.

This paper gives an overview of the Hong Kong's listing regime for SPACs.

#### What is a SPAC?

A SPAC is defined under the Rules Governing the Listing of Securities on the Stock Exchange (**Listing Rules**) as “an issuer that has no operating business and is established for the sole purpose of conducting a transaction in respect of an acquisition of, or a business combination with, a target, within a pre-defined time period, to achieve the listing of the target”.

The acquisition of, or a business combination with, a target (**De-SPAC Target**) by a SPAC is called a **De-SPAC Transaction**. The listed issuer resulting from the completion of a De-SPAC Transaction is a **Successor Company**.

#### Relevant rules and guidance

The major rules and guidance materials for the listing regime for SPACs include:

- [Chapter 18B “Equity Securities – Special Purpose Acquisition Companies” of the Listing Rules](#);
- [HKEX Guidance Letter HKEX-GL113-22 “Guidance on Special Purpose Acquisition Companies”](#); and
- [Practice Note 23 “Waivers from the application of Rule 26.1 of the Takeovers Code for De-SPAC Transactions”](#) published by the Securities and Futures Commission (**SFC**).



#### Suitability and eligibility of SPAC Promoters

Persons who establish a SPAC and/or beneficially own shares issued by a SPAC exclusively to such persons at nominal consideration (**Promoter Shares**) are the **SPAC Promoters** (known as “SPAC Sponsors” in the United States).

At the time of listing of the SPAC and on an ongoing basis during the lifetime of the SPAC:

- the Exchange must be satisfied as to the **character, experience and integrity** of all SPAC Promoters and that they are capable of meeting a standard of competence commensurate with their position; and
- at least one of its SPAC Promoters is a firm that holds a **Type 6** (advising on corporate finance) and/or a **Type 9** (asset management) licence issued by the SFC (**Licensed SPAC Promoter**), which is the beneficial holder of at least **10% of the Promoter Shares** issued by the SPAC.

**Q. Can a firm with a similar overseas accreditation (but without a requisite SFC licence) fulfill the requirement of a Licensed SPAC Promoter?**

**A.** The Exchange will consider modifying or waiving the licensing requirement on a case-by-case basis if a SPAC Promoter has overseas accreditation issued by a relevant regulatory authority that the Exchange considers to be equivalent to a Type 6 and/or Type 9 licence issued by the SFC.

**Q. Can the licensing requirement be met by the controlling shareholder of a SPAC Promoter?**

**A.** The Exchange will consider a SPAC Promoter that does not hold the requisite SFC license to have met the requirement, if its controlling shareholder (which is a licensed corporation) satisfies the requirement. This is subject to the condition that: (a) the SPAC demonstrates to the Exchange that sufficient safeguards and/or undertakings are put in place to ensure the controlling shareholder's oversight of the SPAC Promoter's responsibilities; and (b) the controlling shareholder gives an undertaking to the Exchange that they will ensure the SPAC Promoter's compliance with applicable Listing Rules.

### Suitability of SPAC Directors

At the time of listing of the SPAC and on an ongoing basis during the lifetime of the SPAC:

- any director nominated by a SPAC Promoter for appointment to the board of a SPAC must be **an officer of the SPAC Promoter** representing the SPAC Promoter who nominated him or her;
- where a SPAC Promoter is an individual, that person must be a director of the SPAC; and
- the board of a SPAC must include at least **two individuals licensed by the SFC** to carry out Type 6 (advising on corporate finance) and/or Type 9 (asset management) regulated activities for a SFC licensed corporation (**Licensed SPAC Directors**), **one of whom must be a licensed person** of the Licensed SPAC Promoter.

### Material change in SPAC Promoters or SPAC Directors

In the event of a material change in: (1) any SPAC Promoter who, alone or together with its close associates, controls or is entitled to control 50% or more of the Promoter Shares in issue (or where no SPAC Promoter controls or is entitled to control 50% or more of the Promoter Shares in issue, the single largest SPAC Promoter); (2) any Licensed SPAC Promoter; (3) the eligibility and/or suitability of a SPAC Promoter referred to in (1) or (2); or (4) any of the Licensed SPAC Directors (**SPAC Promoter/Director Material Change**), the continuation of the SPAC following such a material change must be approved by: (i) a **special resolution** of the shareholders of the SPAC at a general meeting (on which the SPAC Promoter(s) and their respective close associates must abstain from voting) within one month from the date of the material change; and (ii) the Exchange.

