



Consultation on Special Purpose Acquisition Companies

The Law Society's Submissions

The Stock Exchange of Hong Kong Limited (the "Exchange") issued a consultation paper on "Special Purpose Acquisition Companies" on 17 September 2021 ("Consultation Paper").

In response, the Law Society provides the following submissions on the questions posed. The same abbreviations and definitions appearing in the Consultation Paper are used in this paper.

Question 1 Do you agree that the subscription and trading of SPAC securities prior to a De-SPAC Transaction should be limited to Professional Investors only (see paragraph 149 of the Consultation Paper)?

Please give reasons for your views.

Law Society's response:

We agree, in principle, that subscription and trading of SPAC securities prior to a De-SPAC transaction should be limited to professional investors. SPACs is a more complex investment and professional investors are in a better position to assess the potential value and return prospects of a De-SPAC target. As a SPAC has no operation, its share price will largely be driven by speculation and possible rumours about acquisition of potential De-SPAC targets. Returns for investors in SPACs in the US have varied significantly. Professional investors are better placed to consider the unique characteristics and risks associated with an investment in SPACs.

It is noted that neither the US, the UK nor Singapore have restricted the trading of the SPAC securities prior to a De-SPAC Transaction to professional investors (paragraph 143 of the Consultation Paper).

If trading of the SPAC securities prior to a De-SPAC Transaction is going to be limited to professional investors, there should be (as is currently proposed in paragraph 149 of the Consultation Paper) no restriction on the type of professional investors and the wider definition of professional investor under the Securities and Futures (Professional Investor) Rules should be adopted.

Question 2 If your answer to Question 1 is “Yes”, do you agree with the measures proposed in paragraphs 151 to 159 of the Consultation Paper to ensure SPAC’s securities are not marketed to and traded by the public in Hong Kong (excluding Professional Investors)?

Please give reasons for your views.

Law Society’s response:

Subject to the following, we agree with these measures which are desirable to ensure that SPAC’s securities are not marketed to retail investors and at the same time these measures are not unduly onerous on the SPAC Exchange Participants:

- (a) given that only professional investors can trade these securities, the Exchange may consider lowering the board lot size to encourage wider participation and a more open market; and
- (b) the mandatory unwinding order in paragraph 158 has the unintended consequence of penalising the ineligible investor. Extending the period of time for a settled position to be liquidated seems desirable.

Question 3 Do you consider it appropriate for SPAC Shares and SPAC Warrants to be permitted to trade separately from the date of initial listing to a De-SPAC Transaction? If not, do you have any alternative suggestions?

Please give reasons for your views.

Law Society’s response:

We agree that separate trading of SPAC Shares and SPAC Warrants should be permitted. Separate trading will enhance liquidity and the attractiveness of the SPAC regime. While the trading of SPAC Warrants may give rise to volatility, the professional investor-only restriction will mitigate any downside risks.

Question 4 If your answer to Question 3 is “Yes”, would either Option 1 (as set out in paragraph 170 of the Consultation Paper) or Option 2 as set out in paragraph 171 to 174 of the Consultation Paper) be adequate to mitigate the risks of extraordinary volatility in SPAC Warrants and a disorderly market? Do you have any other suggestions to address the risks regarding trading arrangements we set out in the Consultation Paper?

Please give reasons for your views. Please provide further technical details if you suggest a different option.

Law Society’s response:

Option 2 is to be preferred for it allows greater flexibility.

Question 5 Do you agree that, at its initial offering, a SPAC must distribute each of SPAC Shares and SPAC Warrants to a minimum of 75 Professional Investors in total (of either type) of which 30 must be Institutional Professional Investors?

Please give reasons for your views.

Law Society’s response:

The minimum number of 75 Professional Investors holding at least 25% of the securities marketed is a suitable balance between promotion of orderly trading and a distribution arrangement not unduly onerous on the SPAC regime. There shall be further discussion with investment bankers on whether the requirement of a minimum number of 30 Institutional Professional Investors is overly restrictive. If the professional investor restrictions are going to be imposed on the distribution of SPAC Shares and SPAC Warrants, further restrictions on the type of professional investors seem undesirable.

Question 6 Do you agree that, at its initial offering, a SPAC must distribute at least 75% of each SPAC Shares and SPAC Warrants to Institutional Professional Investors?

Please give reasons for your views.

Law Society’s response:

Yes, please also refer to our reply to Question 5.

