

## New Listing Regime for SPACs in Hong Kong – an offshore perspective / 离岸视角下香港关于特殊目的收购公司的新上市制度

Service area 服务范围 / Corporate 公司

Legal jurisdictions 司法管辖 / Hong Kong SAR 香港特别行政区

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The recent revisions to the Hong Kong Main Board Listing Rules introducing the SPAC regime is an incredibly positive step forward in addressing the competitive disadvantage Hong Kong faced in attracting SPAC sponsors to the market, particularly from the dominant US exchanges.

香港最近修订的《香港主板上市规则》引入了特殊目的收购公司 (SPAC) 制度，此举是香港在弥补吸引 SPAC 保荐人（尤其是来自占主导地位美国交易所的保荐人）上市面临的竞争劣势方面迈出的积极一步。

Although some commentators have noted that the quality and suitability requirements set out in the new regime are too high and will detract from the commercial attractiveness of the regime, SPAC promoters in the PRC and Hong Kong have largely welcomed the development and see it as increasing the attractiveness and accessibility of Hong Kong as a listing venue.

虽然有评论人士指出，新制度制定的质量和适用性标准要求过高，会降低该制度在商业上的吸引力，但是，中国内地和香港的 SPAC 发起人对这一发展表示大力欢迎，并认为其提升了香港作为上市地点的吸引力和可及性。

The new Hong Kong SPAC listing regime seeks a balance, introducing relatively stringent requirements for the quality of both listing candidates and also de-SPAC targets, addressing the commercial needs of SPAC sponsors whilst also raising the bar in terms of investor protections. Key examples of the focus on investor protection include:

新的香港 SPAC 上市制度力求达到一种平衡，对上市候选公司和 de-SPAC（即，SPAC 并购）交易目标的质量提出了相对严格的要求，如此一来既满足了 SPAC 保荐人的商业需求，又提高了投资者保护标准。重点投资者保护的关键事项包括：

- only professional investors are allowed to participate in the SPAC at IPO stage;
- 仅专业投资者可在 IPO 阶段参与 SPAC；
- once the SPAC IPO completes and moves to the de-SPAC transaction, retail investors may participate in trading in the securities of the de-SPAC target;
- 一旦 SPAC 公司的 IPO 完成并进入 de-SPAC 并购交易，散户投资者方可参与 de-SPAC 目标公司的证券交易；
- promoter shares are capped at a maximum of 30% of the total number of the shares in issue at the SPAC IPO;
- 在 SPAC 进行 IPO 时，发起人股份的上限为发行股份总数的 30%；
- SPAC shareholders must be given the option to redeem their shares prior to the de-SPAC transaction;
- SPAC 股东必须获得在 de-SPAC 并购交易前赎回其股票的选择权；
- the de-SPAC target is required to undergo the same vetting procedures as with other traditional IPOs;
- 与其他传统 IPO 相同，de-SPAC 目标公司也需要接受同样的审查程序；

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- funding by third party independent PIPE investors in the de-SPAC transaction is mandatory, with at least 50% of the independent PIPE investment to come from at least 3 Sophisticated Investors (as defined under the Listing Rules).
- 第三方独立 PIPE 投资者有义务在 de-SPAC 并购交易中提供资金，且其中需包含至少 50% 来自至少 3 名资深投资者的独立 PIPE 投资（根据上市规则定义）。

All of these measures are aimed at providing more protection and confidence to investors. The SPAC promoters must meet a set of suitability and eligibility requirements according to the SPAC rules (e.g. the requirement to have at least one SPAC promoter to be a Type 6 (advising on corporate finance) and/or Type 9 (asset management) licence issued by the SFC), which are intended to result in better quality de-SPAC targets, and by extension, better market performance. According to a study conducted by Spac Research as reported in an article published by the Financial Times on 21 January 2022, until 19 January 2022, share prices of the 199 SPAC mergers completed in 2021 in the US have dropped on average around 40%. With the high volatility on the performance in the US SPACs space, the enhanced scrutiny of the Hong Kong SPACs listing regime offers greater confidence to sponsors to identify better quality de-SPAC targets. We believe the above features can assist to differentiate the Hong Kong SPAC regime as being an enhanced version of SPAC listing regimes globally. It offers (i) SPAC promoters (which if the US experience is anything to go by, will include major regional private equity sponsors) a streamlined route to raising local capital without the long timeline of the traditional road show process, and (ii) de-SPAC targets an alternative to the traditional IPO route, in each case in a more regulated environment, aligning with the interests of market participants.

