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Newsletter

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What's inside?

Some insights for SPAC promoters

Rhoda Yung and Peter Cheng

Since the implementation of the Hong Kong listing regime for special purpose acquisition companies (**SPACs**) on 1 January 2022, 11 SPACs have lodged listing applications (*see a summary of these cases at the end of this article*) with The Stock Exchange of Hong Kong Limited (**Exchange**) as of 23 March 2022, with the first one having made its debut on 18 March 2022. We are currently advising the sponsor in relation to one of these SPAC listing applications which was lodged in mid-February 2022. We expect a strong pipeline of SPAC listings in Hong Kong this year.

Our previous client alert "Overview of Hong Kong's listing regime for special purpose acquisition companies (SPACs)" issued in early January 2022 summarises the key features of the SPAC listing regime. Please note that capitalised terms such as "SPAC Shares" used in this article are explained in that alert. On 4 March 2022, the Exchange published a new guidance letter (HKEX-GL114-22) providing guidance on the qualifications and obligations of the trustee or custodian regarding the operation of the escrow account of a SPAC for ring-fencing the IPO proceeds. This guidance letter has addressed many of the questions we have received at the time when the SPAC listing regime first became effective from our trustee and custodian clients surrounding their qualifications and obligations in the context of a SPAC listing.

In this article, we will provide some insights on a few issues that potential SPAC Promoters (i.e. persons who establish a SPAC and/or beneficially own "Promoter Shares" issued by a SPAC exclusively to such persons at nominal consideration, commonly known as "sponsors" in the United States) may be interested to know.

Would (a) a SPAC Promoter controlled by a licensed firm / individual or (b) a SPAC Promoter structured as a fund managed by a licensed general partner fulfil the licensing requirement?

At the listing of the SPAC and on an ongoing basis for the lifetime of the SPAC, the Exchange must be satisfied as to the character, experience and integrity of a SPAC Promoter and that it is capable of meeting a standard of competence commensurate with its position. Section A of the Exchange's guidance letter (HKEX-GL113-22) sets out the information that a potential SPAC Promoter must provide to the Exchange and the factors that the Exchange will take into account when considering the suitability of the SPAC Promoter.

To help ensure high quality SPAC Promoters and better alignment of interest with other SPAC investors, the Hong Kong listing regime specifically requires that at least one SPAC Promoter must be a firm that holds a ***type 6*** (advising on corporate finance) and/or a ***type 9*** (asset management) licence issued by the Securities and Futures Commission (**SFC**).

The Exchange will consider a SPAC Promoter that does not hold the requisite SFC licence to have met the requirement, if its controlling shareholder (which is a licensed corporation) satisfies the requirement, provided 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. For the avoidance of doubt, the licensing requirement cannot be satisfied by an individual who holds a type 6 or type 9 licence.

If the SPAC Promoter is structured as a fund in the form of a limited partnership, the licensing requirement would apply to the general partner of the fund as it assumes ultimate responsibility for its management and control. This follows the same approach as the principles in Part A of the SFC's circular to private equity firms seeking to be licensed issued on 7 January 2020.

SPAC Promoters are also reminded that if they conduct activities that fall within the scope of regulated activities, they should consider whether there are any possible licensing or other implications under the Securities and Futures Ordinance (**SFO**).

Potential conflict of interests / competition

The Hong Kong listing regime imposes the following requirements for directors of a SPAC:

- any director nominated by a SPAC Promoter for appointment to the board of a SPAC must be an officer (as defined under the SFO) 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
- to help ensure the good conduct of a SPAC board and the SFC's regulatory reach over that conduct, the rules require a SPAC board to include at least two type 6 or type 9 SFC-licensed individuals (one of whom must be a licensed person of the SFC-licensed SPAC Promoter).

Directors and officers of a SPAC who are also officers or other employees of the SPAC Promoters may be involved in the investment activities of the SPAC Promoters. They may also be involved in the management of other SPACs that the SPAC Promoters will promote in the future. Potential conflicts of interest may arise when the SPAC Promoters are seeking suitable investment opportunities similar to those of the SPAC for a De-SPAC Transaction. To assist investors to make an informed assessment of the potential conflicts of interest, the offering circular of the SPAC should disclose:

- specific information on any business interests of the SPAC Promoters and their respective affiliates that compete or are likely to compete either directly or indirectly with the SPAC (including identification of targets similar to prospective De-SPAC Targets), including a discussion on the nature and extent of such competition; and
- the basis upon which the directors believe that the corporate governance measures in place will be effective in managing existing and potential conflicts of interest, and will enable them to make decisions independently of the SPAC Promoters and in the best interests of the SPAC and its shareholders.