Question 7 Do you agree that not more than 50% of the securities in public hands at the time of a SPAC's listing should be beneficially owned by the three largest public shareholders?

Please give reasons for your views.

Law Society's response:

Yes, please also refer to our reply to Question 5.

Question 8 Do you agree that at least 25% of the SPAC's total number of issued shares and at least 25% of the SPAC's total number of issued warrants must be held by the public at listing and on an ongoing basis?

Please give reasons for your views.

Law Society's response:

Yes, this is in line with Listing Rule 8.08(1). We also note the proposal at paragraph 182(b) of the Consultation Paper that the Exchange be given a discretion to accept a lower percentage of between 15% and 25% for SPACs with an expected market capitalisation at the time of listing of over HK\$10 billion.

Question 9 Do you agree that the shareholder distribution proposals set out in paragraphs 181 and 182 of the Consultation Paper will provide sufficient liquidity to ensure an open market in the securities of a SPAC prior to completion of a De-SPAC Transaction or are there other measures that the Exchange should use to help ensure an open and liquid market in SPAC securities?

Please give reasons for your views.

Law Society's response:

Yes, the proposals set out in paragraph 182 of the Consultation Paper are the same as the current Listing Rules 8.08(3) and 8.08(1), respectively and therefore we agree with the proposals at paragraph 182 of the Consultation Paper.

The Exchange may also consider lowering the size of each board lot to say, HK\$500,000 and increasing the minimum number of Professional Investors to promote liquidity.

Question 10 Do you agree that, due to the imposition of restricted marketing, a SPAC should not have to meet the requirements set out in paragraph 184 of the Consultation Paper regarding public interest, transferability (save for transferability between Professional Investors) and allocation to the public?

Please give reasons for your views.

Law Society's response:

Yes, the consequential exemptions are necessary given the unique features of SPACs.

Question 11 Do you agree that SPACs should be required to issue their SPAC Shares at an issue price of HK\$10 or above?

Please give reasons for your views.

Law Society's response:

Yes, this seems appropriate for Hong Kong's Professional Investors-only regime.

Question 12 Do you agree that the funds expected to be raised by a SPAC from its initial offering must be at least HK\$1 billion?

Please give reasons for your views.

Law Society's response:

In view of the proliferation of SPACs in various jurisdictions, there will be increasing competition for SPACs to find suitable De-SPAC targets. It is stated in paragraph 194 of the Consultation Paper that of the 12 Greater China and South East Asian companies involved in a De-SPAC transaction in the US, only four raised HK\$1 billion or above. It seems appropriate for the Exchange to lower the initial offering size of a SPAC to provide investors with more investment opportunities in light of the relative size of De-SPAC targets in the Asian context. At the same time, the SPAC regime allows listing applicant to take a dual track approach to listing. If the average De-SPAC transaction value can be lower, there will be increased business combination opportunities for a more diverse number of listing applicants thus helping to promote the success of the SPACs regime in Hong Kong. In this connection, it is noted that Chapter 8 of the Listing Rules only requires an initial market capitalisation of not less than HK\$500 million.

Question 13 Do you agree with the application of existing requirements relating to warrants with the proposed modifications set out in paragraph 202 of the Consultation Paper?

Please give reasons for your views.

Law Society's response:

Yes, the Exchange should retain its existing right to approve the issue and the terms of all SPAC Warrants.

We wish to highlight that where the terms of a SPAC Warrant or a Promoter Warrant are altered in accordance with the terms of the relevant warrant, these changes should not require the approval of the Exchange. This is consistent with Listing Rule 15.06 and is the current position under the paragraph 202 (d) of the Consultation Paper.

Where a warrant is not listed, any change to the terms of the warrant should not need to be approved by the HKEX.

Question 14 Do you agree that Promoter Warrants and SPAC Warrants should be exercisable only after the completion of a De-SPAC Transaction?

Please give reasons for your views.

Law Society's response:

Yes, this offers better protection to investors in SPACs.

Question 15 Do you agree that a SPAC must not issue Promoter Warrants at less than fair value and must not issue Promoter Warrants that contain more favourable terms than that of SPAC Warrants?

Please give reasons for your views.

Law Society's response:

We agree that Promoter Warrants should not be issued at less than fair value. Promoter Warrants are usually used as part of an incentive package offered to SPAC Promoters. Allowing Promoter Warrants to contain more favourable terms than SPAC Warrants will

provide greater market flexibility provided that there are restrictions on transfer and a suitable cap on the number of Promoter Warrants issued.

