

# Hong Kong Capital Markets Update

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## HKEX's consultation conclusions on SPAC

### Key Features - SPAC

<b>Investor suitability</b>	The subscription for and trading of a SPAC's securities are <b>restricted to Professional Investors only</b> .
<b>Trading arrangements</b>	<b>Separate trading of SPAC Shares</b> (short names ending with "-Z") and <b>SPAC Warrants</b> (short names ending with "Z Y Y M M" or "Z Y Y", with YY and MM representing expiry year and expiry month respectively).
<b>Open market requirements</b>	A <b>minimum of 75 Professional Investors</b> , of which <b>at least 20 are Institutional Professional Investors</b> and <b>at least 75% of SPAC securities must be distributed to Institutional Professional Investors</b> upon SPAC IPO.
<b>SPAC Share issue price and fund-raising size</b>	The <b>SPAC Share issue price</b> must be <b>HK\$10 or above</b> and the <b>SPAC IPO</b> must <b>raise at least HK\$1 billion</b> .
<b>SPAC Promoters</b>	<b>Must meet suitability and eligibility requirements with at least one Promoter</b> being a firm that holds (i) a <b>SFC Type 6/9 license</b> (waiver may be granted <b>on case-by-case basis</b> ) and (ii) <b>at least 10% of the Promoter Shares</b> .
<b>SPAC Directors</b>	The <b>SPAC board</b> must have <b>at least two directors</b> who are <b>Type 6/9 SFC-licensed individuals</b> (including one director representing the <b>SFC-licensed SPAC Promoter</b> ).
<b>Dilution cap on Promoter Shares &amp; earn-out rights</b>	A <b>cap on issue of Successor Company shares from Promoter Shares &amp; earn-out rights</b> at <b>30% of total number of shares in issue</b> at the SPAC IPO date.
<b>Dilution cap on warrants and minimum exercise price</b>	A <b>cap on warrants in aggregate</b> at <b>50% of the total number of shares in issue</b> at the warrant issue date, with the <b>minimum exercise price set at least a 15% premium</b> to the <b>issue price of SPAC Shares</b> .

### Key Features - De-SPAC Transaction

<b>Full application of New Listing Requirements</b>	The Successor Company must meet all new listing requirements <b>to the same extent as traditional IPO/RTO</b> .	
<b>Size of De-SPAC Target</b>	The <b>fair market value</b> of the De-SPAC Target should be <b>at least 80% of funds raised</b> by the SPAC <b>from the SPAC IPO (prior to any redemption)</b> .	
<b>Mandatory independent PIPE investment</b>	Must be <b>Professional Investors</b> and constitute a <b>minimum percentage of the negotiated value of De-SPAC Target</b> (see table below), of which <b>at least 50% must come from at least three Sophisticated Investors</b> .	
	<b>Negotiated value of De-SPAC Target ("NV")</b>	<b>Minimum independent PIPE investment (as % of NV)</b>
	< HK\$2 billion	25%
	>= HK\$2 billion but < HK\$5 billion	15%
	>= HK\$5 billion but < HK\$7 billion	10%
	>= HK\$7 billion	7.5%
<b>Shareholder vote on De-SPAC Transaction</b>	<b>Must be approved by SPAC shareholders</b> at a general meeting, with <b>SPAC Promoters and shareholders with a material interest in the transaction abstaining from voting</b> .	
<b>Redemption option of SPAC Shares</b>	<b>Must be given to SPAC shareholders</b> in the vote on (i) a material change in SPAC Promoters; (ii) a De-SPAC Transaction; and (iii) extension of completion deadline. <b>No alignment of voting with redemption</b> is required.	
<b>Completion deadline</b>	<b>Must be announced within 24 months</b> and <b>completed within 36 months</b> from the SPAC listing date.	

## Background

On 17 December 2021, the Stock Exchange of Hong Kong Limited (the “Exchange”) published the consultation [conclusions](#) (“Conclusions”) on the proposals to create a listing regime for special purpose acquisition companies (“SPACs”) in Hong Kong.

As a continuing effort to keep Hong Kong a competitive international financial centre and attract Greater China and South East Asia companies to list in Hong Kong that may otherwise choose to list elsewhere via De-SPAC Transactions, the Exchange published a [consultation paper](#) (“Consultation Paper”) on 17 September 2021 seeking market feedback on proposals to create a listing regime for SPAC in Hong Kong (for the summary, please refer to our [Capital Markets Update Issue 2021-06](#)). The consultation period ended on 31 October 2021.

The Exchange concluded that the proposals outlined in the Consultation Paper should be adopted with amendments in response to market comments.

## Key amendments

The key amendments to the original proposals in the Consultation Paper are summarised as follows:

- 1) The minimum number of Institutional Professional Investors<sup>1</sup> upon SPAC IPO is lowered from 30 to 20;
- 2) The issue price of Promoter Warrants cannot be less than 10% of the issue price of SPAC Shares, rather than imposing a minimum threshold referencing their fair value;
- 3) An additional requirement that the minimum exercise price of the SPAC Warrants and Promoter Warrants must be at a price which represents at least a 15% premium to the issue price of the SPAC Shares;
- 4) A new waiver on the SFC licensing requirement of SPAC Promoters in which the Exchange may accept, on a case-by-case basis, a SPAC Promoter with overseas accreditation issued by the relevant regulatory authority that the Exchange considers to be equivalent to a Type 6 and/or Type 9 license issued by the SFC;
- 5) The proposal requiring a majority of directors on the SPAC board to be officers (as defined under SFO) of the SPAC Promoters will not be adopted;
- 6) An additional requirement that a SPAC board must include at least two Type 6 or Type 9 SFC-licensed individuals (one of whom must be a director representing the SFC-licensed SPAC Promoter);
- 7) The accrued interests or other income earned on monies held in the escrow account are allowed to be released for other use as long as it is disclosed in the SPAC’s listing document;
- 8) A new waiver on the restriction of transfer of Promoter Shares and Promoter Warrants in which the Exchange may permit, in exceptional circumstances, the transfer of Promoter Shares or Promoter Warrants between SPAC Promoters of the same SPAC (e.g., the revocation of license of a licensed SPAC Promoter);
- 9) The proposal requiring the SPAC to use a certain proportion of the net funds it raises (i.e. funds raised from its IPO plus PIPE investments, less redemptions) as consideration for a De-SPAC Transaction will not be adopted;
- 10) The minimum percentage of independent PIPE investment of the negotiated value of De-SPAC Target has been revised as set out in the table on page 1 above, replacing the proposed thresholds of 15% - 25% of expected market capitalisation of the Successor Company<sup>2</sup>;
- 11) An additional requirement that all PIPE investors must be Professional Investors<sup>1</sup>;
- 12) An additional requirement that at least 50% of independent PIPE investment must be contributed by at least three Sophisticated Investors<sup>3</sup>;
- 13) The proposals of a warrant-to-share ratio cap and a Promoter Warrant cap will not be adopted,
- 14) The cap on warrants in aggregate to the total number of shares in issue at the warrant issue date is increased from 30% to 50%;
- 15) The performance target of the earn-outs is allowed to be linked to the share price of the Successor Company;

<sup>1</sup> “Professional Investor” refers to an Institutional Professional Investor or a Non-Institutional Professional Investor. “Institutional Professional Investor” refers to investors that fall under paragraphs (a) to (i) of “professional investor” in Section 1 of Part 1 of Schedule 1 to the SFO. “Non-Institutional Professional Investor” refers to investors that fall under paragraphs (j) of “professional investor” in Section 1 of Part 1 of Schedule 1 to the SFO.

<sup>2</sup> “Successor Company” refers to the listed issuer resulting from the completion of a De-SPAC Transaction.

<sup>3</sup> “Sophisticated Investor” is defined as 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. A fund managed by a fund manager that has assets under management of at least HK\$8 billion would also qualify as a Sophisticated Investor for this purpose.

- 16) The proposal prohibiting a SPAC from granting anti-dilution rights to its SPAC Promoters will not be adopted, instead the existing Listing Rules will apply which require anti-dilution rights to terminate upon listing;
- 17) The proposal imposing a voting restriction on the outgoing controlling shareholder will not be adopted, instead the Exchange will apply the same requirement for reverse takeover (“RTO”) in this regard;
- 18) The proposal requiring alignment of voting with redemption will not be adopted;
- 19) The proposal providing exemption from inclusion of accountants’ reports in listing documents will not be adopted; and
- 20) The proposals providing exemptions from issuing a corporate governance (“CG”) report and environmental, social and governance (“ESG”) report will not be adopted.

### **SPAC Guidance Letter**

The Exchange will issue a guidance letter for SPAC (“Guidance Letter”) set out in the Appendix V of the Conclusions to provide further guidance in the following areas:

- A. Suitability of SPAC Promoters;
- B. Listing applications;
- C. Prospectus and disclosure requirements under Hong Kong Companies Ordinance (Cap. 32);
- D. Stock market
- E. Funds in escrow account - meaning of cash equivalent
- F. Financial information and accounting matters;
- G. Sophisticated independent third party investors;
- H. Content of the announcement of De-SPAC transaction;
- I. Fair market value for the purpose of the requirement of the size of De-SPAC Target;
- J. Participation by a SPAC Promoter in a SPAC's initial offering and De-SPAC Transaction;
- K. Forward purchase agreements;
- L. Loans granted by a SPAC Promoter to a SPAC.

### **Effective date**

The amendments to Listing Rules in relation to SPAC and the Guidance Letter will be effective on 1 January 2022.

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 If you have any questions about the matters discussed in this publication, please feel free to contact the following capital markets partners and directors.

#### **Paul Lau**

Partner, Head of Capital Markets/Professional Practice  
 KPMG China  
 +852 2826 8010  
[paul.k.lau@kpmg.com](mailto:paul.k.lau@kpmg.com)

#### **Louis Lau**

Partner, Capital Markets Advisory Group  
 KPMG China  
 +852 2143 8876  
[louis.lau@kpmg.com](mailto:louis.lau@kpmg.com)

#### **Terence Man**

Partner, Capital Markets Advisory Group  
 KPMG China  
 +86 10 8508 5548  
[terence.man@kpmg.com](mailto:terence.man@kpmg.com)

#### **Mike Tang**

Partner, Capital Markets Advisory Group  
 KPMG China  
 +852 2833 1636  
[mike.tang@kpmg.com](mailto:mike.tang@kpmg.com)  
[kpmg.com/cn](http://kpmg.com/cn)

#### **Elton Tam**

Director, Capital Markets Advisory Group  
 KPMG China  
 +852 2978 8188  
[elton.tam@kpmg.com](mailto:elton.tam@kpmg.com)

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