Can a SPAC Promoter or its close associate participate in the SPAC's IPO?

Paragraph 5(1) of Appendix 6 to the Listing Rules provides that no allocation of securities will be permitted, without the prior consent of the Exchange, to existing shareholders of the listing applicant or their close associates. According to the Exchange's Guidance Letter HKEX-GL113-22, the Exchange may allow a SPAC Promoter to participate in the offering of SPAC Shares at the time of the initial listing of a SPAC subject to the following conditions being satisfied:

- the SPAC Promoter meets the definition of a "Professional Investor" (defined in section 1 of Part 1 of Schedule 1 to the SFO) (as the subscription and trading of a SPAC's securities to "Professional Investors" only);
- the SPAC complies with all applicable open market requirements;
- the price and terms of subscription of shares by the SPAC Promoter must be substantially the same as, or are not more favourable to the SPAC Promoter, than those available to other investors, and any such participation increases the SPAC Promoter's "capital at risk" (on top of their subscription price for the Promoter Shares and the Promoter Warrants) to align its interests more closely with the interest of other shareholders;
- the SPAC and the relevant sponsor must confirm to the Exchange that no preferential treatment has been, nor will be, given to the SPAC Promoter; and

- the participation is disclosed prominently in the listing document produced for the purpose of the SPAC's listing.

However, as indicated in the offering circular of the first listed SPAC, which disclosed that a close associate of one of the SPAC Promoters proposed to participate in the SPAC's IPO by subscribing for the SPAC Shares offered, the close associate will be subject to certain restrictions imposed on SPAC Promoters in respect of its SPAC Shares and SPAC Warrants, including:

- it will be prohibited from dealing in its SPAC Shares and SPAC Warrants prior to the completion of a De-SPAC Transaction;

- it must not, during the period ending 12 months from the date of the completion of a De-SPAC Transaction, dispose of any share of the Successor Company; and

- while it would be permitted to exercise the redemption rights in respect of its SPAC Shares like other SPAC investors:

  - it will be required to notify the SPAC whether or not it will exercise its redemption rights and such information should be disclosed in the SPAC's circular to shareholders for the relevant general meeting; and

  - if it elects not to exercise its redemption rights, it is required to provide an irrevocable undertaking to the SPAC that it will not exercise such redemption right, details of which should be disclosed in the SPAC's circular to its shareholders.

It remains to be seen whether these will become standard conditions whenever a SPAC Promoter and/or its close associate(s) seeks to participate in a SPAC's IPO.

List of SPAC listing applications (up to 23 March 2022)

Date of posting of Application Proof	SPAC listing applicant	SPAC Promoter with type 9 and/or type 6 licence	Sponsor(s)	Target business sector (geographic area)
17/01/2022	Aquila Acquisition Corporation Stock Code: 7836 Warrant Code: 4836 (Listed on 18/03/2022)	CMB International Asset Management Limited *(type 9)*	Morgan Stanley CMBI	"New economy" sectors, e.g. green energy, life sciences and advanced technology and manufacturing (Asia, with a focus on China)
28/01/2022	Tiger Jade Acquisition Company	Dragonstone Capital Management Limited *(type 9)*	UBS	Healthcare and healthcare-related sectors (Greater China)
31/01/2022	Trinity Acquisition Holdings Limited	Astrapto Capital Partners (HK) Limited *(type 9)*	JP Morgan Credit Suisse	Consumer lifestyle (Global with growth potential in China)
31/01/2022	Interra Acquisition Corporation	ABCI Asset Management Limited *(type 9)*	ABCI JP Morgan	Innovative technology, consumer and new retail, advanced manufacturing, healthcare and climate action (Greater China)
14/02/2022	Ace Eight Acquisition Corporation	Forwin Capital Management Limited *(type 9)*	CMBC *(Note)*	Biotechnology and TMT industries (Asia, with a focus on the PRC)
15/02/2022	Vision Deal HK Acquisition Corp.	Opus Capital Limited *(type 6)*	Citigroup Haitong	Smart car technologies or supply chain and cross-border ecommerce (China)

