

“SPAC”acular year of 2022: new SPAC listing regime in Hong Kong from 1 January

31 December 2021

Ending the long-awaited anticipation, Hong Kong Exchanges and Clearing Limited (**HKEX**) announced its [consultation conclusions](#) to the new listing regime for special purpose acquisition vehicles (**SPACs**) on 17 December 2021 (**Consultation Conclusions**). Joining major peer markets in the US, UK and Singapore, SPACs will be able to list in Hong Kong from 1 January 2022.

In gist, a SPAC is a cash shell company without any trading or operating history established for raising funds via an initial public offering for the purpose of subsequently conducting a transaction (**De-SPAC Transaction**) for an acquisition of, or a business combination with, a target business (**De-SPAC Target**) within a pre-defined time period after the SPAC’s listing.

HKEX published its [consultation paper](#) introducing the proposal of a SPAC listing regime on 17 September 2021 (**Consultation Paper**), followed by a 45-day consultation period during which market feedback was sought. In its Consultation Conclusions, HKEX introduced new Chapter 18B of the Listing Rules on SPACs (see Appendix IV of the Consultation Conclusions) effective on 1 January 2022.

New Listing Framework for SPACs

A summary of the new listing framework for SPACs is as follows:

1. Conditions for Listing

Requirement	Details
Investor Suitability	<ul style="list-style-type: none"> The subscription and trading of SPAC securities is limited to professional investors only and shall not be marketed to or traded by the public in Hong Kong.
Open Market Requirements	<ul style="list-style-type: none"> At the time of listing, there must be an adequate spread of holders of the SPAC securities to be listed. A SPAC must distribute each of SPAC Shares (i.e. the SPAC’s shares which are not promoter shares) (SPAC Shares) and SPAC Warrants (i.e. the SPAC’s warrants which are not promoter warrants) (SPAC Warrants) to a minimum of 75 professional investors, 20 of which must be institutional professional investors. The 20 institutional professional investors must hold at least 75% of the securities to be listed.
Trading Arrangements	<ul style="list-style-type: none"> The separate trading of SPAC Shares and SPAC Warrants from the date of the initial listing to a De-SPAC Transaction is allowed. Both the automatching of orders with HKEX’s volatility control

	mechanism and manual trades will be conducted for SPAC securities to mitigate the risk of volatility in SPAC securities.
SPAC Share Issue Price	<ul style="list-style-type: none"> The issue price of SPAC Shares must be HK\$10 or above.
SPAC Fund Raising Size	<ul style="list-style-type: none"> At the time of listing, the gross funds raised by a SPAC from its initial offering must be at least HK\$1 billion.
Warrants	<ul style="list-style-type: none"> The existing requirements relating to warrants shall apply to SPAC Warrants and promoter warrants with minor modifications in respect of HKEX's approval, expiry of the exercise period, disclosure of material terms, and alteration of terms. Promoter warrants and SPAC Warrants shall be exercisable only after the completion of a De-SPAC Transaction. SPACs are prohibited from issuing promoter warrants at less than 10% of the issue price of SPAC Shares per promoter warrant. Promoter warrants which entitle the holder to receive more than one share in the listed issuer resulting from the completion of a De-SPAC Transaction (Successor Company) upon its exercise is prohibited to prevent the circumvention of the issue price restriction. The minimum exercise price of the SPAC Warrants and promoter warrants must be at a price which represents at least 15% premium to the issue price of the SPAC Shares.