Question 16 Do you agree that the Exchange must be satisfied as to the character, experience and integrity of a SPAC Promoter and that each SPAC Promoter should be capable of meeting a standard of competence commensurate with their position?

Please give reasons for your views.

Law Society's response:

Yes, while this helps to promote more robust and credible management standards for SPACs, some flexibility should be allowed. There are concerns that the current proposals set out in paragraph 217 of the Consultation Paper may exclude a large part of the Hong Kong market apart from the 'bulge bracket investment banks'.

Question 17 Do you agree that the Exchange should publish guidance setting out the information that a SPAC should provide to the Exchange on each of its SPAC Promoter's character, experience and integrity (and disclose this information in the Listing Document it publishes for its initial offering), including the information set out in Box 1 of the Consultation Paper, or is there additional information that should be provided or information that should not be required regarding each SPAC Promoter's character, experience and integrity?

Please give reasons for your views.

Law Society's response:

Please see our comments on question 16. For clarity, we highlight that sufficient disclosure in the Listing Document in respect of a Promoter's experience, suitability and their background will be sufficient. There are adequate safeguards to protect the investors and to ensure an orderly market and therefore care should be taken not to narrow the field of potential Promoters to the extent that the Hong Kong local market is excluded.

Question 18 Do you agree that the Exchange, for the purpose of determining the suitability of a SPAC Promoter, should view favourably those that meet the criteria set out in paragraph 216 of the Consultation Paper?

Please give reasons for your views.

Law Society's response:

Please refer to our responses in question 16 and 17 above.

Question 19 Do you agree that at least one SPAC Promoter must be a firm that holds: (i) a Type 6 (advising on corporate finance) and/or a Type 9 (asset management) license issued by the SFC; and (ii) at least 10% of the Promoter Shares?

Please give reasons for your views.

Law Society's response:

While a licensed firm helps to ensure the quality of SPAC Promoters, there are some concerns that this may be too restrictive. It is also noted that in the US, the UK and Singapore, there is no requirement that SPAC Promoters or SPAC Directors have specific qualifications or licenses.

The 10% minimum shareholding requirement is considered appropriate for it helps to align the interests of the Promoters with the Professional Investors.

Question 20 Do you agree that, in the event of a material change in the SPAC Promoter or the suitability and/or eligibility of a SPAC Promoter, such a material change must be approved by a special resolution of shareholders at a general meeting (on which the SPAC Promoters and their respective close associates must abstain from voting) and if it fails to obtain the requisite shareholder approval within one month of the material change, the trading of a SPAC's securities will be suspended and the SPAC must return the funds it raised from its initial offering to its shareholders, liquidate and de-list (in accordance with the process set out in paragraphs 435 and 436 of the Consultation Paper)?

Please give reasons for your views.

Law Society's response:

Agree. Given that SPAC shareholders invest primarily on the basis of the profile of the Promoters, these redemption events triggered by circumstances affecting the Promoters are necessary to offer suitable protection to the shareholders. As these triggering events are

not exhaustive, it is also appropriate to give the Exchange a general discretion to consider other relevant changes.

Question 21 Do you agree that the majority of directors on the board of a SPAC must be officers (as defined under the SFO) of the SPAC Promoters (both licensed and non-licensed) representing the respective SPAC Promoters who nominate them?

Please give reasons for your views.

Law Society's response:

Yes, this reinforces the alignment of interests between the Promoters and the Professional Investors.

Question 22 Do you agree that 100% of the gross proceeds of a SPAC's initial offering must be held in a ring-fenced trust account located in Hong Kong?

Please give reasons for your views.

Law Society's response:

It is too restrictive to require 100% of the gross proceeds to be ring-fenced. It seems that the amount ring-fenced should be the gross proceeds net of all offering expenses as disclosed in the prospectus. On top, the Exchange should also consider whether to allow a certain amount not exceeding a stipulated percentage of the total net amount raised be held outside the trust account to cover continued legal, accounting and the Exchange listing fees and other miscellaneous expenses (including that may be incurred in identifying suitable De-SPAC targets).

Question 23 Do you agree that the trust account must be operated by a trustee/custodian whose qualifications and obligations should be consistent with the requirements set out in Chapter 4 of the Code on Unit Trusts and Mutual Funds?

