

Hong Kong Encourages Listings by Foreign Companies, SPACs

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Takeaways

- Greater China companies operating in any industry can now obtain secondary listings in Hong Kong, provided they meet market capitalization minimums.
- Recent Listing Rules amendments also allow some companies with weighted voting rights to have primary listings.
- More companies qualify to upgrade from secondary to primary listings.
- SPAC IPOs will be permitted, but with strict investor protections: Shares can only be sold to institutional investors, de-SPAC transactions require full IPO-level disclosure and investors enjoy strong redemption protections.

By late 2020, Hong Kong may have settled into a “new normal” shaped by the pandemic, but 2021 proved to be an unusually eventful year for capital market regulation, as the Hong Kong Stock Exchange (HKEX) sought to make itself a more attractive venue for international companies through new initiatives:

- amendments to the Hong Kong Listing Rules that provide more flexibility for overseas companies to undertake secondary or dual primary listings; and
- a proposal to allow SPACs to go public on the HKEX for the first time.

The changes come at the same time the U.K. Financial Conduct Authority (FCA) is liberalizing its listing rules and encouraging SPACs, in an effort to permit the London Stock Exchange (LSE) to better compete for listings in a global market. (See “[Wide-Ranging Reforms of UK Capital Markets: A Watershed Moment?](#)”)

More Flexibility for Secondary and Dual Primary Listings

Amended rules that took effect January 1, 2022, open up new opportunities for overseas companies to list in Hong Kong.

New secondary listings. Companies, including those based in Greater China, are permitted to have a secondary listing in Hong Kong regardless of whether their business is considered “innovative” by HKEX (*e.g.*, internet or other high-tech

businesses) — previously a threshold condition for Greater China company secondary listings.

The rules set minimum market capitalizations of:

- HK\$3 billion for companies with a track record of good regulatory compliance for five financial years on the New York Stock Exchange (NYSE), Nasdaq or the LSE for Greater China companies, or on a wider range of recognized exchanges in the case of companies based elsewhere; or
- HK\$10 billion with a track record of good regulatory compliance for two financial years on the NYSE, Nasdaq or the LSE.

Primary listings for weighted voting companies. The new rules also permit dual primary Hong Kong listings by several categories of companies with weighted voting rights (WVRs):

- innovative “Grandfathered Greater China Issuers” — those listed overseas on qualifying exchanges with WVR shares held by individuals on or prior to December 15, 2017, and those with WVR shares held by body corporates on or before October 30, 2020, which do not otherwise comply with HKEX’s usually strict criteria for dual-class shares; and
- non-Greater China issuers with WVR or variable interest entity (VIE) structures that do not comply with HKEX requirements.

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Previously, such companies could only undertake a secondary listing.

Conversions from secondary to primary listings. HKEX also clarified three routes for secondary-listed issuers to convert to a primary listing:

- **Voluntary conversion.** A company may choose to upgrade from a secondary to a dual primary listing.
- **Overseas delisting.** If a secondary-listed company delists from its overseas exchange, it will automatically be treated as primary-listed in Hong Kong.
- **Trading migration.** If a majority of the trading volume of a secondary-listed company migrates to HKEX, it will be required to convert to a primary listing.

In all these cases, the company will lose the benefit of the automatic Listing Rules waivers granted to secondary-listed companies, such as HKEX’s corporate governance and financial reporting requirements and the onerous rules on notifiable and connected transactions. However, companies with noncompliant WVR or VIE structures that upgrade to a primary listing may retain these existing structures.

Opening the Door to SPACs

In another major development, HKEX has introduced new rules allowing SPACs to list, but with a number of significant conditions that may limit Hong Kong’s appeal for sponsors.

SPACs have proven extremely popular in the U.S. in recent years, and other major markets, including the U.K. and Singapore, have also introduced rules to facilitate listings. (See “[Wide-Ranging Reforms of UK Capital Markets: A Watershed Moment?](#)” and “[Choppy Market for SPACs and PIPEs](#),”

[Competition for Targets Spurs Deal Innovations.](#)”) Moreover, some major Asia-based operating companies have chosen to go public through de-SPAC transactions (merging with a SPAC) rather than via traditional IPOs. In light of these developments, there was competitive pressure at HKEX to introduce a SPAC regime.

However, given the unique risks and investor characteristics of the Hong Kong market, HKEX opted for a regime that permits only “the listing of SPACs that have experienced and reputable SPAC promoters that seek good quality de-SPAC targets.” As a result, the proposed rules are heavy on investor protection and present significant hurdles for promoters and target companies compared to other jurisdictions.

Among the key features to protect investors:

- Only professional investors will be permitted to subscribe for or trade SPAC securities.
- SPACs will be required to ring-fence 100% of their IPO proceeds in order to refund investors their full pro rata share if they seek redemption. This effectively creates a risk-free structure for investors, while promoters will bear all the expenses in connection with the IPO and operations (including underwriting commissions and taxes).

Aspiring SPAC promoters must meet rigorous eligibility criteria, and SPAC IPOs will be subject to stringent fundraising and distribution requirements, including:

- a minimum IPO fund-raise of HK \$1 billion; and
- distribution to at least 75 professional investors, with at least 75% of the shares placed with at least 20 institutional investors.

In the highly competitive market for de-SPAC targets, HKEX’s strict requirements may make Hong Kong SPACs less attractive as merger candidates. Much of the appeal of merging with a SPAC is deal and pricing certainty and, for a public-ready company, speed as compared to a traditional IPO. Those attractions may be undermined for Hong Kong SPACs by HKEX’s proposals:

- HKEX will treat de-SPAC transactions as new listing applications. A sponsor must be appointed to conduct IPO-level due diligence, a prospectus must be produced and the application will be fully vetted by HKEX. The time required will therefore be comparable to that of a traditional IPO. This is not unlike the regulatory focus in the U.S. on the de-SPAC transaction being the “true IPO” transaction for the target company. SPACs will be required to raise money via a PIPE (private investment in public equity) placement to independent professional investors simultaneous with any de-SPAC transaction, which is intended as an arms-length validation of the valuation. The minimum required size of the PIPE transaction will be subject to a sliding scale based on the de-SPAC target valuation, with a minimum PIPE of at least 25% of the market capitalization of the successor company required where the de-SPAC valuation is less than HK\$2 billion to as low as 7.5% where the de-SPAC valuation is HK\$7 billion or more. At least 50% must be placed with a minimum of three asset management firms or funds with HK\$8 billion in assets under management. Any de-SPAC transaction will thus be conditioned on the ability to price and sell the PIPE deal to external investors, potentially undermining deal certainty.

The SPAC rules came into effect January 1, 2022.