2. SPAC Promoters and SPAC Directors

Requirement	Details
SPAC Promoters	<ul style="list-style-type: none"> HKEX must be satisfied as to the character, experience, and integrity of each person who establishes a SPAC and/or beneficially owns promoter shares issued by a SPAC (SPAC Promoter) by adopting a holistic approach in determining the suitability and eligibility of a SPAC Promoter. At least one SPAC Promoter must be a firm which holds: (i) a Type 6 (advising on corporate finance) and/or Type 9 (asset management) licence from the Securities and Futures Commission (SFC), and (ii) at least 10% of the promoter shares. For SPAC Promoters who have substantial overseas SPAC experience and the equivalent overseas accreditation but are not licensed by SFC, HKEX may consider a waiver on such SFC licensing requirement.
Material change in SPAC Promoters	<ul style="list-style-type: none"> Upon a material change in the SPAC Promoter or the suitability and/or eligibility of a SPAC Promoter: (a) it must be approved by a special resolution of shareholders; (b) holders of SPAC Shares must be given the opportunity to elect to redeem their SPAC Shares; and (c) if a SPAC fails to obtain the requisite shareholder approval within one month of the material change, HKEX could suspend the trading of the SPAC's securities and the SPAC must, within one month of

	<p>such suspension, return all the funds it raised from its initial offering to its shareholders, followed by liquidation and cancellation of the listing of the SPAC.</p> <ul style="list-style-type: none"> The continuation of the SPAC following a material change in SPAC Promoters is also subject to HKEX's approval, in addition to shareholders' approval.
SPAC Directors	<ul style="list-style-type: none"> The SPAC's board must have at least two Type 6 or Type 9 SFC-licensed individuals (including one director representing the licensed SPAC Promoter).

3. Continuing Obligations

Requirement	Details
Funds Held in Escrow	<ul style="list-style-type: none"> 100% of the gross proceeds of a SPAC's initial offering must be held in a ring-fenced escrow account located in Hong Kong, operated by a qualified trustee or custodian under Chapter 4 of the Code on Unit Trusts and Mutual Funds administered by SFC, and in the form of cash or cash equivalents. Monies held in the escrow account must not be released other than for the purposes of: (i) meeting redemption requests of the SPAC shareholders; (ii) complete a De-SPAC Transaction; or (iii) return funds to SPAC shareholders upon the suspension, liquidation or winding up of the SPAC.
Promoter Shares and Promoter Warrants	<ul style="list-style-type: none"> Promoters shares and promoter warrants must be beneficially owned by the SPAC Promoter. Such beneficial ownership must not be transferred to another person, unless in exceptional circumstances where HKEX allows for a waiver of the requirement to permit the transfer of promoter shares or promoter warrants between SPAC Promoters of the same SPAC (such as where there is a revocation of license of a licensed SPAC Promoter).
Trading Halts and Suspensions	<ul style="list-style-type: none"> Existing trading halt and suspension policy will apply to SPACs.

4. De-SPAC Transaction Requirements

Requirement	Details
Application of New Listing Requirements	<ul style="list-style-type: none"> HKEX will consider a De-SPAC Transaction in a similar way as a reverse takeover which will be considered as a deemed new listing. As such, the Successor Company is required to meet all new listing requirements (including minimum market capitalisation requirements, financial eligibility tests, IPO sponsor appointment requirements, due diligence requirements and documentary requirements).