Please give reasons for your views.

Law Society's response:

Yes, this requirement offers better protection to the investors. At the same time, the category could be expanded to include, for example, a corporation or registered institution that is licensed by the SFC to carry on Type 1 Regulated Activity (with additional requirements) as has been adopted for private open-ended fund companies.

Question 24 Do you agree that the gross proceeds of the SPAC's initial offering must be held in the form of cash or cash equivalents such as bank deposits or short-term securities issued by governments with a minimum credit rating of (a) A-1 by S&P; (b) P-1 by Moody's Investors Service; (c) F1 by Fitch Ratings; or (d) an equivalent rating by a credit rating agency acceptable to the Exchange?

Please give reasons for your views.

Law Society's response:

We agree in principle. There are, however, some concerns whether the proceeds should be applied in holding government bonds (achieving the minimum rating) denominated in other currencies for there may be exchange rate fluctuations.

Question 25 Do you agree that the gross proceeds of the SPAC's initial offering held in trust (including interest accrued on those funds) must not be released other than in the circumstances described in paragraph 231 of the Consultation Paper?

Please give reasons for your views.

Law Society's response:

Please refer to our reply to Question 22.

Question 26 Do you agree that only the SPAC Promoter should be able to beneficially hold Promoter Shares and Promoter Warrants at listing and thereafter?

Please give reasons for your views.

Law Society’s response:

Yes, this restriction on dealing in Promoter Shares and Promoter Warrants helps to align the interests of the Promoters with the Professional Investors in ensuring a successful De-SPAC transaction.

Question 27 If your answer to Question 26 is “Yes”, do you agree with the restrictions on the listing and transfer of Promoter Shares and Promoter Warrants set out in paragraphs 241 to 242 of the Consultation Paper?

Please give reasons for your views.

Law Society’s response:

Yes, please refer to our response to Question 26.

Question 28 Do you agree with our proposal to prohibit a SPAC Promoter (including its directors and employees), SPAC directors and SPAC employees, and their respective close associates, from dealing in the SPAC’s securities prior to the completion of a De-SPAC Transaction?

Please give reasons for your views.

Law Society’s response:

This restriction should not apply to SPAC Shares and SPAC Warrants acquired by the Promoters after the listing of a SPAC. There may be valid commercial reasons for a SPAC Promoter to liquidate some of its investment (other than the Promoter Shares and Promoter Warrants). The Hong Kong insider dealing regime is reasonably adequate to help maintaining a fair, orderly and open market.

Question 29 Do you agree that the Exchange should apply its existing trading halt and suspension policy to SPACs (see paragraphs 249 to 251)?

Please give reasons for your views.

Law Society’s response:

Yes, given that there is a deadline for the completion of a De-SPAC transaction, applying the Exchange’s existing trading halt and suspension requirements is appropriate.

Question 30 Do you agree that the Exchange should apply new listing requirements to a De-SPAC Transaction as set out in paragraphs 259 to 281 of the Consultation Paper?

Please give reasons for your views.

Law Society's response:

Yes. Hong Kong has a stringent RTO regime to ensure that applicants will not circumvent the eligible listing requirements. To safeguard the quality of listed companies in Hong Kong, a potential De-SPAC target should not be treated differently.

Question 31 Do you agree that investment companies (as defined by Chapter 21 of the Listing Rules) should not be eligible De-SPAC Targets?

Please give reasons for your view.

Law Society's response:

Agree. Chapter 21 is a different regime for investment vehicles and is not apt for assessing the suitability of the listing of De-SPAC targets.

Question 32 Do you agree that the fair market value of a De-SPAC Target should represent at least 80% of all the funds raised by the SPAC from its initial offering (prior to any redemptions)?

Please give reasons for your views.

Law Society's response:

Yes, this seems appropriate in view of the requirement that a Successor Company would need to fulfil management and ownership continuity, and if there are multiple targets, these targets must be a group of companies under the same management and ownership. In practice, there will not be acquisitions of multiple De-SPAC targets as permitted by the SGX, and a target having a fair market value of 80% of the funds raised by a SPAC will be in line with the expectation of the investors as to the size of the business of the potential target at the time they invested in the SPAC concerned.

Question 33 Should the Exchange impose a requirement on the amount of funds raised by a SPAC (funds raised from the SPAC's initial offering plus PIPE investments, less redemptions) that the SPAC must use for the purposes of a De-SPAC Transaction?

