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This month's newsletter covers two important developments in Singapore. First, after a period of consultation SGX has introduced a new listing framework for special purpose acquisition companies (SPACs). The listing of SPACs has been a hotly discussed issue for some time, and it is a good development for a clear framework to be provided. A perhaps even bigger development is the wide ranging changes to the Copyright Act which is now before Parliament. This will generally modernize the Act as well as introducing important new features in Singapore's copyright law. Both topics are addressed below.

## I. SGX introduces SPAC listing framework

Henry Tan, Attorney-at-law

On 31 March 2021, the Singapore Exchange (the "**SGX**") issued a consultation paper (the "**Consultation Paper**")[1] seeking public feedback on its proposal to introduce a new framework for the listing of special purpose acquisition companies ("**SPACs**")[2] on the Mainboard of Singapore Exchange Securities Trading Limited ("**SGX-ST**") . On 2 September 2021, the SGX released a paper on its response to the public feedback received (the "**Response Paper**")[3]. The Response Paper also sets

[1] The Consultation can be found at: https://api2.sgx.com/sites/default/files/2021-03/Consultation%20Paper%20on%20Proposed%20Listing%20Framework%20for%20Special%20Purpose%20Acquisition%20Companies.pdf.

[2] SPACs are established solely for the purpose of raising funds, through an initial public offering ("**IPO**"), to acquire operating business(es) or asset(s). Such acquisition can take the form of a merger, share exchange, asset acquisition, share purchase, reorganisation, or other similar business combination methods (a "**Business Combination**").

[3] The Response Paper can be found at: https://api2.sgx.com/sites/default/files/2021-

forth the finalized listing framework for SPACs (the "**SPACs Framework**") that came into effect on 3 September 2021, based broadly on the framework proposed in the Consultation Paper, with some adjustments to address the feedback received. This article briefly discusses certain key aspects of the SPACs Framework, focusing on the following areas: (i) the admission and related criteria in respect of SPAC listings, (ii) protection of shareholders against dilution risks and (iii) other safeguards for investor protection.

## 1. Admission and Related Criteria

### (1) IPO Criteria

Under the SPACs Framework, SPACs will be permitted to apply for primary listing on the Mainboard of the SGX-ST. Some of the key admission criteria for such listing are as follows:

(i) SPACs should have a minimum market capitalisation of S$150 million at IPO;

(ii) SPACs must have at least 25% of their issued shares (excluding treasury shares) held by not less than 300 public shareholders at IPO;

(iii) Securities offered for a SPAC IPO should have a minimum issue price of S$5 per share or unit; and

(iv) A SPAC's founding shareholders and management team must, in aggregate, subscribe for a minimum value of equity securities (based on the IPO subscription price) in accordance with the following requirements:

| **Market Capitalisation (S$ million) ("M")** | **Proportion of subscription** |
|---|---|
| 150 ≤ M < 300 | 3.5% |
| 300 ≤ M < 500 | 3.0% |
| M ≥ 500 | 2.5% |

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(2) Suitability Assessment of SPACs

Practice Note 6.4 ("**Practice Note 6.4**") to the listing rules of the SGX-ST Mainboard (the "**Mainboard Rules**") provides a non-exhaustive list of the factors the SGX-ST will consider in assessing the suitability of a SPAC for listing. These factors include the following:

(i) the profile, including the track record and repute, of the founding shareholders and experience and expertise of the management team of the SPAC;

(ii) the business objective and strategy of the SPAC;

(iii) the nature and extent of the management team's compensation;

(iv) the proportion of rewards to be enjoyed by the founding shareholders, the management team, and their associates;

(v) the provisions in the articles of association and other constituent documents of the SPAC (including comparability of shareholder protection and the liquidation rights with that of Singapore-incorporated companies, and whether the SPAC will be subject to the Insolvency, Restructuring and Dissolution Act of Singapore ("**IRDA**") for liquidation procedures or the incorporation of such equivalent provisions of the IRDA); and

(vi) the intended use of IPO proceeds not placed in the escrow account.

(3) Permitted Time Frame for Completion of Business Combination

A SPAC must complete a Business Combination within 24 months from the date of its listing. If it has entered into a legally binding agreement for a Business Combination before the end of such 24-month period, it will have an additional 12 months to complete the Business Combination. Outside of such circumstances, a SPAC wishing to extend the timeframe for its completion of a Business Combination has to apply to the SGX-ST for an extension of time and specifically obtain the approval of at least 75% of shareholders at a general meeting. For this purpose, the founding shareholders, the management team, and their associates are not permitted to vote with shares they have acquired at nominal or no consideration before or at the time of the SPAC's IPO.