### Types of SPAC securities

- **SPAC Shares** (i.e. shares issued by a SPAC that are not Promoter Shares):
  - Each SPAC Share must have an issue price of at least **HK\$10**.
  - A SPAC must have a board lot size and subscription size of a value of at least **HK\$1,000,000** for its SPAC Shares.
- **Promoter Shares**:
  - A SPAC must **not** apply to **list** Promoter Shares.
  - A SPAC must **not** allot, issue or grant any Promoter Shares to SPAC Promoters that represent more than **20%** of the total number of shares the SPAC has in issue as at the date of its listing.
  - The total number of ordinary shares of the Successor Company to be issued under (i) any earn-out rights after completion of the De-SPAC Transaction and (ii) all Promoter Shares must **not** be more than **30%** of the total number of shares that the SPAC had in issue as at the date of its listing.
  - Promoter Shares must only be converted into ordinary shares of the Successor Company on a **one-for-one basis** and **at or after the completion** of a De-SPAC Transaction.
- **SPAC Warrants** (i.e. warrants issued by a SPAC that are not Promoter Warrants):
  - The exercise price must represent at least a **15% premium** to the issue price of the SPAC Shares issued at its initial listing.
  - SPAC Warrants must have an exercise period that commences **after the completion** of a De-SPAC Transaction.
  - SPAC Warrants must **expire not less than one year and not more than five years** from the date of the

completion of a De-SPAC Transaction.

- **Promoter Warrants** (i.e. warrants issued by a SPAC exclusively to SPAC Promoters):
  - A SPAC must **not** apply to **list** Promoter Warrants.
  - Promoter Warrants must **not** be issued at a price that is **less than 10%** of the issue price of SPAC Shares at the SPAC's initial offering.
  - The exercise price must represent at least a **15% premium** to the issue price of the SPAC Shares issued at its initial listing.
  - Promoter Warrants must **not** be exercisable during the period ending **12 months from the date of the completion** of a De-SPAC Transaction.
  - Each Promoter Warrant must **not** entitle the holder, upon exercise, to receive **more than one share** in the Successor Company.
  - Promoter Warrants must **not** contain terms that are **more favourable** than those of the SPAC Warrants.
  - Promoter Warrants must **expire not less than one year and not more than five years** from the date of the completion of a De-SPAC Transaction.

Warrant dilution cap - The number of shares to be issued upon exercise of **all** outstanding warrants issued by a SPAC must **not**, if all such rights were immediately exercised, whether or not such exercise is permissible, **exceed 50%** of the number of shares in issue at the time such warrants are issued.



### Suitability of investors in SPAC securities

The securities of a SPAC must **only** be marketed to or traded by professional investors defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (**Professional Investors**).

### Open market requirements for SPAC

For each class of securities new to listing by a SPAC (i.e. **SPAC Shares and SPAC Warrants**), at the time of listing, there must be an adequate spread of holders of the securities to be listed which must, in all cases, be at least **75 Professional Investors**, of whom at least **20** must be **institutional Professional Investors** (i.e. persons falling under paragraphs (a) to (i) of the definition of “professional investor” in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance) and such institutional Professional Investors must hold at least **75%** of the securities to be listed.

A SPAC must also meet **all other open market requirements** applicable to a new listing, including the requirements that at least 25% of its total number of issued shares (and 25% of its total number of issued warrants) are at all times held by the public and that not more than 50% of the securities in public hands at the time of listing can be beneficially owned by the three largest public shareholders.

### Funds to be raised from SPAC IPO

The gross funds raised by a SPAC from its initial offering must be at least **HK\$1,000,000,000**, and must (excluding proceeds raised from the issue of Promoter Shares and Promoter Warrants) be held in a **ring-fenced escrow account** domiciled in Hong Kong and operated by a trustee or custodian whose qualifications and obligations are consistent with the requirements of Chapter 4 of the Code on Unit Trusts and Mutual Funds administered by the SFC, and the monies must be held in the form of cash or cash equivalents.

The monies held in the escrow account must **not** be released to any person other than to:

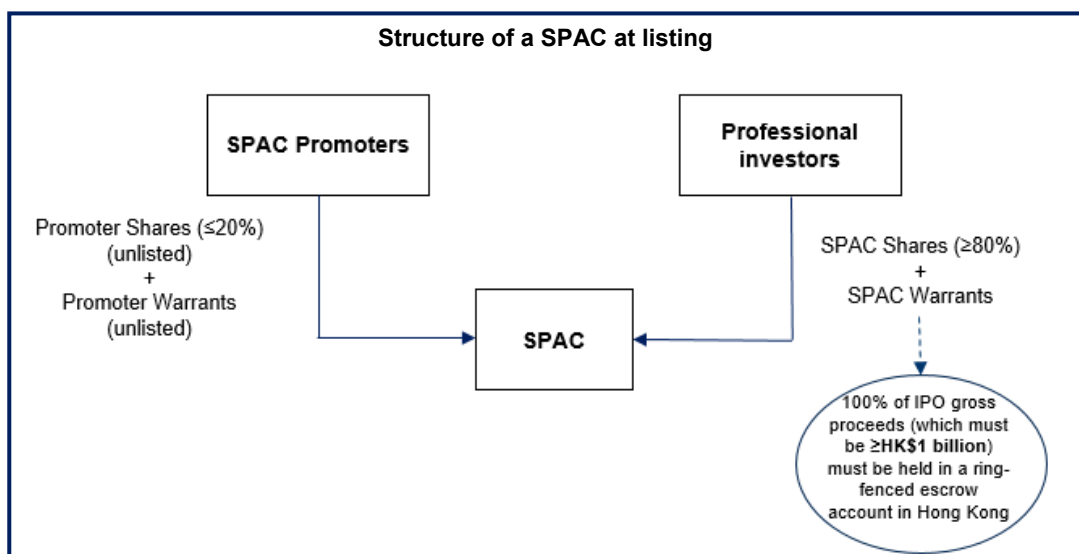
- meet redemption requests of the SPAC shareholders (*to be discussed below*);
- complete a De-SPAC Transaction; or
- return funds to SPAC shareholders upon suspension of trading (*to be discussed below*) or upon the liquidation or winding up of the SPAC.

Any interest, or other income earned, on monies held in the escrow account may be used by a SPAC to settle its expenses.

### SPAC IPO sponsor engagement

SPAC listing applicants should engage a sponsor in connection with its listing application. The sponsor should conduct due diligence (including, among other things, whether the SPAC Promoters and the SPAC's internal controls meet the Listing Rule requirements) prior to the submission of a "substantially complete" listing application in accordance with Paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the SFC and Practice Note 21 of the Listing Rules.

A SPAC listing application should be submitted **no earlier than one month** (instead of two months for other types of new listing applications or a De-SPAC Transaction) after the date of the formal appointment of the sponsor.



### Trading arrangement of and restrictions on dealing in SPAC securities

SPACs must apply to list the SPAC Shares and the SPAC Warrants that trade separately from the date of initial listing onwards.

SPAC Promoters (including their directors and employees), SPAC directors and SPAC employees, and their respective close associates are prohibited from dealing in any of the SPAC's listed securities prior to the completion of a De-SPAC Transaction.



### Eligibility of De-SPAC Targets

**Type** - The Exchange will **not** consider a Successor Company to be eligible if it qualifies for listing only by virtue of the application of **Chapter 21** of the Listing Rules (Investment Companies).

**Size** - A De-SPAC Target must have a fair market value of at least **80%** of funds raised by the SPAC from its initial offering.

**Application of new listing requirements** - A Successor Company must meet all new listing requirements, including, among other things, the minimum market capitalisation requirements and financial eligibility tests.

**Connected target** – If a De-SPAC Transaction is a connected transaction under Chapter 14A of the Listing Rules, a SPAC must comply with the applicable connected transaction requirements in Chapter 14A. In addition, a SPAC must:

- demonstrate that **minimal conflicts of interest** exist in relation to the proposed transaction;
- support, with adequate reasons, its claim that the transaction would be on an **arm's length basis**; and  
(Note: The above two matters may be evidenced, for example, by: (a) demonstrating that the SPAC and/or its connected persons (including SPAC Promoters, SPAC Directors and their respective associates) are not controlling shareholders of the De-SPAC Target; and (b) no cash consideration is paid to connected persons, and any consideration shares issued to the connected persons are subject to a lock-up period of 12 months.)
- include an **independent valuation** of the transaction in the listing document.

### Independent third party investments

**Total amount** - The total funds to be raised from the independent third party investors (which must be Professional Investors) must constitute at least the following percentage of the negotiated value of the De-SPAC Target:

Negotiated value of the De-SPAC Target ("A")	Minimum independent third party investment as a percentage of (A)
< HK\$2 billion	25%
HK\$2 billion - < HK\$5 billion	15%
HK\$5 billion - < HK\$7 billion	10%
≥ HK\$7 billion	7.5%
> HK\$10 billion	< 7.5%

The investments made by the independent third party investors must result in their **beneficial ownership** of the listed shares in the Successor Company.

**Significant investment from sophisticated investors** - At least **50%** of the value of the independent third party investment should be contributed by no fewer than **three investors**, which must either be an asset management firm with assets under management of at least **HK\$8,000,000,000** or a fund with a fund size of at least **HK\$8,000,000,000**.

### Shareholders' approval for a De-SPAC Transaction

A De-SPAC Transaction must be made conditional on approval by the SPAC's shareholders at a general meeting. SPAC Promoters and their close associates must abstain from voting.

### Deadlines for announcing and completing a De-SPAC Transaction

A SPAC must:

- publish an announcement of the De-SPAC Transaction **within 24 months** of the date of its listing; and
- complete a De-SPAC Transaction **within 36 months** of the date of its listing.