Please give reasons for your views.

Law Society's response:

This seems unnecessary if there is a requirement of the fair market of the De-SPAC target. There are numerous ways to structure the consideration for the acquisition and dispensing with the proposed requirement for funds application will allow more commercial flexibility.

Question 34 If your answer to Question 33 is "Yes", should a SPAC be required to use at least 80% of the net proceeds it raises (i.e. funds raised from the SPAC's initial offering plus PIPE investments, less redemptions) to fund a De-SPAC Transaction?

Please give reasons for your views.

Law Society's response:

Please refer to our reply to Question 33.

Question 35 Do you agree that the Exchange should mandate that a SPAC obtain funds from outside independent PIPE investors for the purpose of completing a De-SPAC Transaction?

Please give reasons for your views.

Law Society's response:

We do not agree. We do not think that it is necessary to mandate independent PIPE investment from third parties.

Question 36 If your answer to Question 35 is "Yes", do you agree that the Exchange should mandate that this outside independent PIPE investment must constitute at least 25% of the expected market capitalisation of the Successor Company, with a lower percentage of between 15% and 25% being

acceptable if the Successor Company is expected to have a market capitalisation at listing of over HK\$1.5 billion?

Please give reasons for your views.

Law Society's response:

The 25% PIPE Investment may be too restrictive and exacerbates the difficulty in finding suitable De-SPAC targets. A lower threshold may contribute to the success of the SPAC regime. Investors are, to an extent, protected by their redemption option. If the SPAC regime is too rigid or largely similar to traditional IPO book building process, IPO applicants may not be able to take advantage of the flexibility afforded by the SPAC regime to pursue a dual-track approach to going public.

Question 37 If your answer to Question 35 is "Yes", do you agree that at least one independent PIPE investor in a De-SPAC Transaction must be an asset management firm with assets under management of at least HK\$1 billion or a fund of a fund size of at least HK\$1 billion and that its investment must result in it beneficially owning at least 5% of the issued shares of the Successor Company as at the date of the Successor Company's listing?

Please give reasons for your views.

Law Society's response:

This requirement appears to be restrictive. Please also refer to our answer to Question 35.

Question 38 If your answer to Question 35 is "Yes", do you agree with the application of IFA requirements to determine the independence of outside PIPE investors?

Please give reasons for your views.

Law Society's response:

If PIPE Investment is mandatory, either an IFA or the sponsor to the listing of the Successor Company can fulfil the role.

Question 39 Do you prefer that the Exchange impose a cap on the maximum dilution possible from the conversion of Promoter Shares or exercise of warrants issued by a SPAC?

Please give reasons for your views.

Law Society's response:

Yes, this enhances investor protection against significant dilutive impact especially with regard to Promoter Shares which are incentives tied to completion of a De-SPAC transaction.

Question 40 If your answer to Question 39 is "Yes", do you agree with the anti-dilution mechanisms proposed in paragraph 311 of the Consultation Paper?

Please give reasons for your views and provide any suggestions for alternative dilution cap mechanisms that could be considered.

Law Society's response:

We have no strong views on the percentage of the cap as it appears to be a reasonable balance between the market norms of incentive packages and safeguards against significant dilution effect for investors.

Question 41 If your answer to Question 39 is "Yes", do you agree that the Exchange should be willing to accept requests from a SPAC to issue additional Promoter Shares if the conditions set out in paragraph 312 are met?

Please give reasons for your views.

Law Society's response:

We have no strong views on the "earn out" structure provided that shares issued to Promoters arising from the "earn out" after the completion of the De-SPAC transaction should be subject to a moratorium period not shorter than the one imposed in paragraph 392 of the Consultation Paper.

Question 42 Do you agree that any anti-dilution rights granted to a SPAC Promoter should not result in them holding more than the number of Promoter Shares that they held at the time of the SPAC's initial offering?

Please give reasons for your views.

Law Society’s response:

Yes, provided sufficient and adequate disclosure is made, this appears reasonable as a built-in investor safeguards.

Question 43 Do you agree that a De-SPAC Transaction must be made conditional on approval by the SPAC’s shareholders at a general meeting as set out in paragraph 320 of the Consultation Paper?

Please give reasons for your views.

Law Society’s response:

Yes, this is in line with the current requirements of the Listing Rules for large notifiable transactions. There is no reason to treat the acquisition of a De-SPAC target any differently.

