

SPACs on the rise in Asia

There is significant interest in launching special purpose acquisition companies' (SPACs) IPO transactions from mainland China, Hong Kong, Singapore, North and Southeast Asia-based financial institutions, investment banks, private equity and venture capital funds, corporate finance firms, asset management firms, promoters and private investors.

To date, the NYSE and Nasdaq are the stock exchanges where most of the SPAC IPOs have been launched. Global SPAC promoters, including Asia-based ones, have sought market exposure and access to the immense US investor pool of capital on such exchanges, particularly the US and the global institutional and high net worth investor pool.

Following the implementation of a new regime to permit the listing of SPACs on the Singapore Stock Exchange (SGX), and with SPAC listings also soon to be possible on the Stock Exchange of Hong Kong (SEHK), there are now some further compelling options for Asia-based SPAC promoters and investors.

Singapore SPACs now available

On 3 September 2021, the SGX amended its listing rules to permit SPAC IPOs. This exciting development has been positively received by the market. The author has received a number of enquiries from current and prospective clients keen to explore the potential for listing a SPAC on the SGX using a Cayman Islands exempted company as the SPAC issuer.

Cayman Islands exempted companies continue to be a powerful tool providing Singaporean and Asia-based SPAC promoters with the right corporate and governance framework to attract and maintain investor funding, incentivise management, and promote the objectives of key stakeholders. The use of a Cayman Islands exempted company provides the right structure for the SPAC to be in a position to consummate a business combination following its IPO on the SGX, once the board of the SPAC has identified a prospective target for it to acquire or merge with, commonly known as the de-SPAC.

For a SPAC to be listed on the SGX under its SPAC framework, the SGX has stated that the SPAC must have these key features:

- The SPAC must have a minimum market capitalisation of SGD150 million (USD110 million).
- The business combination or de-SPAC transaction must take place within 24 months of the SPAC's IPO, with an extension of up to 12 months subject to fulfilment of prescribed conditions.
- There is a moratorium on the trading of sponsors' shares from IPO to de-SPAC, a six-month moratorium after de-SPAC and, for applicable resulting issuers, a further six-month moratorium on 50% of shareholdings.
- Sponsors must subscribe to at least 2.5-3.5% of the IPO shares or units or warrants, depending on the market capitalisation of the SPAC.

- A business combination or de-SPAC transaction can proceed if more than 50% of independent directors approve the transaction and more than 50% of shareholders vote in support of the de-SPAC transaction.
- Warrants issued to shareholders will be detachable, and the maximum percentage dilution to shareholders arising from the conversion of warrants issued at the SPAC's IPO is capped at 50%.
- All independent shareholders are entitled to redemption rights.
- There is a sponsor promote limit of up to 20% of issued shares at the SPAC's IPO.

Further information on the SGX's new rules are set out in its response paper on proposed listing framework for SPACs.

In terms of the procedure, the SPAC may be incorporated quickly, with the relevant documents returned from the Cayman Islands registrar of companies in as little as 24 hours. The SPAC is incorporated in the same way as any other Cayman Islands exempted company, although with a SGX listing rule-compliant SPAC-specific memorandum and articles of association (M&A) incorporating certain SPAC provisions, including provisions regulating the SPAC's entry into a prospective business combination (de-SPAC). The M&A will govern the SPAC's operations for its lifespan (generally two years unless otherwise extended, such as for a further 12 months to facilitate a de-SPAC) until the SPAC identifies and consummates a de-SPAC transaction.

In the event it does not do so within the prescribed lifespan, or if it identifies a de-SPAC deal that is not approved by the requisite majority of investors, then the SPAC will be liquidated and dissolved, and the subscription funds returned to investors who would have their shares redeemed, minus certain expenses associated with the SPAC's IPO and the SPAC's maintenance (if this occurs, then the sponsor or founders will lose their capital on liquidation). The shareholders of a SPAC will be entitled to redeem their shares and receive the return of their funds under a de-SPAC, even if they vote for the de-SPAC to occur.

Hong Kong SPACs on the way

SPAC developments in Hong Kong are also very positive. The SEHK on 17 September 2021 published a consultation paper seeking market feedback on proposals to create a listing framework for SPACs in Hong Kong. The SEHK sought market feedback on its SPAC proposals and the proposed listing rules to implement them by the prescribed deadline of 31 October 2021.

The SEHK has indicated a number of key proposals in the consultation paper for which market feedback was sought. These included, but were not limited to:

Pre de-SPAC transaction proposals:

- The subscription for and trading of a SPAC's securities would be restricted to professional investors only, with a minimum threshold specified for the distribution of SPAC shares and warrants. This restriction would not apply to the trading of the successor company (being the listed issuer following the completion of a business combination or de-SPAC transaction) shares post the business combination or de-SPAC transaction. Notably, this requirement is different to the approach taken by other exchanges in the US, SGX and in Europe (Euronext), where retail investors are permitted to invest in SPACs.
- SPAC promoters must meet suitability and eligibility requirements, and each SPAC must have at least one SPAC promoter, which is a Hong Kong Securities and Futures Commission (SFC) licensed firm, being firms with a type 6 (advising on corporate finance) and/or a type 9 (asset management) licence issued by the SFC, and holding at least 10% of the promoter (sponsor) shares.

- Promoter (sponsor) shares are proposed to be capped at a maximum of 30% of the total number of all shares in issue as at the initial offering date, and a similar 30% cap on dilution from the exercise of warrants is also proposed.
- The funds expected to be raised by a SPAC from its initial offering must be at least HKD1 billion (USD128 million).

De-SPAC transaction proposals:

- A successor company must meet all new listing requirements, including minimum market capitalisation requirements and financial eligibility tests.
- Independent third-party investment would be mandatory and, subject to certain criteria, must constitute between 15-25% of the expected market capitalisation of the successor company, essentially supporting the ultimate valuation of the successor company.
- A de-SPAC transaction must be approved by SPAC shareholders at a general meeting, which would exclude the SPAC promoter and other shareholders with a material interest.
- SPAC shareholders must be given the option to redeem their shares prior to a de-SPAC transaction, a change in SPAC promoter, and any extension to the deadline for finding a suitable de-SPAC target. Interestingly, the SEHK has proposed that shareholders may only redeem if they vote against one of these matters, which is again a departure from the approach seen in other jurisdictions such as the US, where shareholders may vote for one of these matters and still request a redemption of their shares.

Liquidation and de-listing:

- If a SPAC is unable to announce a business combination or de-SPAC transaction within 24 months, or complete one within 36 months, the SPAC must liquidate and return 100% of the funds it raised (plus accrued interest) to its shareholders, following which the SPAC will be delisted.

It is widely anticipated that, following the consultation period and the finalisation of its position on the key proposals described, the SEHK will implement its new SPAC regime to permit Hong Kong SPACs to be listed sometime in late 2021 or early 2022.

With a significant proportion of Cayman Islands companies listed on the SEHK and representing more than 54% of all the companies listed on the main board of the SEHK as at the end of 2020, the author expects that Cayman Islands exempted companies will continue to be the SPAC issuer vehicle of choice for Hong Kong SPAC IPOs.

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