<p>Eligibility of De-SPAC Targets</p>	<ul style="list-style-type: none"> Investment companies (as defined by Chapter 21 of the Listing Rules) should not be eligible De-SPAC Targets. 										
<p>Size of De-SPAC Target</p>	<ul style="list-style-type: none"> A De-SPAC Target must have a fair market value of at least 80% of funds raised by the SPAC from its initial offering (prior to any redemptions). HKEX expects confirmation from the SPAC’s board of directors on satisfaction of this requirement. Differing from its proposal under its Consultation Paper, there will not be any criteria imposed requiring a SPAC to use a certain proportion of the net funds it raised as consideration for the De-SPAC Transaction. To prevent the listing of Successor Companies which HKEX believes to be a “cash company”, HKEX will continue to apply existing rules to consider whether it is suitable for listing. 										
<p>Independent Third Party Investment</p>	<ul style="list-style-type: none"> A SPAC must obtain funds from outside independent third party (or PIPE, meaning Private Investments in Public Equity in a US context) investors for the purpose of completing a De-SPAC Transaction. In terms of the size of the investment from the independent PIPE investors, HKEX will adopt staggered thresholds relative to the negotiated value of a De-SPAC Target as follows: <table border="1" data-bbox="512 972 1401 1290"> <thead> <tr> <th data-bbox="512 972 919 1128">Negotiated value of the De-SPAC Target (in HK\$ billion)</th> <th data-bbox="919 972 1401 1128">Minimum independent PIPE investment as a percentage of the negotiated value of the De-SPAC Target</th> </tr> </thead> <tbody> <tr> <td data-bbox="512 1128 919 1169" style="text-align: center;">< 2</td> <td data-bbox="919 1128 1401 1169" style="text-align: center;">25%</td> </tr> <tr> <td data-bbox="512 1169 919 1209" style="text-align: center;">2 – 5</td> <td data-bbox="919 1169 1401 1209" style="text-align: center;">15%</td> </tr> <tr> <td data-bbox="512 1209 919 1249" style="text-align: center;">5 – 7</td> <td data-bbox="919 1209 1401 1249" style="text-align: center;">10%</td> </tr> <tr> <td data-bbox="512 1249 919 1290" style="text-align: center;">≥ 7</td> <td data-bbox="919 1249 1401 1290" style="text-align: center;">7.5%</td> </tr> </tbody> </table> As for the minimum investment by significant independent PIPE investor, at least 50% of the independent PIPE investment must come from at least three institutional investors with assets under management of at least HK\$8 billion. In determining the independence of such PIPE investors, the same criteria applicable to an independent financial advisor shall apply. 	Negotiated value of the De-SPAC Target (in HK\$ billion)	Minimum independent PIPE investment as a percentage of the negotiated value of the De-SPAC Target	< 2	25%	2 – 5	15%	5 – 7	10%	≥ 7	7.5%
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<p>Dilution Cap</p>	<ul style="list-style-type: none"> A SPAC is prohibited from issuing promoter shares to SPAC Promoters that represent more than 20% of the total number of shares that the SPAC has in issue as at the date of its listing. If the SPAC Promoter is entitled to receive earn out rights after completion of the De-SPAC Transaction, the total number of ordinary shares of the Successor Company to be issued under (i) such earn-out rights and (ii) all promoter shares must, altogether, represent an amount not more than 30% of the total number of shares that the SPAC had in issue as at the date of its listing. SPACs must not issue warrants (including SPAC Warrants and promoter warrants), in aggregate, that, if exercised, would result in more than 50% of the number of shares in issue at the time such warrants are issued. 										

	<ul style="list-style-type: none"> • There will also be no separate cap on the warrant to share ratio and on promoter warrants.
<p>Shareholder Vote on De-SPAC Transactions</p>	<ul style="list-style-type: none"> • A De-SPAC Transaction must be approved by the SPAC’s shareholders at a general meeting. No written shareholders’ approval in lieu of a general meeting will suffice. • Shareholders and their close associates with a material interest in the transaction must abstain from voting at the relevant general meeting. • SPAC Promoters and their respective close associates will be regarded by HKEX as having a material interest in the transaction and must abstain from voting.
<p>De-SPAC Transactions Involving Connected De-SPAC Targets</p>	<ul style="list-style-type: none"> • The general rules on connected transaction under Chapter 14A of the Listing Rules would apply to De-SPAC Transactions. For the purposes of the connected transactions rules, the definition of “connected person” would include a SPAC Promoter, the SPAC’s directors and an associate of any of these parties. A SPAC’s trustee or custodian, however, would not be considered as a connected person for sole reason of acting as a SPAC’s trustee or custodian. • In addition, a SPAC must also demonstrate that there is minimal conflicts of interest in the proposed transaction, show that the transaction would be on an arm’s length basis and include an independent valuation in its listing document.
<p>Alignment of Voting with Redemption</p>	<ul style="list-style-type: none"> • There is no requirement to link the redemption of SPAC Shares and the shareholder’s vote casted against a De-SPAC Transaction. This requirement has been relaxed by HKEX and has been replaced by the strengthening of requirements on independent PIPE investment to provide a more meaningful check on the terms and valuation of the De-SPAC Transaction.
<p>Share Redemptions</p>	<ul style="list-style-type: none"> • SPAC must provide for a redemption option to its SPAC shareholders prior to a general meeting to approve any of the following matters (i) the continuation of the SPAC following a material change; (ii) a De-SPAC Transaction; or (iii) the extension of deadline for the publication of announcement or completion of a De-SPAC Transaction, under which shareholders who elect to redeem should receive no less than the IPO price per share, which is to be paid out of monies held in the escrow account. • A SPAC shareholder must be able to redeem part or all of the SPAC Shares (irrespective of their vote casted on the De-SPAC Transaction).
<p>Forward Looking Information</p>	<ul style="list-style-type: none"> • Existing requirements which are applicable for an IPO shall apply to forward-looking statements in the listing document of a De-SPAC Transaction. This should include a confirmation from the sponsor that they are satisfied that the profit forecast has been made by the directors upon due and careful enquiry and the accountant’s