Question 44 If your answer to Question 43 is “Yes”, do you agree that a shareholder and its close associates must abstain from voting at the relevant general meeting on the relevant resolution(s) to approve a De-SPAC Transaction if such a shareholder has a material interest in the transaction as set out in paragraph 321 of the Consultation Paper?

Please give reasons for your views.

Law Society’s response:

Yes, please refer to our response to Question 43.

Question 45 If your answer to Question 43 is “Yes”, do you agree that the terms of any outside investment obtained for the purpose of completing a De-SPAC Transaction must be included in the relevant resolution(s) that are the subject of the shareholders vote at the general meeting?

Please give reasons for your views.

Law Society’s response:

Yes, if PIPE Investment is mandatory, completion of the De-SPAC transaction will likely be conditional upon the completion of outside (including PIPE) investment, and outside

investment will involve a further issue of shares. It is desirable for SPAC shareholders to approve any resulting dilution impact.

Question 46 Do you agree that the Exchange should apply its connected transaction Rules (including the additional requirements set out in paragraph 334) to De-SPAC Transactions involving targets connected to the SPAC; the SPAC Promoter; the SPAC's trustee/custodian; any of the SPAC directors; or an associate of any of these parties as set out in paragraphs 327 to 334 of the Consultation Paper?

Please give reasons for your views.

Law Society's response:

Yes, an absolute prohibition against acquisition of connected targets is too restrictive but it is important to have measures in place to safeguard against possible conflicts of interests. We agree that the Exchange should apply its connected transaction requirements (including the additional ones set out in paragraph 334) to regulate acquisition of connected targets.

Question 47 Do you agree that SPAC shareholders should only be able to redeem SPAC Shares they vote against one of the matters set out in paragraph 352?

Please give reasons for your views.

Law Society's response:

Yes, this proposal ensures that those SPAC shareholders who vote for the De-SPAC transaction align their interests with their voting decisions. The rules should also clarify that those shareholders who have not participated in the vote are not entitled to redemption, subject to considerations as to whether or not an exception may be made for those whose votes were excluded for regulatory or legal reasons (and in particular those who have formally published their opposition to the relevant resolutions).

To prevent abuse, shareholders who voted against a De-SPAC transaction should not be given an option to elect for redemptions i.e. all such redemptions should be mandatory on the part of the dissenting shareholders.

Question 48 Do you agree a SPAC should be required to provide holders of its shares with the opportunity to elect to redeem all or part of the shares they hold (for full compensation of the price at which such shares were issued at the SPAC's

initial offering plus accrued interest) in the three scenarios set out in paragraph 352 of the Consultation Paper?

Please give reasons for your views.

Law Society's response:

We agree that SPAC shareholders should be given an option to redeem in the scenarios set out in paragraph 352 (a) and (c). As regards a dissenting vote of a De-SPAC transaction, we consider that mandatory redemption is appropriate. A redemption right exercisable at the election of a dissenting shareholder may increase the likelihood of a shareholder voting against a De-SPAC transaction, regardless of the fair and reasonableness of its terms. It will increase the uncertainty of the De-SPAC deal being approved and prejudice shareholders who vote in favour of the De-SPAC transaction.

Question 49 Do you agree a SPAC should be prohibited from limiting the amount of shares a SPAC shareholder (alone or together with their close associates) may redeem?

Please give reasons for your views.

Law Society's response:

Yes, given that redemptions are only triggered by the occurrence of a few specified events, full redemption should be allowed.

Question 50 Do you agree with the proposed redemption procedure described in paragraphs 355 to 362 of the Consultation Paper?

Please give reasons for your views.

Law Society's response:

Yes, subject to our comments on questions 47 and 48.

Question 51 Do you agree that SPACs should be required to comply with existing requirements with regards to forward looking statements (see paragraphs 371 and 372 of the Consultation Paper) included in a Listing Document produced for a De-SPAC Transaction?

Please give reasons for your view.

Law Society's response:

Yes. This is consistent with the theme of the current proposal that a De-SPAC target should not be allowed to circumvent the existing suitability requirements of a traditional IPO applicant. All forward looking statements should, hence, be formulated on a reasonable basis and considered by experts to the same standard as that required for an IPO.