The Exchange may permit an extension of either deadline for a period of up to **six months** if the extension is approved by an ordinary resolution of the SPAC's shareholders at a general meeting (on which the SPAC Promoters and their respective close associates must abstain from voting).

### Open market requirements for Successor Company

A Successor Company must have **100 Professional Investors** at the time of listing.

A Successor Company must meet **all other open market requirements** applicable to a new listing, including the requirements that at least 25% of its total number of issued shares are at all times held by the public and that not more than 50% of the securities in public hands at the time of listing can be beneficially owned by the three largest public shareholders.

### Sponsor engagement

A Successor Company must formally appoint at least one independent sponsor to assist it with the application for listing at least **two months** prior to the date of the listing application of the Successor Company.

**Q. If a firm has been appointed as a sponsor by the SPAC for its initial listing, can this firm act as an independent sponsor for the Successor Company?**

**A.** Yes - as long as the firm has no "current business relationship" with the applicant at the time of the De-SPAC Transaction, and it can meet all other independence requirements.

**Q. If a firm has been appointed as an independent sponsor by a De-SPAC Target for a traditional IPO which then subsequently files an application to list via a De-SPAC Transaction instead, can this firm act as an independent sponsor for the Successor Company?**

**A.** Yes - This is on the basis that this would fall within the exemption that the relationship arises under the sponsor's engagement to provide sponsorship services. In such case, the Exchange would take into account the time of the appointment of the IPO Sponsor for the traditional IPO when considering whether the minimum engagement period of two months has been satisfied for the Successor Company's listing application.

### **Application of the Takeovers Code**

The application of Rule 26.1 of the Takeovers Code in relation to a De-SPAC Transaction which would result in the owner of the De-SPAC Target obtaining 30% or more of the voting rights in a Successor Company would **normally** be **waived**.

### **Lock-up**

SPAC Promoters must not dispose of any securities of the Successor Company during the period ending **12 months from the date on the completion of the De-SPAC Transaction**.

The controlling shareholder of a Successor Company would be subject to the current requirements of the Listing Rules on the disposal of shares by controlling shareholders following a new listing. That means, the controlling shareholder could not dispose of its holdings in the first six months of the Successor Company's listing and could not dispose of its holdings in the second six months following the listing if this would result in it ceasing to be a controlling shareholder.

### **Share redemptions**

Prior to a shareholder vote on any of the following matters, a SPAC must provide its shareholders with the opportunity to elect to **redeem all or part** of their holdings of SPAC Shares (for an amount per SPAC Share which must be not less than the price at which the SPAC Shares were issued at the SPAC's initial offering):

- the continuation of the SPAC following a SPAC Promoter/Director Material Change;
- a De-SPAC Transaction; and
- the extension of the deadline for the publication of announcement of the De-SPAC Transaction or the deadline for the completion of the De-SPAC Transaction.

### **Suspension → return of funds → delisting**

The Exchange may suspend the trading of a SPAC if the SPAC fails to:

- announce / complete a De-SPAC Transaction within the respective deadlines (including any permitted extensions); or
- obtain the requisite shareholders' approval in respect of the continuation of the SPAC following a SPAC Promoter/Director Material Change.

Within one month of the suspension, the SPAC must return the funds it raised at its initial offering to all holders of SPAC Shares as held in the escrow account on a pro rata basis.

Upon the return of funds, the Exchange will cancel the listing of the SPAC's securities.

## Want to know more?

Ronny Chow  
Partner

ronny.chow@deacons.com  
+852 2825 9435

Sabrina Fung  
Partner

sabrina.fung@deacons.com  
+852 2825 9478

Maynard Leung  
Partner

maynard.leung@deacons.com  
+852 2825 9415

Alexander Que  
Partner

alexander.que@deacons.com  
+852 2825 9770

Kelvan Cheung  
Partner

kelvan.cheung@deacons.com  
+852 2825 9279

Peter Cheng  
Partner

peter.cheng@deacons.com  
+852 2826 5390

Rhoda Yung  
Partner

rhoda.yung@deacons.com  
+852 2825 9624

Gary Wong  
Partner

gary.wong@deacons.com  
+852 2825 9798

Canny Lau  
Partner

canny.lau@deacons.com  
+852 2826 5346

The information contained herein is for general guidance only and should not be relied upon as, or treated as a substitute for, specific advice. Deacons accepts no responsibility for any loss which may arise from reliance on any of the information contained in these materials. No representation or warranty, express or implied, is given as to the accuracy, validity, timeliness or completeness of any such information. All proprietary rights in relation to the contents herein are hereby fully reserved.

0122© Deacons 2022

[www.deacons.com](http://www.deacons.com)