	confirmation as to the accounting policies and calculations, amongst other requirements.
Open Market in Successor Company's Shares	<ul style="list-style-type: none"> • A Successor Company must ensure that there is an adequate spread of holders of its shares of at least 100 shareholders. Such threshold is lower than the 300 shareholder requirement normally required of new listings, as a typical De-SPAC Transaction does not include a public offer.
Lock-up Periods	<ul style="list-style-type: none"> • A lock-up period of 12 months will apply to SPAC Promoters following the completion of the De-SPAC Transaction, and promoter warrants should not be exercisable during this period of 12 months. • Controlling shareholders of a Successor Company will also be subject to a restriction on the disposal of their shareholding in the Successor Company. A controlling shareholder shall not dispose of its shares in the first six months post-listing, or dispose of its shares in the second six months following the listing of the Successor Company if it would result in them ceasing to be a controlling shareholder of the Successor Company.

5. De-listing Conditions

Requirement	Details
Deadlines	<ul style="list-style-type: none"> • A SPAC must publish a De-SPAC announcement within 24 months of its listing date, and shall complete the De-SPAC Transaction within 36 months of the date of the listing of the SPAC. Failure to meet either of the deadlines above may result in a suspension of the SPAC's listing. • Where an extension of time is required, the SPAC may make a request to HKEX for such extension, provided that it has obtained shareholders' approval by ordinary resolution at a general meeting.
Liquidation and De-Listing	<ul style="list-style-type: none"> • If a SPAC fails to announce or complete the De-SPAC Transaction within the deadlines as stipulated above, or if it fails to obtain shareholders' approval for a material change in SPAC Promoters within one month of the material change, the SPAC's securities could be suspended from trading by HKEX. • In the event of such suspension, the SPAC must return 100% of the funds raised at its initial offering (including any accrued interest) to SPAC shareholders on a pro rata basis (excluding holders of promoter shares) within one month of suspension. Upon the return of funds, HKEX will cancel the SPAC's listing status.

6. Application of the Takeovers Code

Requirement	Details
Prior to Completion of De-SPAC Transaction	<ul style="list-style-type: none"> The Hong Kong Code on Takeovers and Mergers (Takeovers Code) will apply in general prior to the completion of a De-SPAC Transaction to regulate any offers and ensure an orderly market.
De-SPAC Transaction	<ul style="list-style-type: none"> Rule 26.1 of the Takeovers Code would normally be waived in relation to a De-SPAC Transaction, which completion would otherwise trigger the application of Rule 26.1 as the owner of the De-SPAC target would obtain 30% or more of the voting rights of the Successor Company. Such waiver does not automatically apply, and would be considered by the SFC Takeovers Executive by way of a waiver application. Further details relating to the application process of such waiver in relation to the De-SPAC Transactions can be found in the new Practice Note 23 of the Takeovers Code, which shall come into effect on 1 January 2022 together with the new SPAC listing regime.