Question 52 Do you agree that a Successor Company must ensure that its shares are held by at least 100 shareholders (rather than the 300 shareholders normally required) to ensure an adequate spread of holders in its shares?

Please give reasons for your views.

Law Society's response:

Yes, this seems reasonable given that SPAC shares are restricted to Professional and PIPE Investors which have a smaller shareholder base. The requirements that at least 25% of the shares will be held by the public with the top three public shareholders owning not more than 50% of the Successor Company will help to ensure that there is an open market for the shares.

Question 53 Do you agree that the Successor Company must meet the current requirements that (a) at least 25% of its total number of issued shares are at all times held by the public and (b) not more than 50% of its securities in public hands are beneficially owned by the three largest public shareholders, as at the date of the Successor Company's listing?

Please give reasons for your views.

Law Society's response:

We agree in principle. This proposal is in line with the Chapter 8 of the Listing Rules. We also support the proposal that a lower percentage of between 15% and 25% be applied to SPACs with an expected market capitalisation at the time of listing of over HK\$10 billion.

Question 54 Are the shareholder distribution proposals set out in paragraphs 380 and 382 of the Consultation Paper sufficient to ensure an open market in the securities

of a Successor Company or are there other measures that the Exchange should use to help ensure an open market?

Please give reasons for your views.

Law Society's response:

We agree in principle but wish to reiterate our comment on question 12 that the minimum market capitalisation for IPO applicants is only HK\$500 million.

Question 55 Do you agree that SPAC Promoters should be subject to a restriction on the disposal of their holdings in the Successor Company after the completion of a De-SPAC Transaction?

Please give reasons for your views.

Law Society's response:

Yes. It is important to ensure that the key persons who are responsible for identifying and completing a De-SPAC transaction have their economic interests aligned with that of the shareholders of a Successor Company. The moratorium period will also help to enhance investor confidence in the disclosure made in the circular of the De-SPAC transaction.

Question 56 If your answer to Question 55 is "Yes", do you agree that:

- (a) the Exchange should impose a lock-up on disposals, by the SPAC Promoter, of its holdings in the Successor Company during the period ending 12 months from the date of the completion of a De-SPAC Transaction; and
- (b) Promoter Warrants should not be exercisable during the period ending 12 months from the date of the completion of a De-SPAC Transaction?

Please give reasons for your views.

Law Society's response:

Yes, a moratorium period of 12 months seems reasonable. On top, if a Promoter is awarded with "earn out" shares, these shares should be subject to the same lock-up requirement commencing on the date of their issue.

Question 57 Do you agree that the controlling shareholders of a Successor Company should be subject to a restriction on the disposal of their shareholdings in the Successor Company after the De-SPAC Transaction?

Please give reasons for your views.

Law Society's response:

Yes, they should be treated no differently from the controlling shareholders of a company that goes for an IPO.

Question 58 If your answer to Question 57 is "Yes", do you agree that these restrictions should follow the current requirements of the Listing Rules on the disposal of shares by controlling shareholders following a new listing (see paragraph 394 of the Consultation Paper)?

Please give reasons for your views.

Law Society's response:

Please see our response to Question 57.

Question 59 Do you agree that the Takeovers Code should apply to a SPAC prior to the completion of a De-SPAC Transaction?

Please give reasons for your views.

Law Society's response:

Agree. Notwithstanding that SPACs have certain unique features, there are no valid reasons to treat SPACs differently from other listed companies in Hong Kong. Shareholders should be provided with an exit in the event of a change of control prior to a De-SPAC transaction.

Question 60 Do you agree that the Takeovers Executive should normally waive the application of Rule 26.1 of the Takeovers Code in relation to a De-SPAC Transaction, the completion of which would result in the owner of the De-SPAC Target obtaining 30% or more of the voting rights in a Successor

Company, subject to the exceptions and conditions set out in paragraphs 411 to 415 of the Consultation Paper?

Please give reasons for your views.

Law Society's response:

Yes, a SPAC is formed for the purpose of acquiring suitable targets and investors do expect that there will be a change of control upon completion of the acquisition. It is unreasonable to require the owners of the De-SPAC to make a general offer. It will not only prolong the timetable of the transaction but will also serve as a disincentive for suitable De-SPAC targets to pursue the dual track approach to listing. An investor is also protected by the redemption opportunity if it does not approve of the De-SPAC target. The exceptions set out in the proposal will enhance the protection given to investors.