21/02/2022	Vivere Lifesciences Acquisition Corp.	VMS Asset Management Limited *(type 9)*	UBS	Healthcare industry, more specifically, in areas including biotechnology, diagnostics, therapeutic devices, novel platform and healthcare-related technologies, synthetic biology and contract service organisations (China or other global opportunities with a significant China angle)
28/02/2022	HK Acquisition Corporation	Max Giant Limited *(type 9)*	Haitong	Financial services and technology sectors (Greater China)
02/03/2022	Pisces Acquisition Corporation	OCI Asset Management Company Limited *(type 9)*	CMBI	"New economy" sector, e.g. healthcare and life sciences, green energy, new models of consumer and retail, advanced technology, etc. (Asia Pacific, with a focus on Greater China)
15/03/2022	A SPAC (HK) Acquisition Corp.	JVSakk Asset Management Limited *(type 9)*	Haitong	Consumer sector (Asia, esp. Mainland China and Hong Kong)
20/03/2022	Black Spade Asia Acquisition Co	BOCHK Asset Management Limited *(type 9)*	UBS	Entertainment, lifestyle and healthcare industry, with a focus on (i) enabling technology, (ii) brands, products, or services, and (iii) media (Greater China)

(Note: Deacons is advising CMBC in this SPAC listing application.)

Client webinar – Introduction to the SPAC regime

To give an overview of the SPAC regime discussed above, we are hosting a webinar for clients entitled "Introduction to the Hong Kong SPAC regime" on Thursday, 7 April 2022.

In this webinar, our Partners will explain what a SPAC is, discuss the overview of the SPAC lifecycle, its benefits and formation, and share their insights on SPAC listing applications as well as related escrow issues. Further details of the event, and the registration link, are available here.

Update on streamlined requirements for eligible ETFs adopting a master-feeder structure

Pinky Siu and George Ho

On 25 February 2022, the Hong Kong Securities and Futures Commission (**SFC**) published a supplemental circular (**Supplemental Circular**) which further streamlines the requirements for eligible exchange traded funds (**ETFs**) adopting a master-feeder structure.

The streamlined requirements for eligible ETFs adopting a master-feeder structure were first introduced by the SFC in December 2019, as discussed in our earlier article (available here). In essence, provided that certain conditions are met, the SFC will allow an SFC-authorised feeder ETF to invest its assets in an overseas-listed master ETF without the latter obtaining the SFC authorisation.

Before the relaxation in the Supplemental Circular, the overseas-listed master ETF must have a fund size of not less than USD 1 billion and a track record of more than five years at the time of the feeder ETF's listing on the Stock Exchange of Hong Kong (**SEHK**). The SFC is now prepared to relax the fund size and track record requirements for overseas-listed master ETFs. Under the revised requirements announced in the Supplemental Circular, an eligible master ETF must have a fund size of not less than USD 400 million and a track record of more than one year at the time of the feeder ETF's listing on the SEHK.

Notwithstanding the relaxation on the fund size and track record requirements, the following conditions remain unchanged:

(a) the master ETF must be a scheme regulated in a recognised jurisdiction managed by a management company in an acceptable inspection regime or a scheme eligible under a mutual recognition of funds arrangement;

(b) the master ETF, together with its management company and trustee/custodian, must have a good compliance record with the rules and regulations of its home jurisdiction and (in the case of master ETF) the listing venue;

(c) the master ETF must adopt physical replication of the underlying index through either a full replication or a representative sampling strategy; and

(d) the master ETF's engagement in securities financing transactions should not exceed 50% of its total net asset value unless there are comparable safeguards and disclosure.

The relaxation aims to provide greater flexibility to ETF issuers and to offer more investment choices to investors. This would facilitate the growth of Hong Kong ETF market while maintaining an appropriate level of investor protection.

Hong Kong SFC licensing and compliance hints

Jennifer Baccanello

Deadline for the Asset and Wealth Management Activities Survey

According to the SFC's Circular to Licensed Corporations Engaged in Asset and Wealth Management of 25 February 2022, licensed corporations should ensure that their responses to the Asset and Wealth Management Activities Survey are submitted on or before 25 April 2022.