(4) Minimum Percentage of IPO Proceeds Held in Escrow

Immediately upon listing, a SPAC must place at least 90% of the gross funds raised from its IPO in an escrow account opened with and operated by an independent escrow agent. Such escrow agent must be a financial institution licensed and approved by the Monetary Authority of Singapore. The amount in escrow cannot be drawn down except for a Business Combination, on liquidation of the SPAC or in other permitted circumstances as set out in Practice Note 6.4.

(5) Fair Market Value of Target Company Relative to Amount in Escrow

The initial business or asset acquired pursuant to a Business Combination must have a fair market value of at least 80% of the amount in the escrow account at the time of entry into the binding agreement for the Business Combination, excluding any amount held in the escrow account representing deferred underwriting fees and any taxes payable on the income earned on the escrowed funds.

(6) Required Approval for Business Combination

A Business Combination must be respectively approved by (i) a simple majority of independent directors, and (ii) an ordinary resolution passed by shareholders at a general meeting. For purposes of item (ii), the founding shareholders, the management team, and their associates, are not permitted to vote with shares acquired at nominal or no consideration before or at the SPAC's IPO.

**2. Safeguards Against Dilution Risks**

A SPAC must establish a percentage limit of not more than 50% as to the maximum dilution to its post-IPO issued share capital with respect to the conversion of any warrants or other convertible securities issued by the SPAC in connection with the IPO.

**3. Other Safeguards for Investor Protection**

(1) Event of Material Change

If, before a SPAC completes its Business Combination, an event of material change occurs in relation to the profile of the founding shareholders and/or the management team which may be critical to the successful founding of the SPAC and/or successful completion of the Business Combination, the SPAC must obtain the approval of at least 75% of the votes cast by independent shareholders at a general meeting for the continued listing of the SPAC on the SGX-ST. For this purpose, the founding shareholders, the management team, and their associates, are not considered as independent shareholders. The aforesaid circumstances are not intended to be exhaustive and SGX-ST has the discretion to determine when a circumstance constitutes an event of material change.

(2) Cap on Sponsor's Promote

The Sponsor's Promote (i.e., the aggregate equity interests in a SPAC acquired by the founding shareholders, management team, and their associates at nominal or no consideration before or at the time of the SPAC's IPO, including equity interests arising from warrants or other convertible securities acquired at nominal or no consideration) will generally be permitted up to 20% of the issued share capital of the SPAC (on a fully diluted basis) immediately following closing of the IPO.

The SGX-ST has discretion in considering the appropriateness of such equity ownership, taking into account the overall structure of the SPAC.

(3) Moratorium

The moratorium requirements specified in Rules 227, 228 and 229 of the Mainboard Rules must be satisfied in respect of SPAC listings. More specifically, a moratorium will apply to the equity interests of the founding shareholders, the management team, and their respective associates on the date of listing up to and including the completion date of the Business Combination. Following completion of the Business Combination, a moratorium of at least 6 months will apply to the equity interests of (i) the founding shareholders and the management team of the SPAC, and their respective associates and (ii) the controlling shareholders of the issuer that results from the Business Combination (the "**Resulting Issuer**") and their associates, and executive directors of the Resulting Issuer with an interest in 5% or more of the issued share capital of the Resulting Issuer.

(4) Resulting Issuer to Meet Initial Listing Requirements

The Resulting Issuer that follows a Business Combination must meet the applicable initial listing requirements under Chapter 2 of the Mainboard Rules.

(5) Appointment of Financial Adviser

A SPAC must appoint a financial adviser, who is an issue manager, to advise the SPAC on its Business Combination.

## II. The Copyright Bill – Proposed Amendments to the Copyright Act

Jessalyn Tay, Advocate & Solicitor

### 1. Introduction

The Copyright Bill (the "**Bill**") tabled for First Reading in Parliament on 6 July 2021 seeks to repeal and replace the current Copyright Act (the "**Act**") and is expected to be operational in November 2021. The Bill introduces several changes amongst which we will highlight below some of the more key amendments.

(1) Granting creators and performers the right to be identified

(i) When must they be identified

Currently under the Act, creators and performers do not have a right to be identified when their

work is being used. Under the new Bill, anyone who uses a work or performance in a way that it is seen in public must now identify the creator of the work or the performer. However, this right to be identified notably does not apply to computer programs and work that is made by an employee in the course of their employment where the employer is the first owner of the copyright.

This right to be identified does not apply to works made or performances given before the enactment of the Bill and existing agreements will not be affected.

(ii) Who must be identified

If there are joint creators and performers, the names of each creator or performer must be identified unless the creator or performer is not generally known, not known to the person and could not be reasonably ascertained.