Question 61 Do you agree that the Exchange should set a time limit of 24 months for the publication of a De-SPAC Announcement and 36 months for the completion of a De-SPAC Transaction (see paragraph 423 of the Consultation Paper)?

Please give reasons for your views.

Law Society's response:

We have some concerns that the time lag of 12 months from the date of announcement to completion of a De-SPAC transaction might be too long. The share price of a SPAC may experience great volatility due to rumours and speculation about the success of the closing of the acquisition during the interim period. A shorter time frame seems appropriate given that a SPAC can apply for an extension of a De-SPAC Transaction Deadline. In appropriate circumstances, the Exchange may also retain a discretion to allow a SPAC to continue trading its securities even if a DE-SPAC transaction is not approved by the Exchange provided that trading continues to be limited to professional investors, subject to shareholders' approval.

Question 62 Do you agree that the Exchange should suspend a SPAC's listing if it fails to meet either the De-SPAC Announcement Deadline or the De-SPAC Transaction Deadline (see paragraphs 424 and 425 of the Consultation Paper)?

Please give reasons for your views.

Law Society's response:

Yes, given that the liquidation procedure will be triggered if a SPAC does not meet these deadlines, it provides greater market certainty to impose a suspension.

Please also refer to the answer in Question 61.

Question 63 Do you agree that a SPAC should be able to make a request to the Exchange for an extension of either a De-SPAC Announcement Deadline or a De-SPAC Transaction Deadline if it has obtained the approval of its shareholders for the extension at a general meeting (on which the SPAC Promoters and their respective close associates must abstain from voting) (see paragraphs 426 and 427 of the Consultation Paper)?

Please give reasons for your views.

Law Society's response:

Yes, an extension approved by independent shareholders provides flexibility and is to be preferred to a rolling extension that may result in a proliferation of SPACs with unlimited lifespan.

Question 64 Do you agree that, if a SPAC fails to (a) announce / complete a De-SPAC Transaction within the applicable deadlines (including any extensions granted to those deadlines) (see paragraphs 423 to 428 of the Consultation Paper); or (b) obtain the requisite shareholder approval for a material change in SPAC Promoters (see paragraphs 218 and 219) within one month of the material change, the Exchange will suspend the trading of a SPAC's shares and the SPAC must, within one month of such suspension return to its shareholders (excluding holders of the Promoter Shares) 100% of the funds it raised from its initial offering, on a pro rata basis, plus accrued interest?

Please give reasons for your views.

Law Society's response:

Yes, we agree to the liquidation of a SPAC that does not achieve the objective of finding a suitable De-SPAC target or in the event of a proposed change of Promoters that is not approved by the shareholders. Instead of requiring 100% of the gross proceeds to be returned with accrued interests, it is also reasonable to allow a SPAC to deduct some pre-

disclosed running costs which are permitted in other jurisdictions. Please also refer to our response to Question 22.

Question 65 If your answer to Question 64 is “Yes”, do you agree that (a) a SPAC must liquidate after returning its funds to its shareholders and (b) the Exchange should automatically cancel the listing of a SPAC upon completion of its liquidation?

Please give reasons for your views.

Law Society’s response:

Yes. However, it would appear that the SPAC listing could be cancelled on return to all shareholders of funds and not on completion of liquidation (which can be a lengthy legal and procedural process) which could occur months later.

Question 66 Do you agree that SPACs, due to their nature, should be exempt from the requirements set out in paragraph 437 of the Consultation Paper?

Please give reasons for your views.

Law Society’s response:

Yes, these consequential changes are necessary in order for the SPAC regime to be introduced.

Question 67 Do you agree with our proposal to require that a listing application for or on behalf of a SPAC be submitted no earlier than one month (rather than two months ordinarily required) after the date of the IPO Sponsor’s formal appointment?

Please give reasons for your views.

Law Society’s response:

Yes, given that a SPAC is a mere cash company, the due diligence work of the IPO Sponsor will be limited, and a shorter time frame is appropriate.

Question 68 Should the Exchange exempt SPACs from any Listing Rule disclosure requirement prior to a De-SPAC Transaction, or modify those requirements for SPACs, on the basis that the SPAC does not have any business operations during that period?

Please give reasons for your views.

Law Society's response:

Yes, exemptions or modifications to some of the Listing Rules' requirements are appropriate and will also reduce the operation costs of a SPAC.

**The Law Society of Hong Kong
23 November 2021**