Business continuity planning

In light of the possible Compulsory Universal Testing scheme which may be implemented by the HKSAR Government at some point in the future, now is the time for licensed corporations to review and make any necessary updates to their business continuity planning. In the circular of 7 March 2022, Importance of business continuity planning amidst latest COVID-19 situation, the SFC highlights a range of measures that licensed corporations should consider when reviewing their business continuity plans, such as assessing the impact of temporary staff shortages and reviewing functions performed by service providers, among other measures. Licensed corporations should consult the SFC's dedicated FAQ webpage, Information for firms and the market on COVID-19, for any further updates.

Online arrangements for sitting Papers 1, 2, and 6

Due to current social distancing restrictions, the Hong Kong Securities and Investment Institute has put in place temporary arrangements until 30 April 2022 for individuals who wish to undertake the Licensing Examination for Securities and Futures Intermediaries Papers 1, 2, and 6. In addition, all in-person examinations in Hong Kong have been cancelled during this period. For further details, candidates should consult the full guidelines. Meanwhile, the SFC has allowed an extension period of three calendar months for licensed individuals who are required to pass regulatory examinations (see Q1, Licensing related matters in light of the COVID-19 pandemic (**SFC's COVID-19 FAQ**)).

Extension period for CPT hours

Given that some Continuous Professional Training courses may have become unavailable temporarily or licensed individuals may be unable to attend such training in person, the SFC has allowed for an extension period of three calendar months for all licensed individuals who are required to complete additional CPT hours on or before 31 May 2022 (see Q2, SFC's COVID-19 FAQ).

Flexible submission arrangements for licensed corporations submitting audited accounts

In its circular of 4 March 2022, Submission of financial statements, other documents and auditor's report under section 156(1) of the Securities and Futures Ordinance, the SFC advises that licensed corporations facing difficulty in submitting original copies of audited accounts with wet-ink signatures can first submit a scanned copy by the submission deadline (i.e. within four months after the end of the licensed corporation's financial year), followed by the original copy, as soon as reasonable practicable after the submission deadline (see Q11, SFC's COVID-19 FAQ). "Audited accounts" includes financial statements, other documents and the auditor's report. If licensed corporations anticipate a delay in preparing the audited accounts, an extension can be applied for, and the SFC will consider such applications pragmatically (see Q10, SFC's COVID-19 FAQ).

Recent publications

PRC's 14th Five Year Plan makes plans for the digital economy

Launch of cross-border fintech pilot trial facility

ISDA whitepapers on environmental, social and governance issues

Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022

HKMA consultation on crypto-assets and stablecoins

HKMA publishes report on first climate risk stress test (CRST) of the Hong Kong banking sector

Salaries tax alert: Payment of bonus shares to former employee and per diem for post-employment assistance to former employer held not taxable

HKMA's reminder on the Credit Reference Platform

HKAB publishes guideline on banking services for persons with dementia

Enhanced guidance on sharing of personal data with third parties for direct marketing purposes

HKMA circular on handling of dormant accounts and unclaimed deposits

Remote Workers: Asia Pacific Guide for Employers

Guidance note: Amendments introduced by the Employment (Amendment) Bill

China has designs on Hague but local requirements still important

Unprecedented moment for modern Hong Kong: Things for employers to consider to prepare for the potential lock-down

Want to know more?

Jeremy Lam
Partner
jeremy.lam@deacons.com
+852 2825 9732

Taylor Hui
Partner
taylor.hui@deacons.com
+852 2826 5368

Alwyn Li
Partner
alwyn.li@deacons.com
+852 2825 9627

Su Cheen Chuah
Partner
sucheen.chuah@deacons.com
+852 2825 9651

Fiona Fong
Partner
fiona.fong@deacons.com
+852 2826 5316

Ming Chiu Li
Partner
mingchiu.li@deacons.com
+852 2825 9752

Pinky Siu
Partner
pinky.siu@deacons.com
+852 2825 9568

Joyce Li
Partner
joyce.li@deacons.com
+852 2825 9318

Scott Carnachan
Consultant
scott.carnachan@deacons.com
+852 2825 9265