所有此类措施都旨在为投资者提供更多的保护和信心。根据 SPAC 规则，SPAC 发起人必须满足一系列的适用性和合格要求（例如，要求至少有一名 SPAC 发起人持有第 6 类（就机构融资提供意见）和/或第 9 类（资产管理）香港证监会颁发的牌照），旨在达成更为优质的 de-SPAC 并购目标，并由此延伸，取得更好的市场表现。据英国《金融时报》2022 年 1 月 21 日报道，截至 2022 年 1 月 19 日，Spac Research 在 2021 年完成的并购交易中有 199 宗的股价平均下跌了约 40%。由于美国 SPAC 市场表现的高度波动性，对香港 SPAC 上市制度的严格审查促使保荐人更有信心识别出更为优质的 de-SPAC 并购目标。我们相信，上述特点有助于香港特别行政区的上市制度在全球范围内成为特别行政区上市制度的强化版。它将为 (1) SPAC 的发起人（如果以美国的经验为参照的话，将包括主要的地区性私人股本赞助商）提供一条简化途径，使其可在当地筹集资金，而无需经历传统路演过程的漫长时间；(2) de-SPAC 并购目标是一种传统 IPO 途径之外的替代途径，每个案例都是在一个更为规范的环境下进行，从而更加符合市场参与者的利益。

Cayman Islands companies continue to be favoured by sponsors and investors when structuring a SPAC transaction, particularly where the target company is based outside of the US. The Cayman Islands offers a range of benefits, such as a sophisticated judicial system which is substantially based on English common law, political stability, tax efficiency, flexibility of capital maintenance rules, no restrictions on exchange control, a straightforward statutory merger regime and a long history of recognition by the world's leading financial centers and securities exchanges. M&A deals involving Cayman Islands companies are mostly structured through Cayman Islands statutory mergers (for instance, most SPACs with non-US targets are using Cayman Islands incorporated companies as the SPAC to cater for the subsequent de-SPAC transaction). As of June 2021, there were 289 Cayman Islands companies listed on NASDAQ and 185 Cayman Islands companies listed on the New York Stock Exchange. By the end of 2020, there were 1,186 Cayman Islands companies listed on the Hong Kong Stock Exchange, which accounted for 60.36% of the aggregate number of listed companies on the Hong Kong Stock Exchange. With the implementation of the Hong Kong SPACs regime, we are optimistic that the demand for Cayman vehicles will continue to grow.

开曼群岛公司在执行一项 SPAC 并购交易时，会持续受到保荐人和投资者的关注，尤其是当并购目标公司的总部位于美国以外的地区时。开曼群岛提供了一系列便利之处，例如，大体上以英国的普通法、政治的稳定性、税收的高效性、资本保全规则的灵活性、对外汇管制的自由性为基础的严密的司法系统、简捷的法定兼并制度，以及获得全球领先金融中心和证券交易认可的悠久的历史。涉及开曼群岛公司的并购交易大多是通过开曼群岛的法定兼并程序完成（例如，大多数拥有非美国目标的 SPAC 公司都使用开曼群岛注册 SPAC 公司，以满足后续的 de-SPAC 并购交易）。截至 2021 年 6 月，有 289 家开曼群岛公司在纳斯达克上市，185 家开曼群岛公司在纽约证券交易所上市。截至 2020 年底，开曼群岛在港交所上市公司 1186 家，占港交所上市公司总数的 60.36%。随着香港 SPAC 制度的实施，我们对开曼投资工具的需求将继续增长持乐观态度。

For offshore legal assistance, please feel free to speak to our corporate team members in Hong Kong.

如需海外法律援助，请随时联系我们在香港的公司团队成员。

续



## Key contacts 主要联系人

For further information or professional advice, please contact our team below:  
有关更多信息或专业意见，请联系以下团队：



**彭德贤 Michael Padarin**  
管理合伙人 - 公司, 投资基金

直线 +852 3628 9006  
电邮 [michael.padarin@careyolsen.com](mailto:michael.padarin@careyolsen.com)



**还晓彤 Tiffy Wan**  
资深高级律师 - 公司

直线 +852 3628 9021  
电邮 [tiffy.wan@careyolsen.com](mailto:tiffy.wan@careyolsen.com)



**李典昭 Calvin Lee**  
律师 - 银行与金融, 公司

直线 +852 3628 9028  
电邮 [calvin.lee@careyolsen.com](mailto:calvin.lee@careyolsen.com)



### FIND US / 联系我们

Carey Olsen Hong Kong LLP  
Suites 3610-13  
Jardine House  
1 Connaught Place  
Central  
Hong Kong SAR  
T +852 3628 9000  
E [hongkong@careyolsen.com](mailto:hongkong@careyolsen.com)



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