Guidance Letter on SPACs

In addition to the introduction of Chapter 18B of the Listing Rules by HKEX and Practice Note 23 of the Takeovers Code by the SFC, HKEX will also issue a guidance letter on the listing of SPACs (see Appendix V of the Consultation Conclusions) effective on 1 January 2022, which provides guidance on the suitability of SPAC Promoters, listing applications, prospectus and disclosure requirements for the listing of SPACs and De-SPAC Transactions, funds in escrow and other related matters.

Key Differences – Consultation Paper proposals vs. Requirements to be implemented

The key differences between the proposals under the Consultation Paper and the requirements to be implemented are summarised below:

	Consultation Paper proposals	Requirements to be implemented
Open Market Requirement at Initial Listing	<ul style="list-style-type: none"> A SPAC's securities must be distributed to a minimum of 30 institutional professional investors. 	<ul style="list-style-type: none"> Proposal adopted, but the minimum number of institutional professional investors required is reduced to 20.
SPAC Directors	<ul style="list-style-type: none"> The majority of a SPAC's board must be composed of officers of the SPAC Promoters (both licensed and non-licensed) representing the respective 	<ul style="list-style-type: none"> Replaced by a requirement for a SPAC's board to have at least two Type 6 or Type 9 SFC-licensed individuals (including one director representing the licensed SPAC Promoter).

<p>Alignment of Voting with Redemption</p>	<p>SPAC Promoters who nominate them.</p> <ul style="list-style-type: none"> • SPAC shareholders must only be able to redeem SPAC Shares if they vote against a De-SPAC Transaction. 	<ul style="list-style-type: none"> • Proposals replaced with strengthened requirements on independent PIPE investment to provide a stronger regulatory check on the terms and valuation of the De-SPAC Transaction (see below). 										
<p>Mandatory Independent PIPE Investment</p>	<ul style="list-style-type: none"> • <u>Size of independent PIPE investment</u>: Independent PIPE investment must constitute at least 25% of the expected market capitalisation of a Successor Company, or 15% to 25% in the case of successor companies with an expected market capitalisation of over HK\$1.5 billion. • <u>Significant sophisticated investment</u>: At least one independent PIPE investor must be an asset management firm or fund with assets under management of at least HK\$1 billion, and the independent PIPE investment must result in this investor beneficially owning at least 5% of the issued shares of the Successor Company as at the date of the Successor Company's listing. 	<ul style="list-style-type: none"> • <u>Size of independent PIPE investment</u>: Replaced by staggered independent PIPE investment size thresholds relative to the negotiated value of a De-SPAC Target: <table border="1" data-bbox="986 842 1407 1236"> <thead> <tr> <th>Negotiated value of the De-SPAC Target (in HK\$ billion)</th> <th>Minimum independent PIPE investment as a percentage of the negotiated value of the De-SPAC Target</th> </tr> </thead> <tbody> <tr> <td>< 2</td> <td>25%</td> </tr> <tr> <td>2 - 5</td> <td>15%</td> </tr> <tr> <td>5 - 7</td> <td>10%</td> </tr> <tr> <td>≥ 7</td> <td>7.5%</td> </tr> </tbody> </table> • <u>Significant sophisticated investment</u>: Replaced by a requirement that at least 50% of the independent PIPE investment must come from at least three institutional investors each with assets under management of at least HK\$8 billion. 	Negotiated value of the De-SPAC Target (in HK\$ billion)	Minimum independent PIPE investment as a percentage of the negotiated value of the De-SPAC Target	< 2	25%	2 - 5	15%	5 - 7	10%	≥ 7	7.5%
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<p>Dilution Cap on Warrants</p>	<ul style="list-style-type: none"> • SPACs must not issue warrants (including SPAC Warrants and promoter warrants), in aggregate, that, if exercised, would result in more than 30% of the number of shares in issue at the time such warrants are issued (Overall Warrant Cap). 	<ul style="list-style-type: none"> • Overall Warrant Cap is increased to 50%; prominent disclosure on the dilutive effect of all warrants is required; no separate cap is set on the warrant to share ratio and on promoter warrants. 										

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