(iii) How must they be identified

The creator or performer must be identified in the way they wish to be identified. For example, by their name or pseudonym. The identification must be “clear and reasonably prominent”. In the event where copies are supplied, the identification must appear in or on each copy or noticed by a person acquiring a copy.

(iv) Modification or Exclusion by Contract

The right to be identified co-exists with copyright. This means that even when a person owns the copyright of a work, the creator or performer must still be identified when the work is used in a way that it is seen in public unless the exceptions below apply. Therefore, the right to be identified must be specifically negotiated separately from the copyright if parties wish for this right to be modified.

The right to be identified does not apply where the the creator or performer has formally waived their right to be identified by giving a formal waiver in writing and signed, or where the creator or performer gives their consent to not being identified, in writing or otherwise.

(v) Exceptions to the right to be identified

The right to be identified does not apply to the certain types of works including:

(i) computer programs;
(ii) authorial works where the author made the work in the course of employment and the employer is the first owner of the copyright in the work; and
(iii) authorial works where the Government is the first owner of the copyright in the work

and the author has not been identified

The right to be identified does not apply to certain permitted uses of works including:

(i) the use of a work for the purpose of an examination. For example, when setting examination questions;
(ii) the making, publishing, including in a film, television broadcast or cable programme of a painting, drawing, engraving or photograph of a building, model of a building, and sculpture or other works of artistic craftsmanship not temporarily located in a public place;
(iii) the including of a work in a film, television broadcast or cable programme as incidental or the main content; and
(iv) the use of a work in judicial proceedings.

(2) Granting creators default ownership of certain commissioned works

Currently under the Act, creators of commissioned photographs, portraits, engravings, sound, recordings, or films are not the first owners of copyright of such works by default. This position is reversed under the Bill.

Under the Bill, creators of photographs, portraits, engravings, sound recordings, and films will by default, unless otherwise agreed in a contract, be the first owner of copyright, even if they were commissioned to make those works.

(i) What this means

If a photographer or videographer is engaged for an event or for a shoot, the copyright will belong to the photographer or videographer by default. If the person commissioning the work wishes to own the copyright, they must ensure that the copyright is assigned to them by contract. Otherwise, the photographer or videographer may use the work for his own purposes as the copyright owner, including selling or licensing the work.

However, the use of the work by coopyright owners may still be restricted by other laws and regulations. For example. if the work contains images of individual persons constituing personal data under the Personal Data Protection Act 2021 (“**PDPA**”), the photographer or videographer who is the copyright owner is still bound by their obligations under the PDPA.

(3) Permitted use of works for computational data analysis

(i) What is computational data analysis

Computational data analysis is defined under the Bill as (a) using a computer program to

identify, extract and analyse information or data from the work or recording and (b) using the work or recording as an example of a type of information or data to improve the functioning of a computer program in relation to that type of information or data. Examples include using images to train a computer to recognize images or data mining.

(ii) When is copying permitted

Under the Bill, the copying of copyright works for the purpose of computational data analysis is permitted. This is provided the following conditions are met:

a) the person making the copy does not use the copy other than for the purpose of computational data analysis;
b) does not supply the results of the computational data analysis other than for the purpose of verifying the results or collaborative research;
c) the person has lawful access to the work (the “first copy”). For example, the person must not have circumvented paywalls to access the first copy;
d) the first copy is not an infringing copy or the person does not know that the first copy is an infringing copy.

This exception for the permitted use of works for computational data analysis cannot be modified or excluded by contract.

(iii) What this means

If a person or company wishes to prevent works that they have published online from being used, they may consider installing a paywall. However, if a person using the work complies with terms of access, such as subscribing, they may access and copy the work for computational data analysis.

(4) Protecting certain exceptions from being restricted by contract

Under the current Act, there are already several permitted uses of protected work which may not be excluded or restricted by contract at all such as the backing up of computer programs. Under the Bill, this is expanded to include, *inter alia*, the exception for computational data analysis as mentioned above and works of libraries and museums.

For other types of permitted uses, the copyright owner may exclude or restrict the application of a permitted use by contract. This is provided that the contract is:

a) individually negotiation; and
b) the restricted term is fair and reasonable.

The first condition excludes standard form contracts or “click-through contracts” which cannot be negotiated. In other words, users may rely on copyright exceptions notwithstanding that such contracts stipulate any contractual term to the contrary.

The second condition of whether a restrictive term is fair and reasonable will be determined by a list of factors in the Bill including the strength of the bargaining positions of the parties and whether an inducement was received for agreement to the term.

These provisions will apply to all contracts including contracts concluded before the enactment of the Bill for acts to be carried out after enactment.

## 2. Conclusion

In light of the new provisions under the Bill as highlighted above, it is prudent to keep these changes in mind for future agreements and review existing copyright arrangements to be in compliance.

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